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U.S. Citizenship
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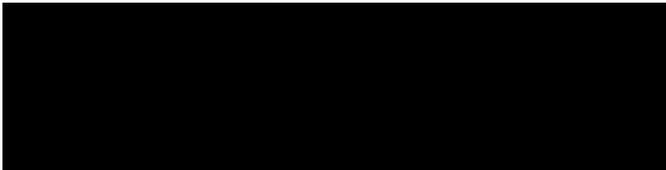
Date:

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, 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 the beneficiary 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 Jersey that is engaged in providing technical advisory services to home furnishing textile importers in the United States, as well as services related to the export of ophthalmologic products to its parent company in Pakistan. The petitioner claims that it is the subsidiary of MNS International, the beneficiary's current employer, located in Lahore, Pakistan. The petitioner seeks to open a new office in the United States and has requested that the beneficiary be granted a one-year period of stay to serve as its president.

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

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 director abused his discretion in denying the petition and failed to consider the evidence previously submitted. Counsel contends that the petitioner has met its burden to establish that the beneficiary will be employed primarily in a managerial or executive capacity. In support of these assertions, the petitioner submits a 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 regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petitioner, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

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 within one year.

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 a letter dated April 15, 2002, submitted with the initial petition, the petitioner described the beneficiary's proposed duties as follows:

[The beneficiary's] role as President will be supervising and controlling the USA operations of our company at our New Jersey office. He will work closely with the company's senior management in the development and growth of our deals in the US marketplace. He will evaluate/analyze/negotiate/finalize trade deals with companies in the US.

- 1) He will evolve new strategies and programs to expand our (parent company's) existing business of marketing and distribution of ophthalmic products such as Intra Ocular Lenses, visco-elastic solutions, and ophthalmic devices. He will also give strategic directions to ensure quality control and inspection of the exports of Ophthalmic Equipment out of [the] USA. He will also help us identifying [sic] new ophthalmic products for the marketing and distribution in Pakistan.
- 2) He will also evolve and ensure implementation of the strategy to offer our quality control and inspection services to the US based importers of home furnishing Cotton Weave & knitted Textile and related items.

- 3) He will be managing and controlling major management processes in the United States that include the following:
 - a) Identifying new products (especially related to ophthalmology) for exports from USA by attending Trade Congresses.
 - b) Providing key strategic technology and project management directives to stay ahead in the Textile Imports/Exports indenting & Textile knowledge management business.
 - c) Manage Finance operations, Personal and Human Resources development policies.
 - d) Set guidelines for quality management, technical support management and attend trade shows[.]
- 4) Report back to parent company in Pakistan[.]
- 5) Identifying potential trading deals.

With the initial petition, the petitioner submitted a nineteen-page business plan dated March 29, 2002, attached with two appendices, which comprised some of its market research in the textile industry. Included in the business plan was a proposed organizational chart depicting the beneficiary as president, two regional vice presidents, one of whom would supervise two sales representatives, a vice president of administration coordination, and a quality control and inspection team based at the petitioner's parent company.

On June 8, 2002, the director requested additional evidence to establish that the U.S. organization would be able to support the beneficiary in a managerial or executive capacity within one year. Specifically, the director requested the following: (1) a copy of the business plan indicating specific dates for each proposed action for the next two years; (2) evidence to show how the new company will grow to be of sufficient size to support a managerial or executive position, including evidence which would demonstrate that the beneficiary, within one year of operation, will be relieved from performing the non-managerial, day-to-day operations involved in producing a product or providing a service; (3) an explanation as to how many individuals the petitioner intends to employ in the U.S. organization within the next year, including a description of position titles of each proposed employee as well as the educational credentials required for each position's duties; (4) photographs of the interior and exterior of all the premises secured for the United States entity; and (5) a statement explaining why the beneficiary's services are needed during the start-up phase of the U.S. organization.

