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FILE:

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Office: CALIFORNIA SERVICE CENTER

Date: MAR 21 2006

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

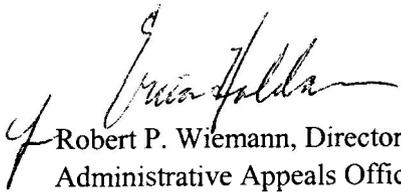
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation authorized to do business under the laws of the State of Arizona that is engaged in the manufacture, distribution, and sale of health food supplements. The petitioner seeks to employ the beneficiary as its United States branch manager.

The director denied the petition concluding that the petitioner had not established that: (1) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity; or (2) a qualifying relationship existed between the foreign and United States entities at the time of filing.

On appeal, counsel for the petitioner contends that the beneficiary's employment meets the statutory requirements of a "manager," as she "is responsible for the development of the company's product line through sales and promotional activities, as key function that must be overseen and coordinated by a manager." Counsel also claims that as a branch office of the foreign Canadian company, the petitioner established the requisite qualifying relationship. Counsel submits a brief and additional documentary evidence in support of the appeal.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

(C) Certain Multinational Executives and Managers. – An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement, which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The first issue in this proceeding is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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), provides:

The term "executive capacity" means 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 petitioner filed the immigrant petition on July 22, 2004, noting on Form I-140 the existence of a one-person staff. In an attached letter, dated June 16, 2004, the petitioner's president acknowledged that the beneficiary was the petitioner's sole employee at the time of filing, and noted that the beneficiary's employment would satisfy the petitioner's need "to perform critical marketing," and process its products and sales. The petitioner stated:

As Branch Manager, the Beneficiary has been responsible for managing the sales of the Petitioner's products . . . [and] for managing all day-to-day operations of the company which includes:

- Managing sales promotions and all publicity of the company's products through newsletters and advertising on infomercials
- Developing bilateral agreements between other U.S. Companies and the Canadian Parent Company
- Developing creative packaging ideas, handling materials, order processing and warehousing
- Attending trade shows as a Manager of the Petitioner
- Leading the research and development of new products
- Continuing to develop and review two websites as a vehicle to sell our products as well as to educate our customers
- Maintaining our mail-order service which entails compiling mailing lists, providing service and information assistance through our toll-free numbers and responding to customer letters, questions or complaints

The petitioner explained that during the next two years, the beneficiary would seek to incorporate two new product lines into the petitioner's business and develop new ventures for sales with outside companies.

In a request for evidence, dated March 11, 2005, the director asked that the petitioner submit the following documentary evidence in support of the beneficiary's employment in a primarily managerial or executive capacity: (1) an organizational chart reflecting the petitioner's staffing levels, and clearly identifying the beneficiary and any subordinate employees; (2) a brief description of the job duties and education of the petitioner's employees; (3) a detailed description of the job duties performed by the beneficiary during a "typical day"; and (4) state quarterly wage reports filed by the petitioner for the last four quarters.

In her June 1, 2005 response, counsel provided an outline of the same job duties as that provided in the petitioner's June 16, 2004 letter. Counsel also explained:

More specifically, on a daily basis the Beneficiary communicates with health industry advisors, raw material suppliers, designers, lawyers, etc. scheduling meetings at trade shows, arranging for shipping and set-up of the [petitioner's] booths at the tradeshow, reserving travel and hotel accommodations, and receiving and distributing samples of our products to potential buyers. Due to [the] Beneficiary being in the US as the Branch Manager of Petitioner, the Petitioner was able to get a contract to purchase an encapsulator machine which is in Canada and helps makes gel capsules. The worth of this machinery is about \$20,000. Also through Beneficiary's managerial skills, the Petitioner was able to obtain a contract with a US company to buy acidophalis, a raw material which the encapsulator machine turns into pills. The Petitioner then manages the sale of these pills throughout the world. The Beneficiary is also responsible for contracting with a US company to sell Argan Oil in the US. All of these recent business activities of the US company would not have been possible without the foreign entity setting up a branch office in the US.

Counsel submitted the petitioner's requested state quarterly wage report for the quarter ending September 30, 2004, the period during which the instant petition was filed, which reflected the employment of only the beneficiary.

In a decision dated July 15, 2005, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director noted the beneficiary's proposed job duties, and stated that they "[are] more indicative of an employee who is performing the necessary tasks to provide a service or to produce a product." The director also noted that as the sole employee of the organization, the petitioner did not maintain "the organizational complexity to warrant having an executive." The director further concluded that the beneficiary would not be employed as a function manager, as the beneficiary would be "involved in the performance of routine operational activities of the entity rather than in the management of a function of that business." Consequently, the director denied the petition.

