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U.S. Citizenship
and Immigration
Services

DATE: JAN 26 2015 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

7 Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed a Petition for a Nonimmigrant Worker (Form I-129) seeking to classify the beneficiary as a 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 New Jersey corporation established in [REDACTED] states that it designs, manufactures, and sells motorcycle apparel and accessories. It claims to be the parent company of [REDACTED] the beneficiary's employer in Pakistan. The petitioner seeks to employ the beneficiary as its international logistics manager for a period of three years.

The director denied the petition concluding that the petitioner failed to establish: (1) that the beneficiary's foreign employment was in a position that was managerial or executive or a position involving specialized knowledge; and (2) that the beneficiary will be employed in the United States in a managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the record establishes the beneficiary's prior employment in a managerial capacity and that he will be employed as a function manager in the United States.

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(1)(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.

II. The Issues on Appeal

A. Employment in the United States in a Managerial Capacity

The first issue to be addressed is whether the petitioner established that it will employ the beneficiary in a qualifying managerial capacity. The petitioner does not claim that the beneficiary will be employed in an executive capacity.

1. Facts

The petitioner filed the Form I-129 on August 20, 2013 seeking to employ the beneficiary as its international logistics manager. The petitioner indicated on the Form I-129 that it was established in [REDACTED] to design, manufacture, and sell motorcycle apparel and accessories. The petitioner indicated that it has 18 employees and a gross annual income of \$11,890,137.

The petitioner provided a letter in support of the petition dated August 2, 2013. The letter states that:

As our International Logistics Manager, [the beneficiary] will be responsible for directing and managing logistics for manufacturing, design and quality control of our product line. He will direct and manage all functions related to design, materials allocation, production, and scheduling for products sold in the US, as well as performing all necessary managerial tasks for increasing manufacturing efficiency and reducing design and production costs.

The petitioner states that the beneficiary's weekly duties and responsibilities will include the following:

1. Coordinating, with US management and Pakistan management, functions relating to the feasibility of custom designs for US customers utilizing cost analysis procedures to estimate production costs, manufacturing procedures, and determining estimated profits.
2. Coordinating designs and production planning with US and overseas management personnel to determine product pricing guidelines.
3. Coordinating overseas production process operations to customize designs including planning and implementing fabrication sequences, production specifications and production project management.
4. Coordinating quality control procedures with our overseas manufacturing facility and resolving quality control issues for products that do not meet our US customers' required specifications.
5. Directing and coordinating product testing to meet the highest quality production standards.

The petitioner provided 2012 IRS Form W-2, Wage and Tax Statement, for 31 individuals. The petitioner also submitted Form 941, Employer's Quarterly Federal Tax Return, for all four quarters of 2012. The quarterly tax returns indicate that the petitioner employed between 17 and 19 individuals in each quarter. The petitioner did not provide evidence of wages paid to employees in 2013.

The director issued a request for additional evidence ("RFE") instructing the petitioner to submit additional evidence that the beneficiary will be employed in a managerial or executive capacity in the United States. The director advised the petitioner that its description of the beneficiary's duties was vague and did not establish that the beneficiary will primarily perform managerial or executive duties. The director requested a more detailed job description with the percentage of time the beneficiary will allocate to specific duties, as well as the petitioner's organization chart identifying the beneficiary's subordinates by name, job title, summary of duties, educational level and salary.

In response to the RFE, the petitioner indicated that the beneficiary will be performing the following job duties:

- Direct and coordinate management personnel engaged in production and quality control functions through the assignment of tasks and duties to our Production Manager in Pakistan. The production manager will meet daily with the heads of various departments to implement these production and quality control directions. (15 hours)
- Formulate administrative policies (US and Pakistan) for short term and long term production management operations. (5 hours)
- Oversee implementation of manufacturing and quality control policies and procedures related to the improvement of production operations. (5 hours)
- Analyze and modify production budgets to meet budget guidelines after review of production quality control and manpower/materials costs. (5 hours)
- Allocate funds to support appropriate functions regarding manufacturing, materials purchasing, equipment purchasing, and quality control modifications. (5 hours)
- Direct preparation of production, quality control and scheduling operations to use with company officers and directors during weekly meetings to determine modifications in design and production policies and procedures to reduce costs and improve revenue. (5 hours)

The petitioner indicated that the beneficiary will "have the discretionary authority to hire and fire employees in the US and Pakistan, develop and implement short term and long term business policies for both organizations relating to all design and production matters, and [he] will direct, through management personnel in Pakistan, all activities for the design production, and quality control operations." The petitioner stated that the beneficiary's proposed position is essential for the design, manufacture, and quality control of the company's product.

