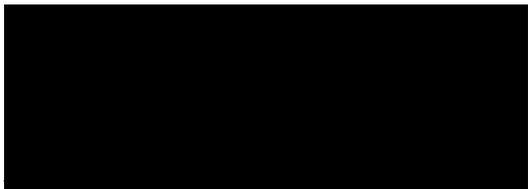




U.S. Citizenship
and Immigration
Services

57



FILE: EAC 02 245 50279 Office: VERMONT SERVICE CENTER Date: **OCT 28 2004**

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

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

ON BEHALF OF PETITIONER:
[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

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border security and immigration
investigation is exempt from
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DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ its Global Account Manager – New York Region as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of New York that operates as an international cargo airfreight forwarder and sea freight consolidator. The petitioner claims that it is the subsidiary of Star Trans International, Limited, located in Hong Kong, China. It seeks to employ the beneficiary in the United States for a period of three years.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the record contains sufficient evidence to show that the beneficiary will be employed in a primarily managerial or executive capacity. Counsel further alleges that the director discriminated against the petitioner and beneficiary due to their Chinese national origin. In support of these assertions, counsel submits and brief and additional evidence.

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

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The primary issue in the present matter is whether the beneficiary will 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), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In the initial petition, the petitioner stated that beneficiary's job duties include "[setting] up systems for better air cargo forwarding logistics between New York City and the offices in China [and] implement[ing] marketing plans to expand the New York air cargo market." The petitioner further stated that, "[the beneficiary] will head the sales department which currently has three persons who will report to him. He may expand this department as he sees fit in order to facilitate company goals for [the petitioner.]" The petitioner submitted a letter that further described the beneficiary's duties as follows:

[The beneficiary] must be an expert in the processes, procedures, and details to provide the most efficient logistics to our clients, and cost saving methods to [the petitioner]. He therefore must have knowledge of the company's financial goals and policies involving not only our clients, but also our employees, dealing with our resources and negotiations with third parties. It is also his responsibility to expand the New York market.

[The beneficiary] must submit an accounting of his department's receipts and expenses, keeping that in line with an allotted budget. He must oversee the department so to ensure a smooth and efficient operation whereby the sales team have available to them the necessary information to maintain old accounts and to procure new ones.

To qualify for this position, our company requires someone with an in-depth knowledge with company policies, goals, budgets, procedures, and systems. An ideal person for such a position would have years of experience working in our company in some management position. He must also have leadership and organizational qualities to head a department and staff. And he must have professional qualities in maintaining our leading clients' accounts; and interacting with other departments and the directors in the home office in Hong Kong and the offices in China. As he would be communicating with other Star Group offices in Hong Kong and China, a command of the Chinese language, as well as English, is a necessity.

On November 15, 2002, the director requested additional evidence. Specifically, the director requested evidence to show that the beneficiary has been employed abroad in a qualifying managerial or executive capacity, including: (1) a description of the beneficiary's managerial responsibilities with his foreign employer, such as an accounting of the beneficiary's methods of evaluating employees under the his supervision; (2) documentation of managerial decisions made by the beneficiary on behalf of the foreign entity; and (3) a list of the foreign employees that the beneficiary supervised, including their titles and the minimum education and experience required to perform their respective duties. Further, the director requested evidence to show that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States, including: (1) an organizational chart for the petitioner; (2) a complete position description for the beneficiary and all of the petitioner's employees in the United States, including a breakdown of the hours devoted to each of the employees' duties on a weekly basis; (3) a list of the employees that the beneficiary will supervise, including their titles and the minimum education and experience required to perform their respective duties; (4) a copy of all of the petitioner's 2001 Forms W-2 and Forms 1099; (5) a copy of the petitioner's 2001 Form W-3 and Form 1096; (6) a copy of the petitioner's Forms 941, Employer's Quarterly Tax Return, for the first two quarters of 2002, including the pages that list all of the petitioner's employees; and (7) either copies of the petitioner's 2000 and 2001 United States federal income tax forms with all schedules and attachments, or in the alternative, copies of the petitioner's 2000 and 2001 annual reports with audited and reviewed financial statements.

