

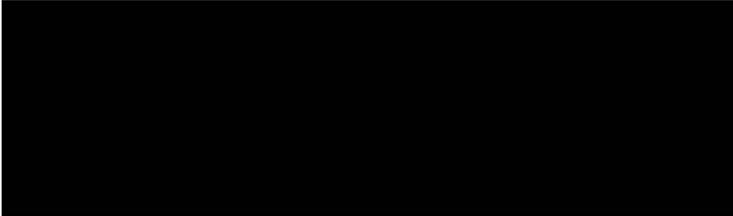
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**U.S. Citizenship
and Immigration
Services**

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File: WAC 05 007 50754 Office: CALIFORNIA SERVICE CENTER Date: JUL 06 2006

IN RE: Petitioner:
Beneficiary:



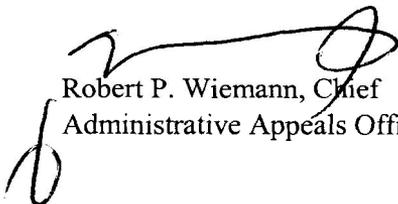
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON 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, 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 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 claims that it is a branch of the beneficiary's foreign employer, [REDACTED], located in Portugal. The petitioner claims to be engaged in the distribution of construction supplies. The petitioner seeks to employ the beneficiary as its chief executive officer for a three-year period.¹

The director denied the petition concluding that the petitioner had not established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner claims that the director's decision "contained mere accusations and false presumptions" to support the determination that the beneficiary has not been employed in a qualifying capacity abroad. Counsel asserts that the petitioner submitted sufficient evidence to establish that the beneficiary has been employed by the foreign entity in an executive capacity since 2001. Counsel submits a brief and additional evidence in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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.

¹ The petitioner and counsel also refers to the beneficiary's proposed position as "Integration Specialist," and on appeal, counsel references the proposed position as "Architectural Consultant." The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- (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 office² 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 petition, 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.

² The petitioner did not indicate on Form I-129 that the beneficiary is coming to the United States in order to open a new office, and in fact initially stated that the U.S. company was established in 2002, and has established a "nationwide presence" with 45 employees. In response to the director's request for additional evidence, the petitioner stated that the purpose of the beneficiary's transfer is to open a new office in the United States. As discussed further below, there was clearly no established U.S. office at the time the petition was filed, and the AAO is left to question the validity of the petitioner's claims regarding the beneficiary's eligibility for this visa classification. 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).

The issue raised by the director in this matter is whether the petitioner established that the beneficiary has been employed in a managerial or executive capacity with the foreign entity.

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.

The nonimmigrant petition was filed on October 8, 2004. In a letter dated October 1, 2004, the petitioner stated that the beneficiary served as the president of the foreign entity for more than two years. The petitioner provided the following information regarding the positions the beneficiary has held with the foreign entity:

In 2002, [the beneficiary] began his career with [the foreign entity] as the Operations Manager. In said capacity, he worked extensively with construction workers, clients, sales

and marketing companies to further develop and stabilize the company. He also communicated with technical details to clients regarding the company's services.

After a few months, [the beneficiary's] managerial responsibilities were further expanded when he was promoted to the position of Management Analyst. As such, he managed a team of individuals to develop the Operations Manual and Marketing Strategies for the company. He likewise managed and prepared the teams' project plans and goals. In managing his professional team, [the beneficiary] had authority to recruit, hire, train, promote and terminate his staff.

With respect to all matters within his authority, [the beneficiary] exercised broad discretion over day to day operations in developing a database and interfaces that allow the company's system to interact with various customers' needs.

Throughout his employment with [the foreign entity] in Portugal, as a key managerial employee with proprietary knowledge of our international operations and varied product lines, [the beneficiary] has demonstrated considerable skill in managing development and support functions. He utilized his expertise in designing and analyzing the technology to create a robust flexible, scalable and secure company specifically for the construction industry that gets customers and builds relationships with their worldwide supply chain partners. He also managed and delegated responsibility in preparing and maintaining the continual development of the smooth operational procedures of the company and helped sustain profitability throughout the years.

