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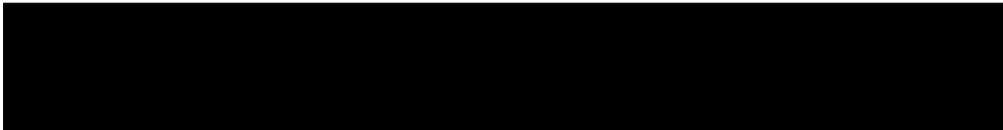
File: SRC 06 102 52547 Office: TEXAS SERVICE CENTER Date: AUG 01 2007

IN RE: Petitioner:  
Beneficiary:



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

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to extend the employment of its international executive vice 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 limited liability company organized under the laws of the State of Florida and is allegedly an exporter of pharmaceutical products. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States 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 for review. On appeal, the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of an executive or function manager. 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.
- (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 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 in the initial petition 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.

The petitioner described the beneficiary's job duties in the United States in the Form I-129 as "[e]stablish, coordinate, train and supervise a staff or [sic] purchasers and exporters of pharmaceutical products to Venezuela." The foreign entity further described the beneficiary's proposed duties in a letter dated January 23, 2006 as performing "the functions of a technically proficient [p]harmacist, purchaser and importer of pharmaceuticals and medical supplies into Venezuela." Finally, in a list of all of the prospective positions in the United States, the petitioner described the beneficiary's proposed duties as:

Responsible for overseeing, evaluating, and managing all ventures in which the company is interested in pursuing, Latin American [sic]. These responsibilities include product development, product registration (in each country), legal documentation, and technical information processing which require the know-how of a professional, licensed pharmacist.

On February 21, 2006, the director requested additional evidence. The director requested an organizational chart for the United States operation including employee names, job titles, job descriptions, and educational backgrounds as well as wage reports for the petitioner's staff.

In response, the petitioner submitted wage reports indicating that the petitioner employed two people during the third and fourth quarters of 2005. The petitioner also submitted a letter dated February 21, 2006 from its accountant indicating that, as of February 2006, the petitioner employed five people. However, the accountant did not reveal when, exactly, the additional employees were hired. The instant petition was filed on February 10, 2006.

Finally, the petitioner submitted an organizational chart dated January 1, 2006 and an associated list of employees and job descriptions. According to these documents, the beneficiary is performing the duties of

the international vice president, the administrative vice president, the international sales manager, and the international sales force. The beneficiary is also shown to have direct or indirect supervisory authority over an executive assistant and an accountant. While the chart lists a president/sales and marketing vice president, the beneficiary appears to both supervise and report to this individual who, like the beneficiary, has been ascribed multiple duties and functions. Finally, although the chart identifies two sales employees, it is unclear whether these employees actually report to the beneficiary. To the contrary, it appears as if the sales employees report to the president/sales and marketing vice president.

As indicated above, the job descriptions appended to the organizational chart ascribe four separate sets of duties to the beneficiary. While the duties ascribed to her as "international vice president" and "international sales manager" are identical to each other and to those duties listed in the above reproduced job description, the duties ascribed to her as "administrative vice president" and "international sales manager" are as follows:

**ADMINISTRATIVE VICE PRESIDENT**

**Vacant**

Presently being performed by [the beneficiary]. Once appointed, this individual will be responsible for maintaining and controlling company's account receivables, account payables, bank accounts and general office policies.

**INTERNATIONAL SALES FORCE**

**Vacant**

Presently being performed by [the beneficiary]. Employees to be hired will perform all sales and marketing procedures pertaining to the company's international sales schemes and reports directly to the International Sales Manager.

The petitioner does not reveal how much time the beneficiary devotes to each of the roles ascribed to her.

As for the subordinate employees, the executive assistant is described as a clerical employee and the sales force is described as being engaged in sales activities.

On August 25, 2005, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary's duties are primarily those of an executive or functional manager. Counsel submitted additional evidence including wage reports for the first quarter of 2006 which indicate that the petitioner employed five people in February 2006, the month in which the instant petition was filed. Counsel, however, asserts that the petitioner employed eight people in February 2006. Moreover, counsel asserts that the director was obligated by 8 C.F.R. § 214.2(l)(8)(i) to issue a Notice of Intent to Deny before denying the instant petition.

Upon review, the petitioner's assertions are not persuasive.

Title 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 Citizenship and

Immigration Services (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 United States operation has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* 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 establish 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 will do on a day-to-day basis. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes lofty duties does not establish that the beneficiary will actually be performing managerial duties. 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). 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).

Likewise, the duties ascribed to the beneficiary appear to be primarily non-qualifying administrative or operational tasks which do not rise to the level of being managerial or executive in nature. For example, the petitioner states that the beneficiary's responsibilities will include "product development, product registration (in each country), legal documentation, and technical information processing which require the know-how of a professional, licensed pharmacist." Moreover, the petitioner states that the beneficiary is presently "maintaining and controlling company's account receivables, account payables, bank accounts and general office policies" in her role as "administrative vice president," and that the beneficiary is presently performing "all sales and marketing procedures pertaining to the company's international sales schemes." However, these sales, administrative, and technical duties constitute non-qualifying administrative or operational tasks when performed by the beneficiary. As the petitioner has not established how much time the beneficiary devotes to such non-qualifying tasks or whether subordinate staff members are performing some or all of these tasks, it cannot be confirmed that she is "primarily" employed as a manager. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988). The fact that the petitioner plans to hire more employees to relieve the beneficiary of the need to perform the non-qualifying tasks associated with the

"administrative vice president" and the "international sales force" positions is not relevant to this proceeding. As indicated above, the regulations allow the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. If the United States operation has not developed to the point that it can support an executive or managerial position, the beneficiary will be ineligible for an extension. Based on the various non-qualifying tasks ascribed to the beneficiary at the time of the instant petition's filing, the beneficiary is ineligible for an extension.

