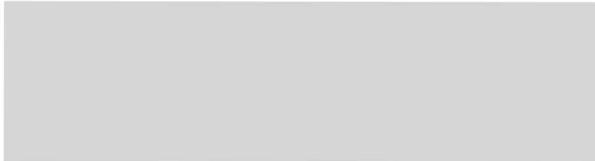




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 30 2015**

PETITION RECEIPT #: [REDACTED]

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

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:

NO REPRESENTATIVE OF RECORD

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

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Georgia limited liability company established in [REDACTED] is engaged in general contracting and custom cabinet design and installation. The petitioner states that it is an affiliate of [REDACTED] located in Brazil. The petitioner seeks to employ the beneficiary as the manager of its cabinetry department for one year.

The director denied the petition, finding the petitioner did not establish that it has a qualifying relationship with the foreign employer. Further, the director concluded that the petitioner did not demonstrate that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner references previously submitted tax documentation and a letter provided from the company's accountant and asserts that this evidence establishes that it has a qualifying relationship with the foreign employer. In addition, the petitioner contends that the beneficiary's proposed position will require him to primarily perform managerial duties and oversee professional subordinates.

#### I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker (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.

## II. THE ISSUES ON APPEAL

### A. MANAGERIAL OR EXECUTIVE CAPACITY (U.S EMPLOYMENT)

The first issue to be addressed is whether the petitioner has established that the beneficiary will be employed in a managerial or executive capacity in the United States.

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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

#### 1. Facts

The petitioner filed the Form I-129 on July 14, 2014. The petitioner indicated in a support letter provided with the petition that its main area of expertise is the real estate market, specifically, "buying old or foreclosed properties, remodeling them and putting them in the market for sale or rent." The petitioner stated that it also installs kitchen and bathroom cabinetry and countertops. The petitioner noted in the Form I-129 that it earned \$364,515 in revenue during 2013 and that it employs five individuals.

The petitioner stated that the beneficiary would act as the "Director/Manager for our Cabinetry/Carpentry department." The petitioner explained the beneficiary's duties as follows:

[The beneficiary's] duties as Director will be: hiring and supervising our carpenters, cabinet makers and installers, maintaining the high quality standards required by market standards, managing schedules of fabrication, installation and execution of such related activities. Inspecting finished jobs, and reporting to the president the outcome of every job. We will also be responsible for receiving and accepting or rejecting supplies and materials as they are delivered from the suppliers, ordering tools and materials as needed to guarantee the continuous process of fabrication and installation. He will also be responsible to oversee all safety procedures to avoid accidents.

The petitioner provided a business plan stating that the president of the company, [REDACTED] "decided that the best way to adapt to the market was to take advantage of the fact that new building permits are down." The petitioner further noted that customers would "be more likely to hold on to their assets and remodel existing homes rather than go out to buy a new home." The petitioner provided a personnel plan reflecting that it would employ a production manager, a design employee, an office production manager,

and an office employee during 2015. The petitioner provided an organizational chart indicating that the company employed a president overseeing a manager of the real estate development department, a marble and granite subcontractor " " and a tile flooring manager.

The director later issued a request for evidence (RFE) advising the petitioner that its initial evidence did not demonstrate that the beneficiary would primarily perform qualifying duties or supervise managers, supervisors or professionals. As such, the director requested that the petitioner submit a letter describing the beneficiary's expected managerial decisions and duties, including the percentage of time the beneficiary would spend on each of his tasks. The director asked that the petitioner explain how the beneficiary would supervise and control the work of other supervisory, professional or managerial subordinates. Further, the director requested that the petitioner provide an organizational chart reflecting all of its employees, their names, job titles, along with a summary of their duties, education levels and salaries.

In response, the petitioner submitted a letter from its president stating that the following with respect to the beneficiary and his proposed position:

I need someone in this position to free me from the Managerial activities so that I can pursue the establishment and development of the Construction/Building department of our company.

