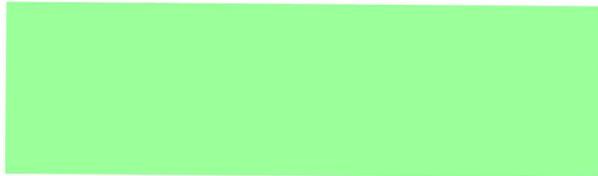
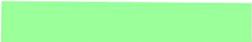


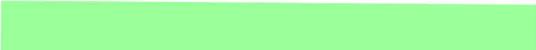


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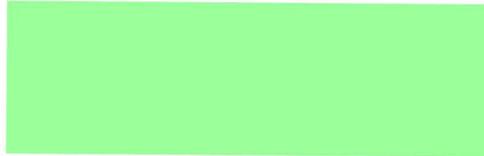


DATE: Office: VERMONT SERVICE CENTER FILE: 

IN RE: **SEP 18 2014**
Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

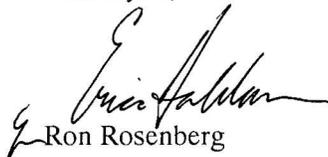


INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Texas limited liability company established in July [REDACTED] stated that it is engaged in the recycling, remanufacturing, and sale of ink and toner cartridges. The petitioner is an affiliate of [REDACTED] located in Mexico. The petitioner seeks to employ the beneficiary as the general 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 the beneficiary had been employed by its foreign affiliate for one continuous year in the three years preceding the filing of the petition. Further, the director concluded that the petitioner did not demonstrate that the beneficiary would be employed in the United States a qualifying managerial or executive capacity within one year of the approval of the petition.

On appeal, counsel contends that the petitioner has submitted sufficient evidence to establish that the beneficiary has acted in a qualifying managerial or executive capacity abroad for at least one of the prior three years. In addition, counsel asserts that the petitioner has demonstrated that the beneficiary will act in a qualifying managerial or executive capacity within one year. Counsel contends that the director inappropriately considered the petitioner's current staffing levels in denying the new office petition.

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. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

The first issue to address is whether the petitioner has 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).

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 filed the Form I-129 on September 27, 2013. In support of the petition, the petitioner stated that "it is our company's intention to establish a presence in the U.S. in the immediate market throughout the [REDACTED] area within the next year." The petitioner indicated that the beneficiary would perform the following duties as its general director:

- Oversee, manage, and supervise all activities directly related to the production of products or services as well as the sale and distribution of our products;

- Direct, plan and implement policies and procedures to ensure quality standards are met, maximize efficiency of sales of our products and increase profitability;
- Assist in negotiations, approve contracts and agreements with retail sellers as well as negotiate wholesale contracts;
- Establish and implement departmental policies, marketing goals, sales objectives, staffing requirements, marketing and sales promotions in accordance to standardized operating procedures of the parent company;
- Study market reports and oversee the implementation of distribution offices and retail stores.
- Establish, review, and audit financial reports as well as fiscal expenditure, receipts, and obligations.
- Manage, hire, and supervise staff until adequate hires are effectuated and additional officers/managers can receive delegated job duties.

The petitioner stated that the beneficiary would work closely with the foreign entity during the first year "in order to use the same promotional campaigns and sales techniques proven successful in Mexico." In addition, the petitioner noted that the beneficiary would receive support from the foreign entity's sales department "in order to fill orders and supply the distribution chain in the U.S."

The petitioner provided its proposed organizational chart indicating that it intends to hire an operations manager, sales supervisor and accounting manager, along with operations and sales personnel who would report to these managerial employees. The petitioner further submitted a "company profile" outlining the company's anticipated milestones for its initial year. It projected that "[the beneficiary] will engage in advertising company services to prospective clients and negotiate contracts and sales after six months," that the petitioner "will have a set clientele base and will be open to prospective customers after nine months," and that it "will have hired a full staff of personnel and will have a fully operating company after twelve months."

