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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 20 2007
WAC 06 005 50961

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

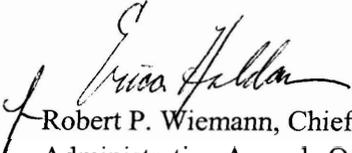
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based visa 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 visa 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 organized under the laws of the State of California that is operating as a wholesaler and distributor of diamonds and precious stones. It claims to be an affiliate of the beneficiary's foreign employer in Japan, and seeks to employ the beneficiary as its president.

The director denied the petition concluding 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 also observed that the record did not demonstrate that the beneficiary's foreign assignment was primarily managerial or executive in nature.

On appeal, counsel contends that the beneficiary's proposed employment in the United States entity is comprised of both managerial and executive functions. Counsel submits a letter 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 present immigrant visa petition on September 29, 2005, noting the beneficiary's employment as president, during which he would be responsible for the "company's operations" and "day-to-day executive decision making," the development of its client base, and finalizing the sales and finance terms of distributors' contracts. In an attached letter, dated September 26, 2005, the petitioner explained that the beneficiary's proposed position would incorporate the management of "all activities in regard to the marketing and selling of our company's products," and stated:

Specifically, [the beneficiary] will continue to be responsible for assuming full responsibly [sic] at the corporate/managerial level for all issues regarding the Sales, Marketing and

Distribution of our products in North America. He will further assume the responsibility for the negotiation of contracts and proposals in the marketplace. In addition, he will continue to explore ways to expand our sales and marketing team, and will develop the necessary policies and procedures so that our company can function effectively, if any one member ceased employment or took an extended leave from our concern.

[The beneficiary] is presently directly supervising the activities of our sales and administrative staff and he will plan and monitor directly all sales and marketing of our company. Additionally, he will prepare our US Company logistically for the necessary changes in the size of the operation and the range of products marketed as our company continues to grow and expand. [The beneficiary] has complete authority to hire and discharge personnel as required.

[The beneficiary] will continue to have full responsibility at the corporate management level for the day-to-day operations of our company as it relates to activities between our local company, our company's operations, and with our Indian parent company and our Japanese subsidiary. He will continue to have overall responsibility for the negotiation of proposals and the sales of our products in the market place with our local and international vendors.

[The beneficiary's] key managerial functions, responsibilities are as follows:

1. Manage revenue and company assets;
2. Work with Management personnel to increase our company's business activity including manage our margin, expense, collection of all US business activities[;]
3. Recruit, train, develop and manage support personnel;
4. Develop sales and marketing strategies and overview proper implementation of tactics for all single markets;
5. Train and develop field support staff;
6. Increase sales over the next three (3) years by at least ten [percent] (10%) per year.

In a separate untitled statement, the beneficiary's employment was described as follows:

[The beneficiary] is the President of the company and is in sole charge of guiding the business to higher levels. He oversees all departments of the [company] including buying, selling and administration. He is looking towards the possibility of hiring a full time Sales Manager to promote sales outside of California. He has hired Office Secretaries at different times to assist him with administration matters. Also he has qualified Sales Personnel who sell goods on [a] commission basis for the business. Currently he is seeking full time personnel to work in his business to assist him with the growing demands of the business.

The petitioner did not submit additional evidence of its staffing levels, or the personnel to be supervised by the beneficiary.

In a request for evidence, dated June 27, 2006, the director directed the petitioner to submit evidence related to its staffing levels, including each worker's job title, job duties, and level of education, copies of the Internal Revenue Service (IRS) Forms W-2 issued by the petitioner in 2005, as well as an organizational chart reflecting the beneficiary's position in the company. The director noted that the petitioner should explain whether certain workers were employed for only a portion of the year or on a part-time basis. The director further asked the petitioner to describe any supervision the beneficiary would receive in his proposed position.

The petitioner responded in a September 25, 2006 letter, claiming that the beneficiary would be engaged in performing both managerial and executive job duties. The petitioner stated:

The Beneficiary's key managerial functions and achievements have been and will continue to be as follows: Plan, develop and establish policies and objective[s] of [the] business organization in accordance with the business plan as developed by the Indian parent company. This individual will continue to be fully responsible on a managerial/executive level for the development of organizational policies including the direction and coordination of a formal sale, marketing and financial programs. This individual was [sic] been responsible for managing revenue, margin, and expense; develop [sic] and management of our operations as the same has expanded over the past three years.