* * *

In April 2004, [the beneficiary] was promoted and assumed the position of Software Implementation Manager. This department is one of the most critical functions of our company in terms of the gross sales and revenues it generates. In particular, he oversees three (3) essential departments of our company, i.e., the Product Management department, Product Development Department and the Quality Assurance Department.

The petitioner did not address the organizational structure of the foreign entity, but noted that the company "ranks first or second in major segments of the construction industry," and "maintains a nationwide network of offices . . . performing work on over 1,500 projects each year."

The director issued a request for additional evidence on October 18, 2004, in part instructing the petitioner to submit the following evidence to establish that the beneficiary has been employed in a managerial or executive capacity with the foreign company: (1) a copy of the foreign company's organizational chart including the names of all executives, managers, supervisors, the number of employees within each department, and brief job descriptions, educational level and annual salaries for all employees under the beneficiary's supervision; and (2) the total number of employees working at the location where the beneficiary is employed. The director also requested that the petitioner specify when the beneficiary was hired by the foreign entity, the positions he has held, and why he was selected for the position with the U.S. entity.

In a response dated November 16, 2004, counsel for the petitioner noted that the foreign entity was established in 2002 and since then “has engaged three (3) full time employees and several on site workers depending on the scale of the project.” The petitioner submitted an undated letter on the foreign entity’s letterhead, which states that the beneficiary has served as chief executive officer of the foreign entity since January 2002. The letter indicates that the foreign entity employs seven people on a full-time basis and lists their job titles as technical manager, warehouse manager, site teams manager, administration secretary, accounts department, and marketing manager.

The petitioner also submitted an organizational chart which depicts a total of twelve positions within the company. The chart depicts a chief executive officer supervising five departments, including marketing, technical, site projects, factory warehouse and accounts and administration. The positions identified on the chart are marketing manager, sales consultant, technical project manager, architect designer, site projects manager, site projects team leader, construction team, factory warehouse manager, warehouse laborers, accounts administrator and secretary.

The director denied the petition on December 1, 2004, concluding that the petitioner had not established that the beneficiary has been employed in a primarily managerial or executive capacity with the foreign entity. The director found that “a preponderance of the beneficiary’s duties have been directly providing the services of the foreign organization and supervising two . . . non-professional employees.” The director further determined that the record did not establish that the beneficiary was primarily supervising a subordinate staff of professional, managerial or supervisory personnel who relieve him from performing non-qualifying duties, or that the beneficiary primarily manages an essential function of the organization.

On appeal, counsel for the petitioner asserts that the director relied on “mere accusations and false assumptions” to support his reasons for denying the petition. Counsel asserts that the beneficiary has been employed as the chief executive officer of the foreign entity since 2001, and also refers to the beneficiary as the “Owner/President” of the foreign entity. Counsel further describes the beneficiary’s duties as follows:

His main duties include directing the management of the organization and establishing the goals and the policies of [the foreign entity]. He also is burdened with high profile decision making skills in terms of managing the entire operation of the company and other supervisory or managerial employees who reports [sic] directly to him. [The beneficiary] also has the authority to hire, fire or recommend certain employees that has [sic] the right qualification, personal actions or is due for promotion. Lastly, [the beneficiary] takes charge of the overall supervision of the day to day operations of the company.

In support of the appeal, the petitioner submits un-translated copies of the foreign entity’s payroll records, documents identified as “social security declarations,” and educational and training documents for the beneficiary.