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory or managerial employees. As explained in the organizational chart, wage reports, and job descriptions for the subordinate employees, the petitioner appears to employ four people in addition to the beneficiary. While the organizational chart is confusing given that the beneficiary and another individual are assigned multiple jobs, it appears that three of the employees can be described as being subordinate to the beneficiary, either directly or indirectly. However, these three employees – two sales representatives and an executive assistant – are described as performing the tasks necessary to the provision of a service or the production of a product. The subordinate employees are not described as having supervisory or managerial functions. In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. A managerial 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.<sup>1</sup>

Moreover, the petitioner has not established that the beneficiary will manage professional employees. In 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

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<sup>1</sup>It is noted that the director only considered the petitioner's employment of two people in adjudicating the petition because the petitioner had only presented evidence confirming its employment of two individuals in the third and fourth quarters of 2005. The record before the director was devoid of any evidence that the petitioner employed any additional employees beginning in 2006 other than the letter from the petitioner's accountant dated February 21, 2006. On appeal, however, counsel submitted wage reports for the first quarter of 2006 which confirm that the petitioner employed five individuals beginning in February 2006. The wage reports are generally consistent with the accountant's letter and the organizational chart and will be considered by the AAO in adjudicating the appeal since this evidence was not previously available and relates to a fact in place at the time the petition was filed. That being said, and for the reasons articulated herein, the petitioner has nevertheless failed to establish that the beneficiary will be employed in a managerial or executive capacity.

Finally, it must be noted that counsel, in his brief, asserts that the petitioner employed eight people at the time the instant petition was filed. This assertion is entirely unsupported by the evidence. Not only does this contradict both the accountant's letter and the organizational chart, it is inconsistent with the wage reports counsel submits on appeal to support his assertions. Counsel's assertion will be disregarded.

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 the subordinate employee. The possession of a bachelor'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. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the duties of any of the beneficiary's subordinate employees. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>2</sup>

Similarly, the petitioner has failed to establish 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

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<sup>2</sup>While counsel implies on appeal that the beneficiary should be classified as a functional manager, the record does 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(1)(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. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions, if any, and what proportion would be non-managerial. Also, as explained above, the record establishes that the beneficiary is primarily a first-line manager of non-professional employees and/or is performing non-qualifying administrative or operational tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her 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).

stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will be acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, the beneficiary appears to be primarily employed as a first-line supervisor and/or is performing non-qualifying administrative or operational tasks. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in approving a visa for a multinational manager or executive. *See* § 101(a)(44)(C) of the Act. However, 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). Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act. Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will be primarily performing managerial or executive duties, and the petition may not be approved for that reason.

Finally, counsel argues on appeal that the regulation at 8 C.F.R. § 214.2(l)(8)(i) required the director to issue a Notice of Intent to Deny prior to issuing an adverse decision. Counsel's argument is without merit. At the time the director denied the petition, this section of the regulation stated as follows:

Notice of intent to deny. When an adverse decision is proposed on the basis of evidence not submitted by the petitioner, the director shall notify the petitioner of his or her intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

In this matter, the director based her decision on the record and not on evidence submitted from some other source. Therefore, 8 C.F.R. § 214.2(l)(8)(i) is not relevant to this proceeding. Counsel misinterprets this regulation to obligate the director to issue a Notice of Intent to Deny when an adverse decision is proposed on the basis of missing evidence. This is incorrect. While the director, at the time the petition was denied, was obligated to request additional evidence when initial evidence is missing pursuant to 8 C.F.R. § 103.2(b)(8), the obligation to issue a Notice of Intent to Deny under 8 C.F.R. § 214.2(l)(8)(i) arose only if the director had proposed to deny a petition based on evidence outside of the record. It is noted that, in this case, the director correctly requested additional evidence pursuant to 8 C.F.R. § 103.2(b)(8) prior to denying the petition and that her denial was based solely on the record before her.<sup>3</sup>

Beyond the decision of the director, an additional issue in this matter is whether the petitioner has established

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<sup>3</sup>It is noted that substantial revisions have been made to the regulations as these pertain to Requests for Evidence and Notices of Intent to Deny. *See* 72 F.R. 19100 (Apr. 17, 2007). As these changes did not become effective until June 18, 2007, they are not relevant to the instant petition.

that it still has a qualifying relationship with the foreign entity.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) states that a petition to extend a "new office" petition filed on Form I-129 shall be accompanied by:

Evidence that the United States and the foreign entity are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section[.]

Title 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 (l)(1)(ii) of this section" and "is or will be doing business." A subsidiary is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity."

The regulation 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; *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 matter, the petitioner asserts in the Form I-129 that it is 51% owned by the foreign entity and 49% owned by a third party. However, both the beneficiary's 2005 Form 1040 and the petitioner's 2005 Form 1065 directly contradict this assertion. These documents indicate that the petitioner is 50% owned by the beneficiary and 50% owned by a third party. The petitioner offers no explanation for this fundamental and serious inconsistency in the record which undermines its claim of having a qualifying 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). Therefore, as the petitioner has not credibly established that it still has a qualifying relationship with the foreign entity, the petition may not be approved for this additional 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 the 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

