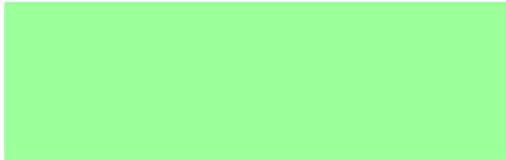




U.S. Citizenship  
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Services

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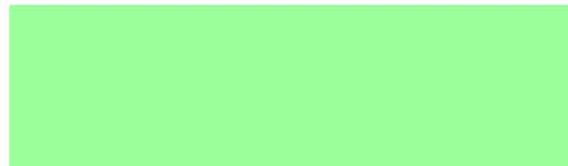


DATE: **NOV 13 2014** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner 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 corporation established in [REDACTED] states that it is engaged in the trucking industry. The petitioner asserts that it is a subsidiary of [REDACTED] located in the United Arab Emirates (UAE). The petitioner seeks to employ the beneficiary as the managing director of a "new office" in the United States for a period of one year.

The director denied the petition, finding that the petitioner did not establish that it has a qualifying relationship with the foreign entity. Further, the director concluded that the petitioner did not demonstrate that the beneficiary is employed abroad in a qualifying managerial or executive capacity.

On appeal, the petitioner contends that the director erred in concluding that the petitioner does not have a qualifying relationship with the foreign entity. In addition, the petitioner asserts that the beneficiary's duty description establishes that he acts in a qualifying executive 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. Qualifying Relationship

The first issue to be addressed is whether the petitioner has established that it has a qualifying relationship with the foreign entity.

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 (1)(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.

\* \* \*

(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.

1. Facts

The petitioner filed the Form I-129 on December 27, 2013. The petitioner indicated in the Form I-129 that it is a subsidiary of the foreign entity. However, where asked to state the company ownership and managerial control of each company on the Form I-129, the petitioner stated that it is 100% owned by the beneficiary. The petitioner did not state the ownership of the foreign entity on the Form I-129.

In a letter dated December 17, 2013 the petitioner stated that it is "100% owned by the management of the Parent company in U.A.E." The petitioner stated that the foreign entity "is owned by [the beneficiary] & Mr. [REDACTED]" and that "Mr. [REDACTED] being their official sponsor is the third partner." The petitioner explained that "Mr. [REDACTED]" has "certified" that [the beneficiary] and

<sup>1</sup> We note that the Mr. [REDACTED] is also referred to on the record as Mr. [REDACTED] and Mr. [REDACTED]

are the actual owners of the company and that they have invested all capital in the company. Further, in the same letter, the petitioner indicated that 60% of its shares are owned by the beneficiary and 40% of its shares are owned by

As evidence of the foreign entity's ownership, the petitioner submitted a "partners addendum" from the Department of Economic Development dated October 6, 2013 reflecting that the foreign entity is owned as follows: 51% by Mr. 25% by the beneficiary; and 24% by Further, the petitioner provided a 2012 "Supplement of M.O.A., Withdraw & Adding Partner" indicating that Mr. purchased 153 shares in the foreign entity (51% of the outstanding shares) from an for 300,000 Emirati dirham. The agreement specified that the beneficiary holds 75 of the foreign entity's outstanding shares valued at 75,000 Emirati dirham; and that owns 72 outstanding shares valued at 72,000 Emirati dirham. According to this agreement, the beneficiary and each share in 40% of the company's profits and losses while Mr. share of profits and losses is 20%. The agreement also includes the following clause:

In case of non-local partner(s) leave out of U.A.E. for more than six [continuous] months or non renewal of the said company trade license for more than one month, they authorize the U.A.E. national partner to access his shares including his share selling to himself or others or dissolve and to cancel the license and to refund bank guarantees of partners of the company and employees from Department of Immigration and Ministry of Labor and to refund other guarantees.

The petitioner further submitted a "declaration" dated June 13, 2012 in which Mr. Boloushi states that he is only a "sponsor of the company" and that the beneficiary and are the owners of the company that they have "invested money for the company and spend all expenses of the company."

In addition, the petitioner provided an audited financial statement for the foreign entity which states at Section 1.4 that "the management and controls of the Company are vested with [the beneficiary] (Managing Director)." The petitioner also submitted a commercial license issued by the Department of Economic Development on June 10, 2013 to the foreign entity listing the beneficiary as the "licence member."

With respect to the ownership of the U.S. company, the petitioner submitted a copy of its articles of incorporation indicating that it was established in California on June 14, 2013 and is authorized to issue 1,000 shares of common stock.

