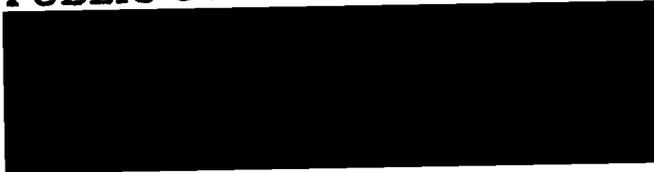




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File: WAC 05 019 52081 Office: CALIFORNIA SERVICE CENTER Date: **OCT 24 2006**

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, 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 visa petition seeking to extend the employment of its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of California and is allegedly engaged in the business of manufacturing and transporting household goods and furniture.¹ The petitioner claims that it is the subsidiary of [REDACTED], a business entity located in Israel. The beneficiary was initially granted two one-year periods of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay for two years.

The director denied the petition concluding that the record failed to establish that the petitioner and the foreign entity are qualifying organizations as defined in 8 C.F.R. § 214.2(l)(1)(ii)(G).

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, the petitioner asserts that the director erred and that the record establishes that the petitioner is a subsidiary of the foreign entity by virtue of the foreign entity's ownership of 51% of the petitioner's stock. In support of this assertion, 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.

¹It should be noted that, according to California state corporate records, the petitioner's corporate status in California is "conditionally dissolved." Therefore, as the petitioner has voluntarily elected to wind up its business operations and is completely dissolved (with the exception of not receiving a tax clearance from the Franchise Tax Board), the company can no longer be considered a legal entity in the United States. Therefore, even if issues raised on appeal were overcome, given the petitioner's current corporate status in the United States, it would remain ineligible for the classification sought.

- (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 primary issue in the present matter is whether the petitioner and the foreign entity are qualifying organizations as defined in 8 C.F.R. § 214.2(l)(1)(ii)(G).

In support of its initial petition, the petitioner provided a copy of its Articles of Incorporation indicating that the corporation is authorized to issue 1,000 shares of stock; a copy of the petitioner's unsigned bylaws; three stock certificates as follows: Certificate #1 (510 shares issued to [REDACTED] Certificate #2 (250 shares to the beneficiary), and Certificate #3 (240 shares to [REDACTED] minutes dated April 6, 2002 from the organizational meeting of the petitioner's board of directors at which the directors (a) agreed to issue 600 shares of stock to [REDACTED] and 400 shares to [REDACTED] in exchange for the transfer of property and (b) authorized the issuance of no more than 1,000 shares of common stock; wire transfer statements showing that [REDACTED] transferred funds to the beneficia twice in August 2002; and the petitioner's 2003 Form 1120 in which the petitioner avers that it is owned by [REDACTED] (50%) and [REDACTED] (50%).

On December 16, 2004, the director requested additional evidence. Specifically, the director requested, *inter*

alia, proof of stock purchase by the foreign entity, a copy of the petitioner's stock ledger, and a detailed list of the petitioner's owners.

In response, counsel to the petitioner indicated that the wire transfer from [REDACTED] to the beneficiary is a transfer from the foreign entity because [REDACTED] means "white flowers" in Hebrew. However, counsel offered no explanation as to why these funds were wired to the beneficiary and not to the petitioner. The petitioner also provided a copy of the stock ledger which indicates that the foreign entity owns 51% of the petitioner's stock. Finally, the petitioner provided a copy of the petitioner's 2004 Form 1120 in which, just like in its 2003 Form 1120, the petitioner avers that it is owned by [REDACTED] (50%) and [REDACTED] (50%).

On March 29, 2005, the director denied the petition. The director concluded that the record did not establish that the petitioner and the foreign entity are qualifying organizations. Specifically, the director determined that there are numerous unresolved inconsistencies in the record regarding the ownership of the petitioner and that the petitioner failed to establish that the foreign entity made a cash investment in the petitioner in exchange for shares of stock.

On appeal, counsel to the petitioner asserts that the director erred and that the record sufficiently establishes a qualifying relationship. Counsel included a copy of excerpts from an amended Form 1120 now listing the foreign entity as the 51% owner of the petitioner, and describes the averments made in the original 2003 and 2004 Forms 1120 as "clerical" errors. The petitioner does not provide complete amended returns and does not indicate when these returns were filed. Moreover, counsel in his brief reiterates that the foreign entity invested in the petitioner, and acquired its stock, by wiring money from Israel. Counsel maintains that the documentation showing that wires were initiated by [REDACTED] corroborates this averment because *Perah Lavan* means "white flowers" in Hebrew. However, the petitioner again provides no explanation for why these transfers were made to the beneficiary and does not offer any translation of the words "*Perah Lavan*."

