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U.S. Citizenship  
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Services

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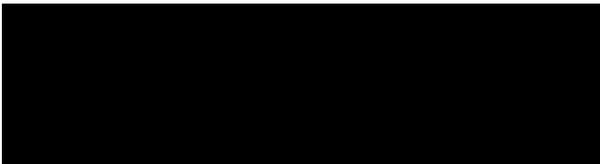


File: SRC 05 248 51900 Office: TEXAS SERVICE CENTER Date: **AUG 06 2007**

IN RE: Petitioner:   
Beneficiary: 

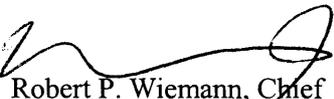
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Texas Service Center, denied the petition for a nonimmigrant visa and affirmed the decision on a motion to reopen and reconsider. 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 employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Kentucky corporation, states that it intends to engage in retail sales. The petitioner states that it is a branch office of BCM Corporation, located in Mumbai, India. The petitioner seeks to open a new office in the United States and has requested that the beneficiary be granted a three-year period in L-1A classification to serve as the U.S. entity's executive manager.<sup>1</sup>

The director denied the petition on May 26, 2006, concluding that the petitioner did not establish: (1) that the United States company has secured sufficient physical premises to house the new office; or (2) that the foreign entity had provided funding or capitalization for the U.S. company. The petitioner filed a timely motion to re-open or reconsider in response to the director's decision. The director granted the motion and affirmed her previous decision on November 21, 2006.

On appeal, counsel for the petitioner contends that the petitioner submitted evidence of the intent and financial ability of the foreign entity to transfer \$80,000 to the U.S. company immediately upon approval of the L-1A petition. Counsel asserts that the regulations do not require the petitioner to establish that it has funds in a U.S. bank account as of the date the petition is filed. Counsel also contends that the commercial office space secured by the petitioner will be separate from its eventual retail operations and their staff, and is sufficient for the beneficiary to carry out his proposed duties. Counsel submits a brief and documentary evidence in support of the appeal.

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.

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<sup>1</sup> Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

The first issue in this matter is whether the petitioner has submitted sufficient evidence of the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States.

The nonimmigrant petition was filed on September 12, 2005. The petitioner stated on Form I-129 that it is a "branch" of BCM Corporation, an Indian sole proprietorship owned by [REDACTED], who is also claimed to own 60 percent of the U.S. company. In an attachment to Form I-129, the petitioner stated that "the initial capital investment of the petitioner will be approximately \$110,000.00, funds which have been set aside for this purpose but which will be wired to the U.S. only after the visa petition is approved."

The petitioner submitted extensive financial documentation for the foreign entity, and a certificate from an Indian chartered accountant, [REDACTED], who states that "on verification of Books of Accounts and

other relevant records and on the basis of clarifications given by the owner, M/s BCM Corporation (Prop. [REDACTED]). is planning to start US Branch for export of Pharmaceuticals Products, bulk drugs & Handi Craft gift articles in USA." [REDACTED] stated that the foreign entity "is having funds available to the tune of approx. 1,00,000 USD or more," while [REDACTED] has "net own funds" of Rs. 103.05 Lacs.

On October 17, 2005, the director issued a request for additional evidence. The director instructed the petitioner to provide:

Evidence of the funding or capitalization of the United States company to include copies of wire transfers showing transfer of funds from the foreign organization and evidence of financial resources committed by the foreign company to include copies of bank statements for the U.S. business checking and saving accounts.

The director also requested the petitioner's business plan "demonstrating qualifications and financial goals for the first year of operations."

In a response dated January 6, 2006, counsel for the petitioner stated that evidence of the capitalization of the U.S. entity was being provided "in the form of funds which have been earmarked and set aside for that purpose." Counsel noted that "due to the substantial expenses which are incurred in taxes, duties and similar fees, the company abroad does not intend to transfer the funds to the U.S. until the petition has been approved." The petitioner did not submit copies of the U.S. company's bank statements.

The petitioner attached a new certificate from [REDACTED] who stated that "the net worth of [REDACTED] is Rs. 103.20 lacs and the available fund for the branch in USA is Rs. 35 Lacs."