The director later issued a request for evidence (RFE) stating that the evidence submitted by the petitioner was insufficient to establish that it has a qualifying relationship with the foreign entity. As such, the director requested that the petitioner submit additional evidence to demonstrate ownership in both the petitioner and the foreign entity, including meeting minutes, stock certificates, a stock ledger, and/or proof of stock purchases relevant to each entity.

In response, the petitioner provided copies of its stock certification nos. 1 and 2, its stock ledger, by-laws, and the minutes of the first meeting of the board of directors. This evidence supported the petitioner's statements that it is 60% owned by the beneficiary and 40% owned by

The petitioner acknowledged that the foreign entity is owned by the three foreign partners referenced above in the aforementioned percentages. The petitioner stated the following with respect to ownership in the foreign entity:

Mr. [REDACTED] is the official sponsor of the [the beneficiary] & Mr. [REDACTED] in UAE. However, Mr. [REDACTED] has certified that Mr. [REDACTED] and [the beneficiary] are the actual owners of the Company having invested the entire capital in the Company.

In support of this assertion the petitioner provided another declaration from Mr. [REDACTED] dated December 3, 2014 stating that "in the United Arab Emirates, it is compulsory to have a local partner in all businesses which include foreign partners." He stated that he is "only the local sponsor of [the foreign entity] as per the law." Again, Mr. [REDACTED] indicated that the beneficiary and [REDACTED] are the owners of the company that have invested all money required to operate the business.

In denying the petition, the director concluded that the petitioner had failed to establish that it is owned by the foreign entity as necessary to qualify as a subsidiary. The director noted that the petitioner is owned by the beneficiary and [REDACTED] and not by the foreign entity. The director further stated that the evidence was insufficient to show that the petitioner and the foreign entity are owned and controlled by the same individuals or by the same group of individuals each owning a proportionate share as necessary to qualify them as affiliates.

On appeal, the petitioner contends that the petitioner and the foreign entity are affiliates. The petitioner states that, under UAE law, 51% of the equity of a corporation formed in that country must be owned by a citizen of the UAE. The petitioner states that Mr. [REDACTED], the 51% owner of the foreign entity, has no actual control over the foreign entity or decision making authority. The petitioner notes that its commercial licenses to operate trucks in UAE lists the beneficiary, and not Mr. [REDACTED] as the holder of the license.

On appeal, the petitioner submits a website screenshot from [REDACTED] providing information on limited liability companies in [REDACTED]. The website states that "foreign investors are allowed to hold an equity ownership in the UAE companies, provided, 51% of equity is held at all times by UAE nationals." The petitioner maintains that Mr. [REDACTED] has no actual control of the company, has no decision-making authority, and invested no assets in the UAE entity.

## 2. Analysis

Upon review of the submitted evidence, the petitioner has not demonstrated that it has a qualifying relationship with the 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 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 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. To establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982).

In the present matter, the petitioner has not established that there is common ownership and control between it and the foreign entity. The petitioner has submitted evidence establishing that the foreign entity is majority owned by Mr. [REDACTED], who has no ownership interest in the petitioner. Further, the evidence establishes that the beneficiary is the majority owner of the petitioner.

The petitioner claims that Mr. [REDACTED] despite holding a 51% interest in the foreign entity, has no actual control over the company and that he only serves as a local sponsor as required by UAE law. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). The petitioner has submitted a one-page screenshot from the website [REDACTED] in support of its claim that Mr. [REDACTED] is merely a "local sponsor" who has no actual control over the business. However, it has not submitted any citations to UAE law in support of its claim that a "local sponsor" does not or cannot control a UAE limited liability company. 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 submits two declarations on the part of Mr. [REDACTED] in which he asserts that the beneficiary and [REDACTED] are the true owners of the foreign entity based upon their investment in, and management of, the entity. However, the petitioner submits foreign entity corporate documentation indicating that Mr. Boloushi purchased 153 shares in the foreign entity for 300,000 Emirati dirham in 2012, or a 51% controlling ownership interest in the entity. This document undermines the petitioner's assertion that he made no investment in the foreign entity. Further, the petitioner lists Mr. [REDACTED] on its organizational chart and in its employee list, and the evidence submitted shows that he shares in the profits and losses of the company. The limited evidence provided does not support a finding that he is simply a "sponsor" with no other interest or involvement in the company.