In the RFE, the director stated that the petitioner must describe the scope of the new business and its financial goals and demonstrate the investment in the venture and the new company's ability to pay the beneficiary and begin doing business. The director requested that the petitioner submit a comprehensive description of the beneficiary's proposed duties and how they will be executive or managerial in nature, including an indication as to whether the beneficiary will function at a senior level within the organizational hierarchy and whether the beneficiary will manage other professional, managerial or supervisory subordinates. The director asked the petitioner to submit a list of prospective employees identifying their titles, position descriptions, and the hours they will devote to their duties weekly. The director further requested that the petitioner provide a business plan specifying timetables for each action for starting the business during the first year.

In response, the foreign entity's human resources director explained the beneficiary's proposed duties as follows:

- Review candidates resumes, hire, manage, and supervise staff until adequate hires are effected and employees can receive delegated job duties from the corresponding department managers; (3 hours per week)
- Sets and regulates the policies to direct the Operations Manager and Sales Manager with company regulations (6 hours per week)
- Seek mediums such as newspaper and magazine companies to advertise the company (5 hours per week)
- Oversee, manage, and supervise all activities directly related to the recycling of company products and services as well as the sale and distribution of our products; (2 hours per week)
- Direct, plan, implement policies and procedures to ensure quality standards are met during the purification system process, maximize efficiency of sales of our products and increase profitability; (6 hours per week);
- Network with local business and engage in negotiations, approve contracts and agreements with retail sellers as well as negotiate wholesale contracts; (6 hours per week)
- Establish and implement marketing goals, sales objectives, staffing requirements, marketing and sales promotions in accordance to standardized operating procedures of the parent company; (5 hours per week)
- Study market reports and oversee the implementation of distribution offices and retail stores as demand for the product increases; and, (4 hours per week)
- Review financial reports submitted by the departmental managers, as well as the fiscal expenditures, receipts, and obligations in order to comply with the U.S. state and federal regulations. (3 hours per week)

The petitioner reiterated that it would work closely with the foreign entity during the first year "to use the same promotional campaigns and sales techniques provide successful in Mexico" and that it would use its sales department in Mexico in order to fill orders in the United States. The petitioner submitted no further explanation of specific intended actions necessary to successfully launch its operations.

The petitioner provided a new projected organizational chart indicating that it intends to hire an operations manager and sales manager subordinate to the beneficiary within three months. Further, the petitioner explained that it projected it would hire a toner and ink-jet technician and warehouse staff subordinate to the operations manager, and sales personnel subordinate to the sales manager, within six months. The petitioner specified that the operations manager would make \$15-\$18 per hour, and that he or she would require a bachelor's degree or three years' experience in management. The petitioner indicated that the operations manager would be "responsible for the operation and administration of the company," that he or she would "report directly to the General Director on the progress of recycling and manufacturing toner and in-jet cartridges," and be "responsible for compliance with regulations and material, financial and human resources of the company," amongst other duties. In addition, the petitioner explained that the sales manager would earn \$10-\$13 per hour and require technical training or sales experience. The petitioner stated that the sales manager would primarily be "responsible for overseeing the proper execution of sales," "follow up with potential and existing customers," and "act as a link between the

company and customers to manage and develop new business proposals." The petitioner provided similar duty descriptions and required education for the other projected operational employees.

Furthermore, the petitioner stated that the foreign entity has the financial ability to support the new office's start-up costs. The petitioner submitted a bank account statement indicating that the foreign entity had deposited \$5,000 in the petitioner's U.S. bank account on September 13, 2013. The petitioner stated that "if and when the [petitioner] is in need of funds, the [foreign entity] will make additional deposits" and that the foreign entity is "willing and able to financially support the [petitioner]."

In denying the petition, the director stated that the petitioner's proposed organizational structure did not appear likely to support the beneficiary as necessary to relieve him from primarily performing non-qualifying operational duties. The director stated that photographs of the petitioner's business premises indicate that all of the employees will operate out of the same space and appear to indicate "that all will perform the same functions of the company." The director concluded that the evidence suggested that the beneficiary would be employed as a first line supervisor of non-professional employees.

On appeal, counsel contends that the director inappropriately considered the petitioner's current number of employees rather than the projected staffing levels of its new office. Counsel asserts that the beneficiary will supervise two managerial employees within one year and states that it is not reasonable to assume that the petitioner's staff will perform entirely operational duties based solely on provided photographs.

