



U.S. Citizenship
and Immigration
Services

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DATE: **FEB 10 2015**

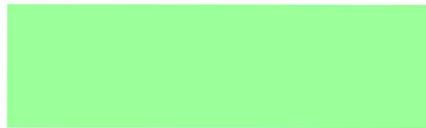
Office: VERMONT SERVICE CENTER

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:

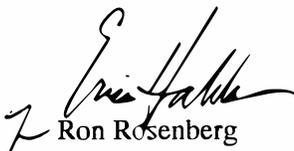
SELF-REPRESENTED

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

This nonimmigrant petition was filed seeking to extend the beneficiary's status 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). On the Form I-129 (Petition for a Nonimmigrant Worker), the petitioner indicates it was established in [REDACTED] and lists its business as "Property Acquisition and Sales."¹ It claims to maintain a qualifying relationship with [REDACTED] located in the United Kingdom. The petitioner seeks to employ the beneficiary in L-1A classification as its chief executive officer for two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary had been employed in a managerial or executive capacity for the foreign entity or would be employed in a managerial or executive capacity for the U.S. entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to this office. On appeal, the petitioner asserts that the director's denial of the petition was erroneous.

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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a parent, subsidiary, or affiliate of the foreign employer.

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;

¹ The record shows that the petitioner is a Florida corporation incorporated in January 2008. The instant petition was filed August 30, 2013. However, the petitioner answered "yes" on the Form I-129 Supplement L to the question "Is the beneficiary coming to the United States to open a new office?" The record also includes the beneficiary's initial one year approval in L-1A classification from August 27, 2012 to August 26, 2013. Based on the information in the record, it is unclear when the petitioner began its operations. However, the petitioner, in response to the director's request for evidence, clarified that it is not a new office despite indicating otherwise on the Form I-129. We confirm that the petitioner does not qualify as a new office as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

- (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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by 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. QUALIFYING MANAGERIAL OR EXECUTIVE CAPACITY

The issues addressed by the director are whether the petitioner established that the beneficiary had been employed in a qualifying managerial or executive capacity for the foreign entity for one continuous year within three years preceding the beneficiary's application for admission into the United States and whether the petitioner had established that the beneficiary would be employed in a managerial or executive capacity for the petitioner. Upon review, we find the record does not include sufficient probative evidence to overcome the director's decision on these issues.

A. Facts and Procedural History

In a letter, dated August 12, 2013, the petitioner indicated that the beneficiary had been employed as the chief executive officer of a United Kingdom (UK) business trading as [REDACTED]. The petitioner noted that the UK business is a partnership started in [REDACTED]. The petitioner explained that it "is a property services business currently concentrating on property management and services in excess of 80 short term rental properties in the [REDACTED] area." The petitioner noted that it had "plans to expand not only the management company but also realty sales and acquisition, as well as a vacation booking agency and also home furnishing packages." The petitioner stated that the "beneficiary is needed to remain on a permanent basis" in order to direct the investment in the expansion and growth of the U.S. entity.

The petitioner noted that the beneficiary has overall executive and financial control of both the foreign and U.S. entity and submitted similar duty descriptions for her foreign and U.S. positions. The petitioner listed the beneficiary's duties for the foreign entity as:

1. Overall executive and financial control of her department at all times.
2. All financial aspects including profitability of her department (20% of time spent)
3. All corporate development planning and implementation (10% of time spent)
4. Setting and monitoring budgets and cash flows for her department (10% of time spent)
5. Developing and implementing the company's business plan and goals (15% of time spent)
6. Setting and monitoring all corporate goals, policies and procedures representing the company to financial and legal entities (2% of time spent)
7. Delegation of responsibilities to management staff in her department (5% of time spent)
8. Undertaking regular staff performance review (5% of time spent)
9. Establishing capital requirements (3% of time spent)
10. Setting and implementing pricing policies (3% of time spent)
11. Researching and implementing business opportunities (5% of time spent)
12. Exercising discretion over day to day operations of the business (15% of time spent)
13. Review of financial reports to determine corporate progress (2% of time spent)
14. Recruitment of key personnel (5% of time spent)

The petitioner submitted the foreign entity's organizational chart showing the beneficiary as the chief executive officer with a general manager reporting directly to her. The general manager is depicted as

supervising a restaurant manager and the administrative accounts and invoicing department. The restaurant manager is shown supervising a head waiter and head chef who in turn each supervise additional staff. The record included job descriptions for the beneficiary's direct subordinates and tax certificates issued to 15 of the foreign entity's employees setting out their earnings for the 2013 year.