The petitioner otherwise submits no other supporting documentation to substantiate its claim that Mr. [REDACTED] enjoys something less than a controlling interest in the foreign entity. The petitioner has not submitted a complete copy of any of the foreign entity's corporate documents, but instead provides a "partners addendum" and a "supplement of M.O.A." While the latter document does appear to distinguish between local and non-local partners, it also gives the local partner authority to dissolve the company if the other partners leave the UAE or if the company does not maintain its trade license. Without full disclosure of all relevant documents, including the full memorandum of association, USCIS is unable to determine the elements of ownership and control.

Although it is certainly possible that the owners of the foreign entity have reached an understanding to allow the beneficiary and [REDACTED] to manage the affairs of the foreign entity despite Mr. [REDACTED]

majority ownership, the petitioner has not submitted sufficient supporting documentation in support of its claim.

Further, the petitioner has provided no evidence that the beneficiary, the majority owner of the petitioner, exercises de facto control over the foreign entity beyond submitting a business license that lists his name. This evidence falls short of demonstrating that the beneficiary exercises full control over the foreign entity despite Mr. [REDACTED] majority interest. In the absence of other documentation to the contrary or an explanation as to how the beneficiary controls the foreign entity, the petitioner has not demonstrated the requisite common ownership and control between it and the foreign entity.

For the reasons set forth above, the petitioner has not established that it has a qualifying relationship with the foreign entity. For this reason, the appeal must be dismissed.

#### B. MANAGERIAL OR EXECUTIVE CAPACITY (ABROAD)

The next issue to be addressed is whether the petitioner has established that the beneficiary has been employed abroad in a qualifying managerial or executive capacity for one continuous year in the three-year period preceding the filing of the petition.

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

The petitioner states that the foreign entity, based in [REDACTED] has a fleet of thirteen trucks and that "the Company has been leading in the field of transportation of steel products, containers, food items, wood, building material, construction material and heavy equipment for various corporations, manufacturers, traders and developers in the entire U.A.E and Gulf Region." Audited financial statements submitted by the petitioner indicate that it earned 3,514,286 Emirati dirham in 2013.<sup>2</sup>

The petitioner explained the beneficiary's role with the foreign entity as follows:

[The beneficiary] is the Partner and Managing Director of the [foreign entity], since its inception in 2006. His responsibilities over a period of time included general management; taking and making policy decisions for the company, hiring and firing of senior managerial employees; negotiations with customers and vendors and other entities including governmental authorities. As a Manager he is responsible to supervise all business affairs.

The petitioner indicated that the beneficiary's duties are "primarily concerned with all managerial and executive tasks," including "marketing functions, negotiating prices, hiring and firing, [and] supervising and training of his employees." The petitioner also explained that the beneficiary "has been responsible for bringing business from various buyers."

The petitioner submitted the foreign entity's organizational chart depicting the beneficiary as managing director, supervising the aforementioned Mr. [REDACTED] and [REDACTED] partners, an "accountant general" and a "supervisor." The chart further indicated that the supervisor oversaw seventeen truck drivers and a "loading/unloading worker." As previously noted, the foreign entity's audited financial statements indicate that management of the company is vested with the beneficiary. The audited financial statements provided for 2012 specify that the foreign entity paid 647,518 Emirati dirham in "wages and benefits" during that year.

In the RFE, the director indicated that the evidence submitted by the petitioner was insufficient to establish that the beneficiary was employed in a qualifying managerial or executive capacity with the foreign entity for one of the three years previous to the filing of the petition. As such, the director requested that the petitioner submit copies of the beneficiary's training, pay, or other personnel records to substantiate his managerial or executive employment and an organizational chart indicating the names, job titles, duties,

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<sup>2</sup> Equivalent to approximately \$957,000 as of the date of the decision.

education levels, and salaries of the foreign entity's staff. Further, the director asked that the petitioner provide a letter from the foreign entity explaining the beneficiary's typical managerial or executive duties, including the percentage of time he spends on each duty.

In response, the petitioner submitted a letter from the foreign entity explaining the beneficiary's role as follows:

Being the Promoter and one of the Top Executives of the Company, [the beneficiary] set the goals and objectives of the Company. He envisioned the Company to be one of the most reliable service providers in trucking and transportation. He laid the policies for other to follow. To start, he prevailed over other directors when he took firm decisions to service one sector at a time. The Company followed his policy decision to nurture one market sector at a time. The Company followed his policy decision to nurture one market sector at a time and establish its reliability to customers in that sector, before moving to another market segment. The Company started only with transportation of steel products, building and construction material for developers. With that market in mind, the Company invested in Flat Bed, Tripper & Dump Trucks. The dividends came very soon as most of the developers started to give their business to our Company knowing our specialty service to meet their needs. Slowly we moved to transport containers, food items, wood, and heavy equipment for various corporations, manufacturers and traders. Other [t]rucks were purchased to suit the needs of the Company.

