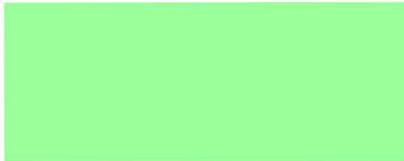
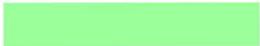




U.S. Citizenship
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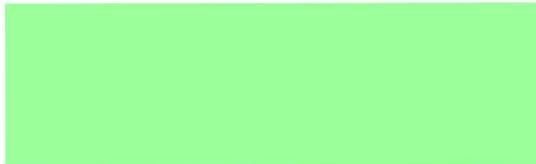


DATE: **SEP 09 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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 ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to classify the beneficiary as an 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 January 2013, states that it is an affiliate of [REDACTED] located in Egypt. The petitioner indicates that it will operate a gas station and other investment businesses. It seeks to employ the beneficiary as the general manager of its new office for a period of one year.

The director denied the petition concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity within one year.

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, counsel for the petitioner asserts that the director mischaracterized and ignored substantial evidence in the record and erroneously concluded that the beneficiary would not be employed in a qualifying managerial or executive capacity within one year. The petitioner submits additional evidence in support of the appeal.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (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 Issue on Appeal

The sole issue addressed by the director is whether the petitioner established that it would employ the beneficiary in a qualifying managerial or executive capacity within one year.

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.

A. Facts

The petitioner filed the Form I-129 on September 4, 2013. The petitioner indicated on the Form I-129 that its type of business is "various, initial investment is a service station." It stated that the beneficiary, as general manager, "will direct and oversee all aspects of the petitioner's operations in the USA."

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

It will be his task to oversee, evaluate and retain or fire all U.S. staff, establish lines of business in the USA, oversee and direct all operations of the U.S. entity, negotiate

and enter into contracts on behalf of the U.S. entity, ensure the implementation of the business plan for the U.S. entity, and document monthly the direction and progress of U.S. operations. [The beneficiary] will be fully in charge of all operations of the U.S. entity.

[The beneficiary] will ensure compliance with the immigration and labor laws of the United States in the operations of the enterprise in the USA – something not always done at service stations in Southern California.

The petitioner further stated that the beneficiary would "manage and direct the restructuring and expansion of the operations of the [REDACTED] in [REDACTED] and such other enterprises as may, from time to time, be purchased by [the petitioner]."

The petitioner submitted a document titled "Escrow Instructions – Business Transfer" which references a Business Purchase Agreement between the petitioner and [REDACTED] under which the petitioner agreed to purchase a [REDACTED] CA gas station for a total price of \$110,000 plus inventory estimated at \$45,000.

The petitioner submitted a three-year business plan for the gas station which discusses its plans to sell gasoline, convenience-store items, and to offer car washing and repair services. The business plan indicates that the petitioner will hire one full-time car wash/detail specialist, one full-time car wash specialist, temporary/part-time car wash staff, and an administrative assistant/receptionist when it opens for business. The evidence of record reflects that the gas station the petitioner intends to purchase does not include a car wash or repair shop.

The business plan contains a monthly sales forecast and sales projections for the first three years of operations. The petitioner projects monthly wage expenses of \$3,500 for the first 12 months and \$3,750 for months 13 through 36. The petitioner's projected sales are from gasoline, diesel fuel, and taxable and non-taxable market items. The petitioner's projections do not include any service income from a car wash or repair shop.

The petitioner also provided California Quarterly Contribution Return and Report of Wages (Form DE 9C) for [REDACTED] indicating that the current owner of the gas station has four employees with quarterly payroll expenses of \$19,240.

The director issued a request for additional evidence (RFE) on September 13, 2013. The director advised the petitioner that the initial evidence was insufficient to establish that the company would have the complexity of operations to support a qualifying managerial or executive position within one year. The director requested, among other items, a letter from the foreign entity indicating the proposed number of employees and types of positions they will hold, the amount of the U.S. investment, and an explanation of how the proposed business venture will support a managerial or executive capacity position within one year. The director also requested the petitioner's proposed

organizational chart showing all proposed positions, a summary of proposed duties and expected educational levels for all employees, and the names of employees filling the positions, if known.

