



U.S. Citizenship
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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: **SEP 11 2007**
SRC 06 159 52390

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

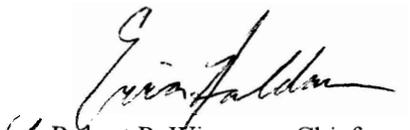
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 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 Texas that is engaged in the import and wholesale of surgical, dental, and beauty products and instruments. The petitioner claims to be the subsidiary of the beneficiary's foreign employer, and seeks to employ the beneficiary as its vice-president of marketing.

The director denied the petition concluding that the petitioner had not demonstrated its ability to pay the beneficiary's proposed weekly wage of \$1,200 at the time of filing the petition.

On appeal, counsel for the petitioner suggests that the analysis of the petitioner's ability to pay the beneficiary's proffered wage should include a review of the totality of the circumstances, as well as consideration of financial documentation other than the petitioner's net income, net current assets, or prior salary. In support of the appeal, counsel submits a brief in which he emphasizes the petitioner's five-year business plan, and provides financial documents related to the beneficiary's foreign employer.

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 issue in this proceeding is whether the petitioner demonstrated its ability to pay the beneficiary's weekly wage of \$1,200 at the time of filing the immigrant visa petition.

The regulation at 8 C.F.R. § 204.5(g)(2) states:

Any petition filed by or for any employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner filed the Form I-140 on April 25, 2006 noting that the beneficiary would receive a weekly compensation of \$1,200, or \$62,400 per year. At the time of filing, the petitioner did not submit evidence in support of the immigrant visa petition, but requested thirty days within which to provide a memorandum and documentation.

On June 6, 2006, the director issued a request for evidence noting the petitioner's obligation, in the case of employment-based immigrant visa petitions, to demonstrate its ability to pay the beneficiary's proffered wage on the date of filing. The director instructed the petitioner to submit copies of the following documentary evidence in support of its ability to pay the beneficiary's proposed wage of \$1,200 per week: (1) the petitioner's 2005 federal income tax return, including all accompanying schedules, annual report, or audited financial statement; (2) year 2005 Internal Revenue Service (IRS) Form W-3, Wage Transmittal Statement, or Form 1099; and (3) the federal quarterly tax returns filed by the petitioner in 2006. The director noted that if the petitioning entity employed the beneficiary prior to the filing date, the petitioner should submit evidence, such as payroll records, of the wages paid to him during 2006. The director instructed: "[O]ther evidence of your ability to pay the proffered wage/salary, such as unaudited financial statements or accountants' compilations, may be considered as long as at least one of the three enumerated forms of evidence (federal tax reports, annual report, or audited (or reviewed) financial statements are provided." The director further instructed that the evidence provided in support of the petitioner's ability to pay "must reflect only the assets of the corporation," and that the assets of shareholders or other individuals cannot be considered in the analysis.

Counsel responded in a letter dated August 28, 2006. Counsel challenged the director's request for evidence, claiming that the petitioner had "previously submitted sufficient evidence to show the beneficiary as a multinational executive or manager" and to establish that "the U.S. employer possesses the ability to pay the proffered wage to the beneficiary." Counsel contended that the petitioner submitted with its initial filing a financial statement and letter from an authorized official of the petitioning entity demonstrating its ability to pay the beneficiary's proffered weekly wage.¹ As additional evidence, counsel submitted a copy of the petitioner's five-year business plan and financial documentation related to the operations of the foreign entity.

In a decision dated February 28, 2007, the director concluded that the petitioner had failed to demonstrate that it possessed the ability to pay the beneficiary his proffered salary at the time of filing the immigrant visa

¹ As noted above, there is no indication in the record of proceeding that the petitioner submitted documentary evidence of its ability to pay with its initial filing. Moreover, counsel did not dispute this finding on appeal. Nor did counsel challenge the director's finding in his February 28, 2007 decision that the petitioner had failed to submit documentation that had been requested by the director.

petition. The director noted the petitioner's failure to submit requested documentary evidence of its ability to pay, most notably its federal income tax returns. Emphasizing the requirement to submit copies of annual reports, federal income tax returns, or audited financial statements, the director also noted that counsel's statement in his August 28, 2006 letter of the petitioner's ability to pay the beneficiary's wages would not be considered "primary evidence" and was not sufficient to satisfy the regulatory requirement at 8 C.F.R. § 204.5(g)(2). Consequently, the director denied the petition.

