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

(b)(6)

DATE: AUG 1 9 2015 PETITION RECEIPT #:

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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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 this Form I-129, Petition for a Nonimmigrant Worker (Form I-129), 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 Virginia corporation, operates an auto engine import company. The petitioner claims to be a joint venture with located in Japan. The petitioner seeks to employ the beneficiary as its general manager for a period of one year.

The director denied the petition on July 15, 2014, concluding that the evidence of record did not establish that: (1) the foreign company is doing business on a continuous and systematic basis; (2) the beneficiary was employed abroad in a qualifying executive or managerial capacity for one year in the previous three years prior to filing the petition; and (3) that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to our office. The petitioner submits a brief 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.

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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

In addition, the regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

> *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
>
> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
>
> (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

> *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

II. THE ISSUES ON APPEAL

A. Doing Business Abroad

The first issue to be addressed is whether the petitioner established that the foreign entity is doing business.

1. Facts

On March 3, 2014, the director issued a request for evidence (RFE), and requested that the petitioner provide documentary evidence showing that the qualifying foreign entity which employed the beneficiary is doing business.

In response to the RFE, the petitioner submitted a document entitled "Certificate of Complete History" of the foreign company. The document stated that the foreign entity was incorporated on It also stated the address, objective, maximum issues of shares, total shares issued, total capital, rules of restriction on stock transfer, and directors. The petitioner also submitted a 2013 salary certificate and a 2013 Withholding Summary Sheet from the foreign company stating the salary paid to the beneficiary when he was employed by the foreign company.

In the denial decision, the director noted that the petitioner did not provide sufficient evidence that the foreign entity has been providing regular and continuous business services such as a valid business license, tax returns, invoice, receipts, bank statements, bills of lading, purchase orders or contracts. On appeal, the petitioner did not submit any additional documentation evidencing that the foreign entity is doing business.

2. Analysis

On review, the evidence submitted is insufficient to establish that the foreign entity has been or is engaged in the regular, systematic, and continuous provision of goods and/or services as a qualifying organization. Despite the director's request for specific evidence, such as invoices, contracts, or other related documentation, the documentation provided by the petitioner in response to the director's inquiries is minimal and does not establish that the foreign entity is doing business. The petitioner was given ample opportunity to produce the required initial evidence and other business records to substantiate its claim of doing business as a viable entity in Japan. The non-existence or unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

For these reasons, we concur with the director's finding that the evidence of record is insufficient to establish that the foreign entity has been and currently is doing business as contemplated by the regulations. For this reason, the appeal will be dismissed.

B. Employment Abroad in a Qualifying Managerial or Executive Capacity

The second issue to be addressed is whether the petitioner established that the beneficiary has been employed abroad in a qualifying managerial or executive capacity.

1. Facts

In response to the RFE, the petitioner submitted a letter from the owner of the beneficiary's foreign employer dated May 5, 2014. The letter certified that the beneficiary "has been working as a General Manager of our Company since April 13, 2013." The letter also stated that the beneficiary "managed the day to day activities of the company, monitored and promoted sales of top families of Japanese cars, parts and accessories; implemented company business goals, ensuring compliance with technical issues and customer satisfaction goals, etc." The petitioner also submitted two documents entitled "2013 Salary Certificate" and "2013 withholding summary sheet" that indicated the beneficiary's salary with the foreign company and his employment start date as April 12, 2013.

2. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary has been employed by a qualifying foreign entity in a primarily managerial or executive capacity. As noted, the petitioner has not specifically addressed this adverse finding on appeal. Accordingly, we affirm the director's determination.

By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). While the information provided by the petitioner indicates that the beneficiary may exercise discretion over the day-to-day operations of the foreign entity, the petitioner has not shown that the beneficiary's actual duties are primarily managerial in nature. 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).

The petitioner provided a very brief description of the beneficiary's duties that includes both overly general duties and duties that are incongruous with the nature and scope of the foreign entity's business. The petitioner explained that the beneficiary "managed the day to day activities of the company" and "implemented company business goals." However, it has not specifically identified the foreign company's business activities and operations, and did not identify any company business initiatives, policies or opportunities undertaken by the foreign company. Further, the record does not contain any documentary evidence corroborating the foreign entity's claimed organizational structure or staffing levels.

In addition, the Form I-129 was filed on January 2, 2014, and the petitioner requested an employment start date of March 2014. According to the submitted copy of the beneficiary's 2013 salary certificate and the letter from the owner of the foreign company, the beneficiary began his employment with the foreign company on April 12, 2013. Thus, the beneficiary did not work abroad in a qualifying executive or managerial capacity for one year in the three years immediately preceding the filing of the petition.

Based on the deficiencies discussed above, and the petitioner's failure to address this issue on appeal, the petitioner has not established that the beneficiary has been employed by a qualifying foreign entity in a qualifying managerial or executive capacity. For this additional reason, the appeal will be dismissed.

