



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-, LLC

DATE: DEC. 8, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner seeks to employ the Beneficiary as an intercompany transferee under the L-1A classification. *See* section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. ISSUES

The Director denied the petition, finding that the evidence of record: (1) did not establish that the new office would support the Beneficiary in an executive or managerial position within one year of approval of the petition, and (2) did not establish that the foreign entity is doing business. Beyond the decision of the Director, we also find that the record: (1) does not establish that the Beneficiary was employed abroad in a managerial or executive capacity, and (2) does not establish that a qualifying relationship exists between the Petitioner and the foreign entity.

II. 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(1)(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 involves 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 (1)(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.

III. EMPLOYMENT IN A QUALIFYING MANAGERIAL OR EXECUTIVE CAPACITY IN THE UNITED STATES WITHIN ONE YEAR OF APPROVAL

The Director denied the petition based, in part, on a finding that the Petitioner did not establish that the new office would support the Beneficiary in an executive or managerial position within one year of approval of the petition.

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.

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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.

A. Facts

On October 7, 2014, the Petitioner filed the Form I-129 on behalf of the Beneficiary to employ him as “owner,” and requested a validity period of September 12, 2014 to September 12, 2015. The record shows that the Petitioner was established on March 31, 2014 as a limited liability company under the laws of the state of Pennsylvania. The record also reflects that the Petitioner began doing business on April 18, 2014 when it finalized the purchase of property and assets of a preexisting business consisting of a [REDACTED] automotive service location.

In the support letter, the Petitioner states that the “officers, directors, and shareholders” of the foreign entity have determined “to transfer [the Beneficiary] to the U.S. company in his capacity as president in order to assure that the U.S. company undergoes a successful commencement of operations and gets established on a sound financial footing with adequate client base.” The Petitioner also notes “although [the Beneficiary] is a successful salesman, he will devote virtually all of his time in the United States to the commencement and management of the U.S. business.” No other description of the proffered position was given.

Regarding the establishment of a new office, the Petitioner submitted a deed of sale for the property, information on the building structure that would house the new office, pictures of the business, financial records from the business’ previous owners, sales records for April to June 2014, internally generated payroll records for April to June 2014, and the Petitioner’s bank records. The Petitioner also stated: “our bank statement has also been included to show the substantial level which our company has been capitalized, a level clearly sufficient to cover obligations such as payroll,” and that the financial records from the previous owners were included “to demonstrate the viability of our business operations.”

The Petitioner’s bank records show a deposit from an unnamed source for \$50,000 and wire transfer from [REDACTED] in the amount of \$600,000. It appears that these funds were later used to purchase the property and assets of the pre-existing business, [REDACTED]. The payroll records show that the once the Petitioner began doing business in mid-April 2014, it employed between nine and 11 individuals in the pay periods from April 19 to June 14, 2014.¹

The Petitioner did not submit information describing the scope of the entity, its organizational structure, or its financial goals, nor did the Petitioner submit information on the structure of the foreign entity.

¹ Although we note that two of the individuals are shown to work zero hours during each pay period, which raises the question of whether or not they are actually employed by the Petitioner.

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The Director issued an RFE identifying the deficiencies in the record and specifically requesting additional information to establish that the Petitioner would support the Beneficiary in a managerial or executive role within one year of approval. In response, the Petitioner did not provide any additional information on the proposed position, the organizational structure of the U.S or foreign entity, nor did the Petitioner provide a business plan. Rather the Petitioner's response focused on the funding on the U.S. entity, stating:

[The Beneficiary] loaned \$600,000 to [REDACTED] MD, of [REDACTED] Kentucky. The loan was for a six month period payable in one lump sum due on June 1, 2014. Mr. [REDACTED] paid [the Beneficiary] in full for the said loan, which payment was used in purchasing the new business entity. In addition to the financial evidence, the business which he intends to run has been in operation for several years prior to [the Beneficiary] finding the business and ascertaining its potential for growth with his management strategy.

On January 23, 2015 the Director denied the petition, stating that the Petitioner had not established that the new office would support a managerial or executive position within one year of approval.

On appeal, the Petitioner states:

[REDACTED] has been in business since 2001. As indicated in the letter wrote by [the Beneficiary], his intentions were to apply his knowledge of business operations to help the business grow. Since the inception of [the Beneficiary's] input to the business transactions, the business has been prospering. It is clear that business was not abundantly successful prior to the acquisition as evidence by its existence for sale and price offered. The business plan was evidenced by the mere submission of the petition and the statement of [the Beneficiary].

