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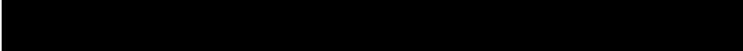
**U.S. Citizenship
and Immigration
Services**

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File: EAC 07 001 51321 Office: VERMONT SERVICE CENTER Date: **AUG 03 2007**

IN RE: Petitioner: 
Beneficiary: 

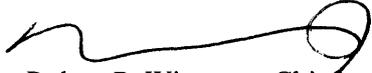
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to extend the employment of its manager/president as an L-1A 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 incorporated in Alabama and Tennessee and claims to be engaged in the operation of a gas station/convenience store and a cellular phone and services store. It states that it is an affiliate of New Ali Tractor, located in Hyderabad, Pakistan. The beneficiary was initially granted a one-year period of stay in L-1A status to open a new office in the United States, and the petitioner now seeks to extend his status for a two-year period.¹

The director denied the petition, concluding that the petitioner did not establish that the beneficiary will be employed by the United States entity in a managerial or executive capacity. The director found that the record contained insufficient evidence of the beneficiary's duties, the petitioner's proposed staffing, or the company's business plan, and determined that the petitioner would not support the beneficiary in a managerial or executive position "within one year."

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner provided a clear description of the beneficiary's duties in the initial petition submitted in 2005 and questions why the director requested a business plan for the extension of a new office petition. Counsel asserts that the beneficiary will be employed in a managerial or executive capacity under the extended petition. Counsel submits a brief and evidence in support of the appeal.

Upon review and for the reasons discussed herein, counsel's assertions are not persuasive. 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

¹ The petitioner stated on the L classification supplement to Form I-129 that the beneficiary is coming to the United States to open a new office. The beneficiary was previously granted L-1A status in order to open a new office for ██████████, an Oklahoma corporation (SRC 05 252 53241) with validity dates from October 12, 2005 to October 12, 2006. The Oklahoma corporation was dissolved on June 30, 2006, and the petitioner has re-incorporated under the same name in both Alabama and Tennessee. Under the governing regulations at 8 C.F.R. § 214.2(l)(3)(v), a U.S. petitioner that has been doing business for less than one year may petition for a manager or executive if it can be expected that the new office will, within one year, support a managerial or executive position. After one year, the regulations require the petitioner to file for an extension with supporting documentation evidencing that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii). As discussed herein, the petitioner can no longer be considered a "new office."

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.

According to 8 C.F.R. § 214.2(l)(1)(ii)(F), a "new office" is defined as "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year." Doing business is defined as "the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii)(H).

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that, after one year, 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.

Preliminarily, the AAO will address whether the instant petitioner should be considered a "new office." The petitioner indicated on Form I-129 that the beneficiary is coming to the United States to open a new office, notwithstanding the fact that he was already granted a one-year period in L-1A status for this purpose. However, the supporting evidence submitted in support of the petition suggested that the petitioner intended to extend the beneficiary's status pursuant to 8 C.F.R. § 214.2(l)(14)(ii). The director's decision suggests that the petition was treated as a new office pursuant to the requirements at 8 C.F.R. § 214.2(l)(3)(v), either due to the petitioner's statement on Form I-129, or because the petitioner had dissolved the initially established Oklahoma corporation, and re-incorporated the company in Tennessee and Alabama several months prior to filing the instant petition.

Upon review, the director should not have applied the regulations at 8 C.F.R. § 214.2(l)(3)(v), as the petitioner may not be granted a second "new office" L-1A visa approval. The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business, or businesses. The regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. By allowing multiple petitions under the more lenient standard, USCIS would in effect allow foreign entities to create under-funded, under-staffed or even inactive companies in the United States, with the expectation that they could receive multiple extensions of their L-1 status without primarily engaging in managerial or executive duties. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii). The petitioner cannot circumvent the regulations by dissolving the original company and re-incorporating during its initial year of operations.