In a response dated February 7, 2003, counsel submitted: (1) a letter briefly describing the beneficiary's job duties; (2) copies of emails sent by the beneficiary to other employees; (3) a list of the petitioner's employees and their titles, labeled "New York Organization Chart"; (4) copies of 2001 Forms W-2 for 50 of the petitioner's employees; (5) copies of the petitioner's 2000 and 2001 Forms 1120, U.S. Corporation Income Tax Return; (6) copies of statements from the petitioner's payroll processor for the first and second quarters of 2002, labeled Quarterly Statement of Deposits and Filings; and (7) copies of New York State Forms NYS-

45-ATT, Employer's Quarterly State Report of Wages Paid to Each Employee, for the first, second, and third quarters of 2002.

In counsel's letter, she further described the beneficiary's position as follows:

[The beneficiary] oversees the sales department of [the petitioner], in particular, the New York sales department, and connects them to their counterparts in Southeast Asia. For example, if he sees ineffective methods or procedures in that department, he issues a memorandum to the sales staff directing them to a better procedure. [O]r he targets a market and instructs the staff on methods of securing the accounts. [The beneficiary] manages an essential department and function within the organization – the sales department at [the petitioner]. In managing an essential department and function within [the petitioner], he oversees the sales executives. In the organizational chart, he is one of two sales managers. He heads the U.S., in particular, the New York office. . . . [The beneficiary] exercises discretion over day-to-day operations in the sales department. To wit, he decides whether to transact with certain companies because of their credit or he pushes special service to another company due to extenuating circumstances.

Despite the director's request, counsel did not provide: (1) additional information or documentation to show that the beneficiary was employed abroad in a primarily managerial or executive capacity; (2) a complete position description for all of the petitioner's employees in the United States, including a breakdown of the hours devoted to each of the employees' duties on a weekly basis; (3) a list of the employees that the beneficiary will supervise, including their titles and the minimum education and experience required to perform their respective duties; (4) a copy of the petitioner's 2001 Form W-3 and Form 1096; or (5) a copy of the petitioner's Forms 941, Employer's Quarterly Tax Return, for the first two quarters of 2002, including the pages that list all of the petitioner's employees. Counsel indicated that she could not provide additional documentation on the beneficiary's employment abroad because "the people he had reported to in China are either retired or have been replaced," and the holiday season makes obtaining information difficult.

On April 14, 2003, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity. Specifically, the director stated that "[t]he record does not . . . demonstrate that the beneficiary functions at a senior level within an organizational hierarchy other than in position title, [and the petitioner has not] shown [that] the beneficiary will be managing a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties." The director further noted that "[the petitioner] elected not to provide [CIS] with a complete position description for all of [the petitioner's] employees in the United States, including one for the beneficiary's position, nor [did it submit] a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis."

On appeal, counsel for the petitioner asserts that the director "ignore[d] the statute's definition of 'Executive' and 'Managerial' as well as the evidence to support the visa petition." Counsel claims that the beneficiary manages a function of the petitioner, as well as sales staff. In counsel's brief, she further discussed the beneficiary's position as follows:

The beneficiary's responsibilities are to implement a system to coordinate the New York office and those in China and Southeast Asia and expand the New York market. . . . The

beneficiary's directives in logistics, communication and manner in dealing with customers are the instructions for the sales departments. . . . His directives, which are usually by e-mail for quick, easy and mass distribution were given as exhibits to the Vermont Service Center. . . . His communications regarding disputes with clients, whether he would honor a discount for a certain client, which amounts to thousands of dollars, were also included, as was his plan for diversification which he disseminated to all the Sales Executives in the Star Group's different offices. . . . In implementing ways and means of communicating with sister offices, and in directing the sales departments (setting guidelines for the sales staff dealing with the customers), the beneficiary manages a department of the organization. In supervising the sales department, the beneficiary manages an essential function of the organization. In supervising the sales staff (setting cost saving and intra-office communication) the beneficiary functions at a senior level with respect to the sales department. In deciding on whether to grant a customer a discount that amounts to thousands of dollars, the beneficiary exercises discretion over the day-to-day operation of the sales department.