The petitioner submitted a business plan for the U.S. entity, which indicates at page 2 that the company's initial capital requirements range between \$100,000 and \$250,000. According to the business plan, "these funds have been set-aside and will be advanced by the company upon its selection, after a thorough investigation and consideration of the market, economy and other factors, of our first convenience store." On page 10 of the business plan, where the petitioner discusses its financial status, "current cash available" is indicated as \$58,000. On page 26 of the business plan, it is stated that "the initial capital required is approximately \$500,000.00 to \$850,000.00. [The petitioner] will require additional investments to acquire an additional facility." The conclusion of the business plan also states "in order to start up this automated Gas Station and Convenience Store (C-Store) we are anticipating investing capital in the amount of from \$500,000.00 to \$850,000.00."

The director denied the petition on May 26, 2006, concluding that the petitioner failed to provide evidence that funding has been committed to the U.S. company from the foreign entity. Specifically, the director stated:

The petitioner concedes that there is no intention to transfer funds for the U.S. entity until the petition is approved. This statement demonstrates that funding has not been irrevocably committed to the U.S. entity to commence business. Though we requested copies of bank statements for the U.S. company's business checking and savings accounts as confirmation, the petitioner failed to provide such documents. Consequently, it has not been demonstrated that there was funding or capitalization committed by the foreign entity to commence doing business in the United States[.]

The petitioner filed a motion to reconsider on June 28, 2006, in which counsel argued that there is no regulatory requirement that funds be transferred to the U.S. prior to approval of the new office petition provided that the foreign entity has set aside funds for such purpose and intends to transfer investment funds once the petition is approved. Counsel asserted that the petitioner submitted sufficient evidence of the foreign entity's capacity and intent to fund the new enterprise in the United States. Counsel also argued that the U.S. company's bank statements were therefore neither relevant nor material.

In support of the motion, the petitioner submitted a statement from [REDACTED], dated June 14, 2006, who stated that the foreign entity "has immediately available for wire transfer funds in the amount of \$80,000 . . . which have been committed to and set aside for the purpose of capitalizing and funding the start-up operations of [the petitioner], a wholly owned subsidiary of BCM Corporation." The letter was accompanied by copies of recent bank statements for the foreign entity.

The director granted the petitioner's motion and affirmed the denial of the petition in a decision dated November 21, 2006. The director acknowledged the submission of bank statements from the foreign entity, but noted that the transactions indicated therein occurred subsequent to the date of filing the petition and cannot be considered in overcoming the grounds for the previous denial.

On appeal, counsel for the petitioner again asserts that the petitioner submitted "evidence of both intent and financial ability to finance the new venture, including the existence of and intent to transfer \$80,000 immediately upon the approval of the L-1A petition." Counsel contends that the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(3) only requires the petitioner to submit information pertaining to the size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business. Counsel states that there is no requirement for the foreign entity to actually transfer funds in advance of the petition approval, and suggests that Congress intended greater flexibility with regard to funding by requiring "information" related to the investment, as opposed to evidence that funds had been transferred.

Upon review, counsel's assertions are not persuasive. As noted by the director, the record as presently constituted contains no evidence of any funds already provided to the U.S. entity for the purpose of establishing the subsidiary company, nor any evidence that the company even had a bank account as of the date of filing. Furthermore, contrary to counsel's assertions, neither the initial petition filing nor the petitioner's response to the director's request for evidence included persuasive evidence of the foreign entity's ability or intent to capitalize the U.S. company. The initial filing included a letter dated July 11, 2005, from an accountant who stated that the foreign entity intends to start a U.S. branch that will import pharmaceutical products, bulk drugs and "handi craft gift articles." All other evidence in the record, including the petitioner's business plan, indicates that the U.S. company intends to operate gas stations and convenience stores. 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).

Further, the accountant merely stated that the foreign entity has approximately \$100,000 available, and that the foreign entity's owner has a net worth of Rs. 103.05 lacs. In response to the director's request for additional evidence, the petitioner submitted another letter from the foreign accountant, who stated that the foreign entity's owner has Rs. 35 Lacs available funds for the U.S. branch office. This evidence falls

significantly short of establishing that the foreign entity has the intent and the ability to capitalize the petitioning company, or that such funds had actually been committed, particularly since both letters came from a third party, rather than from the owner of the foreign entity. Moreover, all financial documentation for the foreign entity provides figures in Indian rupees, and thus the AAO cannot determine whether the foreign entity's financial position can support the anticipated start-up capital requirements of the U.S. company. While counsel questions the need for the foreign entity to actually deposit any money in a U.S. bank account in order to meet the regulatory requirements, the AAO finds insufficient evidence that such funds are even available and were committed as of the date of filing.

