

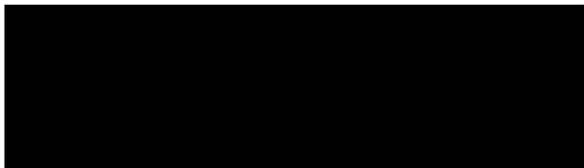
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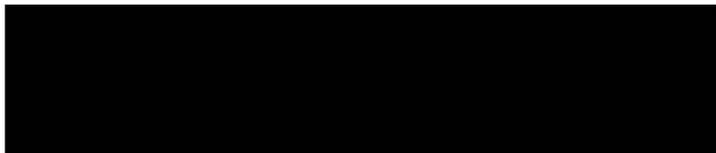
File: WAC 05 045 50487 Office: CALIFORNIA SERVICE CENTER Date: **SEP 05 2006**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 vice president/chief executive officer 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. While the petitioner describes itself as a "conglomerate" in the Form I-129, the evidence reveals that the petitioner is primarily engaged in operating a Coverall Cleaning Concepts Janitorial Service. The petitioner claims that it is the subsidiary of [REDACTED] a business entity located in the Philippines. 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 (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the petitioner and the foreign entity have a qualifying relationship.

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 beneficiary's duties are primarily those of an executive or manager. The petitioner also asserts that the director's interpretation of its IRS Form 1120 to determine the lack of a qualifying relationship was also in error. In support of this assertion, counsel to the petitioner submits additional evidence and a written statement.

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(I)(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 (I)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

The first issue in this case 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.

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, and implies in its appeal that the beneficiary is acting as both. 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. Due to the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary is acting either in a managerial capacity *or* in an executive capacity and will consider both classifications.

In the initial I-129 petition, the petitioner described the beneficiary's job duties in an appended letter dated December 1, 2004 as follows:

- Oversee the corporation's financial functions and direct the preparation and interpretations of all financial statements for Board of Directors and shareholders.
- Direct the financial planning function in the identification of company strengths and weaknesses, industry trends and business opportunities.
- Conduct special studies in areas such as the Company's operational effectiveness, capacity utilization, operating cost containment and make recommendations for profit improvements.
- Achieve optimum financial and personnel performance by ensuring the effective selection, training, motivation and development of subordinates as well as maintaining various activities to promote and maintain a high level of employee morale and productivity.
- Establish, document and implement Company policies and procedures to ensure

treasury, controllership, and financial matters are properly executed and comply with appropriate regulatory requirements.

- Provide overall direction and guidelines in the preparation and consolidation of the Company's annual operating and capital expense budgets.
- Provide actual and forecasted financial results to [the] Board of Directors and shareholders on a monthly basis and leads the discussion of financial issues and recommendations at the Board Meeting.
- Responsible for all special project analysis including merger/acquisition analysis.

Other responsibilities include:

- Manage overall development and implementation of advertising and marketing programs in support of strategic business objectives.
- Identify potential for new service lines and/or markets.
- Creative development of the company's communication, branding, promotion, and public relations plan.
- Very detailed – Responsibility for content and accuracy of all marketing materials.
- Create and maintain budgets.
- Implement administrative and operational policies and procedures.
- Hire and supervise personnel in accordance with Company Hiring Plan and evaluate personnel performance per Company policies and guidelines.
- Responsibility for coordination of activities and operations with regard to the funds under his control.
- Responsible for promotion and termination of personnel.

The petitioner also submitted 2004 Forms 941 (Employer's Quarterly Federal Tax Return) and California Quarterly Wage and Withholding Reports which uniformly reveal that the beneficiary has been the only employee of the petitioner since the petitioner's establishment. Finally, the petitioner submitted a copy of a Janitorial Franchise Agreement between the petitioner and [REDACTED]. This agreement and associated documents demonstrate that the petitioner's primary business is the provision of janitorial services to customers.

On January 12, 2005, the director sent a Notice of Intent to Deny. Specifically, the director gave the petitioner thirty days to submit additional information, evidence, or arguments to support its contention that there is a qualifying relationship between the foreign entity and the petitioner and that the beneficiary will be employed in a primarily managerial or executive capacity.

In response, the petitioner submitted, *inter alia*, an updated organizational chart placing the petitioner (vice president/CEO) above a "sales/marketing/operation manager" and an "accounting/finance manager." The people holding these positions are both identified as the daughters of the petitioner with the explanation that these are unpaid positions. The chart also indicates that the petitioner occasionally employs a bookkeeper and seasonal workers as independent contractors. The petitioner provided no job descriptions or any other evidence describing these claimed employees and contractors.