The petitioner also explained that the individual currently identified as the foreign entity's "production incharge [*sic*]" will undertake the beneficiary's current position of production manager in Pakistan. The petitioner stated that the production manager "will report directly to [the beneficiary] and will be responsible for implementing policies and procedures through the management team now in place responsible for design, production, procurement, quality control, and shipping."

The petitioner did not submit the requested organizational chart showing its staffing levels and management structure or any other additional information regarding the beneficiary's proposed subordinates in the United States.

The director ultimately denied the petition. The director found that the position description provided for the beneficiary was overly vague. The director also found that the petitioner failed to identify the subordinate employees who would relieve the beneficiary from performing the non-managerial duties associated with logistics management. The director concluded that the evidence submitted did not establish that the

beneficiary will be performing in a senior level position with duties and responsibilities higher than that of a first line supervisor.

On appeal, the petitioner states that the beneficiary's position description meets the definition of managerial capacity. The petitioner specifically states that the beneficiary will be the manager of the petitioner's international business operation function. The petitioner indicates that this function is necessary to improve production, reduce delivery times, and increase profits by streamlining managerial control. The petitioner indicates that the beneficiary will report only to the CEO and President and will have subordinate administrative staff, marketing/sales staff, accounting staff, and warehouse/shipping staff. The petitioner also states that the beneficiary will direct and coordinate the managerial functions for the overseas manufacturing operations through production and quality control management personnel. The petitioner asserts that "the presence of other managerial or supervisory staff members at the petitioner's manufacturing facility and its managerial staff in the U.S. establish that the beneficiary has not, and will not be performing operational duties."

The petitioner submits an organization chart on appeal. The CEO/President is at the apex of the chart. The Vice President is subordinate to the CEO/President and the International Logistics Manager is subordinate to the Vice President. The chart also depicts a Vice President – US Operations who is subordinate to both the Vice President and the International Logistics Manager. The International Logistics Manager oversees a Marketing/Sales Manager and a Warehouse/Shipping Manager. The Marketing/Sales Manager has subordinate sales staff and the Warehouse/Shipping Manager oversees a warehouse position and a shipping position. The Accounting Manager reports to the Vice President- US Operations and oversees an office administrator, accounts, and payroll. A reception position is subordinate to the office administrator, and a billing position is subordinate to the accounts position. The petitioner does not identify any employees by name or provide any additional information, such as the previously requested job duties for the beneficiary's proposed subordinates.

The petitioner also submits an IRS Form 941 for the fourth quarter of 2013. The quarterly tax return indicates that the petitioner employed 20 individuals. Finally, the petitioner submits copies of its 2013 IRS Form W-2 for 29 employees.

2. Analysis

Upon review, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity.

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(1)(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 functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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 petitioner'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 petitioner's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The petitioner's initial description of the beneficiary's job duties indicates that he will be responsible for "coordinating, with US and Pakistan management, functions relating to the feasibility of custom designs"; "coordinating designs and production planning with US and overseas management personnel"; "coordinating overseas production process operations"; "coordinating quality control procedures with [the] overseas manufacturing facility"; and "directing and coordinating product testing." The description fails to indicate any specific managerial tasks the beneficiary would perform on a daily basis or how he would accomplish his various "coordinating" responsibilities. As such, the director instructed the petitioner to provide further details explaining the beneficiary's daily activities with specificity.

However, rather than providing a more detailed description of the initial duties, the position description submitted in response to the RFE was written in terms that suggested that the beneficiary would operate at a higher level of authority than indicated at the time of filing. For example, in response to the RFE, the petitioner indicates that the beneficiary will: "direct and coordinate management personnel engaged in production and quality control functions"; "formulate administrative policies"; "oversee implementation of manufacturing and quality control policies and procedures"; "analyze and modify production budgets"; and "direct preparation of production, quality control and scheduling operations." Notably, the initial description of the beneficiary's duties did not include any personnel management or supervision, policy-making functions, or budgetary responsibilities, and the petitioner did not attempt to reconcile the two different descriptions provided for the same position. 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).

