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U.S. Citizenship  
and Immigration  
Services

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File: WAC 04 064 52100 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



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)

IN 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, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California 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 extend the employment of its president 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 California that claims to be engaged in restaurant administration, management, and services.<sup>1</sup> The petitioner claims that it is the subsidiary of [REDACTED] located in Anzoategui, Venezuela. The beneficiary was initially granted a five and one-half month period of stay to open a new office, and the petitioner now seeks to extend the beneficiary's stay for two more years.

The director denied the petition, concluding that the petitioner did not establish that (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or that (2) a qualifying relationship existed between the United States organization and a company abroad.

The petitioner filed an appeal in response to the denial. On appeal, counsel for the petitioner contends that the petitioner did in fact establish that the beneficiary would be employed in a primarily managerial or executive capacity, and that the evidence contained in the record clearly established that a qualifying relationship existed between the U.S. and foreign entities.

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.

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<sup>1</sup> It should be noted that, according to California State corporate records, the petitioner's corporate status in California has been suspended. Although the reason for this suspension is unclear, it raises the issue of the company's continued existence as a legal entity in the United States.

- (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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (a) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (b) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (c) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (d) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (e) Evidence of the financial status of the United States operation.

The first issue in this 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 submitted a business plan for [REDACTED] food kiosk the petitioner intended to operate in a local shopping mall. The business plan indicated that the petitioner had acquired 100 square feet of retail space in a local mall, which included a seating area for approximately 15-20 patrons. In an accompanying letter dated December 17, 2003, the petitioner indicated that the beneficiary would serve as its president and presented the following overview of her duties:

During the past five months, [the beneficiary] has acted on behalf of [the petitioner] in driving activities that resulted in the signing a long-term lease for business premises (with term expiring on January 31, 2008), contracting for the improvements and construction of facilities, obtaining all necessary city and State permits and licenses, patents and trademarks, and hiring the staff for this kiosk. A menu of offerings has been created as well. Six employees have been hired to date, since the opening date of the kiosk on December 1<sup>st</sup> of the current year.

\* \* \*

[The beneficiary] will continue to use her independent discretion and authority in developing the Valley Fair Mall venture, as well as any other business opportunities that present themselves and that are in line with [the petitioner's] objectives. She will be responsible for all management and day-to-day supervision of the venture, as well as supervis[ing] the sales strategy of her employees, setting the standards for the financial

and accounting departments of the corporation. She will have final authority on all contracts with suppliers, utilities, equipment leasers, and such.

The director found the initial evidence submitted to be insufficient and consequently issued a request for additional evidence on January 14, 2004. In the request, the director asked counsel to submit the following: a specific statement describing the U.S. employment of the beneficiary; including her specific duties, the names and positions of other employees she directed as well as their titles and duties; a copy of the petitioner's Forms DE-6, quarterly wage reports, for the past four quarters; and copies of the petitioner's payroll summary including Forms W-2 and W-3.

In a response dated February 18, 2004, the petitioner, through counsel, addressed the director's query. With regard to the director's request for information on the beneficiary's duties and the percentage of time devoted to each, counsel stated that the beneficiary worked forty hours per week and submitted the following statement:

**Personnel Training (10% of worked hours)**

**Selection of Menu Items (10% of hours worked)**

**Inventory Management (20% of worked hours)**

**Personnel Management (20% of worked hours)**

**Process Supervision/Evaluation (20% of worked hours)**

**Administrative Tasks (20% of worked hours)**

In addition to a brief description of the above-referenced tasks, the petitioner further stated:

[The beneficiary] is among the first ones to arrive in the morning and the last to leave. At the conclusion of each day, or sometimes each shift, [the beneficiary] tallies the cash and charges receipts received and balance[s] them against the record of sales. In most cases, she is responsible for depositing the day's receipts at the bank. Finally, she is responsible for locking up, checking that the crepe griddles, and lights are off, and all food is properly stored.

On March 3, 2004, the director denied the petition. The director, who reviewed the record to determine eligibility under both managerial and executive capacity, found that the evidence in the record failed to establish that the beneficiary would be functioning in a primarily managerial or executive capacity. Specifically, the director concluded that the description of the beneficiary's duties was not detailed enough to establish what she did on a daily basis. The director further concluded that the petitioning entity did not possess the organizational complexity to warrant an executive position. On appeal, counsel asserts that the beneficiary is in fact an executive and that the director erroneously concluded otherwise

due to the small size of the petitioning entity. Maintaining that the director's decision was erroneous, counsel submits additional evidence in support of this position.

The director concluded in part that the recitation of the beneficiary's duties was insufficient and vague. The AAO disagrees with this portion of the director's reasoning. The response to the request for evidence provided a significantly detailed list of the beneficiary's duties as well as the percentage of time she spent performing each duty in her average forty-hour workweek. The issue, therefore, is not that the listed duties were too general and nonspecific; instead, the question is whether the duties she performed were primarily managerial or executive in nature.