The petitioner's response to the RFE included a letter from the foreign entity dated December 4, 2013. The letter explained that the beneficiary has been charged with acquiring various types of businesses one at a time after carefully evaluating each prospective business to ensure profitability. The foreign entity's letter further stated:

The initial number of 5 employees today includes the gas station works [sic] plus the manager/executive to oversee this program and each individual enterprise acquired. [The petitioner] closed escrow within the past week on the gas station and is now in the process of hiring a manage [sic] for that site in order to free up [the beneficiary's] time to research and evaluate the next business purchase for [the petitioner]. [The beneficiary] will continue to oversee the gas station for profitability, to develop additional lines of business for the gas station, and to upgrade the site. However, day to day line management will be placed in the hands of a site manager, overseen and evaluate[d] by [the beneficiary].

By next year it is anticipated that the gas station will be more profitable with additional lines of business developed. It is also anticipated that at least one additional business will be acquired. That would more than double the number of employees over the next year.

In the following years, it is anticipated that approximately one new business will be acquired somewhere in the USA each year. These businesses will not necessary be gas stations, but more likely will be food stores, other retail outlets, hotels, or apartment complexes. [The beneficiary] is in charge of these acquisitions and their integration into the family assets.

The petitioner submitted a proposed organizational chart dated December 2013 which identifies the beneficiary as general manager, supervising a proposed site manager position, which in turn would oversee five attendants. The petitioner did not identify any employees by name or provide the requested summaries of their proposed job duties. The petitioner also a submitted proposed organizational chart for December 2014 which indicates that, in addition to the gas station staff, the beneficiary would also supervise the part-time site manager of a "food or furniture store" who would supervise five sales clerks.

Finally, the petitioner provided a copy of its Buyer's Closing Statement indicating that it completed the purchase of its gas station on December 3, 2013.

The director denied the petition on January 2, 2014, concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity within one year. In denying the petition, the director observed that the petitioner had not adequately articulated

or supported how its business would be staffed or structured within one year's time. The director found that the petitioner's references to "anticipated" acquisitions of other businesses were vague and not supported by any evidence. Therefore, the director found that the beneficiary would more likely than not act as a first-line supervisor of non-professional employees working at a gas station.

On appeal, counsel asserts that the director's decision "is based on errors of law and mischaracterization of the evidence, including simply ignoring substantial evidence." Counsel maintains that the beneficiary will not be "a line employee or a line supervisor" but rather is "the sole manager/executive in what is contemplated as a holding company for a series of business investments in the USA."

In support of the appeal, the petitioner submits a letter from [REDACTED], an attorney who states that he has extensive executive experience with a mutual fund company and a professional services company. Mr. [REDACTED] states that he was requested to evaluate and characterize the beneficiary's roles and responsibilities "from the perspective of both the general principles of corporate law and from the best organizational, operational and financial practices of U.S. business organizations." He explains that he reviewed the documents submitted to USCIS, the director's decision, the California Limited Liability Company Act, the Uniform Limited Liability Company Act and other documents, and states that he conducted an extensive telephone conversation with the beneficiary in reaching his conclusion that the beneficiary's roles and responsibilities "must be characterized as executive and managerial in nature."

Mr. [REDACTED] explains the duties the beneficiary will perform in order to identify and acquire additional businesses as well as his duties as a corporate officer of the petitioning holding company. In addition, he describes the duties the beneficiary will perform at the "operating company level" with respect to the gas station, such as analyzing pricing of products and services, analyzing the competition, developing programs for inventory control, equipment maintenance and environmental protection, preparing and analyzing cash flow projections, and developing and implementing human resources policies. Mr. [REDACTED] concludes that by the end of December 2014, the petitioner "can fairly be expected to be a holding company with two operating companies and yet another acquisition near closing."

The petitioner also submits a letter from [REDACTED] President of [REDACTED], who states that his company was retained in April 2013 to assist the beneficiary with locating a profitable business in [REDACTED]. He indicates that he located the gas station that the petitioner ultimately purchased in December 2013 and continues to be in touch with the beneficiary with the understanding that he will purchase additional businesses in the future.

B. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a primarily managerial or executive capacity within one year.

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

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 petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* 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 proposed organizational structure, the duties of any proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of others to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

In the instant matter, the petitioner described the beneficiary's proposed position in very broad terms, noting that he will "direct and oversee all activities, investments and interests of the enterprise," "oversee and direct all operations," hire staff, establish lines of business, enter contracts, implement the business plan and "be fully in charge of all operations of the U.S. entity." These broad statements provide little insight into what the beneficiary will actually do on a day-to-day basis by the end of the first year of operations. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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.). In response to the RFE, the petitioner suggested that much of the beneficiary's time would be allocated to researching and evaluating opportunities to purchase additional businesses, but did not further elaborate with respect to the beneficiary's prospective duties.

On appeal, the petitioner submits an opinion letter from Mr. [REDACTED], who includes a more detailed description of the beneficiary's proposed duties and concludes that they are executive in nature. Mr. [REDACTED] indicates that he reviewed the petitioner's submissions to U.S. Citizenship and Immigration Services (USCIS), the director's decision, the California Limited Liability Company Act, the Uniform Limited Liability Act and other unspecified other documents, and conducted "an extensive telephone conversation with [the beneficiary]."

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated or is in any way questionable. *Matter of Caron Int'l.*, 19 I&N Dec. at 795. Mr. [REDACTED] does not indicate that he reviewed the statutory definitions of managerial and executive capacity at section 101(a)(44)(A) and (B) of the Act or the regulatory requirements for filing an L-1 petition at 8 C.F.R. § 214.2(i), nor does he explain the source of the position description included in his letter. Finally, while he provides different sets of responsibilities pertaining to the beneficiary's roles at the "entity" level and "operating" level, the letter does not specify how the beneficiary's time will be allocated to any specific duties or who will be performing administrative, clerical and other non-executive duties during the first year of operations. The petitioner does not indicate that it intends to hire any administrative or other office support staff during the first year and therefore it is reasonable to conclude that such duties would fall to the beneficiary.

Therefore, while several of the broadly-drawn duties attributed to the position would generally fall under the definitions of managerial or executive capacity, the lack of specificity in the record as a whole raises questions as to the beneficiary's actual proposed responsibilities. We do not doubt the beneficiary's authority to make decisions regarding any new business acquisitions or his senior role in the new company; however, the record does not establish how the beneficiary would perform primarily managerial or executive duties within one year. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. The petitioner's descriptions of the beneficiary's job duties do not establish what proportion of the beneficiary's duties will be executive or managerial in nature, and what proportion will be non-executive. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Overall, the position descriptions alone are insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has established that the beneficiary would have the appropriate level of authority over the business, but the record does not establish what he would actually do on a day-to-day basis after one year. The actual duties themselves 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).

At the time of filing, the petitioner provided evidence that it was in the process of purchasing an existing gas station. However, the petitioner has not clearly described its hiring and expansion plans for the first year of operations and, as observed by the director, has not adequately supported its

claim that it would double its staffing levels and expand to operate a second business within one year. While the petitioner provided evidence that the gas station's previous owner, [REDACTED] had four employees, the petitioner has neither stated nor provided evidence that it will maintain the same staff. The petitioner's business plan references two proposed car wash positions and an administrative employee, but the gas station it purchased does not have a car wash and these positions, though outlined in the business plan, do not appear on the petitioner's subsequent proposed organizational charts. Further, the petitioner's business plan does not mention a proposed site manager position, a proposed position that was mentioned for the first time in response to the director's RFE. Based on these inconsistencies, it is unclear how the business will be staffed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Moreover, the petitioner indicated in its business plan that it anticipates paying total wages of \$42,000 during the first year of operations and \$45,000 during the second year, figures which undermine its claims that it would employ up to 12 staff and operate two businesses at the end of the first year of operations. Further, the beneficiary's offered salary alone is \$30,000. The gas station's previous owner was paying its four employees total annual wages of nearly \$77,000 based on the information reported for the first two quarters of 2013. Therefore, the record does not support the petitioner's claim that it would immediately employ five attendants and a site manager at the gas station, or that it would be adding an additional six employees before the end of the first year of operations. Rather, the business plan indicates that the company will operate one gas station with a reduced payroll when compared to that maintained by the previous owner. Based on the projected payroll expenses stated in the business plan, it is unclear whether the beneficiary would be fully relieved from performing non-managerial duties associated with the day-to-day operations of the gas station.

