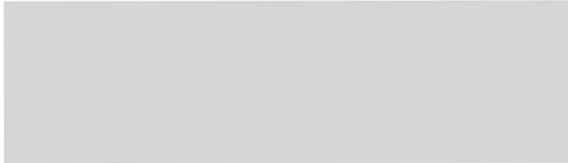


(b)(6)

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

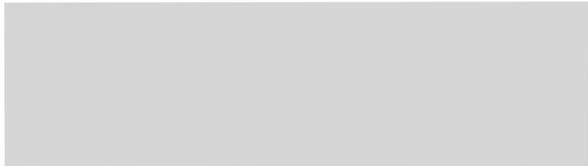


DATE: **APR 08 2015** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed a Form I-129 Petition for a Nonimmigrant Worker seeking to extend the beneficiary's status as an L-1A 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 Florida corporation established in [REDACTED] states that it is engaged in the import and distribution of ethnic foods. The petitioner indicates that it is a subsidiary of [REDACTED] the beneficiary's foreign employer located in India. The beneficiary was previously granted one year as an L-1A intracompany transferee in order to open a "new office" in the United States as the petitioner's managing director. The petitioner now seeks to extend the beneficiary's status for three additional years.¹

The director denied the petition, concluding that the petitioner did not establish that the beneficiary is employed in a qualifying managerial or executive capacity. On appeal, the petitioner contends that the director failed to consider all of the evidence and applicable law and concluded that the beneficiary did not act as a qualifying executive based solely on the company's number of employees.

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.

¹ Consistent with 8 C.F.R. § 214.2(l)(15)(ii), an extension of stay may only be authorized in increments of up to two years.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

II. ISSUES ON APPEAL

A. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

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

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as

promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

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

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

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

1. Facts and Procedural History

The petitioner filed the Form I-129 on June 6, 2014. The petitioner states that the foreign entity has extensive operations in India and that the beneficiary has been assigned to the United States to import and sell its ethnic foods, mainly Indian rice. In a letter from the foreign entity's managing director, the beneficiary's duties in the United States were explained as follows:

- Plan, formulate, direct, manage & coordinate marketing, importation and distribution activities & policies to promote products, working w/advertising & promotion managers in the United States;
- Identify, develop &/or evaluate marketing strategy, based on knowledge of the company's objectives, market characteristics & cost & markup factors;
- Direct the hiring, training, and performance evaluations of marketing and other staff in the United States;
- Evaluate the financial aspects of product development, ie. budgets, expenditures, research & development appropriations, return-on-investment & profit-loss projections;
- Develop pricing strategies, balancing firm objectives & customer satisfaction;
- Compile lists describing product offerings; and
- Supervise product quality & compliance with FDA and U.S. customs requirements.

In addition, the managing director of the foreign entity submitted a job profile specific to the beneficiary indicating the following duties for the beneficiary in the United States:

1. To import basmati rice and other ethnic foods product from [REDACTED]
2. To get the custom and FDA custom clearance done through custom and shipping agent.
3. Transport and ware-housing of imported product.
4. To market and sale of the products imported from [REDACTED]
5. To coordinate the publicity and advertisement of the products.
6. To distribute the products to whole sellers as well as institutions like restaurants etc.
7. To realize the sale proceeds and remit the same to parent company in India.
8. To maximize the profit from the local operations in the USA.

Beside above the [sic] she will market the parent company product to various private labels big importers of basmati rice in USA.

The above job employment involves managerial authority over the new offices.

The petitioner provided a "future business plan" reflecting that it planned to import basmati rice, Indian spices, and other ethnic foods "all over the US," and that it intended to establish sales and distribution centers in [REDACTED] each to be staffed with two sales persons, one delivery person, and a "store keeper." The petitioner estimated that this expansion would generate six million in annual revenue within two years.

The petitioner stated on the Form I-129 that it had four employees as of the date of filing. The petitioner submitted an IRS Form 941 Employer's Quarterly Federal Tax Return from the first quarter of 2014 reflecting that it employed four individuals and that it paid \$14,000 in wages during this period. The petitioner also provided an IRS Form 941 from the fourth quarter of 2013 indicating that it had employed two individuals and paid \$15,000 during this quarter.

