



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 27 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker under 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 petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition 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 [REDACTED] states that it provides event planning and organization services. The petitioner claims to be a branch office of [REDACTED] located in Italy. The petitioner seeks to employ the beneficiary as president/general manager of its new office for a one year period.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been employed with the foreign entity in a managerial or executive capacity.

The petitioner filed the instant 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 admits that the beneficiary does perform non-qualifying duties; however, counsel asserts that the evidence is sufficient to demonstrate that the beneficiary spends the majority of his time on executive and managerial duties and is therefore employed in a managerial or executive capacity with the foreign entity.

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.

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.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

II. Issue on Appeal

The sole issue addressed by the director is whether the petitioner established that the beneficiary was employed in a managerial or executive capacity abroad.

A. Facts

The petitioner filed the Form I-129 on March 18, 2014 seeking to employ the beneficiary as president/general manager of its new office. The Form I-129 indicates that the petitioner has a qualifying relationship with the beneficiary's employer abroad since 2005. The petitioner's business plan indicates that the foreign entity operates an event planning business, recording studio, online musical instrument store, audio/visual/lighting services, and a club in Italy that provides a venue for live concerts every weekend.

The Form I-129 describes the beneficiary's duties with the foreign entity as follows:

AS GENERAL MANAGER

- Established and managed
- Developed and implemented strategic marketing plan for business
 - Gained strong business growth in the first 5 years
 - Doubled the annual turnover during Italian economic crisis in 2011
 - Optimization of economical resources
- Established and managed a (nightclub similar to with weekly live music and shows

- Trained and managed staffs and shifts

AS EVENT MANAGER

- Managed and organized all aspects of small & medium size events with budgets up to \$150,000. Events included: stage performances, private parties, tournees, banquets/dinners and weddings
- Directed team members to ensure projects [*sic*] goals are achieved
- Organized all technical event aspects (audio/video/light)
- Planned all event aspects (artists/venues/services)
- Promoted events through traditional and new networks (print, press, social network)

(Bullets added)

The petitioner provided an organization chart for the foreign entity that places the beneficiary at the highest level of the organization with two subordinates, an administrative and event planner, and a technical/event/sales manager. The chart indicates that the administrative and event planner oversees “staff on call” and one individual identified as freelance event staff. The technical/event/sales manager oversees three freelance audio engineers, two freelance light designers, and one freelance audio technician. The chart includes the same description of the beneficiary’s position as provided on the I-129.

The organization chart provides the following descriptions for the positions directly subordinate to the beneficiary:

Technical/Event/Sales Manager

- Manage customers relationship and sales
- Manage Event
- Manage all technical aspects/equipment

Administrative and Event Planner

- Manage Child Event
- Manage Human Resources
- Perform administrative duties

(Bullets added)

The director issued a request for evidence, (“RFE”), informing the petitioner, in part, that the initial evidence was insufficient to establish the beneficiary’s employment abroad in a managerial or executive capacity. The director suggested that the petitioner submit a more detailed organizational chart for the foreign entity, and a more detailed description of the beneficiary’s duties as well as the percentage of time he allocates to specific tasks.

The petitioner submitted a timely response to the RFE which included the following evidence: (1) the beneficiary's resume and academic transcripts; (2) the beneficiary's work portfolio; (3) a letter from the foreign entity further explaining the beneficiary's duties; and (4) a sworn affidavit from the beneficiary.

The foreign entity's letter provided an expanded description of the beneficiary's duties which was also reflected in his resume. Specifically, the letter indicates that in addition to the previously beneficiary's previously described duties as "general manager" and "event manager," he has performed the following tasks in his current role with the foreign entity:

Audio Engineer/Video-Light Technician

- More then [sic] 100 events as Audio Engineer (Indoor and Outdoor: Big live concerts up to 1000 people, conferences, theaters...)
- Defined the audio/video/light set up for more then [sic] 100 events
- More then [sic] 1000 hours of studio recording as Audio Engineer
- Purchasing Manager of more then [sic] \$200,000.00 of audio/light/video equipment
- Managed the whole audio/video/equipment in the warehouse, during loading operations and during events
- Lighting technician in different situations
- Backliner expert
- Ability to repair audio/video/lighting and electrical cables

Web developer/Software Engineering/Analyst

- Developed dynamic web pages (Websites, Online stores)
- Customized CMS web development
- Realized web graphic
- Developed/analyzed managerial software

The petitioner provided the beneficiary's portfolio describing the work that the beneficiary performed on individual projects. In addition to the duties mentioned in the foreign entity's letter and the beneficiary's resume, the portfolio stated that the beneficiary's tasks have included: implementing marketing plans, advertising campaigns, and graphics; contacting and hiring artists; managing budgets; responsibility for audio and lighting requirements; responsibility for the purchase of services; organizing internal sales; managing the necessary permits to carry out events; hiring and directing team members; finding wedding venues; planning honeymoons; planning wedding wardrobes and decorations; lecturing students on entertainment technologies and the music business; managing computer equipment and registration for entertainment technology course; organizing and managing the snack bar at events; planning tours for bands; driving bands on tour; and music production including songwriting, guitar and vocals, recording, and producing compact discs.