Counsel for the petitioner filed a timely appeal on March 30, 2007. In an appellate brief, submitted on April 27, 2007, counsel challenges the director's reliance on a May 4, 2004 United States Citizenship and Immigration Services (USCIS) memorandum, which instructed adjudicators to consider in its review of a petitioner's ability to pay the company's net income, net current assets or whether the salary offered to the beneficiary is comparable to that previously paid to the beneficiary by the petitioning entity. Counsel states that the analysis of a petitioner's ability to pay is not restricted to a review of these three factors alone, and claims that case law dictates that USCIS should also apply a review of the totality of the circumstances, as well as consideration of other financial documentation, such as cash flow data or the financial status of the company's majority shareholder. Counsel states: "In the business world, subsidiaries often rely on the support of its parent, share holders [sic], business associates, or third party leaders to conduct business." Counsel contends that the beneficiary's foreign employer has sufficient funds to financially support the petitioning entity, including compensating the petitioner the beneficiary's proposed salary. Counsel further states:

[T]he Petitioner's business has been going through an upswing in sales. Consequently, under the Five Year Business Plan (found under the previously submitted Exhibit 4) it was projected that revenues would climb from over \$500,000 in 2006 to \$3.5 million by 2010. These projections were not based on mere speculation but on carefully planned milestones that the Petitioner expected to reach with the assistance of the Beneficiary as Vice President of Marketing. Indeed, the magnitude of operations was corroborated by the invoices and shipping records under the previously submitted Exhibit 5. Additional corroboration of operations is found under Exhibit E, which provides more invoices and shipping records.

Counsel claims that in light of the above considerations, the petitioner has established its ability to pay the beneficiary's proffered weekly wages.

As additional evidence, counsel submits: (1) an undated letter, in which the foreign entity "affirms" its prior and continued financial support of the beneficiary, and acknowledges its pledge to "assume all financial obligations of its US affiliate"; (2) a June 30, 2006 audited financial report of the foreign entity; (3) a copy of the foreign entity's December 2006 bank statement; (4) a copy of the May 4, 2004 USCIS memorandum titled "Determination of Ability to Pay under 8 C.F.R. 204.5(g)(2)"; (5) a copy of *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049 (S.D.N.Y. 1986), which counsel relied upon in his appellate brief; and (6) invoices from goods imported and received by the petitioner.

Upon review, the petitioner has not demonstrated its ability to pay the beneficiary's proffered wage at the time of filing the immigrant visa petition.

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage,

this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner did not establish that it had previously employed the beneficiary.

As an alternate means of determining the petitioner's ability to pay, the AAO will next examine the petitioner's net income figure as reflected on the federal income tax return, without consideration of depreciation or other expenses.

Although requested, the record does not contain a copy of the petitioner's 2005 or 2006 federal income tax return. Nor did counsel submit on appeal copies of the United States company's income tax returns for review and consideration by the AAO. As instructed by the director in her request for evidence, when determining whether the petitioner has the ability to pay the beneficiary's proffered wage, the regulation at 8 C.F.R. § 204.5(g)(2) also allows for the consideration of the company's annual report or audited financial statements. Yet, despite the director's requests, neither document was provided by the petitioner or by counsel. 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)). 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).

Finally, if the petitioner does not have sufficient net income to pay the proffered salary, the AAO will review the petitioner's net current assets. Again, because the petitioner has not provided a copy of its 2005 or 2006 federal income tax return, the AAO cannot consider the company's net current assets in its determination of whether the petitioner possessed the ability to pay the beneficiary's weekly wage. Accordingly, under the common test of a petitioner's ability to pay, which was also acknowledged and cited by counsel on appeal, the petitioner has failed to demonstrate that it possessed the ability to pay the beneficiary his weekly wage of \$1,200.