Counsel further asserts that "[t]he Vermont Service Center is biased against this petitioner because it is Chinese." Counsel alleges that the director's request for evidence was unduly broad, and that "the request for 'a complete position description for all of [the petitioner's] employees in the United States, including one for the beneficiary's position and a breakdown of the hours devoted to each of the employees' job duties on a weekly basis' is truly onerous and irrelevant to the petition." Counsel further refers to the director's request for an organizational chart and all 2002 Forms W-2 and 1099 for the petitioner, and asserts that "[b]ecause these requests do not further resolution of the issue or are even remotely associated with the application, they could only have stemmed from the discriminating view that Chinese companies cannot be as big or even in existence." Counsel alleges that "petitions by European companies were granted without having such requests."

In support of the appeal, counsel submitted two identical letters from the President of the beneficiary's foreign employer, one on the letterhead of the petitioner, and one on the letterhead of the beneficiary's foreign employer. Finally, counsel provided previously submitted evidence.

Upon review, counsel's assertions are not persuasive. 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. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity.

In the instant matter, the beneficiary's job description contains non-managerial and non-executive tasks, such as "submit[ting] an accounting of his department's receipts and expenses, keeping that in line with an allotted budget." Based on the current record, the AAO is unable to determine whether the claimed managerial tasks will constitute the majority of the beneficiary's duties, or whether the beneficiary will primarily perform non-managerial administrative or operational duties. Although specifically requested by the director, the submitted descriptions of the beneficiary's job duties do not establish what proportion of the beneficiary's duties will be managerial in nature, and what proportion will be non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Thus, the petitioner has not submitted a job description that establishes whether the beneficiary will be primarily engaged in managerial duties, or rather tasks necessary

to produce the petitioner's products or to provide the petitioner's services. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Further, 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).

Counsel claims that the beneficiary manages a sales department, overseeing three staff members. In response to the director's request for an organizational chart that clearly delineates the petitioner's personnel structure, counsel submitted an employee list, labeled "New York Organization Chart." This document simply lists the employees of the petitioner, rather than illustrating the hierarchical structure and management relationships between them. Contrary to counsel's assertions, this chart does not reflect that the beneficiary has management authority over any other employees. While there are four sales employees, including two sales executives and two sales managers, the list does not indicate that the beneficiary leads this group. The fact that another employee shares the same title as the beneficiary undermines a finding that the beneficiary has managerial authority over that person. Further, the employee list groups individuals under certain headings, such as "Accounting," "Customer Service," "Warehouse," and "Operation," implying that these are subdivisions or departments of the petitioner. Yet, there is no such subdivision labeled "Sales," which calls into question whether the petitioner has a specific sales department for the beneficiary to manage as claimed. *See* Section 101(a)(44)(A)(i) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i). Without sufficient documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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).

Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, counsel has not established that an advanced degree is necessary to perform the duties of the beneficiary's claimed subordinates. Although specifically requested by the director, counsel did not provide the job duties of the employees that the beneficiary manages. Thus, the AAO cannot determine what level of education or experience is prerequisite to successfully perform the duties of their respective positions. Accordingly, the record lacks sufficient evidence to establish that the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees as contemplated

by section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

As evidence of the beneficiary's managerial capacity, the petitioner submits emails that the beneficiary sent to the petitioner's employees, dated January 27 and January 29, 2003. As the petitioner filed the initial petition on July 18, 2002, these emails were generated after the date of filing. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Thus, these emails are not probative of whether the beneficiary was eligible for classification as an L-1A nonimmigrant intracompany transferee as of the date of filing the initial petition, and they will be accorded no weight in this proceeding.

Counsel claims that that the beneficiary manages an essential function of the petitioner. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial. As discussed above, in the instant matter counsel has failed to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. Counsel describes the beneficiary's duties as managerial, but she fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Thus, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity as required by the regulation at 8 C.F.R. § 214.2(l)(3)(ii). For this reason, the appeal will be dismissed.

