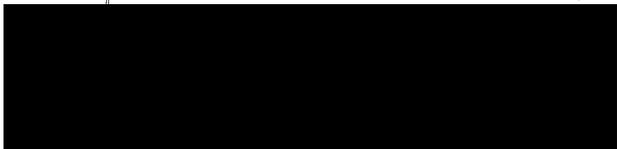




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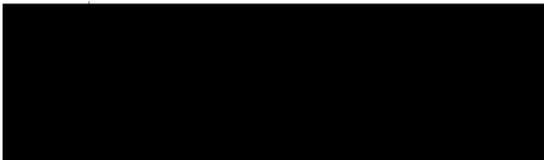
File: SRC 04 063 50771 Office: TEXAS SERVICE CENTER Date: DEC 06 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 manager 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 limited liability company organized in the State of Texas that initially claimed to be engaged in consulting and translation services, but which now claims to be engaged in catering services.¹ The petitioner claims that it is the subsidiary of [REDACTED] located in Barcelona, Venezuela. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

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 (2) the petitioner had been doing business for the previous year as required by the regulations.

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 erred in denying the extension and made incorrect legal decisions about what constitutes doing business and what constitutes a function manager. Counsel alleges that the petitioner did in fact employ the beneficiary in a managerial capacity since the beneficiary managed an essential function within the organization. Furthermore, counsel alleges that the petitioner did business during the previous year but that, due to the hard economy, it was unable to hire the computer employees it required and therefore switched the focus of its business to catering. In support of these assertions, counsel for 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.

¹ It should be noted that, according to the Texas Comptroller of Public Accounts, the petitioner is not currently in good standing in Texas due to the failure to satisfy all state tax requirements. Therefore, regardless of whether the petitioner's tax issues in Texas can be easily remedied or not, it raises the critical issue of the company's continued existence as a legal entity in the United States.

- (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)(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 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.

On the L Supplement to the petition, the petitioner stated that the beneficiary:

Directs and establishes goals for the company and [is] responsible for all marketing and promotion of [the] company in the computer consulting and translation business. [She] [w]ill hire and fire employees, and supervise the employees and independent contractors and their assignments. [She] [e]xercises wide latitude in discretionary decision-making[.] [She] [w]ill establish and oversee budget.

Additionally, the petitioner submitted a letter dated December 10, 2003 prepared by the beneficiary as manager of the petitioner. This letter stated that "the business is now focusing more on translation services and catering rather than import/export. The business continues to do computer consulting. Because this is a new company, I was unable to take a full salary this year."

Finally, the petitioner submitted its Form 1065, U.S. Return of Partnership Income, for 2002, which indicated that no salaries or wages had been paid during that time, and that the petitioner had gross receipts in the amount of \$2,471.

On February 27, 2004, the director requested additional evidence. Specifically, the director requested a definitive statement regarding the employment of the beneficiary, including a more detailed description of her duties, the percentage of time she devoted to each duty, the level of authority held by the beneficiary, and her position in the petitioner's organizational hierarchy. The director also requested a similar overview of the duties of all other employees and/or contractors along with their educational backgrounds, titles, and ranks within the petitioner's organization. The director noted that if the beneficiary did not supervise other employees, a statement describing the essential function the beneficiary managed was required.

In response, counsel for the petitioner submitted a letter dated May 26, 2004. Counsel stated that there were no employees of the petitioner for 2003, as this was its first year of operations. As a result of this difficult first year, counsel further confirmed that the beneficiary did not take a salary. Counsel explained that the beneficiary was currently the only employee of the U.S. entity and referred to exhibit 8 of the response for a more detailed description of the beneficiary's duties. However, Exhibit 8 of the response is merely a blank sheet of yellow paper. No further discussion of the beneficiary's duties was provided.

Furthermore, counsel alleges that wages were paid to an independent contractor who performed services on behalf of the petitioner during this period, but that no 1099 forms were available. Counsel refers to the petitioner's bank statements from February 2003 and May 2003, which she alleges demonstrate the payment of wages to this independent contractor. However, these statements merely show that checks written from the petitioner's account have cleared; the payee and the nature of the payment are not provided, nor are copies of the cancelled checks.

On June 12, 2004, the director denied the petition. The director determined that the beneficiary had not acted in a primarily managerial or executive capacity during the previous year, and that the petitioner had not yet reached the point where it could support the beneficiary in such a capacity. The director also noted that the petitioner had failed to establish that the beneficiary was managing an essential function of the organization, such that she could be deemed a function manager.

On appeal, counsel for the petitioner submits additional evidence in support of the beneficiary's qualifications, and alleges in her appeal brief that the beneficiary is both an executive and a manager. As evidence of meeting the requirements of both capacities, counsel asserts that the beneficiary directs and manages a major function of the organization, namely the catering division.