Further, the petitioner submitted a profit and loss statement covering October 2013 through March 2014 specifying that it earned \$557,576.44 in revenue during these six months. The statement indicated that it paid the following wages to its employees: [REDACTED] \$2,000; [REDACTED] \$10,000; [REDACTED] \$2,000; and the beneficiary, \$15,000. In addition, the petitioner provided a "payroll register report" reflecting that its employees were paid the following monthly wages during the first quarter of 2014: the beneficiary, \$3,000; [REDACTED] \$2,000; [REDACTED] \$2,000, and [REDACTED] \$1,000. The petitioner submitted bank records from March 2014 indicating a check paid to the beneficiary in the amount of \$2,770.50 and another to [REDACTED] for \$920. The bank statement from March 2014 also indicated checks paid to a [REDACTED] in the amount of \$400 and \$125 for "warehouse and packing." In addition, the petitioner provided an email to the beneficiary from a customer account executive which reflected that the customer was passing along an invoice to the beneficiary and discussing a scheduled delivery arranged by the foreign entity's managing director.

The director later issued a request for evidence (RFE) stating that the number and type of employees the petitioner engaged was unclear based on the evidence presented. As such, the director requested that the petitioner submit information regarding its organizational structure including the names of its employees, their job titles, salaries and detailed duty descriptions. Further, the director asked that the petitioner provide supporting documentation to corroborate the employment of its claimed workers, including IRS quarterly tax returns and/or IRS Forms W-2 or W-3 and a payroll summary relevant to the petitioner.

In response, the petitioner submitted a letter from the foreign entity, which stated that the beneficiary has "complete discretionary decision-making authority for the U.S. entity." The letter further indicated that the beneficiary "determines the sale targets and objectives of the U.S. entity" and that she "is responsible for managing all of the regional sales executives and managers of the company."

The petitioner submitted an organizational chart reflecting that the beneficiary supervises the following employees: [REDACTED] Florida sales executive; [REDACTED] Texas sales executive; [REDACTED] California sales executive; and [REDACTED] warehouse office manager (Florida). The chart indicated that [REDACTED] supervises [REDACTED] all "delivery man/warehouse assistants" shown to earn \$50 to \$60 per hour. The chart provided duty descriptions for each of the employees. It indicated that the sales executives are responsible for executing marketing and distribution directives from the beneficiary, monitoring marketing strategies and reporting progress on reaching regional sales targets. The petitioner indicated that the warehouse office manager manages and monitors inventory and storage areas and packs and unpacks items, while his assistants drive and deliver inventory and interface with customers.

The petitioner submitted payroll documentation indicating salary payments made to two of the sales executives prior to the filing of the petition, and to [REDACTED] Florida sales executive, after the filing of the petition in June 2014. The petitioner provided checks to [REDACTED] in the amount of \$50 "cash" in May 2014 for a delivery, a check in the amount of \$60 to [REDACTED] in April 2014 for "delivery and wages," and another check in the amount of \$50 "cash" to [REDACTED] in March 2014.

In addition, the petitioner submitted an email to the beneficiary dated May 20 within which she is informed by a sales executive that a customer wants to purchase twenty bags of rice and in which she is asked for direction on price. Likewise, a similar email was provided from July 4, 2014 indicating the Florida sales executive briefing the beneficiary on a potential sale and requesting a sale price from the beneficiary.

In denying the petition, the director emphasized that the evidence submitted by the petitioner had failed to demonstrate that the beneficiary directs the management of the organization or that she oversees managers or supervisors. The director further concluded that the evidence did not establish that the petitioner employs the subordinates reflected in its most recent organizational chart. As such, the director found that the petitioner failed to establish that the beneficiary was primarily engaged in the performance of qualifying managerial or executive duties.