With respect to the role in the United States, the petitioner listed the beneficiary's duties as its company owner as:

1. Overall executive and financial control at all times.
2. All financial aspects including profitability (20% of time spent)
3. All corporate development planning and implementation (10% of time spent)
4. Setting and monitoring budgets and cash flows (10% of time spent)
5. Developing and implementing the company's business plan and goals (15% of time spent)
6. Setting and monitoring all corporate goals, policies and procedures representing the company to financial and legal entities (2% of time spent)
7. Delegation of responsibilities to management staff (5% of time spent)
8. Undertaking regular staff performance review (5% of time spent)
9. Establishing capital requirements (3% of time spent)
10. Setting and implementing pricing policies (3% of time spent)
11. Researching and implementing business opportunities (5% of time spent)
12. Exercising discretion over day to day operations of the business (15% of time spent)
13. Review of financial reports to determine corporate progress (2% of time spent)
14. Recruitment of key personnel (5% of time spent)

The petitioner submitted its organizational chart showing the beneficiary as the chief executive officer with a general manager reporting directly to her. The general manager is depicted as supervising a homecare manager, an external maintenance manager and an administrative reception employee. The homecare manager is shown supervising cleaners and an internal maintenance position and the external maintenance manager is shown supervising pool maintenance employees, an external maintenance employee, and two landscaping employees. The record included Internal Revenue Service (IRS) W-2, Wage and Tax Statements, issued by the petitioner to 14 employees for the 2012 year, as well as duty descriptions for the general manager, external maintenance manager and homecare manager.

In response to the director's request for further evidence (RFE), the foreign entity's general manager provided the same description and allocation of time spent on the beneficiary's responsibilities for the foreign entity. The foreign entity's general manager indicated that while the beneficiary was in the UK, she "oversaw the day to day running of the business by directing the management of the business," and that she "had the authority to hire and fire and would do so under consultation with the department manager employing the staff member."

The petitioner's general manager also provided the same description and allocation of time spent on the beneficiary's responsibilities for the petitioner. The petitioner's general manager noted that initially the beneficiary performed some non-executive duties but that those duties were now performed by the general manager. The petitioner also clarified that once the U.S. entity had achieved its initial goals the beneficiary

would return to the UK and the general manager would continue to run the business in the beneficiary's absence.

Upon review of the record, the director determined that the petitioner had not established that the beneficiary had been employed in a managerial or executive capacity for the foreign entity or would be employed in a managerial or executive capacity for the petitioner.

On appeal, the petitioner asserts that the beneficiary has financial control of the foreign entity and the U.S. entity and instructs the general managers on the overall budget for the companies. The petitioner indicates that the beneficiary is also responsible for the recruitment of key personnel, such as the general manager, and then the general managers recruit department managers and administration staff. The petitioner explains that the general managers have discretion regarding allocation of funds to different departments. The petitioner contends that there is no overlap of duties between the beneficiary and the general managers, but rather the beneficiary delegates and guides the general managers in performing duties regarding their subordinates. The petitioner asserts that there are many layers of staff between the beneficiary, who holds the highest position in the company, and the general workers, including general managers who relieve the beneficiary from all non-executive duties. The petitioner also submits a copy of the foreign entity's general manager's diploma of a bachelor's of science degree in civil engineering issued in July 1983 and a copy of the petitioner's general manager's 2003 Bachelor of Science degree.

B. Analysis

Upon review of the totality of the record, the petitioner has not established that the beneficiary's duties for either the foreign entity or the petitioner are primarily managerial or executive. 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 either in an executive or managerial capacity. *Id.*