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(i)(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.* In this case, counsel on appeal clarifies that the beneficiary is primarily engaged in managerial duties under section 101(a)(44)(A) of the Act *as well as* primarily executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a

hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

The initial description of duties provided by the petitioner in these proceedings did little to describe the beneficiary's actual duties, nor did it describe the nature of the beneficiary's day-to-day tasks. Instead, it merely provided a vague overview of the nature of her duties. As previously stated, the initial evidence submitted was insufficient to warrant approval and, consequently, the director requested more specific information, including a more specific description of the beneficiary's duties. The petitioner responded to this request; however, the exhibit allegedly containing the updated description of the beneficiary's duties was not provided. As a result, the petitioner will be adjudicated based on the description of duties provided with the initial petition.

The AAO, upon review of the record of proceeding, concurs with the director's finding that the petitioner has not established that the beneficiary will be employed in either a primarily managerial or executive capacity. Whether the beneficiary is a managerial 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. The AAO will first examine the alleged executive capacity of the beneficiary.

The description of duties provided on the L Supplement, previously set forth above, is repeated her for convenience:

Directs and establishes goals for the company and [is] responsible for all marketing and promotion of [the] company in the computer consulting and translation business. [She] [w]ill hire and fire employees, and supervise the employees and independent contractors and their assignments. [She] [e]xercises wide latitude in discretionary decision-making[.] [She] [w]ill establish and oversee budget.

When compared to the definition of executive capacity, the duties of the beneficiary simply mirror the regulation. For example, 8 U.S.C. § 1101(a)(44)(B)(ii) requires that a beneficiary "establishes the goals and policies of the organization, component, or function," whereas 8 U.S.C. § 1101(a)(44)(B)(iii) requires that a beneficiary "exercises wide latitude in discretionary decision making." No independent evidence of exactly what an average day in the workweek of the beneficiary consists of has been provided. More importantly, however, the lack of specifics in the description of the beneficiary's duties precludes a finding that she is employed primarily in an executive capacity. Reciting the beneficiary's vague job responsibilities or broadcast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co.,*

Ltd. v. Sava, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d 41; *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). 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, *aff'd*, 905 F.2d 41. In this matter, the petitioner has merely repeated the language of the regulations, without showing how the beneficiary functions as an executive during her engagement in the catering and translation services of the petitioner.

The petitioner simultaneously claims that the beneficiary is engaged primarily in managerial duties, and alleges for the first time on appeal that the beneficiary manages an essential function of the petitioner, namely, the catering department. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. 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. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)).

In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. As discussed above, the description of the beneficiary's duties was vague and merely paraphrased the regulatory definitions. While the description was compared above to the definition of executive capacity, the description provided also emulates the definition of managerial capacity. For example, the regulation at 8 U.S.C. § 1101(a)(44)(A)(iii) provides that "if another employee or other employees are directly supervised, [the beneficiary] has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization). . . ." The petitioner's description of the beneficiary's duties includes "[she] will hire and fire employees, and supervise the employees and independent contractors and their assignments." Once again, conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5.

With regard to counsel's claim that the beneficiary is a function manager, it should be noted that this claim is made for the first time on appeal. Prior to appeal, the petitioner claimed that the beneficiary's duties included hiring, firing, and overseeing staff members. However, since no staff members have yet been hired, it appears that the petitioner has changed its position in order to attempt to qualify the beneficiary for the benefit sought under a different basis. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition

was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Regardless, the AAO will review the beneficiary's eligibility for qualification under the classification of a function manager since it is clear that she was the petitioner's only employee at the time of filing. Generally, when a beneficiary is the sole employee of a petitioner, it is presumed that she is thus required to directly perform non-managerial duties essential to the petitioner's business. While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial.

In the present matter, the petitioner fails to sufficiently document the exact nature of the beneficiary's day-to-day duties. The petitioner provides a generic list of the beneficiary's duties, yet without specifics, it is uncertain exactly what the beneficiary does on a day-to-day basis. While the claim on appeal is that the beneficiary manages the catering department, the petitioner fails to quantify the time the beneficiary spends on this task. This failure of documentation is important because catering services do not fall directly under traditional managerial duties as defined in the statute. Absent evidence of other employees, it appears that the beneficiary is primarily responsible for performing all catering tasks, such as preparing, serving, and delivering food to clients. Without a clear and credible breakdown of the time spent by the beneficiary performing these hands-on duties, the AAO cannot determine what proportion of her duties would be managerial or executive, nor can it deduce 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).

Counsel further refers to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification because the company was still considered to be in the start-up phase after one and one-half years. Counsel further contends that based on this decision, the one-year period is an unrealistic time period in which a petitioner can establish a viable business. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. 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.