Even if we assume that the submitted business plan for the gas station did not fully represent the petitioner's planned activities for its first year in operation, the record contains no other business plan. If the petitioner intends to operate a holding company with multiple planned investments and operating divisions within the first year of operations, it is reasonable to expect a business plan for the holding company identifying its proposed timeline for investing in additional businesses. While the petitioner has consistently stated that it will invest in additional businesses in the future, the record does not establish that such acquisitions would take place within 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 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). 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)(1)(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)(1)(ii)(B)(3).

While the petitioner has established that the beneficiary would have the authority to hire and fire employees and supervise the employees of its gas station purchased in December 2013, the petitioner has not established that the gas station's employees would be managers, supervisors or professionals, as the petitioner did not respond to the director's request for position descriptions for all proposed subordinates. Nor has the petitioner provided credible evidence of a proposed organizational structure that would be sufficient to relieve the beneficiary from performing non-qualifying duties within one year. As discussed above, the staffing levels indicated on the petitioner's proposed organizational chart are not corroborated by its business plan or any other evidence in the record. Finally, the petitioner has not claimed that the beneficiary will primarily manage an essential function of the business.

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.* Here, the petitioner has not established that the beneficiary would be relieved from focusing on the day-to-day operations of its newly acquired business within one year, such that he could focus primarily on the goals and policies of the organization.

The AAO does not doubt that the beneficiary will have the appropriate level of authority over the petitioner's business as its general manager. The definitions of executive and managerial capacity, however, 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 will *primarily* perform these specified responsibilities and will not spend a majority of his time on day-to-day functions after the first year in operation. See *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Overall, the vague job description provided for the beneficiary, considered in light of the petitioner's business and hiring plans for the first year of operations, prohibits a determination that the petitioner would support a managerial or executive position within one year. Accordingly, the appeal will be dismissed.

III. Additional Issues

Another issue not addressed by the director is whether the petitioner provided evidence that it had secured physical premises to house the new office as of the date the petition was filed, as required by 8 C.F.R. § 214.2(l)(3)(v)(A). The petitioner indicates that the company will initially operate out of the [REDACTED] service station in [REDACTED]. However, the petitioner signed a lease agreement for its gas station on November 15, 2013, more than two months after it filed the Form I-129. The petitioner has submitted no other lease agreement or other evidence of physical premises secured as of the date of filing.

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). For this additional reason, the petition cannot be approved.

Finally, beyond the director's decision, the AAO observes that the petitioner did not indicate whether a license is required, as instructed on page 5, Part 6 of the Form I-129. The instructions state, "If you do not completely fill out the form . . . you will not establish a basis for eligibility and we may deny your petition." See also 8 C.F.R. § 103.2(a)(1) (incorporating the instructions into the regulations). By completing Part 6 of the form, the petitioner certifies that it has reviewed the Export Administration Regulations and the International Traffic in Arms Regulations and determined whether it will require a U.S. Government export license to release controlled technology or technical data to the beneficiary.¹ By signing the Form I-129, the employer certifies under penalty of perjury that the information provided on the form is true and correct.

In the instant case, the petitioner failed to complete Part 6 of the Form I-129 and, thus it did not comply with the Form I-129 instructions. Accordingly, the petition was not properly filed and must be denied for this additional reason.

¹ The Export Administration Regulations (EAR) (15 C.F.R. § 770-774) and the International Traffic in Arms Regulations (ITAR) (22 C.F.R. § 120-130) require U.S. persons, including companies, to seek and receive authorization from the U.S. government before releasing controlled technology or technical data to foreign persons in the United States. U.S. companies must seek and receive a license from the U.S. Government before releasing controlled technology or technical data to nonimmigrant workers employed as H-1B, H-1B1, L-1, or O-1A beneficiaries.

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, 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.