C. U.S. Employment in a Managerial or Executive Capacity

The third issue to be addressed is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity in the United States.

1. Facts

The petitioner filed the Form I-129 on January 2, 2014 and indicated that it had 4 current employees in the United States and a gross annual income of $828,622. In response to the director's RFE, which requested additional details regarding the beneficiary's position in the United States, the petitioner submitted an undated statement from its owner and CEO,

provided the following description of the duties to be performed by the beneficiary in the position of general manager:

- Manage the day to day operations of our company; formulate and execute business plans; plan, organize, generate and develop business projections to expand import of Japanese Spare parts and identify business potentials and sectors of expansion;
- Using your understanding in technical knowledge relating to the manufacturing of Japanese auto parts such as engine, transmission and spare parts, and cross-cultural understanding[;]
- Communicate and utilize better to identify business opportunities, deal with problems and to offer practical, culturally sensible and realistic solutions;
- Apply your understanding of sales and marketing principles and the Japanese understanding of business culture and practice

The director denied the petition on July 15, 2014, concluding, in part, that the petitioner did not establish that the beneficiary will be employed in a qualifying managerial or executive capacity. In denying the petition, the director found that the record does not establish that the beneficiary will be employed in a managerial or executive capacity, and that the U.S. entity is sufficiently staffed to support an L-1A managerial position.

2. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

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 petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.*

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary owns or manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

The petitioner' provided a description of the beneficiary's job duties which included broadly stated job responsibilities. Due to the overly general information included in the job description, we are unable to gain a meaningful understanding of how much time the beneficiary will spend performing qualifying tasks versus those that would be deemed non-qualifying.

The beneficiary's job description is deficient in that it fails to provide credible and detailed information about the actual tasks the beneficiary will perform while he will "manage the day to day operations"; "formulate and execute business plans"; and "communicate and utilize better to identify business opportunities." The petitioner did not define the petitioner's goals and policies, or clarify the objectives and procedures for business. While the beneficiary, as a claimed manager in the company, exercises authority for planning, the petitioner has not established that his day-to-day tasks associated with overall management of the operations and formulation of business plans are primarily managerial in nature. In addition, several duties listed in the job description are vague. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. 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 job duties. The petitioner has failed to provide sufficient detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Id.*

Furthermore, 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 foreign entity'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 foreign entity's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The petitioner submitted copies of IRS Forms W-2, Wage and Tax Statements, for four of its employees. The petitioner, however, did not provide an organizational chart listing the positions of each employee or provide a job description for each subordinate employee, and thus, the petitioner does not provide a true understanding of how the employees will assist the beneficiary in relieving him from performing operational duties in running the business. It is not clear, therefore, if these subordinate employees will relieve the beneficiary from performing operational duties. 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)).

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). In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F 2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). It is appropriate for 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. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.* at 15. In the present matter, the petitioner indicated that it has four employees but did not provide any information regarding their positions or the organizational structure of the company. Thus, it is not possible to determine if the company's staff would relieve the beneficiary from performing other non-managerial functions, such as supervising non-professional staff, routine bookkeeping and banking, administrative and clerical functions, and operational duties. As such, the petitioner has not established that it has a reasonable need for the beneficiary to primarily perform managerial or executive duties based on the nature of the business, its staffing levels.

Based on the deficiencies discussed above, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity. Accordingly, the appeal will be dismissed for this additional reason.

D. Qualifying Relationship

Beyond the decision of the director, the petitioner did not submit sufficient evidence to establish that it has a qualifying relationship with the beneficiary's foreign employer. 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. a U.S. entity with a foreign office) 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).

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.

On the Form I-129, the petitioner stated that it has a joint venture with the foreign company. The petitioner claims that the same individual owns the foreign company and the petitioner. The record contains an undated stock certificate, Number 11, certifying that is the owner of 1000 shares of the petitioner.

As general evidence of a petitioner's claimed qualifying relationship, a stock certificate alone is not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The stock certificate submitted by the petitioner is number 11, and the petitioner did not submit the prior stock certificates to get a true picture of ownership. In addition, the petitioner did not submit a corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings that must also be examined to

determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The petitioner also submitted a Certificate of Complete History of the foreign company that identifies the Director as (name of person, closest phonetic transcription)." The petitioner claims that the individual listed in the certificate of complete history for the foreign company is the owner of both the foreign company and the petitioner. However, the certificate of complete history identified as the director but did not state that he is the owner of the foreign company. Furthermore, the petitioner did not submit any stock certificates, tax returns, or corporate documents to identify the owner of the foreign company. Moreover, the name listed as the director of the foreign company, is different from the petitioner's claimed owner, 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).

The petitioner did not submit sufficient evidence to establish that it has the requisite qualifying relationship with the foreign company. For this additional reason, the appeal is dismissed.

III. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us 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 we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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 petitioner has not met that burden.

ORDER: The appeal is dismissed.