In an appeal filed on August 17, 2005, counsel contends that the beneficiary satisfies the statutory requirements of "managerial capacity." Counsel claims that the beneficiary directs and coordinates activities related to the purchase and sale of the petitioner's products, and states:

The Beneficiary manages key functions within the company, including the development of product lines. She supervises the work of her two professional employees with authority to hire and fire personnel as needed; and exercises discretion over the day to day operations of the activities and functions for which said employees have authority.

\* \* \*

[T]he Beneficiary is responsible for the development of the company's product line through sales and promotional activities, a key function that must be overseen and coordinated by a manager and not something left solely to an employee. To perform this task requires extensive knowledge of company products as well as the managerial skills to oversee the successful operation of the business.

Counsel provides a list of job duties, which includes some of those already outlined above, and adds that the beneficiary would review the work of the petitioner's sales associate, product designer, and web site developer.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The petitioner's limited description of the beneficiary's proposed job duties fails to clarify the managerial or executive capacity in which the beneficiary would be employed. The petitioner has not documented the specific managerial or executive job duties to be performed by the beneficiary. Rather, the petitioner and counsel submitted the same brief outline of job duties, which, as discussed below, are not typically deemed to be managerial or executive in nature, and fail to expand on the specific managerial or executive tasks to be performed by the beneficiary on a daily basis. Additionally, counsel's blanket claim on appeal that the beneficiary satisfies the criteria of a branch manager,

as defined in the Dictionary of Occupational Titles, is insufficient to meet the petitioner's burden provided in the regulation at 8 C.F.R. § 204.5(j)(5). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The AAO notes that the petitioner's 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).

As noted above, it is evident that the majority of the beneficiary's time would be spent performing non-managerial and non-executive tasks related to the promotion and sale of the petitioner's business and its products. Based on the petitioner's representations, the beneficiary would be responsible for such non-qualifying operational tasks as developing the petitioner's packaging, "handling materials, order processing and warehousing," developing the company's websites, and maintaining the business' mail-order service, which includes compiling customer mailing lists, offering service assistance on the petitioner's toll-free line, and responding to customers, as well as receiving and distributing product samples and arranging for the shipment of products for tradeshow. Additionally, although the petitioner claims that the beneficiary would *manage* such tasks as promotions, advertising, research and development, and sales, the petitioner has not identified any workers employed at the time of filing who the beneficiary would manage or who would perform the associated non-qualifying tasks. The AAO notes that the three subordinate workers identified by counsel on appeal will not be considered herein. As reflected in the accompanying work contracts, none of the workers were employed at the time the immigrant petition was filed. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The beneficiary's performance of the petitioner's operational and administrative tasks is further supported by a June 7, 2004 letter from one of the petitioner's accounts acknowledging a presentation by the beneficiary of the petitioner's products and requesting product displays for its stores. 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. 1988).

The AAO notes that despite the proper finding that the beneficiary would be employed in a primarily qualifying capacity, the director partially based his decision on an incorrect standard. The director incorrectly concluded that the petitioner must possess an undefined level of "organizational complexity" in order to demonstrate its need for a managerial or executive employee. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. To establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not explained how the reasonable needs of the petitioning enterprise would be met through the employment of the beneficiary. Additionally, the petitioner has not justified the beneficiary's performance of non-managerial

or non-executive duties with the reasonable needs of the company. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44).

Despite counsel's claim that the beneficiary would oversee the "key function" of developing the petitioner's product line, the record is devoid of evidence substantiating this claim. 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 written job offer that clearly describes the duties to be performed, 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. 8 C.F.R. § 204.5(j)(5). In addition, 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. Here, counsel's brief statement is not sufficient to demonstrate that the beneficiary would manage an essential function. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

As the beneficiary is primarily performing the routine day-to-day operations of the business, including tasks related to its marketing, advertising, and sales, which are not typically deemed to be managerial or executive in nature, the beneficiary cannot be considered to be employed in a primarily qualifying capacity. Accordingly, the appeal will be dismissed.

The AAO will next consider the issue of whether a qualifying relationship existed between the foreign and United States entities at the time of filing.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

*Affiliate* means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) 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;

\* \* \*

*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.

In its June 16, 2005 letter, the petitioner represented a branch relationship with the foreign Canadian company, noting that each company is owned and controlled by the same three individuals. An appended letter from the petitioner's president indicated that the petitioning entity "is 100% owned and managerially controlled by [the foreign company] of Canada," and again noted the petitioner's existence in the United States as a branch of the foreign entity. As evidence of the petitioner's authorization to do business in the United States, the petitioner provided an Application for Authority to transact business in Arizona, a business license, certificates of trade name and free sale in the State of Arizona, and company brochures. The petitioner also submitted copies of the foreign entity's articles of incorporation, stock certificates and securities ledgers.