As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility pursuant to the regulations at 8 C.F.R. § 214.2(l)(14)(ii). *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The sole issue addressed by the director is whether the beneficiary will be employed by the petitioner 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 nonimmigrant petition was filed on September 29, 2006. In a letter dated September 26, 2006, the petitioner provided the following description of the beneficiary's duties as manager/president:

[The beneficiary] has overseen the general operation of the business including obtaining all the states [sic] and local permits, including Alabama and Tennessee Sales and Use Permit. . . .

[The beneficiary] supervises a staff of four (4) personnel and ensures compliance with the Alabama and Tennessee Department of Treasury tax return requirements. He maintains a full-time work schedule averaging 50 hours per week overseeing the operation of the retail stores which engage in the retail of various items, including Cell Phones, FedEx services, Satellite Dish Networks and a Retail Convenience Store. There have been no changes in the terms and conditions of [the beneficiary's] employment with our company.

The petitioner submitted evidence that the petitioner was incorporated in Alabama on May 9, 2006 and in Tennessee on June 16, 2006, and submitted evidence that it dissolved an Oklahoma corporation of the same name on June 30, 2006.

The petitioner submitted a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2006, which indicates there were no employees and no wages were paid. The petitioner submitted two different versions of its Form 941 for the second quarter of 2006, one which indicates that no employees and no wages were paid, and one which indicates that total wages of \$1,200 were paid to two employees. The petitioner also submitted a copy of its Tennessee quarterly wage report for the second quarter of 2006, which shows that two employees each received \$600 during the month of June 2006.

The petitioner indicated that the beneficiary would work in Huntsville, Alabama at what appears to be his residential address. The petitioner did not submit evidence of the staffing level of its Alabama operations, a retail store doing business as "Cellular Max."

The director issued a request for additional evidence on October 13, 2006, in which the petitioner was instructed to provide the following: (1) an organizational chart for the U.S. entity specifically outlining the beneficiary's position, and providing complete position descriptions for all subordinate positions; (2) a comprehensive description of the beneficiary's proposed duties indicating how those duties qualify as managerial or executive in nature; and (3) evidence to show how the company has grown to be of sufficient size to support a managerial or executive position, and to show that the beneficiary is relieved from performing the non-managerial, day-to-day operations involved in producing a product or providing a service. The director also requested evidence pertaining to the "new office" regulations at 8 C.F.R. § 214.2(1)(3)(v), which, as discussed above, is not relevant to this proceeding.

In a response dated October 30, 2006, counsel for the petitioner stated that the beneficiary "will continue to plan, develop and establish policies and objectives for the Company, including, but not limited to reviewing activity reports and financial statements to determine progress and increase productivity and profitability."

The petitioner submitted an organizational chart showing that the beneficiary would oversee the petitioner's Memphis, Tennessee based cellular phone store and Huntsville, Alabama gas station/convenience store. The petitioner indicated that the Memphis location employs two employees, including an operations manager whose role is to "Operate store, negotiate terms and conditions of purchase orders and locate suppliers/supervise employees/close store." The petitioner indicated that the gas station/convenience store employs two sales clerks and a vice president/sales manager who is responsible to "meet sales quota/promote new deals/offers/marketing/maintenance of store area."

The director denied the petition on November 13, 2006, concluding that the petitioner did not establish that the beneficiary would be employed in a managerial or executive capacity. The director noted that based on the evidence submitted, it appeared that the beneficiary would act as a first-line supervisor of one store with responsibility for non-qualifying duties such as managing sales staff and inventory, and working directly with customers. The director emphasized that the petitioner had neglected to elaborate upon the beneficiary's proposed duties in the United States. As noted above, the director's analysis was based on whether the

petitioner would support the beneficiary in a managerial or executive capacity "within one year's time." Since the petitioner is not eligible to request a second approval as a "new office," the petitioner must establish that the beneficiary would be employed in a primarily managerial or executive capacity as of the date of filing, not in one year's time, as erroneously stated by the director.