The AAO challenges, in particular, counsel's August 28, 2006 response to the director's request for evidence, in which counsel broadly asserted the petitioner's compliance with the regulation at 8 C.F.R. § 204.5(g)(2). Counsel claimed to have attached exhibits with its initial filing, and erroneously stated: "The only evidence initially required to be submitted with the petition is a financial statement and letter from an authorized official." In fact, as stated previously, the regulation at 8 C.F.R. § 204.5(g)(2) identifies relevant evidence of the petitioner's ability to pay as: annual reports, federal tax returns, or audited financial statements. At the initial filing of the Form I-140, a statement from a financial officer of the petitioning corporation is only considered an acceptable form of evidence of the petitioner's ability to pay in cases where the petitioner employs 100 or more workers. The petitioner in the present matter has not alleged the employment of 100 or more employees. 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 additional claims on appeal are not persuasive. In dispute of the director's remark that the assets of shareholders or other individuals are not a factor in the determination of a petitioner's ability to pay, counsel contends that in the business world, it is common for a subsidiary company to rely on the financial support of its shareholders, and cites *Matter of M*, 8 I&N Dec. 24 (BIA 1958; AG 1958), stating that it "only recognizes that the corporation and its shareholder(s) are legally distinct entities," which is not equivalent to disregarding the assets of shareholders. The regulation governing the analysis of a petitioner's ability to pay is clear in the requirement that the employment-based immigrant petition "must be accompanied by evidence that *the*

prospective United States employer has the ability to pay the proffered wage." (emphasis added). *See, e.g. Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990) (finding that statutory interpretation begins with the language of the statute itself). The "prospective United States employer" is clearly the petitioner. While the several cases cited by counsel on appeal do not directly address the issue of a petitioner's ability to pay, they reinforce the distinction set forth in the regulation at 8 C.F.R. § 204.5(g)(2) requiring that the petitioner demonstrate its ability to pay the proffered wage through corporate financial documentation without the consideration of the assets held its investors.

Counsel correctly states on appeal that the analysis of a petitioner's ability to pay may include a review of the totality of the circumstances with respect to the United States company, as proposed in *Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967). Counsel also argues that *Elatos Restaurant Corp. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) proposes that the petitioner may "present a fuller picture of its financial position" through such evidence as cash flow data or certified financial statements, rather than relying solely on a review of the company's net income. The record, however, does not support a finding that pursuant to the court's ruling in either of the above-cited cases, the petitioner in the instant matter demonstrated its ability to pay the beneficiary's proffered salary.

In *Matter of Sonogawa*, the petitioner was deemed to possess the ability to pay the beneficiary's proposed wage despite experiencing an uncharacteristically unprofitable year at the time of filing, which was amid other profitable and successful years. An essential factor in the court's review was the prior financial status of petitioning entity, which had been operating for over eleven years at the time of filing the immigrant visa petition. The court emphasized that during these eleven years, the year in which the immigrant visa petition was filed was unusual in that the company realized only a nominal amount in net profits. 12 I&N Dec. at 615. The court also focused on the fact that during this period the petitioner had incurred significant costs directly related to expanding its business and increasing its profits. *Id.* Moreover, the AAO notes that in its review of the petitioner's ability to pay, the court considered only the assets and net income of the petitioning entity and did not take into account the financial status of any shareholders or related companies.

Counsel has not demonstrated that the facts of the instant matter are analogous to those in the cited decision. The record is devoid of financial documentation corroborating counsel's claim of the petitioner's "increased revenues," or suggesting that the petitioning entity achieved profitable operations and realized significant net income in the years prior to the instant filing. In fact, although established in December 2004, it is unclear from the limited evidence in the record whether the petitioner had begun operating in the United States prior to April 2006, the month during which the Form I-140 was filed. As noted above, the record does not contain documentation, such as federal income tax returns or financial statements, of the petitioner's purported business operations in the United States. As a result, unlike the court in *Matter of Sonogawa*, the AAO cannot rely on a review of the petitioner's previous business operations or net income in its analysis of whether the petitioner's limited assets at the time of filing were uncharacteristic, and ultimately whether the petitioner possessed the ability to pay the beneficiary's wages. Similarly, counsel's reference to *O'Conner v. Attorney General of U.S.*, 1987 WL 18243 (D.Mass., 1987) corroborates USCIS' review of and reliance on the "past growth of [the petitioner's] business" in determining whether the petitioner possessed the ability to pay the beneficiary's proposed salary.