Whether the beneficiary is a manager or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. In this case, the initial description of duties was vague and insufficient. The director consequently requested a more detailed list of all of the beneficiary's duties in the request for evidence. The petitioner's response, as discussed above, supplied an overview of the beneficiary's duties as well as a breakdown of the percentages of time the beneficiary devoted to each of these duties.

According to the petitioner, the beneficiary often opens and closes the kiosk, totals the receipts for the day, and ensures that machinery is turned off and that food is properly stored. In addition, the beneficiary devotes much of her time to selecting menu items, managing inventory, and administrative tasks, in addition to overseeing food preparation and hiring and overseeing personnel. Based on these duties, it appears that the beneficiary is performing a large amount of non-qualifying duties which directly result in the petitioner's ability to provide its customers with the goods and services in which it is engaged. 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). 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).

While counsel argues that the direction provided by the beneficiary to the other employees affirms her executive position, it appears to the AAO that the beneficiary is merely a first-line supervisor. By counsel and the petitioner's own admissions, the beneficiary is engaged in the daily routines essential to the operation of the petitioner's kiosk. It is evident, therefore, from the beneficiary's clearly stated duties that her position is not primarily managerial or executive. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. at 604 (Comm. 1988).

Since the petitioner claims that the beneficiary oversees other employees, it is essential for the AAO to examine this claim as an alternative method through which the beneficiary could qualify for the benefit sought. Although the beneficiary is not required to supervise personnel, if it is claimed that her 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.

Though requested by the director, the petitioner did not provide the level of education required to perform the duties of its other employees. Although the petitioner provided an organizational chart listing each subordinate employee's name and any degree they possessed, the petitioner did not clarify whether such a degree was necessary to perform the duties of each stated position. 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 by section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the duties of the business development manager or the cashier, who are among the beneficiary's subordinates.

Furthermore, the petitioner failed to completely answer the director's questions regarding the subordinate employees, which specifically requested a list of their duties in addition to their position titles. Any 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). Since the petitioner has failed to elaborate on the actual duties of the business development manager and the treasurer, the AAO cannot conclude that these employees are supervisory or managerial, since we do not know what their duties include. The petitioner, therefore, has not shown that either of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Counsel asserts on appeal the crux of the director's error was her reliance on the fact that the petitioning entity was small in size. Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

In this case, however, the director did not rely on the petitioner's lack of employees or small size, as counsel contends, as a basis for denial. Instead, the director concluded that "the petitioning entity does not possess the organizational complexity to warrant having an executive." Counsel makes no specific reference to any direct statements by the director which deny the petition on this claimed basis. Counsel's assertions, therefore, are misplaced.

At the time of filing, the petitioner was a restaurant administration, management, and services company just over a year old (it was incorporated on December 15, 2002). The petitioner claims consideration as a new office, because it recently acquired a crepe business and intended to commence operations at a local mall. However, at the time of filing the extension request, the petitioner was more than one year old. Furthermore, the documentation in the record confirms that at the time of filing, the petitioner employed two cashiers, two cooks, a business operations manager, and a treasurer. The description of the

beneficiary's duties, however, indicates that she is responsible for nearly all of the day-to-day duties involved in the operation of the kiosk, from depositing money in the bank to storing food to planning menus and managing inventory. The petitioner has not explained how the reasonable needs of the petitioning enterprise justify the beneficiary's performance of non-managerial or non-executive duties at this stage of development. The petitioner must establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. Other than counsel's assertions and the statements of the petitioner, the record contains no independent evidence establishing that the beneficiary is an executive. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As discussed above, the petitioner has not established this essential element of eligibility.

Other than the assertions of counsel and the petitioner, there is no clear evidence establishing that the beneficiary has been and will be acting in a primarily managerial capacity. Thus, in the instant matter, the petitioner has not established that it will employ the beneficiary in a predominantly managerial or executive position. For this reason, the petition may not be approved.

The second issue in the present matter is whether the petitioner and the foreign organization are qualified organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation defines the term "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Additionally, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

- (I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.
- (J) "Branch" means an operating division or office of the same organization housed in a different location.
- (K) "Subsidiary" means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly,

half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) "Affiliate" means

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

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or

(3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In this case, the petitioner claims in the initial petition that the U.S. entity is the wholly-owned subsidiary of the foreign entity.

The director found that the initial evidence submitted with the petition to be insufficient to qualify the petitioner for the benefit sought, and consequently issued a request for evidence on January 14, 2004. In the request, the director specifically asked the petitioner to submit evidence that definitively established its qualifying relationship with the foreign company. On February 18, 2004, the petitioner submitted a detailed response to the director's request which was accompanied by numerous corporate documents for the U.S. and foreign companies, as well as additional documentary evidence in support of the claimed parent-subsiary relationship.