B. 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 by the United States entity in a managerial or executive capacity within one year of the petition's approval. As noted above, the Petitioner must demonstrate that the proposed employment involves executive or managerial authority over the new operations *and* that the new office will support an executive or managerial positions as defined

When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of a beneficiary in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a “new office,” it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally* 8 C.F.R. § 214.2(l)(3)(v). In addition to describing the proposed position, 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.*

In this case, the record contains numerous deficiencies that limit our ability to analyze the Petitioner’s claims that the proposed employment involves managerial or executive authority over the new operations or that it would be able to support a position that is primarily managerial or executive within one year of approval. First, while the Petitioner asserts that the Beneficiary will be employed as “President” and will “devote virtually all of his time in the United States to the commencement and management of the U.S. business,” the Petitioner does not provide a description of the position or its duties and requirements and does not account for how the Beneficiary will spend his time on a daily basis. While the “new office” regulations allow for the possibility that the proposed position will not be primarily managerial or executive immediately, the Petitioner is still required to describe the Beneficiary’s proposed position. When examining the executive or managerial capacity of the beneficiary, we look first to the petitioner’s description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Conclusory assertions regarding the beneficiary’s employment capacity are not sufficient. Specifics are clearly an important indication of whether a beneficiary’s duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990). In this case, the information provided by the Petitioner offers little insight into what the Beneficiary is expected to actually do on a day-to-day basis during the first year of operations and beyond.

Furthermore, our analysis of the Beneficiary’s employment and the Petitioner’s ability to employ him in a qualifying capacity by the end of the first year of operations is restricted because of the lack of information about the new office. The regulations require the Petitioner to provide information regarding the proposed nature of the office “describing the scope of the entity, its organizational structure, and its financial goals.” 8 C.F.R. § 214.2(l)(3)(v)(C)(1). In this case, the Petitioner has not provided such information. The Petitioner’s claim on appeal that “the business plan was evidenced by the mere submission of the petition and the statement of [the Beneficiary],” is not sufficient to demonstrate that the Petitioner’s new business would be operating at a level able to support a managerial or executive position within a year of approval. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm’r 1972)).

The record is also lacking information regarding the Petitioner's timeline for hiring additional staff, or the presence of other employees that would relieve the Beneficiary from performing operational duties at the end of the first year of operations. Although the Petitioner did submit payroll records for some claimed employees, it did not submit independent evidence that it actually employed these individuals (such as W-2s or quarterly wage reports), nor did it provide information on the duties of the claimed employees and whether the positions are managerial, supervisory or professional. Furthermore, the Petitioner did not submit an organizational chart showing where these claimed employees' position in the new office's hierarchy, specifically how they relate to the proposed position and whether or not these positions are subordinate to the Beneficiary.

Overall, the evidence in the record 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(l)(3)(v)(C). In this case we find that the Petitioner has not established that it will support the Beneficiary in a managerial or executive position within one year of approval. For this reason, the petition must be denied.

IV. OWNERSHIP AND QUALIFYING RELATIONSHIP

Beyond the decision of the Director, the Petitioner has not established that it is a qualifying organization, in that the evidence in the record does not establish that it has a qualifying relationship with the foreign entity.

8 C.F.R. § 214.2(l)(1)(ii)(G) defines a *qualifying organization* as a United States or foreign firm, corporation, or 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 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

Parent, branch, subsidiary and affiliate are further defined in 8 C.F.R. § 214.2(l)(1)(ii) as:

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- (I) *Parent* means a firm, corporation or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns directly or indirectly less than half of the entity but in fact controls the entity.
- (L) *Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or
- (3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

A. Facts

In the Form I-129, the Petitioner stated that it is an affiliate of the foreign entity, [REDACTED] that is based in Syria. The Petitioner also stated “[the Beneficiary] is President of both [REDACTED] and [the Petitioner] and owns 100% of the shares of both companies.” The Petitioner submitted the following documents concerning its ownership:

- “Limited Liability Company Operating Agreement,” dated March 31, 2014 showing the Beneficiary as the sole shareholder;
- “Minutes of the Special Meeting of [the Petitioner],” dated March 31, 2014 which states: “[the Beneficiary] and [REDACTED] were each elected and appointed to serve as Manager, President, and Chief Executive Officer of the LLC, either to act independently;”

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- IRS Employment Identification Number assignment, addressed to “ [REDACTED] ”
- Three “Inspection Station Certificate of Appointment” notices listing [REDACTED] as the owner of the Petitioner;
- Petitioner’s corporate bank account records showing a \$600,000 wire transfer deposit from [REDACTED]
- A promissory note between the Beneficiary and [REDACTED] for \$600,000. The promissory note was dated December 30, 2013 and was signed only by [REDACTED].