Likewise, counsel's reliance on the petitioner's five-year business plan is not sufficient to establish that the totality of circumstances is such that the petitioner possessed the ability to pay the beneficiary's weekly wage of \$1,200. Again, without financial records documenting the purported success of the company's operations

in the United States or corroborating counsel's claim of an "upswing in sales," the AAO cannot determine the reasonableness of the petitioner's expectation of increased business and profit, factors that counsel conceded are relevant to the instant analysis. *See Matter of Sonegawa*, 12 I&N Dec. at 615. The AAO notes that the invoices and shipping records referenced by counsel are not adequate to "corroborat[e]" the company's operations or business projections. Rather, the submitted copies of invoices and custom bonds demonstrate only that the petitioner has imported and received goods to be sold at a future time in the United States. They do not represent prior sales of the petitioner or corroborate an "upswing in sales." 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. at 534.

Based on the foregoing discussion, the petitioner has not demonstrated that it possessed the ability to pay the beneficiary's proffered wage at the time of filing the immigrant visa petition. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, an additional issue is whether the petitioner had been doing business in the United States for at least one year prior to filing the immigrant visa petition.

The regulation at 8 C.F.R. § 204.5(j)(2) defines "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.

Here, the record contains limited evidence that the petitioner was engaged in the "regular, systematic, and continuous provision of goods and/or services" since April 2005. Although the director requested evidence "in the form of receipts, invoices, and detailed reports indicating goods or services being traded or exchanged," the petitioner offered limited documentary evidence that is more suggestive of the company's expectation to commence operating in the United States. Specifically, the record contains copies of invoices and customs bonds identifying goods purchased by the petitioner to presumably be sold in the United States. However, the petitioner did not offer copies of invoices illustrating sales of the company during April 2005 and April 2006, or submit evidence of payments received by the company for "the regular, systematic, and continuous provision of goods." Moreover, the lease offered by the petitioner identifies a lease term beginning on July 1, 2005, thus suggesting that the petitioner did not begin doing business in the United States in April 2005. The AAO further notes that following the director's request for evidence, counsel stated only that the petitioner had demonstrated that it had been doing business in the United States, yet failed to submit sufficient documentation of his claim. Again, 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. at 534. 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). For this additional reason, the petition will be denied.

An additional issue not addressed by the director is whether the beneficiary had been employed by the foreign entity or would be employed by the United States entity in a primarily managerial or executive capacity.

Based on the Form I-140, the beneficiary would occupy the position of vice-president of marketing in the United States entity. With respect to the request on Form I-140 of a nontechnical description of the proposed job, the petitioner referenced an attached letter. However, counsel's appended April 24, 2006 letter did not

specifically address the beneficiary's proposed employment. Nor did he submit evidence relevant to determining the capacity in which the beneficiary would be employed. Despite the director's request for an organizational chart of the United States company and a description of the job duties performed by each of its employees, counsel for the petitioner again neglected to submit documentation related to the beneficiary's employment in the United States entity, stating that the petitioner had "submitted sufficient evidence to show the beneficiary as a multinational executive or manager." With his response, counsel provided only a copy of the petitioner's business plan, which briefly described the beneficiary's proposed employment as vice-president of marketing as follows:

[He] has devised [a] sales plan based on our marketing research and has identified the target market. He is aware of current market situation as well as opportunities. He is aware of hand crafted instruments and has played a major role in growing [the foreign entity]. His whole selling, distribution and marketing plans are consistent with industry norms and he is utilizing his contacts effectively.

The brief statements offered by the petitioner fall significantly short of establishing the beneficiary's proposed employment in a primarily managerial or executive capacity. The beneficiary's title of vice-president, by itself, is not sufficient to establish his role as a manager or executive. Although required under the regulation at 8 C.F.R. § 204.5(j)(5), the petitioner did not offer a description of specific job duties to be performed by the beneficiary. 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. Moreover, counsel neglected to submit a description of the beneficiary's proposed position following the director's request. 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). Absent a detailed description of the job duties to be performed by the beneficiary as the petitioner's vice-president of marketing, the AAO cannot determine whether the beneficiary would be employed in a primarily managerial or executive capacity. 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). For this additional reason, the petition will be denied.