Upon review, counsel’s argument is not persuasive. Although the director’s conclusion that the beneficiary has not been employed in a primarily managerial or executive position will be affirmed, the AAO notes that when denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section

291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). Upon review of the director's decision, the AAO agrees that the reasons given for the denial are conclusory with few specific references to the evidence entered into the record. As the AAO's review is conducted on a *de novo* basis the AAO will herein address the petitioner's evidence & eligibility. *See 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 examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

Preliminarily, the AAO notes that the petitioner has failed to provide a consistent job title for the beneficiary's current position with the foreign entity. The petitioner initially stated in its October 1, 2004 letter that the beneficiary had joined the company in 2002 and had served in the positions of operations manager, management analyst and, most recently, software implementation manager. In the same letter, the petitioner stated that the beneficiary had served as president of the foreign entity for more than two years. In response to the director's request for evidence, the petitioner submitted a statement on the foreign entity's letterhead indicating that the beneficiary has been employed by the foreign entity as its chief executive officer since January 2002. Although this was the first time the petitioner made this claim, the petitioner did not provide a position description for the role of chief executive officer, nor did it clarify why it previously provided different job titles for the beneficiary's various roles with the foreign entity. 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)). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, the purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, 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 its associated job responsibilities.

On appeal, the petitioner and counsel again fail to clarify why the petitioner initially stated that the beneficiary had served as an operations manager, management analyst and software implementation manager with the foreign entity. Instead, counsel asserts that the beneficiary has served as chief executive officer and "owner/president" of the foreign entity since 2001. However, the evidence in the record shows that the foreign company was established in 2002. Counsel also provides a brief job description for the chief executive officer position on appeal that merely paraphrases the statutory definitions of managerial and executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. §§ 1101(a)(44)(A) and (B). For example, counsel states that the beneficiary's duties include "directing the management of the organization," "establishing the goals and policies" of the foreign entity, hiring and firing employees and recommending personnel actions, and the "overall supervision of the day to day operations of the company." 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Furthermore, the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The position description provided on appeal bears no resemblance to the job descriptions initially provided for the beneficiary's position. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The petitioner has failed to provide a detailed or consistent account of the beneficiary's role with the foreign entity. Due to these inconsistencies, the petitioner has not persuasively demonstrated that the beneficiary was employed as the foreign entity's chief executive officer as of the date the petition was filed.

Accordingly, the AAO will rely on the job descriptions submitted with the initial petition filing to determine whether the petitioner established that the beneficiary's foreign employment has been in a primarily managerial or executive capacity. The petitioner stated that the beneficiary currently serves as a software development manager with responsibility for overseeing the foreign entity's product management, product development and quality assurance departments. However, these three departments do not appear on the petitioner's organizational chart, nor does the company appear to employ any workers engaged in product management, product development or quality assurance activities. Again, 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). Accordingly, the record does not establish that the beneficiary "oversees" product development and quality assurance tasks. Rather, based on the minimal evidence in the record, it appears that the beneficiary would be responsible for directly performing the non-managerial duties associated with these functions. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner indicated that the beneficiary previously served as a management analyst responsible for "managing a team of individuals to develop the Operations manual and Marketing Strategies for the company." The petitioner further referenced the beneficiary's responsibility for exercising discretion over the development of a database, his role in designing and analyzing technology, and his skill in "managing development and support functions." The petitioner did not provide an organizational chart depicting this position, and based on the organizational chart submitted in response to the request for evidence, the foreign entity's organizational structure does not include a management analyst position. Absent evidence that the foreign entity has employees who performed the day-to-day work of developing databases and performing operational tasks associated with designing and analyzing technology and performing market research, the AAO cannot determine that the beneficiary's claimed role as a "management analyst" involved primarily managerial or executive duties. Reciting the beneficiary's vague job responsibilities or broadly-cast 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).

Overall, the petitioner has presented vague, conflicting and incomplete evidence regarding the nature of the beneficiary's employment with the foreign entity. The AAO is therefore unable to determine the beneficiary's actual job title, actual duties, or his level of authority within the foreign entity's organizational hierarchy. Without this information, it is impossible to determine that he performs primarily managerial or executive duties for the foreign entity. The AAO recognizes that the beneficiary appears to be one of three owners of the foreign entity. However, the discretion the beneficiary may exercise as a partial owner of the business is insufficient to establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(44)(A) and (B) of the Act.