In his March 11, 2005 request for evidence, the director asked that the petitioner provide: (1) the foreign company's annual report reflecting any related companies; (2) a copy of the minutes from the foreign company's stockholders' meeting addressing its stockholders and the number of shares held by each; (3) a list of the foreign entity's shareholders and related ownership interests; and (4) the foreign company's articles of incorporation.

In response, counsel noted that as a branch of the foreign company, the petitioner was not incorporated in the United States, but had been authorized to do business in Arizona. Counsel stated that the petitioner is "fully owned and controlled by [the] foreign company," which is owned by three individuals. In addition to the documentary evidence previously submitted and outlined above, counsel provided the following evidence in support of a qualifying relationship: (1) the petitioner's Corporation Annual Report and Certificate of Disclosure; (2) a statement from the company's president, noting the petitioner's status as a branch office; (3) the foreign entity's annual report; and (4) a description of the foreign company's authorized share capital.

In his July 15, 2005 decision, the director concluded that the petitioner had not established the existence of qualifying relationship between the foreign and United States entities. Referencing the petitioner's statement that both the foreign and United States companies are owned by three individuals, the director stated that the petitioner had not submitted evidence of the United States company's ownership. The director further noted the inability to determine "with any degree of certainty, that the foreign entity has an ownership interest in the petitioner." Consequently, the director denied the petition based on the petitioner's failure to establish a qualifying relationship.

On appeal, counsel references the petitioner's Certificate of Good Standing issued by the Corporation Commission of Arizona on August 8, 2005. Counsel also notes that the petitioner's annual report confirms that the petitioner is domiciled in Quebec, while engaged in business in the Arizona. Counsel contends that "the document indicates that the US company is owned by the same three people that own the parent company in Canada." Counsel claims that the submitted evidence establishes the petitioner's status as a branch of the foreign corporation.

Upon review, the petitioner has demonstrated the existence of a qualifying relationship between the foreign and United States entities.

When a foreign company establishes a branch in the United States, that branch is bound to the parent company through common ownership and management. A branch that is authorized to do business under United States law becomes, in effect, part of the national industry. *Matter of Schick*, 13 I&N Dec. 647 at 649-50 (Reg. Comm. 1970). Probative evidence of a branch office would include the following: a state business license establishing that the foreign corporation is authorized to engage in business activities in the United States; copies of Internal Revenue Service (IRS) Form 1120-F, U.S. Income Tax Return of a Foreign Corporation; copies IRS Form 941, Employer's Quarterly Federal Tax Return, listing the branch office as the employer; copies of a lease for office space in the United States; and finally, any state tax forms that demonstrate that the petitioner is a branch office of a foreign entity. Here, the petitioner has offered probative documentary evidence, including its business license, certificates to operate under a trade name and sell products in the State of Arizona, corporate brochures, and annual report, demonstrating its existence as a branch office of the foreign corporation. Accordingly, the director's decision with regard to this issue only will be withdrawn.

Beyond the decision of the director, an additional issue is whether the beneficiary was employed abroad in a primarily managerial or executive capacity. The petitioner stated in its June 16, 2004 letter that the beneficiary was employed as the foreign entity's treasurer, during which "she was responsible for a broad range of managerial duties." An attached letter from the company's president indicated that in this position, the beneficiary "performed key managerial functions for [the foreign entity]." The record is devoid of additional evidence specifically describing the managerial or executive job duties performed by the beneficiary as the company's treasurer. 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 answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Absent a comprehensive description of the beneficiary's former managerial or executive job duties, the AAO cannot conclude that the beneficiary satisfied the statutory requirement of being employed abroad in a qualifying capacity. For this additional reason, the petition will be denied.

The AAO notes that at least two L-1A nonimmigrant petitions have previously been approved for the benefit of the beneficiary. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. See §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. Cf. §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427.

In addition, unless a petition seeks extension of a "new office" petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and CIS normally accords the petitions a less substantial review. See 8 C.F.R. § 214.2(1)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Because CIS spends less time reviewing L-1 petitions than Form I-140 immigrant

petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30 (recognizing that CIS approves some petitions in error).

Moreover, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The prior nonimmigrant approvals do not preclude CIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approval by denying the present immigrant petition.

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The AAO recommends review of the prior L-1A approvals for possible revocation.

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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.