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.*

When examining the executive or managerial capacity of the beneficiary, USCIS 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.*

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 and regulating the policies; overseeing, managing, and supervising all activities directly related to the recycling of company products; directing, planning, implementing policies and procedures; maximizing the efficiency of sales; and establishing and implementing marketing goals, sales objectives, staffing requirements, marketing and sales promotions are overly vague and provide little probative value as to the beneficiary's proposed day-to-day activities. The petitioner does not specifically describe policies the beneficiary will set and regulate, how the beneficiary will oversee and manage the recycling of company products, how he will maximize the efficiency of sales, or what marketing goals, sales objectives, or marketing and sales promotions he will establish. Indeed, the petitioner states a number of times that the beneficiary will implement promotional campaigns and sales techniques successful in Mexico, but fails to detail them. Overall, the petitioner has failed to provide a sufficiently detailed explanation of the beneficiary's proposed activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

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(1)(3)(v)(C).

In the present matter, the petitioner has not submitted sufficient evidence to corroborate its proposed staffing and organizational structure. The petitioner indicates that the beneficiary will hire a total of five full-time staff, including a sales manager and an operations manager, during its initial year of operations. Based on the stated hourly wages and projected hiring timeline for these positions, the petitioner anticipates paying total salary and wage payments of approximately \$105,000. The only financial information contained in the petitioner's three-page business plan is a projected sales forecast indicating that the company anticipates achieving gross sales of \$105,000 during its first full year of operation. In the second year, the stated salaries for the intended staff would actually exceed the projected gross sales. The business plan contains no information regarding the company's anticipated start-up costs, initial operating expenses, cost of sales or other information that would establish how much of the petitioner's gross sales would actually be available to pay the stated wages. The minimal information provided does not support a finding that the petitioner could realistically pay \$105,000 in salaries to the beneficiary and five full-time employees, given that it reasonably needs to purchase inventory, pay taxes, pay rent and utilities, and other normal business expense. Overall, the business plan does not support a finding that the petitioner's staffing plan is feasible. As such, the petitioner has not established that it would have

sufficient personnel to relieve the beneficiary from involvement in non-managerial sales, marketing, inventory, purchasing, accounting and administrative tasks within one year.

Furthermore, the petitioner has not demonstrated the size of United States investment and the financial ability of the foreign entity to remunerate the beneficiary and commence doing business as required by 8 C.F.R. § 214.2(1)(3)(v)(C)(2). The petitioner states that the foreign entity has invested \$5,000 in the newly proposed venture in the United States, a nominal amount that does not establish that the petitioner will have sufficient financial support from the foreign entity during the first year. The record reflects that the petitioner had \$246.91 in its bank account at the time the petition was filed. It is not sufficient to merely state that the foreign entity is "willing and able" to provide additional support as necessary; this must be demonstrated with supporting documentary evidence. However, the petitioner has provided no supporting evidence to substantiate that the foreign entity has sufficient operations or capitalization to support the petitioner during the first year, beyond providing unaudited foreign entity financial statements that do not indicate the time period which they cover. 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)).

In addition, the petitioner's business plan provides only cursory discussion of its business objectives during the first year. The petitioner fails to articulate how it plans on accomplishing its objectives such as setting up a clientele base, being open to prospective customers after nine months, and hiring a full staff of personnel and being fully operational after twelve months. The director indicated that the petitioner should provide a business plan specifying timetables for each action for starting the business during the first year. However, the petitioner has provided only vague objectives and failed to detail actions and strategies that will bring about these milestones. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income

projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id.

As previously stated, the submitted three-page business plan does not provide detailed actions and timetables necessary to assess whether the petitioner's plan is viable and likely to succeed, as was specifically requested by the director. 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). In fact, the petitioner does little more than state that it will implement promotional campaigns and sales techniques successful in Mexico, but fails to detail them. In sum, due to the lack of sufficient detail and supporting documentation, the record does not support a finding that the petitioner will employ sufficient subordinate employees after the first year to relieve the beneficiary from performing non-qualifying operational duties.