Upon review, petitioner's assertions are not persuasive.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). A "subsidiary" is a firm, corporation, or other legal entity of which a parent owns more than half of the entity and controls the entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K).

Moreover, the regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In this case, the petitioner alleges that, because the foreign entity, [REDACTED] owns 51% of its stock, the petitioner and the foreign entity have a parent/subsidiary qualifying relationship, and the foreign entity owns and controls the petitioner. However, because the evidence submitted is full of inconsistencies regarding the ownership of the petitioner, the record does not establish that a qualifying relationship exists.

As indicated above, the petitioner provided documents which point to two different, and conflicting, ownership structures. While the stock certificates and stock ledger are consistent with the petitioner's averment that it is a subsidiary of the foreign entity, the organizational minutes and the 2003 and 2004 Forms 1120 indicate instead that the petitioner is owned solely by the beneficiary and his spouse. This latter structure would not be qualifying. Although the petitioner dismisses the averments in the Forms 1120 as clerical errors and offers on appeal evidence that it has amended its tax returns, there is no evidence that these amendments were ever filed and, if they were, that they were filed prior to the decision of the director. Moreover, the petitioner offers no explanation as to how this clerical error was made two years in a row, and, importantly, offers no explanation as to why the minutes of the organizational meeting of the directors issuing all authorized shares of stock to the beneficiary and his spouse are in direct conflict with the stock certificates. 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). 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. *Id.*

In addition to the inconsistencies in the record, the petitioner failed to establish that the foreign entity ever made an investment in the petitioner in exchange for stock. The regulations specifically allow the director to request additional evidence in appropriate cases. As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. *See* 8 C.F.R. § 214.2(l)(3)(viii). As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In this case, the petitioner provided evidence that [REDACTED] wired money to the beneficiary in August 2002. While the petitioner asserts that [REDACTED] means "white flowers" in Hebrew, the petitioner offered no explanation as to why these funds were wired to the beneficiary and not to the petitioner.²

²It must be noted that counsel to the petitioner never provided any evidence that *Perah Lavan* means "white flowers" in Hebrew. 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). Because the petitioner failed to submit certified translations of the document in question, the AAO cannot determine whether the evidence supports counsel'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.

Therefore, since these funds were wired to the beneficiary, the petitioner has not proven that the purported parent company ever acquired its stock. Therefore, due to this gap in the evidence coupled with the inconsistencies in the record discussed above, the petitioner has not established that it has a qualifying relationship with the foreign entity. For this reason, the petition may not be approved.

Accordingly, the petitioner has not established that the petitioner and the foreign entity are qualifying organizations as defined in 8 C.F.R. § 214.2(l)(1)(ii)(G).

The director's decision does not indicate whether he reviewed the approvals of the initial new office petitions. However, if the previous nonimmigrant petitions were approved based on the same evidence of a qualifying relationship that is contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church of Scientology International*, 19 I&N Dec. at 597. It would be absurd to suggest that Citizenship and Immigration Services (CIS) or any agency must treat acknowledged errors as binding precedent. *Sussex Engr. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). In addition, a prior approval does not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

Beyond the decision of the director, an additional issue is whether the petitioner has established that 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.

The petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or 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 is indeed representing 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. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary is acting either as a managerial *or* as an executive and will consider both classifications.

In the initial petition, the petitioner included a support letter dated October 14, 2004, in which it describes the beneficiary's job duties and elaborates on what percentage of time the beneficiary devotes to each duty. These duties include manage human resources (20%); review activity reports and financial statements (15%); manage sales and promotional activities (15%); liaise with suppliers, contractors, and professional agents (15%); expand business (10%); establish policies and objectives (10%); liaise with foreign entity (10%); and examine and review market opportunities (5%). However, the petitioner failed to provide any specific examples illustrating the beneficiary's performance of these duties. The petitioner also provided copies of wage reports from the last quarter of 2003 and the first three quarters of 2004 indicating that the petitioner employed four or less people from October 1, 2003 through September 30, 2004.