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a managerial and executive capacity, and contends that the director "incorrectly punishes the Petitioner and Beneficiary for a deemed failure to provide a detailed description of the duties of the position offered the beneficiary." Counsel re-iterates the beneficiary's job duties as stated in the petitioner's letter dated September 26, 2006 and its response to the request for evidence, and also provides a copy of a letter dated September 30, 2005, which the petitioner had submitted in response to a request for evidence in connection with the previous petition filed on behalf of the beneficiary. Counsel asserts that the descriptions submitted are "entirely consistent with the duties outlined in the Department of Labor Job Titles." Counsel argues that the regulations "do not define how or to what extent 'detailed duties' are to be 'defined' or 'detailed.'" Counsel asserts that the letters submitted "make it very clear what the position of 'President' entailed," and alleges that the director's determination was overreaching.

Counsel also contends that the director placed undue emphasis on the number of employees to be supervised by the beneficiary. In addition, counsel asserts that the director failed to consider whether the beneficiary qualifies for L-1A classification in a managerial capacity and instead only considered whether he qualified as an executive. As evidence of the beneficiary's managerial capacity, counsel states:

The record will reflect that [the beneficiary] negotiated and executed various lease agreements, service agreements with cellular telephone companies, federal express, dish network, gasoline providers/retail suppliers and executed articles of incorporation, sales tax returns, bank accounts, lines of credit, etc., all in his capacity as the "President/CEO" of [the petitioner]. Additionally, [the beneficiary] actively sought out these businesses and is in the process of locating additional locations to increase revenue and add products.

Upon review of the petition and evidence, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition.

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.* In cases involving the extension of a petition for a "new office," the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(C) requires that the petitioner submit a statement of the duties performed by the beneficiary during the first year of operations, and the duties to be performed under the extended petition.

The evidence submitted in support of the initial petition provided no insight into what the beneficiary actually does on a day-to-day basis as the manager/president of the petitioning company. The petitioner stated that the beneficiary has "overseen the general operation of the business including obtaining all the states and local

permits," and that he spends 50 hours per week "overseeing the operation of the retail stores." The beneficiary was also claimed to supervise a total of four personnel working in two retail stores located approximately 200 miles apart, and to ensure compliance with tax return requirements. These general statements fall significantly short of meeting the petitioner's burden of establishing that the beneficiary would be performing primarily managerial or executive duties under the extended petition, and would not be considered clear or detailed by any standard. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Upon review of the initial petition, the director reasonably requested that the petitioner submit a comprehensive description of the beneficiary's duties, indicate how those duties are managerial or executive in nature, and clearly show how the beneficiary is relieved from performing the non-managerial day-to-day operations of the petitioner's businesses. The petitioner's response to the director's request for a "comprehensive" description was that the beneficiary will "plan, develop and establish policies and objectives for the Company, including but not limited to reviewing activity reports and financial statements to determine progress and increase productivity and profitability." Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The petitioner did not show a good faith effort to respond to the director's request for the required detailed job description. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Accordingly, the record before the director contained no concrete description of what the beneficiary does on a day-to-day basis as the manager/president of the petitioning company. The definitions of executive and managerial capacity have two specific requirements. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Here, while the AAO does not doubt that the beneficiary exercises decision-making authority and overall oversight over the petitioning company as its manager/president, the petitioner has not met its burden to show that the beneficiary primarily performs managerial or executive duties. The AAO cannot accept a managerial or executive job title and broad, conclusory assertions regarding the beneficiary's responsibilities in lieu of the required detailed description of the beneficiary's duties. The petitioner has not described the beneficiary's actual duties, such that they could be classified as managerial or executive in nature.

Counsel argues on appeal that the job description submitted in support of the beneficiary's previous L-1A petition should have been considered in the instant proceeding. It is worth emphasizing that each petition

filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, U.S. Citizenship and Immigration Services (USCIS) is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Furthermore, the job description submitted with the previous petition represented the beneficiary's proposed duties for the start-up operation, while the regulations at 8 C.F.R. § 214.2(l)(14)(ii) clearly require the petitioner to describe the actual duties the beneficiary performed during the first year of operations and will perform under the extended petition. The record shows that the petitioner departed from its initial business plan to operate a jewelry store in Texas and sell automobile parts and accessories from a base in Oklahoma City, and has undergone dissolution. As such, the beneficiary's proposed duties as of September 2005, as they relate to these non-existent Texas and Oklahoma businesses, have no bearing on a determination of the beneficiary's employment capacity at the time this petition was filed.