On appeal, the petitioner asserts that the director improperly based her decision solely on the petitioner's number of employees. The petitioner states that the beneficiary's duties are executive in nature and that the evidence establishes that she is primarily engaged in the performance of qualifying duties. The petitioner

provides an additional support letter from the managing director of the foreign entity. In this letter, the managing director of the foreign entity states that the petitioner has earned \$800,000 in revenue through the end of June 2014 based on the beneficiary's leadership. He notes that "she is responsible for all top executive decision-making duties including supervising other professional executives," that she has "full power of hiring and firing," and that "she has set all the policies and goals of [the petitioner] and formulated the strategies," including "Product, Price Placement, and Promotion." He further states that the success of the new venture demonstrates the executive nature of the beneficiary's position and he indicates that the position requires "special expertise and knowledge like the complete product knowledge of ethnic foods especially Basmati Rice, its typical storage, quality control, adhering to FDA and USDA regulations and guidelines[,] getting clearance from FDA and coordination with FDA authorized labs." The managing director of the foreign entity explains that the beneficiary hired and trained all of her sales executives, set broad company policy frameworks for them, set their sales targets, assigned their territories, and that she monitors their daily production. He also indicates that the beneficiary oversees the warehouse manager who further supervises "3 part-time delivery men," and noted that evidence of payments made to these subordinates has been submitted on the record.

2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition.

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

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The duties offered for the beneficiary in her capacity in the United States, such as planning and coordinating importation and distribution activities and policies, working with advertising and promotion, developing marketing strategies, evaluating product development, and developing pricing strategies 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 proposed duties. For instance, the petitioner provides no specific examples of policies or strategies set by the beneficiary, advertising or marketing she developed and coordinated or pricing policies she set. 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).

In fact, to the extent the petitioner has provided evidence detailing the beneficiary's duties, this indicates that she is likely primarily performing non-qualifying operational tasks. For instance, the beneficiary's "job profile" reflects that she will be directly engaged in the importation of rice and its clearance through customs, the marketing and sale of these products, and their distribution to wholesalers. Further, the submitted emails corroborate the beneficiary's direct day-to-day involvement in sales transactions and do not reflect that she is primarily engaged in setting policies and goals. In addition, the petitioner did not document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. This failure of documentation is important because several of the beneficiary's daily tasks, as noted above, do not fall directly under traditional managerial duties as defined in the statute. 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. For this reason, we cannot determine whether the beneficiary is primarily performing the duties of a qualifying manager or executive. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Beyond the required description of the job duties, United States Citizenship and Immigration Service (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 evidence submitted does not indicate that the petitioner's organization is sufficient to support the beneficiary in a qualifying managerial or executive capacity. As indicated in the petitioner's organizational chart, the beneficiary is stated to supervise three regional sales executives and a warehouse manager, who in turn oversees three delivery men/warehouse assistants. At the time of filing, the petitioner stated that it had four employees and provided an IRS Form 941 for the first quarter of 2014 reflecting that it employed four workers, not the eight employees reflected in its organizational chart submitted in response to the RFE approximately one month later. While the petitioner indicates that the beneficiary supervises a subordinate warehouse manager who, according to the organization chart, oversees subordinate personnel, the petitioner did not provide evidence that the delivery men/warehouse assistants are regular employees of the company, such that the warehouse manager could be considered a supervisor. The petitioner provided copies of one check issued to each of these assistants and did not include them on its IRS Forms 941.

Otherwise, the petitioner has provided no evidence to support a conclusion that the beneficiary oversees subordinate managers or supervisors. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). 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). In fact, the preponderance evidence indicates that the beneficiary is acting as a first-line sales manager primarily engaged in the non-qualifying operational aspects of the business.

On appeal, the petitioner contends that the beneficiary oversees and supervises "professional executives." In evaluating whether the beneficiary manages professional employees, we 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). Here, the petitioner has presented no evidence to demonstrate that the beneficiary's subordinates are professionals, such as evidence that her subordinates hold, or are required to have, specific baccalaureate level degrees. Indeed, the evidence reflects that these employees are acting as sales representatives selling rice, an activity not typically deemed professional according to regulations and the applicable case law referenced above. Otherwise, the petitioner has provided no evidence to support a claim that the beneficiary's subordinates perform professional level duties. Again, 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).