In response, the petitioner submitted a new business plan consisting of its planned growth and financial projections over a three-year period, and a chart outlining the specific dates for proposed actions over a two-year period. The petitioner also provided a description of its intended staffing levels, indicating that the beneficiary, an office assistant and a sales representative would be hired during the first year of operations. In addition, the petitioner submitted a letter dated December 11, 2002, which included the same description of the beneficiary's duties quoted above, and photographs of its claimed office space. In a chart labeled "Human Resources Needed" the beneficiary's job description is described as follows:

The job requires strategic planning for Corporate Entrepreneur-ship, Financial Management and Control, Marketing & Procurement Management. Being part of the Corporate entrepreneur-ship program, the President will be required to be involved (initially) in the marketing operations. As part of the startup operations, he will be required to recruit, train and motivate individuals required to run the day to day operations of the organizations [sic]. The president will attend major trade conferences in the US which include conferences on Textiles and Ophthalmology.

The job duties of the beneficiary's proposed subordinates were described as follows:

Office Assistant [proposed start date January 2003]: The job will require assisting the president in his endeavors to run the administrative Functions including Filing, Typing, Invoicing, Record Management, and receiving and answering telephone calls.

* * *

Sales Staff 1 [proposed start date April 2003]: Sales person will be responsible for marketing of the Textile products in North East of US. Travel required for meeting with customers who are primarily importers of Home Furnishing and other Textile items.

* * *

Sales Staff II [proposed start date July 2004]: Sales person will be responsible for marketing of the Textile products in the South West of US. Some travel will be required for meeting with the customers who are primarily the importers of Home Furnishing and other Textile items.

On April 18, 2003, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary would be employed in a bona fide managerial or executive position within one year's time, as required by the regulations at 8 C.F.R. § 214.2(1)(3)(v). The director noted that the petitioner's business plan does not clearly identify any potential professional subordinates to relieve the beneficiary of non-managerial duties, and further notes that an organization of the petitioner's proposed size and nature would not require the beneficiary to perform primarily executive or managerial job duties. Rather, the director concluded that it appears that the beneficiary would be engaged in the non-managerial day-to-day operations involved in fabricating a product or providing a service.

On appeal, counsel for the petitioner asserts that the director abused his discretion in denying the petition and failed to consider the extensive evidence submitted of the beneficiary's qualifications for a management-level position. Counsel further asserts that the job description provided clearly demonstrates the executive and managerial nature of the beneficiary's proposed duties, and evidences that he will primarily be engaged in "directing the broad operations of the new company." Finally, counsel alleges that the director inappropriately emphasized the small size of the petitioning company rather than focusing on the beneficiary's actual job duties.

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(1)(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.* A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing that the beneficiary is both an executive and a manager, as is the case in the instant petition.

Contrary to counsel's assertions on appeal that the petitioner has provided Citizenship and Immigration Services (CIS) with a list of "very specific duties" to be performed by the beneficiary, the job descriptions provided do not convey sufficient understanding of what the beneficiary will actually be doing on a daily basis. Many of the duties described are vague and nonspecific, such as "evolving new strategies and programs to expand our parent company's existing business of marketing and distribution of ophthalmic products" and "giving strategic directions" to ensure quality control and inspection of the exports of ophthalmic equipment out of the U.S.A. These duties are listed first in the beneficiary's job description, but the AAO cannot determine whether these are purported to be his primary duties or how much time he would spend on matters related to facilitating the parent company's ophthalmic equipment import business. The petitioner does not report any expected earnings from ophthalmic exports in its detailed business plan, and it is not clear from the record who would receive the beneficiary's "strategic directions" for quality control and inspection activities related to the exports, given that the petitioner's other proposed employees are described as performing duties related to textiles import activities only, not to ophthalmic equipment imports. In addition, the beneficiary will also be responsible for identifying new ophthalmic products for marketing and distribution in Pakistan, but the petitioner does not explain how this duty is managerial or executive in nature. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Notwithstanding the petitioner's vague references to "evolving strategies" and "providing strategic directions," it appears that the beneficiary's responsibilities will be limited to attending trade conferences to learn about new developments in the industry, collecting product information and brochures from U.S. ophthalmologic equipment manufacturers, and sending this documentation to the parent company for review.