For this position I need the Manager to be able to do the following:

- Manage the 5 employees we have and the 3 sub-contractor companies that render services to us.
- Will have the authority to hire and fire any employee needed for tasks
- Has to be trustworthy
- Has to be knowledgeable about carpentry, cabinetry, counter tops (in case an employee is absent) and other peripheral tasks such as tiling, electrical and plumbing.
- Has to have enough experience to evaluate the jobs executed and to identify mistakes or possible errors in job executions that will compromise the integrity of the job
- Will have complete authority over acquisition of supplies and materials as well as authorizing payment of employees and sub-contractors
- Will report directly to me

In denying the petition, the director pointed to the petitioner's failure to provide an organizational chart and documentation of wages paid to the company's asserted employees and contractors. The director stated that the petitioner had not submitted sufficient evidence to establish that the beneficiary will oversee and control managerial, supervisory or professional subordinates. The director indicated that the beneficiary's duty descriptions reflected that he would be primarily engaged in the performance of non-qualifying operational duties.

On appeal, the petitioner asserts that the beneficiary will primarily perform managerial duties and oversee professional carpenters, thereby qualifying for the benefit sought. The petitioner resubmits much of the

evidence provided previously on the record, including the beneficiary's duty descriptions. The petitioner provides a list of twelve sub-contractors. The petitioner also provides a copy of its contract with one of these sub-contractors and states that additional contracts can be submitted upon request.

## 2. Analysis

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

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

Here, the petitioner did not document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. Indeed, the director requested this evidence in the RFE, asking the petitioner to identify the percentage of time the beneficiary would devote to each of his tasks. However, the petitioner did not provide this detailed description of the beneficiary's proposed duties. 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). This failure of documentation is important because several of the beneficiary's daily tasks, such as "managing schedules of fabrication, installation and execution," "inspecting finished jobs," receiving and accepting or rejecting all supplies and materials, and "ordering tools and materials as needed," do not fall directly under traditional managerial duties as defined in the statute. For this reason, we cannot determine whether the beneficiary is primarily performing the duties of a qualifying manager or executive. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

In response to the RFE, the petitioner did little to elaborate on the beneficiary's proposed duties, adding only that the beneficiary would supervise five employees and three subcontractor companies, that the beneficiary was trustworthy, and that he would manage and be responsible for hiring and firing employees. However, the petitioner did not identify the beneficiary's subordinates, their titles, or duties, or otherwise set forth specific managerial tasks the beneficiary would perform. 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990). In fact, to the extent that the petitioner provides specifics regarding the beneficiary's duties, these suggest that he is primarily responsible for non-qualifying operational tasks, including applying his knowledge of carpentry, cabinetry, and countertops,

filling in for subordinates in their absence and identifying mistakes in job execution. The actual duties themselves reveal the true nature of the employment. *Id.* The petitioner indicates that the beneficiary will be acting as a first line supervisor of non-professional employees, such as carpenters and installers, while the president of the company, to whom the beneficiary reports, will be setting goals and policies for the company. 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).

Beyond the required description of the job duties, United States Citizenship and Immigration Service (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

In the current matter, the petitioner has submitted insufficient evidence to substantiate the nature and duties of the beneficiary's subordinates. The petitioner has failed identify the beneficiary's subordinates specifically with names, titles, duties, educations or salaries, as requested by the director. Again, 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). Further, the petitioner has not provided supporting documentation to corroborate the employment of the beneficiary's asserted subordinates. 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)).

To the extent the petitioner submitted evidence relevant to its organizational structure, it includes material discrepancies which undermine the probative value of this evidence. For instance, the petitioner provided a business plan indicating that it planned to employ a production manager, a design employee, an office production manager, and an office employee during 2015, whereas its submitted organizational chart indicated that the company engaged a manager of the real estate development department, a marble and granite subcontractor " [REDACTED] " and a tile flooring manager. It is noteworthy that neither of these organizational structures indicates that the beneficiary will supervise carpenters or installation specialists as asserted elsewhere on the record. Further, in response to the RFE, the petitioner stated that the beneficiary would supervise five employees and three subcontractor companies, which is not reflected in either of its provided organizational structures. As noted, the petitioner did not specifically identify these employees or subcontractors by name. In sum, these discrepancies leave question as to the beneficiary's claimed subordinates and limit our understanding of the beneficiary's proposed position in the organization. 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).