Accordingly, the petitioner has failed to establish that the beneficiary will be employed in a qualifying managerial or executive capacity within one year. For this reason, the appeal must be dismissed.

B. MANAGERIAL OR EXECUTIVE CAPACITY (ABROAD)

The next issued 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.

1. Facts

The petitioner states that the foreign entity "remanufactures, exports, purchases, sells, services and distributes, recycled ink and toner cartridges for personal and commercial use, as well as printers and machinery for printing purposes." The petitioner indicated that the foreign entity employs twenty-four persons in Mexico. The petitioner specified that the beneficiary, 50% owner of the foreign entity, has acted as the general director of the foreign entity since its inception in 2011 and that his "direction has been instrumental to the company's success." The petitioner provided the beneficiary's resume which described the beneficiary's duties abroad as follows:

- General Administrator of company;
- Plan, organize, direct, supervise the company and his divisions;
- Supervise hiring of new personnel;
- Direct and supervise company supervisor;
- Analyze company risks and business plans;
- Supervise and adjust business and sales plan;
- Supervise credits and collections;
- Direct purchases and services;
- Contact customers relations

The petitioner submitted an organizational chart relevant to the foreign entity reflecting that the beneficiary acts as "director general" supervising four managerial employees. The chart indicated that the foreign entity had twenty four employees.

The director issued a request for evidence (RFE) requesting that the petitioner submit additional evidence relevant to the beneficiary's employment abroad, including copies of the beneficiary's training, pay, or other personnel records to demonstrate his employment in managerial or executive capacity and a foreign entity organizational chart with the names, titles, job duties, and educations of its employees.

In response, the petitioner did not provide payroll records documenting the beneficiary's foreign employment, but stated that "due to Mexican law, [the beneficiary] is exempt from being on payroll and does not have any paystubs." In lieu of payroll documentation, the petitioner provided a letter from an accountant in Mexico stating that the beneficiary "receives a monthly income of \$30,000 as part of his earnings [from November 2011 to the present]." An accompanying support letter from a foreign entity human resources representative stated that "[the beneficiary] is not salaried; instead he is paid from the net earnings of the company, averaging a yearly amount of \$360,000 Pesos."

Further, a foreign entity human resources representative stated that as general director the beneficiary "is responsible for directing company operations manager and expanding the business," and that "he has the authority to promote and reprimand employees." The letter further explained the beneficiary's duties abroad as follows:

- Oversees the management and supervision of all activities directly related to the recycling of company products and services as well as the sale and distribution of our products;
- Oversees and directs the General Manager on policy implementation of the company;
- Makes daily executive decisions that affect the daily implementation of policies and procedures to ensure purification process standards are met, in order to maximize efficiency of sales of our products and increase profitability;
- Meets with existing and potential clients to negotiate commercial and wholesale contracts for toner and ink as well as recycling of client cartridges;
- Establish and implement policies, marketing goals, sales objectives, staffing requirements, marketing and sales promotions in accordance to standardized operating procedures of the company;
- Study market reports and financial reports for the company expansion;
- Hire, manage, and supervise staff until adequate hires are effectual and employees can receive delegated duties.

As requested by the director, the petitioner submitted a foreign organizational chart indicating that the beneficiary oversees a general manager, who in turn, supervises an accountant, a human resources employee, a driver, an ink and toner supervisor, a warehouse employee, a merchandise

purchaser, and a sales supervisor. Further, the chart reflected that the accountant supervises an assistant director of finance and a receptionist, that the ink and toner supervisor oversees a toner technician leader and a toner technician, and that the sales supervisor supervises a sales leader and two sales representatives. The petitioner submitted the duties, education levels and salaries for each employee with the foreign entity. For instance, the general manager, the beneficiary's only direct subordinate, was stated to have a bachelor's degree in human resources, to receive a 3,000 peso monthly salary and to focus on "administration of the company on a day to day basis," "resolving associate and customer relations concerns," "managing inventory levels," amongst other duties. The petitioner provided evidence of educational credentials for the foreign entity's human resources employee confirming that she holds a bachelor's degree in business administration from Mexico. In addition, the petitioner submitted untranslated degree documentation relevant to three other employees.