The petitioner describes the beneficiary as "managing and controlling major management processes" including "providing key strategic technology and project management directives" but does not adequately define these processes or technologies, elaborate on what specific duties would be involved in "managing management processes" or explain what types of "projects" would be managed. Further, it is not clear how technology and project management directives would be implemented within the context of the petitioner's organization, whose primary business activity is marketing textile products from Pakistani manufacturers and submitting orders on behalf of U.S. buyers on commission. The business plan does not identify any specific projects to be undertaken, nor does the petitioner's business seem to rely heavily on technology, and certainly not to the point where the beneficiary would reasonably spend a significant amount of time developing strategic technology objectives. Similarly, the petitioner states that the beneficiary will "set guidelines for quality management" and "technical support management," however; the petitioner does not define these guidelines or explain how or why they would be implemented within the context of its business environment. There is no indication that the petitioner will employ staff involved in technical support or quality

management functions, which makes it difficult to understand what duties will be performed by the beneficiary in “setting guidelines” for these functions. Specifics are clearly an important indication of whether a beneficiary’s duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.* at 1108. In this case, it is difficult to determine what are the beneficiary’s actual duties, because the broad duties outlined are too vague to be meaningful without additional explanation, particularly within the context of the petitioner’s detailed business plan.

Furthermore, a critical analysis of the nature of the petitioner’s business undermines counsel’s assertions that the beneficiary will not be performing primarily non-qualifying duties within one year. Rather, it appears that the petitioner intends to hire only two additional staff during the first year of operations, a sales person responsible for marketing textiles imports and an office assistant. As the office assistant is described as performing only administrative functions for the beneficiary, it can be assumed that the beneficiary will be performing every function associated with the identification of ophthalmic products to be exported to Pakistan, including non-managerial tasks related to market and product research, and routine correspondence with U.S. ophthalmic equipment manufacturers. The petitioner has stated that the beneficiary will initially be directly involved in marketing of textile products, and it is not evident that one sales person would relieve him from directly performing the company’s marketing duties within the first year of operations. It is noted that marketing textile products from Pakistani manufacturers is the primary function of the petitioner’s company and its only claimed source of income. An employee who primarily performs the tasks necessary to produce a product or 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). In addition to marketing duties, it appears that the beneficiary will also perform non-qualifying duties related to “managing finance operations” since the company does not anticipate hiring employees who will be responsible for bookkeeping or other routine financial tasks within the first two years of operations.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary’s duties, or whether the beneficiary will be primarily performing non-managerial administrative or operational duties at the end of the petitioner’s first year of operations. The petitioner’s description of the beneficiary’s job duties does not establish what proportion of the beneficiary’s duties is managerial in nature, and what proportion is non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Accordingly, the petitioner has not established that the beneficiary will be primarily engaged in managerial or executive duties.

On appeal, counsel correctly states that section 101(a)(44) of the Act was not intended to limit managers or executives to persons who supervise a large number of persons or large enterprises. A company’s size alone, without taking into account the reasonable needs of the organization, may not be determining factor in denying a visa to a multinational manager or executive *See* section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). If staffing levels are used as a factor in determining whether an individual is acting in a

managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. To establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter the petitioner has not explained how the reasonable needs of the petitioning enterprise justify the beneficiary's apparent performance of a significant number of non-managerial or non-executive duties, or the fact that it appears that he will perform such duties well after the first year of operations. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. See sections 101(a)(44)(A) and (B) of the Act, 8 U.S. C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties, as appears to be the case in the instant petition. Although counsel repeatedly emphasizes on appeal that the beneficiary will primarily direct the broad operations of the United States entity, as already discussed, there is insufficient evidence on record to support this statement. 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 Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17I&N Dec. 503, 506 (BIA 1980).

In support of her assertions on appeal, counsel refers to an unpublished decision involving an employee of the Irish Dairy Board. In the unpublished decision, the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the Irish Dairy Board matter. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the act, unpublished decisions are not similarly binding.