In response to the request for evidence, counsel to the petitioner provided a different set of job duties for the beneficiary with different percentages of time spent on each duty.³ The petitioner also provided an

³On 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 CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). As such, the AAO will only consider the duties and the corresponding percentages provided by the petitioner in its support letter appended to the initial petition.

organizational chart which places the beneficiary at the top of the organization. According to the chart, the beneficiary directly supervises three employees: a human resources/accounting employee, an operations manager, and a sales manager. The operations manager, in turn, supervises the storage and moving employees, while the human resources/accounting employee supervises an unnamed administrative assistant. Finally, the petitioner lists all ten of its employees, all of whom have no more than a high school education. The petitioner does not provide job descriptions for the employees nor does it offer an explanation as to why its list of ten employees is more than twice the number of employees identified in the wage reports appended to the initial petition. It must be concluded, given the petitioner's inclusion of Forms W-9, that these additional employees are actually independent contractors.

Upon review, the AAO has concluded that the petitioner has not established that the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

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.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. As explained above, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner's description of the beneficiary's job duties has failed to prove that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states broadly that the beneficiary's duties include developing and establishing policies, organizing and developing business capabilities, and reviewing sales strategies. The petitioner did not, however, define the beneficiary's policies, the developed business capabilities, or the reviewed sales strategies. The petitioner's elaboration on what percentage of time the beneficiary devotes to each duty is not helpful given the vague, non-descriptive duties listed in the support letter. 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). 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 petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees. While the petitioner provided an organizational chart and employee list, these documents do not establish that the beneficiary supervises and controls the work of supervisory, managerial, or professional employees.⁴ Most of the employees are employed as movers.

⁴As a threshold issue, most of the people employed by the petitioner appear to be independent contractors, and not employees of the petitioner. As indicated above, the petitioner's wage reports establish that it has

Since the petitioner failed to provide job descriptions for the remaining subordinate employees, particularly the operations manager, the sales manager, and the human resources/accounting employee, it cannot be determined whether these employees are supervisory, managerial, or professional. In view of the above, the beneficiary would appear to be a first-line supervisor, the provider of actual services, or a combination of both. 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); see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. Also, since the record fails to reveal the educational or skill levels necessary for entry into the positions held by the subordinate employees, it cannot be determined if they rise to the level of professional employees.⁵ Therefore, the record does not prove that the beneficiary is acting in a managerial capacity.⁶

employed no more than four people since October 2003. Therefore, it must be concluded that these additional employees, many of whom completed Forms W-9, are independent contractors. The beneficiary's supervision of these independent contractors is not qualifying under the clear language of the Act, which requires the supervision or control of *employees*.

⁵In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree, or even a master's degree, by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above.

⁶While the petitioner has not specifically argued that the beneficiary manages an essential function of the organization, the record nevertheless would not support this position. 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. 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 in managing the essential function, *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. See 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. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. Despite its use of percentages, the

Similarly, the petitioner has failed to prove that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* As indicated above, while the petitioner may have provided a vague job description which reiterates the regulations, the petitioner has failed to prove that the beneficiary, who is managing three employees or less with unknown job duties, will be acting primarily in an executive capacity. Therefore, it must be concluded that the reasonable needs of this moving company, in light of the overall purpose and stage of development of the organization, do not require the services of an executive employee.

It is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity as required by 8 C.F.R. § 214.2(l)(3), and the petitioner may not be approved for that reason.

The initial approval of an L-1A new office petition does not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

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

petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. Absent a clear, specific, and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties would be managerial, 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).

appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

Finally, based on the reasons for the denial of the instant petition, a review of the prior L-1 nonimmigrant petitions approved on behalf of the beneficiary is warranted to determine if they were also approved in error. Therefore, the director shall review the prior L-1 nonimmigrant petitions approved on behalf of the beneficiary for possible revocation in accordance with 8 C.F.R. § 214.2(1)(9).

ORDER: The appeal is dismissed.

FURTHER ORDERED: The director shall review the prior L-1 nonimmigrant petitions approved on behalf of the beneficiary (WAC-03-016-55269 and WAC-04-018-51934) for possible revocation pursuant to 8 C.F.R. § 214.2(1)(9).