Counsel's insistence on appeal that the job description submitted with the initial petition was sufficiently detailed to establish the beneficiary's employment in a managerial or executive capacity, and the arguments that the regulations do not adequately define "detailed," are a poor substitute for a description of the beneficiary actual duties, and cannot be accepted in lieu of such a description.

Beyond the required description of the job duties, CIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In the instant matter, the regulations require 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. 8 C.F.R. § 214.2(l)(14)(ii)(D).

The petitioner initially claimed to employ four workers in addition to the beneficiary, but offered no further information regarding its staffing levels. The evidence of wages paid to employees indicated that the company had no employees in the first quarter of 2006. As noted above, the petitioner provided two different versions of its Form 941 for the second quarter of 2006, one showing that the petitioner had two employees in Memphis, Tennessee as of June 2006, and one showing no employees. Again, 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. at 591-92. The record remains devoid of documentary evidence that the petitioner has hired workers to staff its Huntsville, Alabama office. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N at 165.

In response to the request for evidence, the petitioner claimed to employ a total of five employees in addition to the beneficiary, two in one location, and three in the other location. On the organizational chart, the petitioner indicated that it operates "Cellular Max" in Memphis, Tennessee and a gas station/convenience store in Huntsville, Alabama while all other evidence in the record indicates that the gas station is located in Memphis and the cellular phone store is located in Huntsville. Accordingly, it is unclear which business is

claimed to employ two workers and which one is claimed to employ three workers. Regardless, the record does not contain evidence of how many employees were employed by the company at the time of filing and whether they were employed on a full-time or part-time basis, nor is there any evidence of wages paid to employees as of September 2006.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS 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.

Even if the AAO accepted the petitioner's unsupported statement that the U.S. company employed four employees in addition to the beneficiary at the time the petition was filed, it is not clear how two retail businesses could operate with this staffing level without the beneficiary's participation in the day-to-day operations of the company. Retail establishments, particularly convenience stores, are typically open for business more than 40 hours per week, which raises further questions regarding the petitioner's ability to staff two stores with only four employees. It is reasonable to conclude, and has not been shown otherwise, that the beneficiary would have to participate in the day-to-day operations of one or both businesses in order for them to remain operational, and that such activities would preclude him from performing primarily managerial or executive duties. 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Based on the petitioner's failure to provide a detailed description of the beneficiary's duties, or evidence regarding its staffing levels, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the AAO finds insufficient evidence in the record to establish that the petitioner has been doing business in the United States for the year preceding the filing of the petition, as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) states: “*Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.”

The evidence in the record shows that the petitioner was initially incorporated in Oklahoma in July 2005, with the intent to operate a retail jewelry business in Texas and an auto parts supply business in Oklahoma. The Oklahoma entity was dissolved on June 30, 2006, and the petitioner re-incorporated in Alabama and Tennessee in May and June 2006, respectively. There is no evidence to suggest that the petitioner ever commenced business operations in Oklahoma or Texas. Based on the record, the petitioner commenced business operations no earlier than June 2006, approximately three months prior to the filing of the petition, and thus it has not been established that the petitioner was doing business for the previous year. For this additional reason, the petition cannot be approved.

Another issue not addressed by the director is whether the petitioner has a qualifying relationship with the beneficiary's foreign employer. The petitioner has submitted articles of incorporation for two companies of the same name established in Tennessee and Alabama, but has not provided evidence of the ownership and control of either company. Although the petitioner claims that the beneficiary owns both the foreign and United States entities, the petitioner is also obligated to substantiate this claimed affiliate relationship with documentary evidence in order to meet its burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.