Here the petitioner provided broad descriptions of the beneficiary's duties, relying primarily on the fact that the beneficiary is the individual depicted at the top of the organizational chart. For example, the petitioner (and the general manager of the foreign entity) indicated that the beneficiary is responsible for all financial aspects including profitability, all corporate development planning and implementation, developing and implementing the company's business plan and goals, exercising discretion over the day to day operations of the business, and setting and monitoring budgets and cash flows. However, 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 petitioner has failed to provide any detail or explanation of the beneficiary's activities related to these broadly stated tasks, in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Moreover, we observe that the petitioner does not detail the difference between duties such as "corporate development planning and implementation" and "developing and implementing the company's business plan and goals." There is no explanation of the actual duties the beneficiary performs associated with these two similar business objectives. In addition, "[e]xercising discretion over day to day operations of the business"

simply repeats one of the elements within the definition of managerial capacity.² Section 101(a)(44)(A)(iv) of the Act. 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, supra*. Further, the foreign entity appears to restrict the beneficiary's responsibility to a particular department within the company when indicating the beneficiary is responsible for all financial aspects of her department and sets and monitors budgets and cash flows for her department, rather than indicating that she performs these duties for the company as a whole.

Upon review of the general descriptions of the beneficiary's duties, we are unable to ascertain exactly what the beneficiary did for the foreign entity on a daily basis or what the beneficiary will do for the petitioner on a daily basis. The record does not include sufficient probative evidence to establish the beneficiary actually performed duties for the foreign entity or will perform duties for the petitioner. 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 petitioner also submitted descriptions of duties for the foreign entity's executive manager and restaurant manager and the petitioner's general manager. These descriptions are likewise general. The record does not include descriptions of duties of these subordinates' duties that demonstrate what duties the individuals actually perform. For example, the foreign entity indicates that the executive manager will spend 15 percent of his time on finance and budget, 20 percent of his time on planning and organization, 15 percent of his time on reviews and projections with the chief executive officer, and 15 percent of his time delegating duties. Similarly, the restaurant manager spends 15 percent of her time on finance and budget, 20 percent of her time on planning and organization, 15 percent of her time on reviews and projections with the executive manager, and 15 percent of her time delegating duties. These descriptions do not convey an understanding of the actual daily duties performed by these individuals within the context of the foreign entity's restaurant.

Likewise, the petitioner's general manager is tasked with operational administration (10 percent of her time), finance and budget (15 percent of her time), planning and organization (15 percent of her time), reviews and projections with the chief executive officer (15 percent of her time), and delegating duties (10 percent of her time). The petitioner's external maintenance manager spends 25 percent of his time implementing the daily instructions of the general manager and 25 percent of his time delegating duties. The homecare manager also spends 25 percent of her time implementing the daily instructions of the general manager and 25 percent of her time delegating duties. These repetitive and brief descriptions also do not inform of the actual duties these workers perform. The petitioner has not provided evidence of specific tasks these individuals perform that are particularly associated with the type of business the petitioner operates.

As the record lacks a detailed description of the beneficiary's actual duties for the foreign entity and for the petitioner, as well as general and repetitive descriptions for the beneficiary's claimed subordinates, the record is insufficient to support the petitioner's claim that the beneficiary was employed or will be employed in a

² The petitioner claims that the beneficiary's position with the foreign entity and for the petitioner was and will be in an executive capacity, however, exercising discretion over day-to-day operations is an element of managerial capacity. Here, we note that a beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

qualifying managerial or executive capacity. Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the nature of the businesses, and any other factors that will contribute to an understanding of a beneficiary's actual duties and role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position.

Here, while several of the overbroad duties described by the petitioner may fall generally under the definitions of managerial or executive capacity, the lack of specificity regarding the beneficiary's actual duties, as well as the duties of her claimed managerial subordinates, raises questions as to the beneficiary's actual primary responsibilities. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On appeal, the petitioner contends that the beneficiary's management of subordinate managers and professionals establishes her eligibility. The record includes the educational credentials of the general managers for the petitioner and the foreign entity as well as the diploma of the foreign entity's restaurant manager. The petitioner, however, does not indicate that the beneficiary primarily manages or supervises subordinate employees. Upon review of the allocation of the beneficiary's duties, the beneficiary spends approximately 15 percent of her time, or at most 30 percent of her time, managing and supervising her subordinates. Accordingly, based on the current record, we are unable to conclude that the claimed managerial duties constitute the majority of the beneficiary's duties.