The director denied the petition concluding that the petitioner failed to establish the beneficiary's employment with the foreign entity in a managerial or executive capacity. The director stated that the position descriptions and organization chart indicate that the beneficiary is primarily involved in the performance of the routine operational tasks necessary to provide a service or produce a product. The director found that the organization structure is insufficient to support the beneficiary in a position that is higher than a first-line supervisor of

non-professional employees, noting that the petitioner failed to provide a summary of duties, salaries, and education levels for the beneficiary's subordinate employees and failed to provide the percentages of time that the beneficiary spends performing managerial or executive duties versus non-qualifying duties.

On appeal, counsel for the petitioner asserts that the beneficiary's role as founder, majority shareholder, and CEO of the foreign entity establishes that he was employed in an executive capacity although he performed "some non-qualifying duties from time to time to meet the reasonable needs of [the foreign entity]." Counsel asserts that the director failed to take into account the reasonable needs of the foreign entity and the beneficiary's executive duties. Counsel submits a copy of a non-precedent AAO decision in support of her claims

B. Analysis

Upon review of the record, the petitioner has not established that the beneficiary has been employed in a qualifying managerial or executive capacity abroad.¹

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 each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary primarily performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

At the time of filing, the petitioner indicated that the beneficiary performs duties as both the general manager of the foreign company and as an event manager. Although the position description includes language that suggests the beneficiary's high level of authority within the company, it relies on general terms that do not indicate what the beneficiary actually does on a day-to-day basis. For example, the position description states that the beneficiary: "managed and organized all aspects of small and medium size events"; "managed music management & event organization"; "managed a rock'n'roll club"; "managed staff and shifts"; and "managed the whole audio/video/equipment." Absent specific details about the activities performed by the beneficiary to "manage" the organization, events, and equipment; this description is insufficient to establish that the beneficiary's duties are primarily managerial as defined by the Act. The beneficiary's daily activities must support assertions that the beneficiary performs managerial or executive duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

¹ The petitioner claims on appeal that the beneficiary is employed in a primarily executive capacity; however, we will also address whether he is employed in a managerial capacity.

Further, the initial description of duties suggested that the beneficiary is directly involved in direct provision of the company's event planning services, as well as non-managerial marketing and promotion duties. For example, the petitioner stated that the beneficiary "organized all technical event aspects (audio/video/light)"; "planned all event aspects (artists/venues/services)" and "promoted events through traditional and new networks (print, press, social network)." Based on the initial description, the director was unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs these non-managerial operational duties.

Therefore, the director suggested that the petitioner submit a more detailed description of the beneficiary's duties and describe the percentage of time he allocates to specific tasks. While the petitioner responded to the director's request with an expanded description of the beneficiary's duties, the expanded portion of the description was comprised of almost exclusively non-managerial duties the beneficiary performs as an audio-engineer/video-light technician and web developer. Overall, the record indicates that the beneficiary's duties include: plan all event aspects; promote events; implement a marketing plan; develop web pages; organize all technical event aspects; implement marketing plans; plan honeymoons; assist couples in choosing clothes and decorations for wedding events; organize buffets; book hotels; work as an audio engineer; producing compact discs; and act as a driver for touring bands.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. See Section 101(a)(44) of the Act; see also *Brazil Quality Stones, Inc. v. Chertoff*, 531, F.3d 1063, 1069-70 (9th Cir. 2008). In the instant matter, the petitioner failed to document what proportion of the beneficiary's duties is spent on managerial functions and what proportion is allocated to non-managerial duties. Further, based on the number of non-managerial duties documented in the record, it is more likely than not that the beneficiary primarily performs the daily duties necessary to provide the foreign entity's event planning services and music products, notwithstanding his decision-making authority as the company's majority owner and senior employee. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

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 petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The record fails to establish that the foreign entity has sufficient staffing to relieve the beneficiary from primarily performing non-qualifying duties. The petitioner claims that the foreign entity operates an event planning service, recording studio, online music store, and night club. The organization chart indicates that the beneficiary has two direct subordinates. The petitioner states that beneficiary's subordinates oversee

freelance event staff, audio technicians, light designers, and audio engineers; however, the petitioner has not supplied evidence of payments made to subordinate staff, work contracts, position descriptions for freelance employees, or any other evidence to establish the actual number of subordinate employees or their roles within the organization. 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)).