Regarding the ownership of the foreign entity, the Petitioner states: “[The Beneficiary] has continuously owned and operated the foreign entity, [REDACTED] since 2005 up to the present date” and “[REDACTED] has several branch offices in a variety of locations in Syria including [REDACTED].” No documentary evidence regarding the ownership of the foreign entity was provided.²

The Director issued an RFE notifying the Petitioner that the evidence in the record was not sufficient to establish that facts of ownership of either the U.S or foreign entity or to establish that the Petitioner and the foreign entity have a qualifying relationship. In response, the Petitioner stated:

One particular issued that arose was whether sole ownership lie with the applicant. The confusion arises out of an EIN number and Inspection Station Certificate of Appointment in the name on [REDACTED]. [REDACTED] has been designated by [the Beneficiary] to handle management until he can procure legal entry into the United States to assume his management duties. After initially setting up the business, [the Beneficiary] was having difficulties navigating the finer details while outside the country.

The RFE response did not address the issue of ownership of the foreign entity and did not provide further evidence to substantiate its claims.

2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, we cannot conclude that the petitioner is a qualifying organization or that it has a qualifying relationship with a foreign entity. The record contains numerous deficiencies and inconsistencies regarding the claimed ownership of the Petitioner and the foreign entity. Specifically, the Petitioner asserts that the foreign entity, [REDACTED] was formed and 100% owned by the Beneficiary and includes numerous drugstores at various locations throughout Syria. However, the record does not support such assertions. The record does not contain any documentation establishing that [REDACTED] exists as a

² We note that there is a volume of untranslated Arabic documents that were submitted into the record. As they were not accompanied by certified translations, we cannot determine their substance or relevance to this case.

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company, that the company is 100% owned by the Beneficiary or that the company controls the named drugstore locations.

Furthermore, the record contains inconsistencies regarding the ownership and control of the Petitioner. The Petitioner's statement that Mr. [REDACTED] has been designated to handle the management of the company, along with the record of the minutes of the special meeting, which delegate legal authority to Mr. [REDACTED] to independently make decisions for the Petitioner, indicate that the Beneficiary does not in fact control the Petitioner. Without evidence to substantiate the ownership of the Petitioner and the foreign entity, we cannot determine whether or not they have a qualifying relationship.

Therefore, due to the lack of information and documentary evidence regarding the ownership of the Petitioner and foreign entity, the evidence in the record does not substantiate the claim that the Petitioner and foreign entity have a qualifying relationship. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G). For this additional reason, the petition must be denied.

V. FOREIGN ENTITY DOING BUSINESS

The Director denied the petition, in part, finding that the Petitioner has not established that the foreign entity is a qualifying organization doing business. "Doing business," is defined as the regular, systematic, and continuous provision of goods or services. *See* 8 C.F.R. § 214.2(l)(14)(ii)(A) and 8 C.F.R. § 214.2(l)(1)(ii)(H).

1. Facts

In describing the foreign entity, the Petitioner stated: "[The Beneficiary] has continuously owned and operated the foreign entity, [REDACTED] since 2005 up to the present date" and "[REDACTED] has several branch offices in a variety of locations in Syria including [REDACTED]" In a letter dated June 16, 2014 from the Beneficiary, the Beneficiary stated:

I would like to inform you that my office was never closed or ceased to be operational for any period of time in Syria. In 2011, my main office was relocated from [REDACTED] in Syria to [REDACTED] in Syria. The company has been continuously operational prior to 2011. Also I have multiple satellite offices for distribution purposes throughout Syria.

In the Beneficiary's resume, the Beneficiary states "I have to close my business in 2011 due to the political problems in Syria. I have moved to [REDACTED] and started a new job till end of 2013."

In support of the petition, the Petitioner also submitted pictures of products bearing the word '[REDACTED]' and copies of what it purports to be a factory license, store license and store stamp for [REDACTED] however these documents are written in Arabic and translations were not submitted. The Petitioner further submitted a copy of [REDACTED] internally generated statements of income and expenses for 2011 to 2014, and a copy of bank account statements for an account that it claims

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belongs to [REDACTED] however, there is no name on the account statements. Also submitted was a license card for the “[REDACTED]” with no translation or explanation as to which location this represented or whether or not it was related to [REDACTED]

The Director issued an RFE, notifying the Petitioner that the documents submitted were not sufficient to establish that the foreign entity was “doing business” as defined by the regulations. In response, the Petitioner submitted a number of additional documents, including those listed in the Director’s denial. As was noted in the denial, the majority of the documents submitted were not accompanied by translations and as such, we are prevented from analyzing or considering these documents in our analysis. Among the documents were claimed to be submitted were invoices, transportation records, vehicle insurance certificates, and bank statements.