Moreover, the purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description that were

significantly different from those initially provided, thus lessening the probative value of the already vague position description.

Even if we consider the materially different position description provided in response to the RFE, the broad terms fail to establish the beneficiary's performance of managerial duties. While the terms "direct" and "oversee" suggest the beneficiary's level of authority, again, the petitioner has failed to provide insight into the beneficiary's daily activities. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. 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. *Id.*

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. The petitioner indicates that the beneficiary will spend 15 hours directing and coordinating management personnel engaged in production and quality control; five hours overseeing implementation of manufacturing and quality control policies and procedures; and five hours directing preparation of production, quality control and scheduling operations. As discussed above, these broad terms encompass both potentially qualifying and non-qualifying duties. Absent a more detailed position description distinguishing the beneficiary's managerial duties from his non-managerial duties, it cannot be determined that the beneficiary will spend majority of his time performing managerial duties and that he is primarily employed in a managerial capacity.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

In the instant matter, the petitioner indicates that the beneficiary will "direct and manage all functions related to design, materials allocation, production, and scheduling." The petitioner also indicates that the beneficiary will "direct and coordinate management personnel engaged in production and quality control functions." On appeal, the petitioner states that the beneficiary will be the manager of the petitioner's "international business operation function."

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a position description that clearly describes the duties to be

performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who "primarily" performs the tasks necessary to produce a product or to provide services, or other non-qualifying duties, is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r. 1988).

The position description indicates that the beneficiary will analyze and modify production budgets; allocate funds to support appropriate functions; estimate production costs; determine estimated profits; determine product pricing guidelines; and resolve quality control issues. The petitioner has not explained how the beneficiary's financial, administrative, and quality control duties are in a managerial capacity rather than the beneficiary's performance of duties related to the function. While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act; see also *Brazil Quality Stones, Inc. v. Chertoff*, 531, F.3d 1063, 1069-70 (9th Cir. 2008). As discussed above, due to the conflicting position descriptions submitted, and the lack of detail in the position descriptions, the evidence fails to establish that amount of time the beneficiary would spend performing qualifying versus non-qualifying duties.

Moreover, the petitioner has not provided sufficient evidence that the beneficiary would be relieved from performing the non-qualifying duties related to the functions he is claimed to manage. Although the petitioner submits evidence to establish that it employed 18 individuals at the time the petition was filed, the petitioner did not provide evidence to explain its organizational structure and failed to identify or describe any U.S. positions subordinate to the beneficiary's proposed position as requested by the director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner did indicate that the beneficiary has authority to hire and fire employees in the United States and Pakistan, but has not indicated which positions are under the beneficiary's authority and control. 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 does indicate that the beneficiary will oversee a production manager, who will implement policies and procedures through the foreign entity's management team. However, as discussed, the petitioner initially indicated that the beneficiary would simply be "coordinating" with management rather than managing foreign and U.S. personnel. The record contains insufficient information to establish the beneficiary's actual level of authority in the proposed U.S. position.

On appeal the petitioner submits an organization chart placing the beneficiary over a marketing/sales manager, warehouse/shipping manager, vice president of US operations, and an accounting manager. As mentioned above, the director requested a detailed organization chart including the names, titles, and a summary of duties for the beneficiary's subordinate employees. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, we need not and do not consider the sufficiency of the evidence submitted on appeal.

Even if the organization chart were considered, an employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (*Cited in Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)). Here, it cannot be determined that the beneficiary's position on the organization chart corresponds with his actual level of authority within the U.S. company. The petitioner has not explained the beneficiary's placement over the marketing/sales manager or warehouse/shipping manager considering the lack of duties related to sales, marketing, warehousing, or shipping in the beneficiary's position description. Furthermore, the petitioner has not provided position descriptions or other evidence to demonstrate that the subordinates depicted on the chart would perform the non-managerial duties related to the production and/or design functions.

Absent a detailed position description and evidence of sufficient employees to relieve the beneficiary from performing the production and design functions, the petitioner has failed to establish the beneficiary's employment as a function manager, and the record does not support a finding that the beneficiary would be employed as a personnel manager.