* * *

In this high level executive position, [the beneficiary] will continue to be in charge of and directly responsible for all activities of [the] United States jewelry company. This will include day-to-day administration of our company, plan and development of policies and objectives of our company in accordance with our Company's stated goals and objectives. [The beneficiary] will confer with parent company's executives in India to plan the US business objectives so that the same are in line with the overall business strategies of the Indian parent company, to coordinate functions and operations for the overall company, and to establish responsibilities and procedures for attaining stated objectives.

[The beneficiary] will continue to review activity business activity reports and financial statements to determine progress and status accordance with current business, financial, sales and market conditions. He will continue to direct and coordinate formulation of financial budgets to provide funding for new or continuing operations to maximize return on investment and to increase profitability and productivity. [The beneficiary] will have the authority to recommend the hiring of any new personnel and will have the authority to recommend the discharge of any personnel under [his] direction.

The petitioner also outlined a list of additional responsibilities "that [the beneficiary] has taken over the past 6 months." As the listed tasks were assumed by the beneficiary after the time that the petition was filed, and differ from the responsibilities initially named for the beneficiary's proposed position, they do not appear to be representative of the capacity in which the beneficiary would be employed on the filing date. 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. 1978). 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 petitioner also referenced in its letter an organizational chart detailing the managerial hierarchy and staffing levels of the United States entity. The AAO notes, however, that the petitioner has not provided this evidence for the record. Based on the IRS Forms W-2 submitted by the petitioner with its response, during the year 2005, the petitioner employed six workers, including the beneficiary. As the employees' annual wages range from \$3000 to \$15,000, it is reasonable to conclude that they were employed for only a portion of 2005, and if employed at the time of filing, four of the six workers were employed on a part-time basis. The record does not contain a copy of the petitioner's September 30, 2005 state quarterly wage report, which would confirm its staffing levels for the month during which the petition was filed.

In a decision dated November 1, 2006, 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 addressed the descriptions offered for the beneficiary's proposed employment, stating that the named tasks "indicate[] that the major part of the beneficiary's duties is to be devoted to the business marketing, staff recruitment and supervision, and other duties comprising the daily productive tasks of the company, including the first-line supervision of non[-]managerial, non[-]supervisory, [and] non[-]professional personnel." The director further noted that the petitioner had not submitted the requested organizational chart, and concluded that, based on the wages paid during 2005, the majority of the petitioner's workers were employed on a part-time basis. Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on November 29, 2006, claiming that "when reviewed in the context of the material submitted," the majority of the beneficiary's job responsibilities are managerial and executive in nature. In an attached letter, counsel restates both the job responsibilities outlined in the petitioner's response to the director's request for evidence and much of the job description provided in the petitioner's September 25, 2006 letter, which has already been stated above. Counsel also provides yet a third outline of job responsibilities held by the beneficiary, which differ from the job duties originally identified. Again, 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. at 249. 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. at 176.

Counsel states that in his executive capacity, the beneficiary would direct the company's management, establish its goals and policies, and exercise wide latitude of discretionary decision-making. Counsel further states:

Substantial showing has been submitted to show that the principal and main part of the duties that the Beneficiary performs is executive and/or managerial as defined [in §§ 101(a)(44)(A) and (B) of the Act]. The Beneficiary has been shown to be functioning within those capacities. Majority of the duties of the Beneficiary fall within the scope of the executive or managerial capacity as cited in the Code of Federal Regulations.

Upon review, the petitioner has not established 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 description initially offered for the beneficiary's employment as president falls significantly short of establishing his proposed employment in a primarily managerial or executive capacity. The regulations require that the petitioner submit with its Form I-140 a letter clearly describing the managerial or executive job duties to be performed by the beneficiary. 8 C.F.R. § 204.5(j)(5). Merely reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient to meet the regulatory requirements. *See generally*, 8 C.F.R. § 204.5(j)(5).