In addition, the petitioner contends that the beneficiary's duties establish that she primarily acts 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). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The petitioner has not demonstrated with sufficient evidence that the beneficiary acts in a qualifying executive capacity. As previously discussed, the petitioner has provided a non-specific description of the beneficiary's duties and has failed to detail the beneficiary's claimed qualifying duties. The petitioner has not submitted examples or evidence of goals or policies formulated or implemented by the beneficiary. In fact, the evidence provided indicates that the beneficiary is primarily assisting with non-qualifying operational tasks directly related to the daily buying, selling, shipment, and delivery of rice. Although the petitioner presents aggressive plans for expansion that might involve executive level duties, the petitioner has submitted no evidence to substantiate that the beneficiary is engaged in these activities. In fact, the evidence provided indicates that the petitioner does not currently engage sufficient operational employees to relieve the beneficiary from non-qualifying tasks. 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).

Lastly, the petitioner contends that the director improperly considered the size of the company in denying the petition. The petitioner rightfully notes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for United States Citizenship and Immigration Service (USCIS) to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Further, in the present matter, the regulations require USCIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D).² The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

Given the nature of the petitioning company, it is unclear how the two sales executives and warehouse manager employed at the time of filing would relieve the beneficiary from primarily performing duties associated with the marketing, sales, purchase and delivery of imported goods, particularly given the evidence presented on the record which indicates the beneficiary's involvement in these activities. The petitioner indicates that the beneficiary's duties extend to product quality, regulatory, import, customs, financial, and marketing areas but has not established that her subordinates perform the non-qualifying duties associated with the majority of these activities. While the petitioner may still be at a preliminary stage of development, it must still establish that it will employ the beneficiary in a qualifying managerial or executive capacity under the extended petition. The reasonable needs of the petitioner 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).

² Following the enactment of section 101(a)(44)(C) of the Act in 1990, the former Immigration and Naturalization Service (INS) recognized that managerial capacity could not be determined based on staffing size alone and deleted reference to "size and staffing levels" at 8 C.F.R. § 214.2(l)(3)(v)(C)(3) (1990), setting out the evidentiary requirements for initial new office petitions. See 56 Fed. Reg. 61111, 61114 (Dec. 2, 1991). However, the INS chose to maintain the review of the new office's staffing, among other criteria, at the time that the new office seeks an extension of the visa petition. See 8 C.F.R. § 214.2(l)(14)(ii)(D).

Further, the director's adverse decision was not based solely on the size of the company, but on various factors in conjunction with the size of the company, such as the nature of the beneficiary's duties and lack of specificity in the submitted job description, her lack of managerial or professional subordinates, and the absence of sufficient operational employees to relieve her from performing a number of non-executive tasks associated with the petitioner's day-to-day operations. As indicated above, size may be taken into account with these other relevant factors. Therefore, the petitioner's contention that the size of the company was improperly considered is not persuasive.

Based on the foregoing, the petitioner has not established that the beneficiary is, or will be, employed in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

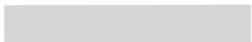
B. QUALIFYING RELATIONSHIP

Beyond the decision of the director, the petitioner has not established that it has a qualifying relationship with the foreign entity. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). When requesting an extension of a petition involving a new office, the petitioner must submit evidence that the petitioner and the foreign entity are still qualifying organizations. See 8 C.F.R. § 214.2(l)(14)(ii)(A).

The petitioner stated on the Form I-129 that it is a subsidiary of the foreign entity and indicated that the beneficiary owns six percent of the foreign entity's stock. Further, the petitioner submitted a copy of its 2013, IRS Form 1120, U.S. Corporation Income Tax Return, which indicates that it is 100% owned by a foreign entity in India. However, the IRS Form 1120 does not identify the foreign owner. The petitioner did not submit any evidence to demonstrate its actual ownership.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

Based on the evidence presented, the actual ownership in the petitioner cannot be determined, and as a result, the petitioner has not established that it maintains a qualifying relationship with the foreign entity. The petitioner has not submitted copies of stock certificates or other corporate documents to establish its ownership. 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 it has a qualifying relationship with the foreign entity. For this additional reason, the petition cannot be approved.



An application or petition that fails to comply with the technical requirements of the law may be denied by this office 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 and the petition will remain denied 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.