Moreover, although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial.³ See section 101(a)(44)(A)(ii) of the Act. Here we observe that neither the petitioner nor the foreign entity provided sufficient probative evidence establishing that the beneficiary's subordinates primarily performed managerial or supervisory duties. The descriptions of the subordinates' duties as found above, are generic and fail to convey an understanding of the day-to-day tasks the

³ 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). Thus, the possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the duties of the general manager, executive manager, or restaurant manager, who are among the beneficiary's subordinates with degrees.

subordinates perform. Accordingly, the petitioner has not established that the beneficiary primarily performed or will manage or supervise managerial, supervisory or professional employees.

Based on the limited probative evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

III. BEYOND THE DIRECTOR'S DECISION

In our *de novo* review of this matter, we found an additional issue that precludes approval of the petition.⁴ The petitioner has not established that it maintains a qualifying relationship with the beneficiary's foreign employer.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides the following pertinent definitions:

(G) *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.

(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

⁴ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (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, . . .

On the Form I-129 Supplement L, the petitioner states that it is a subsidiary of the foreign entity. The petitioner then describes the stock ownership and managerial control of each company as: "[redacted] 50%" and "[the petitioner] 50%." This statement does not describe a subsidiary relationship between the two entities based on the above definitions, and the evidence of record does not show that the foreign entity owns and controls the petitioner.

In response to the director's RFE requesting evidence of the qualifying relationship, the petitioner submitted a copy of its Stock Certificate 1 issuing 1,000 shares to the beneficiary on January 28, 2008. The petitioner's incorporating documents filed with the Florida Secretary of State on January 29, 2008, identified the beneficiary and [redacted] as the initial officer(s) and/or director(s) of the corporation. The Articles of Incorporation showed the petitioner was authorized to issue 2000 shares. The petitioner also submitted the first page of its 2012 IRS Form 1120, U.S. Corporation Income Tax Return.

With respect to the foreign entity's ownership, the petitioner also submitted a partnership agreement entered into on June 8, 2006 between the beneficiary and [redacted] identifying these two individuals as members of the partnership. Under the heading Capital Contributions, the agreement noted that each of the members had contributed to the capital of the venture, in cash or property the following: "[the beneficiary] 50% of shares" and [redacted] 50% of shares." The agreement indicated that the beneficiary is the executive partner and that [redacted] is a shareholder. On the signature page of the partnership agreement, signed by both the beneficiary and [redacted] article 66 of the document reads:

Partner [redacted] gives overall executive and financial control of all ventures undertaken by the partnership to [redacted]. [redacted] is to be employed by the partnership and report to the other partners on a regular basis or at least at annual meetings to be held by the partnership.

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.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The

corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings 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., supra.* Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

In this matter, the record does not include the petitioner's stock certificate registry and does not include the corporate bylaws or any minutes or agreements entered into relating to the voting of shares. The record does not include evidence showing that additional shares of the petitioner were actually issued and if so to whom. Accordingly, it is not possible to ascertain who exercises control of the petitioner. Although the beneficiary is depicted as owning 50 percent of the petitioner, there is no documentary evidence establishing that she actually controls the petitioner. Thus, it is not possible to conclude that the beneficiary owns or has entered into agreements that allow her a controlling interest in the petitioner.

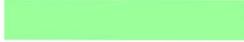
Even if the petitioner established that the beneficiary owns a controlling interest in the petitioner, which it has not, the partnership agreement entered into on June 8, 2006, allegedly between the beneficiary and [REDACTED] references other partners and explicitly gives overall executive and financial control of all ventures to a third party, not the beneficiary or [REDACTED]. Accordingly, the record shows that [REDACTED] a partner of the foreign entity, who does not own or otherwise have a controlling interest in the petitioner, is the individual who actually exercises control of the foreign entity. Accordingly, because the petitioner is not one of two subsidiaries both owned and controlled by the same parent or individual or 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, the petitioner has not established that it and the foreign entity are affiliates.

Upon review of the totality of the record, the record does not include consistent, probative evidence establishing the petitioner's and the foreign entity's actual ownership and control. For this additional reason, the petition may not be approved.

IV. CONCLUSION

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

In this matter, upon review of the totality of the record, the record does not demonstrate that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity or will be employed in a primarily managerial or executive capacity for the U.S. petitioner. Accordingly, we will uphold the director's determination on these two issues. In addition, we find beyond the decision of the director, that the petitioner has not established a qualifying relationship with the beneficiary's claimed foreign employer.



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 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003). The petition will be denied and the appeal dismissed for the above stated reasons. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.