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 show 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). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties related to operational or policy management, not to the supervision of lower level employees, performance of the duties of another type of position, or other involvement in the operational activities of the company.

In the instant matter, the petitioner has failed to show that non-qualifying duties will not constitute the majority of the beneficiary's time. The provided job descriptions do not allow the AAO to determine the actual tasks that the beneficiary will perform such that they can be classified as managerial or executive in nature.

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. The petitioner has not provided a consistent description of the foreign entity's organizational structure. The petitioner initially implied that the foreign entity was a fairly large organization operating "a nationwide network of offices" and sufficient staff to work on "over 1,500 projects each year." In response to the director's request for additional evidence regarding the staffing of the foreign entity, counsel asserted that the foreign entity has three full-time employees, the petitioner claimed that the company employs seven full-time employees, and the petitioner submitted an organizational chart depicting a total of twelve positions. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Due to these unresolved discrepancies, the AAO cannot determine the number or type of employees employed by the foreign entity or supervised by the beneficiary, and thus cannot conclude that the foreign entity employs a staff sufficient to relieve the beneficiary from performing non-managerial and non-executive tasks. Nor can the AAO find that the beneficiary operates at a senior level within the foreign entity's organizational hierarchy, or that he will primarily manage an essential function or a staff of supervisory, professional, or managerial employees. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the foreign entity and the proposed U.S. employer are qualifying organizations, as required by 8 C.F.R. § 214.2(l)(3)(1), and as defined at 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner indicated on Form I-129 that the U.S. entity is a branch office, and in its October 1, 2004 letter, referred to the U.S. entity as both a parent and subsidiary of the foreign entity. As noted above, the petitioner stated that the petitioner was established in 2002 and had 45 employees and an annual income of \$250,000. The petitioner submitted no supporting documentation regarding the ownership and control of the U.S. company. Accordingly, the director requested that the petitioner submit evidence of a qualifying relationship including the petitioner's articles of incorporation, stock certificates, stock transfer ledger, proof of stock purchase, and if applicable, evidence that the U.S. company is authorized to operate as a branch office.

In response, counsel for the petitioner stated that the beneficiary had established a "home office" and will be responsible for "starting the United States branch," noting that the company's articles of incorporation and other documents would be provided "as soon as [the beneficiary] arrives in the United States." The petitioner provided no explanation for its initial statements indicating that the U.S. employer is a two-year old entity with 45 employees. 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. at 591.

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Therefore, it is reasonable to assume, and it has not been shown to be otherwise, that there was no formally organized legal entity to serve as the beneficiary's U.S. employer as of the date of filing. As a matter of law, the beneficiary is ineligible for the classification sought. It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. In order to meet the definition of "qualifying organization," there must be a United States employer. See 8 C.F.R. 214.2(l)(1)(ii)(G)(2). As in the present matter, if there is no authorized branch office of the foreign employer or separate legal entity in the United States, there is no U.S. entity to employ the beneficiary and therefore no qualifying organization. For this additional reason, the petition will not be approved.

Although not explicitly addressed in the director's decision, the record contains insufficient documentation to persuade the AAO that the beneficiary would be employed in the United States in a managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), or that the petitioner would support such a position within one year of approval of the petition, as required by 8 C.F.R. § 214.2 (l)(3)(v). In addition, the petitioner failed to establish that it has secured sufficient physical premises to house the new office, the proposed nature of the office, the scope of the entity, its organizational structure, the size of the United States investment, the financial ability of the foreign entity to remunerate the beneficiary, and the financial ability to commence doing business in the United States. For these additional reasons, the petition cannot 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).

Finally, the AAO notes that a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. In this case, the discrepancies and omissions catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested nonimmigrant visa classification.

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.