On appeal, the Petitioner asserts that the volume of untranslated documents could be translated upon request and that the documents show the continuing operation of the foreign entity, specifically stating that the written statements from the beneficiary alone should be sufficient because the owner indicates that “business records have kept internally since 1999 verifying sales and invoices.”

2. Analysis

As noted above, the Petitioner has not established the existence, ownership or structure of the foreign entity. Specifically it is unclear how the claimed “branch” locations located throughout Syria are related to the claimed foreign entity, [REDACTED]. Without such information, we are limited in our ability to analyze the relevance of submitted documents that pertain to the individual branch locations. Furthermore, the absence of translations for the majority of the documents prevents us from determining whether the documents support the Petitioner’s claims.

Notwithstanding the absence of documentation concerning the existence, ownership, or structure of the claimed foreign entity, we have reviewed the evidence that the Petitioner claims establishes that the foreign entity is doing business. Even if we assume for the sake of argument that the claimed branch locations are owned and operated by the claimed foreign entity, the evidence in the record is not sufficient to establish that the claimed branch offices or claimed foreign entity are in fact doing business, in that they are engaged in the regular, systematic and continuous provision of goods and services. Although the Petitioner claims to have submitted invoices with the RFE response, a review of the file shows only one invoice with an accompanying translation. While there are other similar documents included which may also be invoices, none of these are translated. Because the Petitioner did not submit certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). The record also contains bank statements and insurance certificates, but these are either missing a translation, or if translated, do not identify the foreign entity by name. Therefore these documents have little probative value. Furthermore, we note that the few documents that were translated (one invoice, deed of sale, license, etc.) pertain only to a location in [REDACTED] which the Petitioner states was closed in 2011. As such, documents concerning this location do not constitute evidence that the foreign entity is continuing to do business at the present time.

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For the foregoing reasons, the evidence in the record does not establish that the foreign entity continues to do business. For this additional reason, the petition must be denied.

V. ONE YEAR OF EMPLOYMENT ABROAD

Beyond the decision of the Director, we note that the Petitioner has not submitted evidence to establish that the Beneficiary 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. See 8 C.F.R. § 214.2(l)(3)(iii).

Incorporating our finding that the Petitioner has not established that [REDACTED] is a qualifying organization for these proceedings; we also note that the Petitioner has not submitted documentary evidence to establish that the Beneficiary was actually employed by [REDACTED]. The Beneficiary's statement that he has owned [REDACTED] since 2005 is not sufficient to establish that he was employed in a full-time capacity with the company for at least one continuous year. The Director notified the Petitioner of the deficiencies in the record and requested that the Petitioner submit evidence such as personnel records, pay records, training records, or a letter from the company describing the Beneficiary's position. No such evidence was submitted in this case. Therefore, we find that the Petitioner has not established that the Beneficiary 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. For this additional reason, the petition must be denied.

VI. EMPLOYMENT ABROAD IN A QUALIFYING MANAGERIAL OR EXECUTIVE CAPACITY

Beyond the decision of the Director, we find that the record does not establish that the Beneficiary was employed abroad in a managerial or executive capacity. In describing the Beneficiary's position abroad, the Petitioner states that the Beneficiary has owned [REDACTED] since 2005. Ownership alone is not sufficient to establish that the Beneficiary has been employed in a managerial or executive capacity. The Petitioner must provide a description of the Beneficiary's position, indicating his daily duties/responsibilities and the amount of time spent on such duties. The Petitioner must also clearly delineate the claimed subordinates and provide a description of their duties and the requirements of the subordinate positions.

In this case, the Petitioner did not submit a description of the Beneficiary's position abroad or his related daily duties. The Petitioner also did not submit information on the organization of the foreign entity or information on any claimed subordinates and their duties. The Petitioner did not explain how the Beneficiary was relieved from performing non-qualifying duties for the foreign entity and did not explain or document the staffing model of the foreign entity. We note that the Petitioner did submit copies of Syrian Identification cards for six individuals that it appears to claim as employees; however, the Petitioner did not indicate where these individuals are employed, what positions they fill or what their duties are; nor did the Petitioner submit evidence that they were actually employed and paid by the foreign entity. Therefore, given the deficiencies in the record

noted above, we cannot determine that the Beneficiary's position abroad was managerial or executive and that there was sufficient staff to relieve him from performing non-qualifying duties.

The evidence in the record is insufficient to establish that the Beneficiary was employed abroad in a managerial or executive capacity. For this additional reason, the petition must be denied.

VII. CONCLUSION

We may deny an application or petition that fails to comply with the technical requirements of the law 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, 1037 (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).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-, LLC*, ID# 14715.(AAO Dec. 8, 2015)