Upon review of the evidence submitted, the director concluded that the evidence in the record did not reflect the parent-subsiary relationship claimed by the petitioner. Specifically, the director noted that financial evidence of the purchase of the claimed shares was not supplied in the record and that the circumstances surrounding the foreign entity's alleged acquisition of the shares was questionable. The director subsequently concluded that the petitioner's claim of a qualifying relationship with the foreign entity was invalid and, as a result, the petition was denied.

The petitioner appealed the decision, asserting that the record in fact showed that a qualified relationship existed between the two entities.<sup>2</sup> In support of this contention, the petitioner provides corporate documents establishing the correct percentages of ownership interests in the U.S. and foreign entities.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology*, 19 I&N Dec. at 595.

In this case, the petitioner has provided conflicting documentary evidence in response to the request for evidence. First, the petitioner submitted its Articles of Incorporation, filed on November 15, 2002, which indicated that 2,000 shares of stock were authorized to be issued. The evidence also included a stock certificate affirming that these 2,000 authorized shares were issued to the foreign entity. No evidence of consideration was submitted despite the director's request.

In addition, the petitioner submitted minutes from the first shareholder's meeting and accompanying documents, dated October 18, 2003, which amend Article IV of the petitioner's Articles of Incorporation to authorize the issuance of 100,000 shares of stock. The minutes further indicate that these newly authorized shares have been distributed as follows:

|   |        |
|---|--------|
| Foreign entity:   | 30,600 |
|  | 20,000 |
|   | 9,400  |

The petitioner further submitted a document from the petitioner authorizing reimbursement to the beneficiary for her personal contribution in the amount of \$10,000 toward the U.S. petitioner. The document indicates that this is a means to avoid the currency exchange regulations in Venezuela.

The director's denial relies heavily on this document, and the director challenged the petitioner's credibility since the manner of disbursement of the \$10,000 appeared to be a covert way to avoid the laws of Venezuela. On appeal, counsel discusses the history of Venezuela's currency exchange, in addition to several ownership changes in the foreign entity in the previous years.

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<sup>2</sup> The AAO notes that the director also examined the petitioner's relationship with the foreign entity as an affiliation in addition to a parent-subsidiary relationship. On appeal, the petitioner adopts the director's use of the term "affiliates;" however, the AAO notes that the proper analysis of the relationship in this matter is a determination of whether the U.S. entity is the subsidiary of the foreign entity. Consequently, the AAO will proceed in this manner in evaluating the appeal.

Upon review, the AAO notes that neither the director nor the petitioner addressed the proper issue here. As stated above, ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362; *Matter of Hughes*, 18 I&N Dec. 289.

On its face, the documentation submitted in the record indicates that the foreign entity owns a majority interest in the U.S. petitioner. The director, however, specifically requested evidence to corroborate the ownership of these shares, in the form of wire transfers, cancelled checks, etc. The petitioner, however, submitted evidence of a \$10,000 reimbursement check to the beneficiary for personal funds she used to open a commercial banking account for the U.S. petitioner. There is nothing in the record to indicate that this \$10,000 was used to purchase the foreign entity's shares of stock in the U.S. petitioner. Furthermore, according to the petitioner's articles of Incorporation, the shares of stock were sold at \$.01 each. Consequently, persuasive evidence of the foreign entity's ownership of 30,600 shares would be a monetary transaction in the amount of \$306.<sup>3</sup>

The director specifically requested evidence of consideration paid for the acquisition of the stock interests. In response, the petitioner merely submitted evidence of a \$10,000 reimbursement check paid to the beneficiary. Since there is no evidence of a direct allocation of funds or acknowledgement that \$306 of this \$10,000 was for stock purchases, the petitioner has failed to satisfy its burden of proof of stock ownership. 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). Furthermore, the manner in which funds were delivered to the beneficiary for purposes of commencing the petitioner's U.S. operations is questionable. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Based on the evidence presented, the petitioner has failed to prove that it established and maintained a qualifying relationship as required by the regulations with the foreign entity as of the filing date of this petition.

Beyond the decision of the director, it remains to be determined that the beneficiary's services are for a temporary period. Specifically, the petitioner contends that the foreign entity is the petitioner's sole owner, and further contends that the beneficiary is a 50% owner of the foreign entity. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that she will be transferred to an assignment abroad upon completion of her services in the United States. For this additional reason, the petition may not be approved.

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<sup>3</sup> The AAO further notes that it is unclear whether the foreign entity retained the initial 2,000 shares allegedly issued to it on November 15, 2002 or if these shares were forfeited.

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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *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).

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.