Here, the petitioner offered only broadly based job responsibilities to be held by the beneficiary, such as his responsibility of managing the company's revenue and assets, making personnel decisions, training support staff, increasing long-term sales, and developing sales and marketing strategies. While the petitioner's September 26, 2005 letter contains an additional discussion of the beneficiary's position, it largely restates the outlined job responsibilities without identifying specific managerial or executive tasks of the beneficiary, or clarifying the capacity in which he would be employed. Such broad statements as "assuming full [responsibility] at the corporate managerial level," "developing necessary policies and procedures so that our company can function effectively," "logistically" preparing the petitioner for changes in the size of the company or its range of products, or "coordinating all of our organization's financial, sales, and marketing activities" do not satisfy the petitioner's obligation to "clearly describe" the managerial or executive employment of the beneficiary. *See* 8 C.F.R. § 204.5(j)(5). 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Similarly, the petitioner's response to the director's request for evidence falls short of establishing the beneficiary as a manager or executive of the United States entity. Included in its letter are the petitioner's claims that as a manager and executive, the beneficiary would plan the company's policies and objectives, hire and fire personnel, and manage activities of its sales team. The AAO notes that 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. at 1108. Case law dictates that a petitioner's blanket claim of employing the beneficiary as a manager or executive without a description of how, when, where and with whom the beneficiary's job duties occurred is insufficient for establishing employment in a primarily managerial or executive capacity. *Id.* at 1108. Additionally, the petitioner provided job duties different from those originally assigned to the beneficiary, and which fail to clarify the beneficiary's true proposed employment. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Moreover, despite its repeated claims that the beneficiary would supervise "management personnel" and "sales teams," the petitioner has not offered any evidence of its staffing levels. The AAO again notes that although requested by the director, the petitioner failed to submit its organizational chart, or the job titles and job duties of its employees. Similarly, the petitioner failed to clarify the duration of its workers' employment and whether they were full or part-time employees on the filing date. The 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 information is essential to corroborating the purported supervisory and managerial authority of the beneficiary, particularly since the beneficiary is represented as supervising "sales and administrative staff" and overseeing departments related to the company's "buying, selling and administration." It is equally relevant to demonstrating whether the petitioner's lower-level staff would be

sufficient to relieve the beneficiary from performing non-managerial and non-executive administrative and operational tasks of the organization, especially since four of the five employees claimed to occupy positions subordinate to the beneficiary appear to have been employed on a part-time basis. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The limited record fails to corroborate the petitioner's claims that the beneficiary would exercise managerial or executive authority over a subordinate managerial, sales or administrative staff, or demonstrate that the beneficiary would be relieved from primarily performing the sales, administrative, and marketing functions of the company. The AAO notes that throughout the record the beneficiary was identified as negotiating contracts and proposals, developing the company's sales and marketing strategies, and performing "administration matters," tasks that are not typically deemed to be managerial or executive in nature. *See* §§ 101(a)(44)(A) and (B) of the Act. 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).

Counsel does not resolve these discrepancies on appeal, claiming instead that the totality of the evidence demonstrates that the beneficiary would be performing primarily managerial or executive tasks. 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 Obaigbena*, 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). Counsel's brief claims that the beneficiary would direct the company's management, establish its goals and policies, and exercise wide latitude in discretionary decision-making are not sufficient to establish the beneficiary's employment as a manager or executive. Again, 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. at 1108.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The second issue in this proceeding is whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

In his November 1, 2006 decision, the director concluded that the beneficiary's foreign employment was not in a primarily managerial or executive capacity, stating: "[I]t appears that the alien's foreign assignments were duties composed primarily of the daily productive tasks and first-line supervision of non[-]managerial, non[-]professional employees of the firm."

When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). The director's brief statement does not satisfy

this regulatory requirement. The AAO notes, however, that counsel did not address on appeal the director's finding with respect to the beneficiary's foreign employment.

A review of the record does not establish that the beneficiary was employed by the Japanese entity in a primarily managerial or executive capacity. The beneficiary is identified as having occupied the position of sales manager in the Japanese entity. In the previously referenced untitled statement submitted with its initial filing, the petitioner stated that the beneficiary was "in overall charge of sales all over the world," and that the company hired secretarial and sales personnel as needed. The petitioner explained that the beneficiary has been involved with the jewelry trade for over twenty years, and has over 15 years of experience in diamond and gemstone trade. An organizational chart submitted by the petitioner in its response to the director's request for evidence identified the Japanese company's August 2006 staffing levels as being comprised of a president, a secretary, a sales manager, an account executive, and two sales executives. The AAO notes that the chart depicts the staffing levels maintained by the foreign company approximately eleven months after the filing date and not at the time the beneficiary was employed.