On appeal, the petitioner contends that the beneficiary will primarily act in a managerial capacity and asserts that he will oversee and control "professional" carpenters. The statutory definition of "managerial capacity" allows for both "personnel managers" and a "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).

Here, the petitioner has not demonstrated that the beneficiary will act as a personnel manager. As discussed previously, the director requested that the petitioner submit names, titles, duty descriptions, education levels, and salaries relevant to the beneficiary's subordinates. However, the petitioner did not submit this evidence. Again, 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). Further, as noted above, the petitioner has provided conflicting illustrations of its organizational structure and explanations of the beneficiary's asserted subordinates and did not resolve these ambiguities with independent objective evidence. In addition, as noted, the petitioner has failed to corroborate its employment of the beneficiary's claimed subordinate employees or contractors with supporting evidence, such as wage documentation or contracts. Although the petitioner submitted a copy of a single contract on appeal, it has not sufficiently supported its claim that the beneficiary will regularly supervise employees of specific contract companies. Once again, 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)). In fact, the petitioner stated that the beneficiary oversees three sub-contractor companies, and later indicated that he will supervise one such company in its organization chart, and now lists twelve sub-contractor companies on appeal. Again, 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).

Furthermore, the petitioner asserts on appeal that the beneficiary will oversee professional carpenters and suggests that this responsibility qualifies him as a personnel manager. 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).

However, the petitioner has not identified the professional workers the beneficiary will supervise. It has failed to provide duty descriptions or other supporting evidence to corroborate that these claimed professional level employees report to the beneficiary, or that they are performing professional level duties. In addition, the petitioner has not submitted any evidence to establish that the beneficiary has subordinates who hold baccalaureate degrees or that they are required to hold specific degrees to qualify for these positions. As such, the petitioner has not provided sufficient evidence to demonstrate that the beneficiary will qualify as a personnel manager through his supervision of professional subordinates. Once again, 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)).

For the foregoing reasons, the petitioner has not established that the beneficiary will be employed in a qualifying managerial capacity in the United States. For this reason, the appeal will be dismissed.

B. QUALIFYING RELATIONSHIP

The next issue addressed by the director is whether the petitioner has established that it has a qualifying relationship with the foreign entity.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(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[.]

\* \* \*

(I) Parent means a firm, corporation, or other legal entity which has subsidiaries.

\* \* \*

- (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.

1. Facts

The petitioner indicated in the Form I-129 that it is an affiliate of the foreign entity. The petitioner stated in a support letter that it is wholly owned by [REDACTED]. Further, it asserted that the foreign entity is owned equally by Mr. [REDACTED] and the beneficiary. The petitioner provided a certificate of incorporation in the State of Georgia reflecting that it was originally created as a corporation in [REDACTED] and a certificate of conversion indicating that it had converted to a limited liability company in [REDACTED]. The petitioner provided articles of organization dated in 2012 reflecting that [REDACTED] was the sole organizer, and president, of the company. The petitioner submitted IRS Forms 1120, U.S. Corporation Income Tax Return, for the years 2011 through 2013, which did not provide any information regarding the company's ownership. The petitioner provided a business plan stating that it "is owned by [REDACTED]."

The petitioner later issued a request for evidence (RFE) stating that the petitioner submitted tax documentation failing to reflect ownership in the company and noting that it had not provided membership certificates or other corporate documentation setting forth the company's ownership and control. As such, the director requested that the petitioner provided documentation to substantiate its ownership, including meeting minutes, articles of organization specifying the members and their percentages of ownership, and/or evidence of capital contributions by the members for their ownership interest.