With respect to the beneficiary's foreign employment, section 203(b)(1)(C) of the Act requires that during the three years prior to the beneficiary's application for classification as a multinational manager or executive, the beneficiary *was employed for at least one year in a primarily managerial or executive capacity with the parent company, affiliate or subsidiary of the proposed United States employer*. Here, the brief record is not sufficient to clarify whether the beneficiary's foreign employment satisfies the statutory requirements.

In counsel's April 24, 2006 letter, the beneficiary is identified as having occupied the position of executive director in Jawa Enterprises (PVT) Ltd. (Jawa Enterprises), the purported parent company of the petitioner, from January 2002 through October 2004. In its business plan, the petitioner stated that the beneficiary assumed the position of executive director of Jawa Enterprises in 1999, during which he "handled operations of imports and exports and made his place in the textile industry." The petitioner explained that the beneficiary subsequently began a two-year assignment with a company M-Tex Industries "to head their operations in Pakistan, U.K. and USA," and later relocated to the United States with a company Windsor Home Fashion. According to the petitioner, following the completion of his assignment in the United States, the beneficiary accepted an offer from Jawa Enterprises to "head their operations in [the] USA."

The petitioner did not offer additional evidence of the beneficiary's foreign employment. However, based on the information provided on the beneficiary's Form G-325A, Biographic Information, a supplement to his I-485 application to adjust status, the beneficiary was employed by Jawa Enterprises from January 2002 through October 2004. During April 2003 through March 2004, the beneficiary held the position of marketing manager of the Pakistani company M-Tex Industries, and from May 2004 through December 2005 was employed in the United States as the marketing manager of Windsor Home Fashion, Inc. The AAO notes that in contrast to these claims, the beneficiary represented that he resided in the United States from April 2004 through April 2006. This representation is in conflict with the earlier claim that the beneficiary was employed in Pakistan by Jawa Enterprises until October 2004. Additionally, the beneficiary indicated on the Form G-325A that he resided in the province of Sindh in Karachi, Pakistan from June 1999 through 2004, yet also claimed to be employed with Jawa Enterprises in Lahore, Pakistan, located in the separate province of Punjab, during 2002 through 2004. Given the discrepancies in the beneficiary's location, and considering the geographical distance between the cities of Lahore and Karachi, the period during which the beneficiary was purportedly employed by Jawa Enterprises is both questionable and unverifiable. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Moreover, the petitioner did not clarify the managerial or executive job duties performed by the beneficiary during his purported employment with Jawa Enterprises. The vague reference to the beneficiary's handling of import and export operations does not establish the beneficiary as a manager or executive. Again, the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The beneficiary's job title of executive director, by itself, is not sufficient to establish his former employment in a primarily managerial or executive capacity. 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.

Based on the foregoing inconsistencies, which raise serious doubt as to the veracity of the petitioner's claims with respect to the beneficiary's foreign employment, as well as the petitioner's failure to document the tasks performed by the beneficiary, the AAO cannot conclude whether the beneficiary was employed as a manager or executive of Jawa Enterprises for at least one year during the three years prior to the instant filing. The petition will therefore be denied for this additional reason.

A final issue not addressed by the director is whether a qualifying relationship existed between Jawa Enterprises and the petitioning entity 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").

Here, as evidence of the claimed parent-subsidiary relationship between Jawa Enterprises and the petitioner, the petitioner offers only a reference in its business plan that Jawa Enterprises owns 51 percent of the United

States corporation. Although the director requested documentary evidence in the form of stock certificates, corporate by-laws, certified affidavits, or published annual reports none was provided for the record. Absent relevant documentary evidence naming Jawa Enterprises as a majority owner of the petitioning entity, the AAO cannot determine whether a qualifying relationship existed between Jawa Enterprises and the petitioner at the time the immigrant visa petition was filed. 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. at 165. 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). Accordingly, 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 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.