The limited evidence submitted with respect to the beneficiary's foreign employment is not sufficient to demonstrate that the beneficiary occupied a primarily managerial or executive position in the Japanese company. The petitioner neglected to submit a description of the managerial or executive job duties performed by the beneficiary as the company's sales manager. 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)). Moreover, based on the petitioner's claim of hiring subordinate personnel "whenever it was required for the business," it is reasonable to conclude that the beneficiary was responsible for personally performing non-managerial and non-executive tasks of the business. Again, 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). As counsel does not address on appeal the beneficiary's foreign employment capacity, there is no evidence rebutting the finding that the beneficiary was not employed by the Japanese company in a primarily managerial or executive capacity. For this additional reason, the petition will be denied.

Beyond the decision of the director, an additional issue is whether the beneficiary's foreign Japanese employer, Trilok Dia Company Ltd., and the petitioning entity shared a qualifying relationship at the time the immigrant visa petition was filed.

To establish a qualifying relationship under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e. a United States entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary"). The foreign corporation or other legal entity that employed the beneficiary must continue to exist and have a qualifying relationship with the petitioner at the time the immigrant petition is filed. 8 C.F.R. § 204.5(j)(3)(i)(C). A multinational manager or executive is one 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." Section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C).

In the instant matter, during the three years prior to his entrance into the United States as a nonimmigrant, the beneficiary was employed by the Japanese company, Trilok Dia Company, Ltd. Accordingly, the petitioner is obligated to demonstrate the existence of a qualifying relationship between Trilok Dia Company, Ltd. and the United States organization. *See* 8 C.F.R. § 204.5(j)(3)(i)(C) (requiring the United States petitioner demonstrate that it is "the same employer or a subsidiary or affiliate of the firm or corporation . . . by which the alien was employed overseas").

In its September 26, 2005 letter, the petitioner represented the United States company as an affiliate of the Japanese entity, Trilok Dia Ltd. and a wholly owned subsidiary of the company Kesaria Diamonds Ltd., located in India. With its initial filing, the petitioner submitted a copy of a number three stock certificate, issued February 18, 1997, naming Kesaria Diamonds as the owner of 1,000 shares of the company's 25,000 shares of authorized stock. Schedule K of the petitioner's years 2001 through 2003 income tax returns also identified Kesaria Diamonds as the sole owner of the United States corporation.

With respect to the ownership of Trilok Dia Company Ltd., the initial record contained a copy of the Japanese company's Notice of Business Establishment, which identified its owner as "J.B. Shah." Conversely, the company's attached December 12, 1996 Article of Association identified the individual Palek Plakash Lasikral as both the officer and owner.

Following the director's request for additional evidence of an "intercorporate relationship" between the petitioner and the beneficiary's foreign employer, the petitioner submitted its September 25, 2006 letter, referencing the Japanese company as an affiliate. The petitioner also submitted a copy of a different stock certificate, dated February 14, 1997, identifying the Indian company as owning 25,000 shares of the petitioner's stock.

Notwithstanding the inconsistencies in the petitioner's two submitted stock certificates, the record does not establish a qualifying relationship between the petitioning entity and the beneficiary's foreign employer in Japan. The limited record, particularly with respect to the ownership of the Japanese company, does not corroborate the petitioner's claim that the United States and Japanese companies share an affiliate relationship. The current record presents conflicting claims as to the individual owner of the Japanese company; yet neither document identified the Indian company as a shareholder or owner of Trilok Dia Company, Ltd. 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. at 165. Absent additional documentation confirming the ownership of both the United States and Japanese companies, the AAO cannot conclude the existence of a qualifying relationship. For this additional reason, the petition will be denied.

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 AAO recognizes that Citizenship and Immigration Services (CIS) previously approved five L-1A nonimmigrant petitions filed by the petitioner on behalf of the beneficiary. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22

(D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 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. Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

Furthermore, 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. See 8 C.F.R. § 103.8(d). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. Based on the inconsistent evidence in the current record, the director was justified in departing from the prior nonimmigrant petition approvals and denying the immigrant petition.

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.