In response, the petitioner submitted a letter dated September 9, 2014 from [REDACTED] stating "that our company has prepared income tax returns for [the petitioner] for the last three years" and that "[REDACTED] is 100% shareholder of the Corporation." In addition, the petitioner provided an IRS Form 1125-E "Compensation of Officers" document from an unidentified tax year reflecting that [REDACTED] had been compensated \$37,857 as an officer of the company during that year. Further, the petitioner provided a foreign entity "Limited Partnership Constitution Contract" dated in April 2008 and reflecting that [REDACTED] and the beneficiary each own 7,500 shares in the

foreign entity and that each contributed \$7,500 in exchange for their membership interests.

In denying the petition, the director found that it was not apparent from the petitioner's submitted tax documentation that [REDACTED] holds 100% ownership in the company. The director noted that the letter from the petitioner's accountant made reference to a corporation, while the petitioner claims to be a limited liability company as of [REDACTED]. In sum, the director concluded that the petitioner had submitted insufficient supporting documentation to substantiate its ownership.

On appeal, the petitioner resubmits the evidence relevant to its ownership previously provided and states that "no other documentation exists on the face of this earth that would show that anyone would own even a single share of the company other than Mr. [REDACTED] who owns 100% of the company." Based on its assertion that [REDACTED] owns 100% of the petitioner, and 50% of the foreign employer, the petitioner contends that it is an affiliate of the foreign entity.

## 2. Analysis

Upon review of the submitted evidence, the petitioner has not demonstrated that it has a qualifying relationship with the foreign entity.

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, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence he or she deems necessary. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the identification of a member of an LLC into the means by which this membership interest was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for the membership interest. Additional supporting evidence would include an operating agreement, minutes of relevant membership or management meetings, or other legal documents governing the acquisition of the ownership interest.

The petitioner has not submitted sufficient evidence to establish its ownership. The petitioner has not provided membership certificates, articles of organization, or other corporate documentation reflecting its asserted ownership, as requested by the director. In addition, the petitioner has not submitted evidence of capital contributions made in the company to substantiate its ownership. Again, 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). Therefore, the petitioner has not provided sufficient supporting documentation to corroborate its ownership. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

To the extent the petitioner provides evidence of ownership, this evidence leaves question as to its stated ownership. For instance, as noted by the director, the petitioner provides copies of three IRS Form 1120, none of which include any information regarding the company's ownership. Furthermore, the petitioner submits a letter from its accountant dated in September 2014 indicating that it is 100% owned by [REDACTED]. However, the letter makes reference to the petitioner has a corporation and not a limited liability company, to which it is asserted to have converted in 2012. This discrepancy leaves question as to the accuracy of the assertions in this supporting documentation. As such, without appropriate supporting evidence with respect to ownership in the petitioner, we cannot conclude that there is common ownership between it and the foreign entity.

For the foregoing reasons, the petitioner has not established that it has a qualifying relationship with the foreign employer. Accordingly, for this addition reason the appeal will be dismissed.

### C. MANAGERIAL OR EXECUTIVE CAPACITY (FOREIGN EMPLOYMENT)

Although not addressed in the director's decision, the regulations require the submission of evidence to establish that the beneficiary's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iv). The beneficiary's duties abroad, similar to those analyzed with respect to the beneficiary's proposed U.S. employment analyzed herein, indicate that the beneficiary is also likely primarily engaged in non-qualifying operational duties in his current position as the foreign entity's general shop manager. Further, the petitioner did not submit the percentages of time the beneficiary devotes to his various tasks abroad, leaving further question as to whether he primarily performs qualifying tasks. Once again, going on record without supporting

documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Therefore, the evidence provided does not establish that the beneficiary is primarily engaged in qualifying managerial or executive tasks in his position abroad. An employee who "primarily" performs the tasks necessary to produce a product or to provide services 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). 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).

### III. CONCLUSION

The appeal will be 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.