Counsel further asserts that "[t]he Vermont Service Center is biased against this petitioner because it is Chinese." Counsel alleges that, due to such bias, the director issued a request for evidence that was unduly broad. Specifically, counsel asserts that "the request for 'a complete position description for all of [the petitioner's] employees in the United States, including one for the beneficiary's position and a breakdown of the hours devoted to each of the employees' job duties on a weekly basis' is truly onerous and irrelevant to the petition." As discussed above, due to the fact that the petitioner claims that the beneficiary's duties involve supervising employees, counsel must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. In determining whether the beneficiary's subordinates are supervisory, professional, or managerial, it is necessary to examine their respective position descriptions, and to assess what academic preparation and work experience is required to perform their duties. Thus, the director's request for complete position descriptions for all of the petitioner's employees was appropriate and relevant to determining whether the beneficiary is eligible for L-1A classification. *See* § 101(a)(44)(A)(ii) of the Act. Evidence does not support counsel's allegation that the director's request was due to bias. Additionally, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). Again, 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).

Counsel further refers to the director's request for an organizational chart and all 2002 Forms W-2 and 1099 for the petitioner, and asserts that "[b]ecause these requests do not further resolution of the issue or are even remotely associated with the application, they could only have stemmed from the discriminating view that Chinese companies cannot be as big or even in existence." A proper organizational chart shows a particular employee's position within the management hierarchy of a company, including all employees and departments under his supervision. Contrary to counsel's assertion, an organizational chart is relevant and probative evidence to explain whether the beneficiary "manages the organization, or a department, subdivision, function, or component of the organization" as provided in section 101(a)(44)(A)(i) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i), or "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" as provided in section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). Forms W-2 and 1099 are probative evidence to support counsel's assertions that the petitioner employs individuals that the beneficiary manages. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 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). Thus, the director appropriately requested evidence that was reasonably calculated to support counsel's assertions.

Counsel alleges that "petitions by European companies were granted without having such requests." Yet, counsel has provided no specific instances or documentation to support a pattern of disparate treatment between petitioners of European and Chinese national origin. Counsel's conjecture will not satisfy the petitioner's burden of proof in these proceedings. See *Matter of Obaighbena*, 19 I&N Dec. at 534. As discussed above, the director's requests for additional evidence were appropriate and relevant to determining whether the petitioner and beneficiary are eligible for the benefit sought. Counsel's allegation that the director acted on a personal bias against those of Chinese national origin is unfounded.

Beyond the decision of the director, counsel has not established that the beneficiary was employed abroad in a primarily managerial or executive capacity as required by the regulation at 8 C.F.R. § 214.2(l)(3)(iv). Despite the director's request, the petitioner did not provide a description of the beneficiary's managerial responsibilities with his foreign employer, or documentation of managerial decisions made by the beneficiary on behalf of the foreign entity. The petitioner further declined to submit the requested list of the foreign employees that the beneficiary supervised, including their titles and the minimum education and experience required to perform their respective duties. Thus, the record lacks a sufficiently detailed description of the beneficiary's duties with his foreign employer, and the subordinates he supervised abroad, such that the AAO can determine whether he was employed in a primarily managerial or executive capacity. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the petitioner has a qualifying corporate relationship with the beneficiary's foreign employer as required by 8 C.F.R. § 214.2(l)(1)(ii)(G). On the initial petition, the petitioner indicated that it is the subsidiary of the beneficiary's foreign employer. Counsel submitted copies of the petitioner's 2000 and 2001 Forms 1120, U.S. Corporation Income Tax Return, reflecting that the petitioner is 100% owned by a single individual, Eddie Yau. Yet, counsel has submitted no evidence to show the ownership of the beneficiary's foreign employer, such that the AAO can

determine whether the two entities are owned by the same individual.¹ Counsel provided two identical letters from ██████████ signed in the capacity of president of the beneficiary's foreign employer. One letter is presented on the letterhead of the petitioner, and one appears on the letterhead of the beneficiary's foreign employer. However, the fact that ██████████ is president of the foreign entity does not serve as evidence of his ownership of the organization. Thus, the record is insufficient to show a qualifying corporate relationship. For this additional reason, the appeal will be dismissed.

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).

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.

¹ As the record reflects that the petitioner is 100% owned by an individual, evidence shows that the beneficiary's foreign employer does not have an ownership interest in the petitioner. However, if the petitioner and the beneficiary's foreign employer were owned by the same individual, they would possess a qualifying relationship as affiliates. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L)(1).