The letter further specified that the beneficiary "has top authority to hire and fire any employee of the Company" and that he "sets the agenda for our entire marketing mechanism." The foreign entity explained that the beneficiary "spends his time on envisioning the growth and expansion of the business" and "spells the policies and objectives."

The petitioner provided a 2013 audited financial statement relevant to the foreign entity indicating that the company paid 783,108 Emirati dirham in "wages & benefits" during that year. The petitioner resubmitted the same organizational chart provided in support of the petition, along with a list of foreign employees indicating twenty five names and positions. The employee list reflected the beneficiary, the aforementioned Mr. [REDACTED] and [REDACTED] partners; an accountant; a supervisor and twenty truck drivers. The employee list provided education levels for each employee and reflected that Mr. [REDACTED] the accountant, the supervisor and two of the truck drivers all held bachelor's level degrees.

In denying the petition, the director found that the evidence appeared to show that the beneficiary was primarily assisting in the performance of non-supervisory duties. The director noted that the petitioner had failed to submit the duties, education levels, and salaries of the beneficiary claimed subordinates, as requested in the RFE. The director concluded that the evidence failed to establish that the foreign entity's organizational structure was sufficient to support the beneficiary in a supervisory position beyond that of a first line supervisor of non-professional employees.

On appeal, the petitioner contends that the beneficiary's duty description delineates that he performs executive duties for the foreign entity, including responsibilities for setting policies, goals, and objectives, hiring and firing employees and setting the agenda of the company's marketing mechanism.

## 2. Analysis

Upon review of the record, the petitioner has not established that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

When examining the executive or managerial capacity of the beneficiary, we 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, such as setting the goals, objectives, and policies of the company, are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. Although the petitioner provides some detail regarding the beneficiary's decisions, such as developing a strategy to focus on one market segment at a time, this description fails to provide a complete picture of the beneficiary's typical tasks. Further, the record includes no specific documentation to substantiate the beneficiary's qualifying duties. Indeed, the director requested that the petitioner explain the beneficiary's typical managerial or executive duties, including the percentage of time he spends on each duty, but the petitioner failed to provide this requested description. 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). Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Overall, the petitioner has failed to provide a sufficiently detailed explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

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.

The director asked that the petitioner submit a foreign entity organizational chart naming its employees, their duties, educations, and salaries. In response, the petitioner submitted a list of employees with their job titles and education levels, but did not explain their duties. 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). Without this evidence, we cannot determine how work is distributed among the foreign entity's staff or to what extent the beneficiary's subordinates relieve him from involvement in the non-managerial, day-to-day operations of the company. Further, the petitioner has not provided supporting documentation to substantiate the claimed full-time employment of the beneficiary's subordinates, such as personnel documentation or payroll records. 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)).

On appeal, counsel contends that the beneficiary primarily acts as an executive for the foreign entity. 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 demonstrated with adequate evidence that the beneficiary acts in an executive capacity abroad. First, as previously discussed, the petitioner has not submitted a sufficiently detailed duty description for the beneficiary abroad, nor submitted supporting documentation to substantiate his performance of his asserted duties. In addition, the petitioner has not corroborated the existence of subordinates necessary to demonstrate that the beneficiary focuses primarily on the broad policies and goals of the organization rather than on its day-to-day operations. The evidence presented does not establish that the beneficiary is primarily delegating operational tasks to his subordinates, but suggests that he is in fact involved in these operations, including deciding on the type and number of trucks to purchase. The petitioner has not provided specific examples of broad goals and policies he set or negotiations he conducted with customers, suppliers, and governmental agencies, as referenced in his duty description. The petitioner has not specifically articulated or documented his hiring and firing decisions or how he "set the agenda of the company's marketing mechanism," as asserted by the petitioner on appeal. In addition, the petitioner failed to provide duty descriptions or other supporting evidence relevant to his claimed managerial and professional subordinates to substantiate that they relieved the beneficiary from performing non-qualifying tasks. When asserting that a beneficiary acts in an executive capacity, it is the petitioner's burden to establish with sufficient supporting evidence that the beneficiary is primarily engaged in higher level tasks relevant to the direction of management and establishment of broad goals and policies. Here, the petitioner has failed to demonstrate this with sufficient supporting evidence and insufficiently responded to the director's relevant evidentiary requests. Therefore, the petitioner has not established that the beneficiary acts in a qualifying executive capacity.