Furthermore, many of the beneficiary's duties overlap with the broad job description provided for his subordinate technical/sales/event manager. The position descriptions state that both positions are responsible for managing events, technical aspects, and equipment. The organization chart demonstrates additional overlap in the beneficiary's duties with the freelance employees subordinate to the technical/sales/event manager. The beneficiary's position description includes more than 100 events and 1000 hours of studio recording as audio engineer and states that he worked as a lighting technician in different situations. Given the beneficiary's performance of these duties, further doubt is cast on the number of subordinate employees and the organizational structure of the foreign entity. In addition, there is no indication that any of the beneficiary's subordinates assist him with marketing and promoting the petitioner's services.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "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). Although the beneficiary is not required to supervise personnel, if it is claimed that the beneficiary's duties involve the supervision of employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. There is no evidence that any of the beneficiary's subordinate employees are professional-level employees.² The evidence also fails to establish that the beneficiary manages supervisory or managerial employees.

² In evaluating whether the beneficiary manages professional employees, the AAO must 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).

The focus is on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not established that a bachelor's degree is required for any of the positions subordinate to the beneficiary.

Assuming, *arguendo*, that the organization chart reflects the correct number of employees; the job duties provided do not support the position titles and or the hierarchy depicted in the organization chart. The petitioner failed to provide position descriptions for the freelance and "staff on call" positions. The vague position description indicates that the administrative and event planner actually performs the foreign entity's administrative duties rather than supervising a subordinate staff that performs the administrative duties. The position descriptions indicate that the beneficiary's direct subordinates manage human resources, customer service, and sales functions; but no human resource, sales, or customer service employees are identified on the organization chart. As such, the record fails to establish that the beneficiary's subordinates are supervising or managing subordinate employees rather than performing these duties themselves. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (*Cited in Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)).

The term "function manager" applies generally when a beneficiary does not supervise or control the work of 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 position description 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. Here, the petitioner has not articulated a claim that the beneficiary manages an essential function of the foreign entity and the record would not support such a claim, as the petitioner has not established that the beneficiary primarily performs managerial duties.

On appeal, counsel also claims that the beneficiary will be employed in an executive capacity. 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). 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.* 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. As mentioned above, many of the beneficiary's described duties reflect his significant involvement in the day-to-

day operation of the company. In addition, the record fails to establish the existence of managerial employees or sufficient subordinate employees to allow the beneficiary to focus primarily on executive duties.

Counsel's claim that the beneficiary's role as founder, majority shareholder, and CEO of the foreign entity establishes his employment in an executive capacity is unpersuasive. Although the evidence indicates that the beneficiary exercises discretion over the petitioning entity and has a high level of authority as majority shareholder, the record fails to show that his actual day-to-day duties, as of the time of filing, were primarily managerial or executive in nature. The fact that the beneficiary owns and manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

Counsel admits that the beneficiary performs "some non-qualifying duties from time to time," but claims that the director erred in failing to consider the "reasonable needs" of the company. Counsel is correct that a company's reasonable needs must be taken into consideration when determining whether a small company has sufficient staff to relieve the beneficiary from performing non-qualifying duties. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, the reasonable needs of the company will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the company may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. Here, the evidence does not support a conclusion that the beneficiary allocates his time primarily to managerial or executive tasks.

Based on the evidence furnished, it cannot be found that the beneficiary is primarily employed by the foreign entity in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

III. Additional Issues

Beyond the decision of the director, the record is not persuasive in demonstrating that the beneficiary would be employed in a qualifying managerial or executive capacity within one year of the new office petition.

The petitioner's business plan, organization chart, and the description of the beneficiary's proposed position in the United States indicate that the beneficiary's proposed position and duties are largely the same as his position and duties with the foreign entity. Accordingly, for the reasons discussed above, the record does not contain persuasive documentation that the beneficiary would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act, or that the petitioner would support such a position, within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner's business plan indicates that in addition to overseeing the company's day-to-day operations, he will be "providing highly professional technical and artistic services to [the petitioner's] clients," and will be responsible for coordinating "all aspects of events, and [*sic*] music, art, and technical conferences and courses." The business plan indicates that the company plans to have no more than four employees by the end of year one (including

one freelancer), which further supports a finding that the company will not have the staff within that timeframe to provide the music management, event organization, and training services the petitioner intends to offer.

The petitioner has also failed to provide sufficient evidence that it secured sufficient physical premises to house the new office. *See* 8 C.F.R. § 214.2(1)(3)(v)(A). The petitioner's business plan indicates that the company will have a facility to stage events as well as the ability to travel to outside venues. As evidence of physical premises, the petitioner submitted a copy of the beneficiary's residential lease indicating that the property must be used as a private residence unless the lessee obtains written permission from the landlord. The petitioner has not demonstrated that the residential space is sufficient to allow the commencement of operations or to allow for the growth of the company in accordance to the business plan and proposed organization chart. For these additional reasons, 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).

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.