Based on the foregoing, the petitioner has not established that the beneficiary will be employed in a primarily managerial capacity. Accordingly, the appeal will be dismissed.

B. Employment Abroad in a Managerial Capacity

The second issue discussed by the director, is whether the petitioner established that the beneficiary was employed abroad in a managerial or executive capacity.

In a letter dated July 6, 2013, a representative from the foreign entity indicates that the beneficiary has been employed as production manager since January 2012. The petitioner states that the beneficiary 'is responsible, through subordinate managerial and supervisory personnel, for primarily managing and directing all activities relating to the production of products for sale in the US market. The petitioner further

explained that the beneficiary performs his duties through the subordinate production incharge position and other supervisory employees.

The petitioner submitted a description of the beneficiary's duties as production manager. The duties include directing the hiring and training of the production staff and coordinating the administrative staff and production staff to meet production targets. The petitioner also provided a list of the foreign entity's 84 employees including their position titles and monthly salaries. The list indicates that the beneficiary occupies a position just below the general manager, and demonstrates a multi-tiered organizational structure with several departments. The list identifies "incharge", managerial, and supervisory positions as well as sufficient personnel to produce the company's product and provide the necessary services.

Upon review, the petitioner submitted sufficient evidence to establish that the beneficiary was employed in a managerial capacity abroad.

The director placed undue emphasis on whether the beneficiary has specialized knowledge and his managerial experience relative to other employees. Although the petitioner may provide evidence that the beneficiary's employment involves specialized knowledge, the petitioner in the instant matter claims that the beneficiary is employed "in the managerial position of Production Manager."

The petitioner provided sufficient evidence of the beneficiary's duties and subordinate staff to establish that the beneficiary's duties abroad are primarily related to the management of the production function. The petitioner has also established that the beneficiary's management of the production department, within the context of the petitioner's business organization, can be equated to managing an essential subdivision, function, or component of the organization. *See* section 101(a)(44)(A)(i) of the Act. Further, the totality of the record demonstrates that the beneficiary has sufficient subordinate employees performing the non-managerial production duties, and the foreign has sufficient staff to perform the non-managerial duties outside of the production function. Given the evidence submitted, including the beneficiary's job description and the overall structure of the foreign entity, the petitioner has established by a preponderance of the evidence that he is employed in a managerial capacity. Therefore, the director's decision will be withdrawn with respect to this issue only.

III. Qualifying Relationship

Beyond the decision of the director, the record contains insufficient evidence to establish that the petitioner 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. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(1).

The Form I-129 indicates that the foreign entity is a wholly owned subsidiary of the petitioner. In a letter dated March 3, 2014, the petitioner explains that the petitioner's Board of Directors, shareholders, and

officers ratified the decision to assume 100% ownership of the foreign entity at a board meeting held on March 1, 2013. The petitioner submits the minutes from the March 1, 2013 board meeting as evidence that it owns 100% of the foreign entity.

Although the meeting minutes indicate the petitioner's intent to assume ownership of the foreign entity, the petitioner failed to provide evidence that the intended acquisition actually occurred. There is no evidence to establish the identity of the foreign entity's owner or owners before the petitioner's claimed acquisition. The petitioner provided registration documents for the foreign entity; however, the documents do not include ownership information or reflect any changes in foreign entity's ownership. The petitioner has not provided a contract or otherwise demonstrated the initial owner or owners agreement to transfer full ownership to the petitioner. Likewise, there is no evidence that the petitioner transferred money as payment for its acquisition of sole ownership, or any evidence showing that the appropriate authority within the government of Pakistan has recognized the petitioner's acquisition of ownership. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner submitted several invoices demonstrating a business relationship between the petitioner and the foreign entity; however, evidence that the two companies conduct business together is not sufficient to establish a qualifying relationship. 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.

In the instant matter the petitioner has failed to provide sufficient evidence of the ownership and control of the foreign entity. Accordingly, the petitioner has not established that it has a qualifying relationship with the foreign entity. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by 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).

IV. Conclusion

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). The petitioner has failed to establish that the beneficiary will be employed in the United States in a managerial or

(b)(6)

NON-PRECEDENT DECISION

Page 13

executive capacity, and has failed to establish that it has a qualifying relationship with the beneficiary's foreign employer. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.