As such, for the foregoing reasons, the petitioner has not established that the beneficiary acts in a qualifying managerial or executive capacity abroad. For this reason, the appeal must be dismissed.

### C. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

Beyond the decision of the director, the petitioner has not established that the beneficiary will act in a qualifying managerial or executive capacity within one year. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

1. Facts

The petitioner stated that it will commence operations as a trucking company and that it will rent a parking lot and small warehousing facility for this purpose. The petitioner submitted evidence indicating that the foreign entity had transferred \$15,000 to the petitioner "in order to take care of some start-up expenses."

The petitioner provided a business plan reflecting that it projected that it "can be launched for \$700,000, largely with the investment of [the beneficiary] and with some investment by investing partners." The petitioner projected that the business would "be launched with three 18-wheeler trucks and will expand its operations to utilize eight 18-wheelers by the end of its third year, using auto loans to finance this expansion." The petitioner estimated that it would purchase three new 18 wheel trucks at a cost of \$150,000 each and three forklifts for an estimated \$75,000. The petitioner stated that it planned on purchasing three trucks with the initial capital invested and acquiring additional trucks through loans. Later in the business plan, the petitioner included a table reflecting a total planned investment of \$675,000 from the beneficiary (\$250,000); [REDACTED] (\$150,000); and an "additional investment requirement" (\$275,000). Further, the plan indicated that the business would have "start-up expenses" of \$45,000. The petitioner projected that it would earn nearly \$1 million in revenue and that it would pay \$206,291 in wages during the first year.

The petitioner submitted a projected organizational chart indicating that it would employ eight employees by the end of the first year, including the beneficiary as managing director and CEO overseeing a general manager, who in turn would supervise a sales and marketing associate and an administrative manager. The administrative manager was shown to oversee three drivers and an accountant/clerk.

In the RFE, the director stated that the petitioner had failed to submit sufficient evidence to establish that the petitioner's proposed new office would support the beneficiary in a qualifying managerial or executive capacity after one year. The director requested that the petitioner submit a letter from the foreign entity indicating the proposed number of employees for the new office and their positions, the size of the U.S. investment, and the ability of the foreign entity to pay the beneficiary and commence doing business in the United States. Further, the director asked the petitioner to submit an organizational chart listing the names of any current employees and proposed titles, duties and educational levels for each projected employee.

In response, the foreign entity indicated that it had already transferred \$15,000 to the petitioner "to kick start the company" and that it would "provide adequate financial support to our US operations." The petitioner submitted the foreign entity's audited financials for 2013 reflecting that the shareholders' account at the close of the year held 1,815,240 Emirati dirham (or approximately \$494,000 as of the date of this decision).

2. Analysis

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.

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

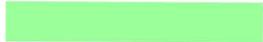
manager or executive within one year. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform 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.*

Overall, the position description alone is 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. company 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v)(C).

Here, the petitioner has not established 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 as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The petitioner states in the submitted business plan that it will require \$700,000 during the first year to launch the business. The petitioner provides evidence indicating that the foreign entity has wired \$15,000 to the petitioner and asserts that the remaining investment will be made by both the beneficiary and the [REDACTED]. However, the petitioner provides no evidence to support the availability of funds for this investment. The petitioner provides foreign entity financial statements that do not reflect that it has sufficient assets to provide the substantial remaining investment to launch the petitioner. Further, the business plan vaguely states that the company has an "additional investment requirement" of \$275,000, an amount more than the proposed investment of the beneficiary and [REDACTED] but fails to articulate or document the potential source of these needed funds. Indeed, the petitioner has not provided supporting documentation to demonstrate that it has received sufficient funds from any source to account for its projected initial start-up expenses of \$45,000, let alone finances necessary to purchase the three \$150,000 trucks needed to commence operations. Therefore, the petitioner has failed to demonstrate that the foreign entity has the ability to support the development of the petitioner during the first year.

As such, for the foregoing reasons, the petitioner has not established that the beneficiary will act in a qualifying managerial or executive capacity in the United States after one year. For this additional reason, the appeal must be dismissed.

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.