On March 11, 2005, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary's duties are primarily those of an executive or manager and argues that the director erred in failing to consider the purpose and stage of the petitioner's development in considering the petition.

**Upon review, the petitioner's assertions are not persuasive.** Title 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 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. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position as defined by law.

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.* 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. 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.

The petitioner 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 provides a long list of duties generally associated with the management of any business, such as overseeing corporate finances, implementing company policies, managing marketing programs, and promoting and terminating personnel. However, the petitioner did not define what policies are being implemented or what marketing programs are being managed. Even more importantly, the petitioner failed to clarify who actually will perform the janitorial services being provided by the petitioner if not the beneficiary. 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 also supplied an organizational chart and tax documents proving that the beneficiary manages no employees and that, in fact, the beneficiary is, and has been since establishment, the only employee of the petitioner. The record is devoid of any evidence of whom, other than the beneficiary, would be performing the tasks necessary for the petitioner to provide its janitorial services. As correctly noted by the director, the

beneficiary would appear to be the provider of actual services. 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 Intl.*, 19 I&N Dec. 593, 604 (Comm. 1988). In the absence of any employees who would relieve the beneficiary of the need to primarily perform the tasks necessary to provide janitorial services, it must be concluded that the beneficiary himself is providing these services. Therefore, the record does not prove that the beneficiary will act in a managerial capacity.

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 apparently managing no employees and who is apparently engaged in providing services to customers, will be acting primarily in an executive capacity.

It is appropriate for Citizenship and Immigration Services (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). Although the petitioner alleged that it has contractual, seasonal employees who are supervised by the beneficiary, the petitioner has failed to explain how the services of the contracted employees obviate the need for the beneficiary to primarily conduct the petitioner's business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). Pursuant to section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" 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 does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the

petitioner has not established that it has reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

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(I)(3).

The second issue in this matter is whether the petitioner has proven that the petitioner and the foreign entity have a qualifying relationship as defined by 8 C.F.R. § 214.2(I)(1)(ii)(G).

The regulation at 8 C.F.R. § 214.2(I)(3) states in part 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 (I)(1)(ii)(G) of this section.

Moreover, when petitioning to extend a petition which involved the opening of a new office, the Form I-129 must be accompanied by "[e]vidence that the United States and the foreign entities are still qualifying organizations as defined in [8 C.F.R. § 214.2(I)(1)(ii)(G)]." 8 C.F.R. § 214.2(I)(14)(ii)(A).

8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (I)(1)(ii) of this section." A "subsidiary" is defined, in part, as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity."

In the initial I-129, the petitioner provided no information regarding the ownership of the United States operation despite the obligation to prove that the United States and foreign entities have a qualifying relationship. *See* 8 C.F.R. § 214.2(I)(14)(ii)(A). The petitioner simply stated in its letter dated December 1, 2004 that "[d]ocumentation supporting the corporate relationship between [the foreign entity] and [the petitioner] was previously submitted with the initial L-1 petition."

However, the petitioner did provide a copy of the Janitorial Franchise Agreement between the petitioner and [REDACTED], allowing the petitioner to operate as a Coverall franchise. This agreement explains the amount of control over the enterprise the petitioner has chosen to cede to the franchisor, Coverall. While the beneficiary is not an employee of Coverall, the petitioner is bound to operate its business in accordance with the terms and conditions of the agreement. The agreement vests Coverall with vast authority to control the petitioner's operation of the business and to control petitioner's enterprise beyond its provision of services to Coverall customers. For example, the agreement includes a non-competition clause, which prohibits the petitioner from providing janitorial or related services to other customers, both during and after the term of the contract. The agreement also gives Coverall the exclusive right to perform all billing for services or supplies provided by the petitioner. Once Coverall subtracts all amounts due it, the petitioner is given whatever is left. Finally, the agreement empowers Coverall to pull the petitioner off any job should a customer complain.

On January 12, 2005, the director sent a Notice of Intent to Deny. Specifically, the director gave the petitioner thirty days to submit additional information, evidence, or arguments to support its contention that there is a qualifying relationship between the foreign entity and the petitioner, citing concerns about the franchise agreement.

In response, the petitioner submitted, *inter alia*, a 2004 Form 1120 for the petitioner. The petitioner did not submit any other evidence regarding the ownership of the petitioner or its relationship to the foreign entity.

On March 11, 2005, the director denied the petition. The director determined that the petitioner did not establish that there is a qualifying relationship between the petitioner and the foreign entity. The director specifically noted (1) the franchise agreement between the petitioner and Coverall; and (2) the petitioner's response in its 2004 Form 1120 indicating that the beneficiary devotes 100% of his time to the petitioner's business as evidence that it is not a subsidiary of a foreign entity but, rather, is owned by the beneficiary outright.