Furthermore, contrary to counsel's assertions, the director's decision does not "totally ignore the fact in [sic] this is an application for a non-immigrant L-1 visa for a new office," and does not, as counsel suggests, utilize a higher standard, such as that applied to an immigrant visa petition. Upon review of the director's decision, it is evident that he appropriately applied the standards established by the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) as they apply to a new office situation. The director properly reviewed the beneficiary's proposed duties, proposed staffing levels, and detailed business plan, and reached the appropriate determination based on the evidence provided.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during

the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. In this case, the AAO does not disagree with counsel's assertion that the petitioner has clearly defined its business goals, and does not question the validity of its business plan. However, the business plan, detailed as it may be, does not support a conclusion that the organization will support the beneficiary in a position that is primarily managerial or executive within a one-year period.

Counsel repeatedly notes that the beneficiary has a proven history of professional accomplishments in the business world and is ideally suited for the position offered in the United States. Counsel further states that the beneficiary was chosen by the foreign organization to primarily direct the broad operations of the new U.S. entity. The AAO does not question these assertions or the beneficiary's significant accomplishments, nor does it fail to recognize that the beneficiary will have a high degree of discretionary authority over all aspects of the business. However, the fact that an individual will come to the United States to manage a small business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. The record does not establish that a majority of the beneficiary's duties will be primarily directing the management of the organization. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties. The petitioner has not demonstrated that it will reach a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Nor does the record demonstrate that the beneficiary will primarily manage an essential function of the organization or that he will operate at a senior level within an organizational hierarchy. Based on the evidence furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not provided sufficient evidence that it has secured sufficient physical premises to house the new office as required by at 8 C.F.R. § 214.2(l)(3)(v)(A). With the initial petition, the petitioner submitted a copy of a lease agreement for 195 square feet of office space consisting of a single room within Suite 309 at ~~188 Route 10 West in East Hanover, New Jersey~~. The lessor is indicated as the President of Infotech Research International Inc., which lists its address as Suite 202 within the same building. The lease was valid from April 1, 2002 until March 31, 2003 and had therefore expired shortly before the director issued his decision. In its initial business plan, the petitioner mentions that it had approximately 200 square feet of storage space in North Royalton, Ohio where the petitioner had been receiving textile samples. The AAO notes the address for this storage space was the same as the beneficiary's residential address at the time the petition was filed. The petitioner did not submit a lease agreement for this claimed storage space.

In response to the director's request for evidence, the petitioner indicated that it signed a lease for an additional 1200 square feet of space located at Suite 202 of the same building in October 2002, but did not submit a copy of the lease agreement. The AAO notes that this address, Suite ~~202, 188 Route 10 West, East~~

Hanover, New Jersey, is the company address listed for Infotech Research International Inc. in the first lease agreement and is currently listed as Infotech Research International's business address on its company web site. The petitioner also submitted a photograph of the building directory with what appear to be temporary signs indicating the petitioner as occupying suite 202 and suite 309. The petitioner's signs appear to be placed directly over other companies' names on the directory listing. A photograph taken outside suite 202 shows a glass door with a large yellow poster board with "Calm Global Services" printed on a piece of office paper in the center of the sign. Although the petitioner claims that the office is 1200 square feet in size, the interior photographs show a single desk and two chairs inside a small office that appears to be within a larger suite. No photographs are provided of the other claimed office space located within suite 309. Given the petitioner's failure to provide a lease agreement for the new office, considered in light of the temporary appearance of the company's signs and the generic pictures of the interior of the office space, the AAO is not convinced that the petitioner is actually occupying the claimed office spaces in East Hanover, New Jersey. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). For this additional reason, the petition must be denied.

Another issue not specifically raised by the director is whether there is sufficient evidence of the foreign company's investment in the United States company as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The only evidence submitted is a copy of a wire transfer receipt showing that the foreign entity transferred \$9,000 to the beneficiary's personal bank account in January 2002. There is no evidence in the record that the petitioner has received any money at all from the foreign entity. The total investment in the petitioner is stated on the foreign entity's March 2002 balance sheet as \$15,200, which includes \$6,200 purportedly charged to the foreign entity's credit card. However, there is no documentary evidence that the U.S. entity actually received any money from the foreign entity, or that the foreign entity plans to provide financial support for the U.S. entity during the start-up phase. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). As the appeal will be dismissed on the other grounds discussed, this issue need not be addressed further.

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 decision of the director will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.