In denying the petition, the director stated that the petitioner had failed to submit payroll evidence documenting the beneficiary's receipt of wages from the foreign entity, as requested. The director determined that the record did not establish that the beneficiary had one continuous year of employment abroad in a managerial or executive capacity.

On appeal, counsel contends that the petitioner has submitted sufficient evidence to establish that the beneficiary has been employed in a qualifying managerial or executive capacity abroad, including a support letter from the foreign entity's human resources director and a letter from the company's accountant confirming the beneficiary's receipt of 30,000 pesos monthly from the foreign entity. Counsel asserts that the beneficiary's receipt of a salary is not determinative of whether he works in a qualifying capacity abroad and states that the director inappropriately presumed that the ink and toner industry does not have a need for qualifying managerial personnel. Counsel notes that the foreign entity has four managerial level employees who are overseen by the beneficiary.

2. Analysis

Upon review of the record, the petitioner has not established that the foreign entity employed the beneficiary for at least one continuous year in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

The director requested that the petitioner submit copies of the beneficiary's training, pay or other personnel records to confirm his employment with the foreign entity in a qualifying managerial or executive capacity. In lieu of payroll documentation, the petitioner provided a letter from an accountant in Mexico stating that the beneficiary receives a monthly income of \$30,000 as part of his earnings and an accompanying support letter from a human resources representative with the foreign entity, stating that "[the beneficiary] is not salaried; instead he is paid from the net earnings of the company, averaging a yearly amount of \$360,000 Pesos." The petitioner's failure to properly respond to the director's evidentiary request leaves question as to whether the beneficiary was employed with the foreign entity for the required one year.

Although it may not be uncommon for an owner or partner of a company to receive his or her compensation from the company's earnings, the petitioner has submitted little to substantiate that the beneficiary actually received a salary or earnings from the foreign entity, such as copies of checks or deposits originating from the foreign entity, or other documentation confirming his receipt of these funds. Even if the beneficiary is not on the payroll, it is reasonable to believe that the foreign entity should be able to produce direct evidence of the beneficiary's employment with the foreign entity since 2011. In addition, although the petitioner asserts that it earns significant revenue and that it holds substantial equity, it provides no supporting evidence to substantiate these claims beyond an unaudited financial statement. 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)).

Therefore, the petitioner has not established that the beneficiary was employed by the foreign entity for at least one continuous year in the three years preceding the filing of the petition. For this additional reason, the appeal will be dismissed.

Furthermore, beyond the decision of the director, the petitioner has not demonstrated that the beneficiary has been employed in a managerial or executive capacity abroad.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The duties offered for the beneficiary in his capacity abroad, such as overseeing the management and supervision of all activities; overseeing and directing the general manager on policy implementation; making daily decisions affecting the implementation of policies and procedures; and establishing and implementing policies, marketing goals, sales objectives, staffing requirements, marketing and sales promotions in accordance to standardized operating procedures, are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. The evidence of record includes no specific examples or documentation to substantiate the beneficiary's claimed duties. Indeed, the director requested that the petitioner disclose how the beneficiary made decisions on daily operations and how he supervised other supervisory, professional or managerial employees. In the present matter, the petitioner has not provided sufficient detail or supporting evidence to substantiate the tasks the beneficiary performs daily with the foreign entity, such as the policies he established and implemented, the marketing goals he set in place, the staff he recruited or hired, or the standardized operating procedures of the company he followed or implemented. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the

beneficiary's employment capacity are not sufficient. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

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 petitioner has submitted, without explanation, two different organizational charts for the foreign entity, one with 16 employees and one with 24 employees. Although the petitioner has submitted duty descriptions and salary information for the foreign entity's claimed employees, it has not provided any supporting documentation to confirm that the number of employees or its payment of wages to either 16 or 24 employees.

Overall, based on the vague position description and inconsistent organizational charts submitted, and the lack of evidence of payments to the beneficiary, the petitioner has not establish that he was employed abroad in a managerial or executive capacity for the requisite one year period. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F.Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and 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.