On appeal, the petitioner asserts that the director erred in that the response cited by the director in the 2004 Form 1120 does not refer to ownership of the petitioner but, rather, is a statement concerning the amount of time the beneficiary as an officer devotes to the business of the petitioner. The petitioner does not address the franchise issue.

Upon review, petitioner's assertions are not persuasive.

While the petitioner is technically correct that the director's reliance on its response in the 2004 Form 1120 is misplaced, the petitioner failed to explain other troubling inconsistencies in the 2004 Form 1120 which undermine its claim that the petitioner is 100% owned by a foreign entity. For example, the petitioner answered "no" to the query: "[i]s the [petitioner] a subsidiary in an affiliated group or in a parent-subsidiary controlled group?" Likewise, the petitioner answered "no" to the query "did any individual, partnership, corporation, estate, or trust own, directly or indirectly, 50% or more the corporation's voting stock?" Finally, the petitioner answered "no" to the query "did one foreign person own, directly or indirectly, at least 25% [of the petitioner]?" Since all of these responses are inconsistent with the petitioner's contention that it is 100% owned by a foreign entity, the petitioner has failed to prove that it has maintained a qualified relationship with the foreign entity. 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).

Moreover, the record is entirely devoid of any other evidence of a qualifying relationship with the foreign entity. The petitioner has failed to provide stock certificates, a stock ledger, or any other documents that could prove that a foreign entity has an ownership interest in the petitioner. While the petitioner asserts that it provided such evidence in the past, the regulations clearly obligate the petitioner to submit this evidence when seeking to extend a new office petition. *See* 8 C.F.R. § 214.2(l)(14)(ii)(A). Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d).

Finally, even if the petitioner was able to prove that the foreign entity and the petitioner had a qualifying

relationship based on ownership, the petitioner did not prove that there is a qualifying relationship based on control. In this case, the foreign entity does not control the petitioner because the petitioner ceded primary control over the enterprise to Coverall in the Janitorial Franchise Agreement.

Although a franchise may be an asset of an independently owned and operated company, and pursuit of a franchise business model alone does not automatically disqualify a petitioner from establishing that it has a qualifying relationship with a foreign entity, the petitioner must prove that it has retained the necessary latitude to control, direct, and develop the enterprise. *See Matter of Kung*, 17 I&N Dec. 260 (BIA 1978). In this case, the petitioner has ceded to Coverall the authority to send and collect invoices, to pay itself fees, to recruit customers for the petitioner, to take customers away, and to enjoin the petitioner from providing janitorial services to anyone other than through Coverall. Given the terms of the Janitorial Franchise Agreement, the petitioner has lost any realistic ability to control, direct, or develop the enterprise. Therefore, there is no qualifying relationship between the foreign entity and the petitioner.

Accordingly, the petitioner has not proven that the petitioner and the foreign entity have a qualifying relationship as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G), and the petition will also be denied for that reason.

That being said, the director's reliance on *Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm'r 1970), is hereby withdrawn. This decision held that a franchise relationship between a United States and a foreign entity was not sufficient to establish a qualifying relationship. This decision is inapposite in this matter where the franchise agreement is not being used to establish a qualifying relationship. To the contrary, the franchise agreement with Coverall, through which the franchisee relinquished control to the franchisor, undermines the element of control over the United States entity, and it only becomes relevant when assuming ownership by a foreign entity. Simply operating a franchise does not prohibit a petitioner from establishing a qualifying relationship with a foreign entity, and the holding of *Schick* has no relevance to this matter.

Moreover, the director's reliance on the franchisor's website in concluding that there would not be actual ownership and control of the petitioner is also withdrawn. The director should have relied on the terms of the franchise agreement and other documents in the record in making this conclusion, and not on information outside the record. However, since the Janitorial Franchise Agreement, which is part of the record, establishes alone that the petitioner does not have any realistic ability to control, direct, or develop the enterprise, the director's reliance on the website was harmless error.

Beyond the decision of the director, the minimal documentation of the petitioner's business operations raises the issue of whether the petitioner is a qualifying organization doing business in the United States. Specifically, under the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B), a petitioner must demonstrate that, for the previous year, it has been engaged in the regular, systematic, and continuous provision of goods or services. In this matter, the petitioner has failed to produce evidence establishing that its business activities commenced prior to April 2004. Therefore, the petitioner has not established that it has been engaged in the regular, systematic, and continuous provision of goods or services since the original "new office" petition was approved. For this additional reason, the appeal must be dismissed and the petition denied.

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. v. Upchurch*, 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 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.

**ORDER:** The appeal is dismissed.