Despite counsel's protests, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. Based on the evidence submitted, it appears that absent evidence to show that the petitioner had hired a subordinate staff to relieve the beneficiary from performing non-qualifying duties at the time of filing, it cannot be determined that she functions in a primarily managerial or executive capacity. As previously stated, 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. at 604. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249. The record is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

The second issue in this matter is whether the petitioner has been doing business as required by the regulations for the previous year. The regulation at 8 C.F.R. §214.2(l)(1)(ii)(H) defines the term "doing business" as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad."

In this matter, the petitioner claimed that its initial business goals were to establish computer consulting services, but this plan was altered to focus primarily on catering services due to the "hard economy." The director denied the petition, finding that the petitioner had failed to satisfy the regulatory requirements for doing business.

With the initial petition, insufficient evidence of the petitioner's business practices was submitted. Consequently, in the request for evidence issued on February 27, 2004, the director requested documentation establishing that the petitioner had been doing business during the previous year as required by the regulations. Specifically, the director requested that the petitioner submit documentation such as dated purchase orders, contracts, or sales agreements that established that the beneficiary had been providing goods and services during the previous year. In the response filed on May 26, 2004, the petitioner submitted a variety of documentary evidence, including invoices, the beneficiary's food manager certification license, a business card, a letter from a client verifying services received, and some bank statements. The petitioner further indicated that its business was now being operated out of the beneficiary's residence, and that it did not currently have a commercial lease. Based on this documentary evidence, as well as a statement outlining the petitioner's business plan, the petitioner asserts that it has sustained its burden.

On review of the evidence submitted, the AAO concludes that the petitioner failed to demonstrate that it had been doing business during the previous year. The record indicates that the beneficiary was granted a one-year period of stay from December 15, 2002 to December 15, 2003 to open a new office. The record further indicates that the petitioner would engage in computer consulting and translation (invoices for some translation services were submitted), but that it changed the course of the business to focus primarily on catering. There is, however, no indication of regular sales activity during this period. For example, a sporadic sampling of invoices in the Spanish language, covering services for 2003, are submitted in support of the petitioner's claim that it has been doing business. Also submitted is the beneficiary's business card and a menu. The problem with this evidence, however, is twofold. First, the invoices do not identify the petitioner as the vendor on these invoices. Second, all documentation submitted is in Spanish and no translations have been provided. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. There is,

therefore, insufficient evidence that sales were continuously made during the course of the beneficiary's stay in the United States.

Based on this limited information, it appears that the petitioner was not doing business as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). The AAO acknowledges the petitioner's claim that it experienced difficulties establishing itself in the computer services industry and that it turned to catering as a result. However, the fact remains that there is insufficient evidence of a consistent provision of goods and services by the petitioner to outside clients during the period from December 2002 to December 2003. While the newly-submitted documentation on appeal indicates that the petitioner has been providing computer and catering services from August to October 2004, there is no indication that such regularity with regard to the provision of the petitioner's goods took place during the first year of operations, and further lacks any explanation or documentation regarding other activities engaged in by the petitioner to promote its business during this period. The fact that the petitioner did not supply evidence of any employees and that the beneficiary did not receive a salary during this first year of operations, coupled with the lack of a commercial base for the business, raises questions of the legitimacy of the petitioner's claimed business operations.

As previously stated, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of a new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) require the petitioner to demonstrate that it has been doing business for the previous year. In the present matter, the evidence submitted at the time of filing confirmed that the petitioner had not been conducting regular business as required. The fact that it recently began improving its sales after the expiration of the beneficiary's initial stay does not entitle the petitioner to an extension of the visa classification requested, for it does not change the fact that the petitioner failed to conduct business during the previous year. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the record reflects that the petitioner did not file the petition for an extension within the required time frame. The regulation at 8 C.F.R. § 214.2(l)(14)(i) provides, in pertinent part, that a petition extension may be filed only if the validity of the original petition has not expired. In the present case, the beneficiary's authorized period of stay expired on December 15, 2003. However, the petition for an extension of the beneficiary's L-1A status was filed on December 30, 2003, fifteen days following the expiration of the beneficiary's status. As the extension petition was not timely filed, the petition may not be approved for this additional reason.

Additionally, the minimal documentation of the parent company's and the petitioner's ownership raises the issue of whether there is a qualifying relationship between and U.S. entity and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner has submitted no evidence establishing that the claimed owners of the entities in fact own both entities as stated on the L Supplement. Without evidence of the ownership of these entities, the claimed affiliate relationship cannot be established. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. As general evidence of a petitioner's claimed qualifying relationship, stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must be examined to determine whether a stockholder

maintains ownership and control of a corporate entity. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. The petitioner has not submitted any such evidence. For this additional reason, the petition may not be approved.

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 at 1043.

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.