The AAO acknowledges that on motion, the petitioner did submit a statement from the owner of the foreign entity who, as of June 2006, states that he intends to wire transfer \$80,000 in funds that have been committed to and set aside for the purpose of capitalizing and funding the start-up operations of the U.S. company. However, as noted by the director, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Regardless, the letter from the foreign entity's owner was once again accompanied by financial documents providing figures in Indian rupees only.

Another deficiency not addressed by the director is the petitioner's failure to clearly and consistently identify its anticipated start-up costs. If the petitioner does in fact anticipate requiring a capital investment between \$100,000 and \$250,000, then the proposed \$80,000 wire transfer would appear to be insufficient. The business plan also indicates that the company has \$58,000 in available cash, but no evidence of such funds has been provided. Furthermore, the petitioner has inexplicably included two "Capital Requirements" sections in its business plan, one indicating that \$100,000 to \$250,000 in initial capital will be required, and one indicating that \$500,000 to \$850,000 will be required. 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. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Overall, the evidence submitted does not clearly establish the size of the foreign entity's investment in the United States entity, nor does it demonstrate that the company had or would have sufficient funds to meet its anticipated start-up costs at the time the petition was filed. The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue. Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner had secured sufficient physical premises to house the new office as of the date the petition was filed, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

At the time of filing, the petitioner submitted a commercial lease for 450 square feet of office space located on Brookhaven Road in Franklin, Kentucky, to be used for office purposes only. The lease, which identifies "Team Work Enterprises, Inc." as the lessor, did not include the street number of the premises. The petitioner stated that it intends to engage in retail sales and anticipates having four employees at the end of the first year of operations.

In the request for additional evidence, the director requested that the petitioner submit a square footage layout for the principal place of business and other evidence that premises sufficient to house the new operation have been secured. As noted above, the director also requested the petitioner's business plan.

In response, the petitioner submitted a small diagram intended to depict the layout of the petitioner's physical premises. The diagram shows a reception area, conference room, office and restroom, and states that the total square footage is 485 feet. According to the petitioner's business plan, the petitioner intends to operate a gas station with a 2,500 square foot convenience store.

The director denied the petition on May 26, 2006, concluding that the petitioner had not established that it had secured sufficient physical premises to house the new U.S. office. The director found that the petitioner's general diagram was non-responsive to the request for the square footage layout of the leased premises, and further noted that it did not appear to coincide with the lease agreement. The director found that a 450 square foot office would not be sufficient to house the new office or the projected employees.

On motion, counsel for the petitioner stated that the premises "are certainly sufficient to house the initial office of a new enterprise." Counsel further asserted: "The petitioner intends to engage in the retail sale of groceries, services, sundries and gas and the central office at which the beneficiary works is separate from the retail sales establishment in which the petitioner will invest."

The director affirmed the denial of the petition on November 21, 2006, but did not specifically address counsel's arguments.

On appeal, counsel emphasizes that the petitioner's ultimate goal in the United States is commercial real estate management and development, and as such, the initial business premises obtained are sufficient for this purpose. Counsel asserts that the beneficiary would not be working as an on-site manager at any retail location, but would carry out his duties in the commercial office space secured, while the prospective employees would work and carry out retail sales activities at separate premises once a location is determined. Counsel also clarifies that the petitioner's leasing agent advised the company that there was no available square footage layout for the company's leased premises.

Upon review, the petitioner has not established that the U.S. company had secured sufficient physical premises to house its proposed business.

If a petition indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner bears the burden of establishing that its physical premises should be considered "sufficient" as required by the regulations. To do so, it must clearly identify the nature of its business, the specific amount and type of space required to operate the business, its proposed staffing levels, and evidence that the space can accommodate the petitioner's growth during the first year of operations.

Here, the petitioner's business plan indicates that the company will operate a gas station and convenience store during its first year of operations. It is clear from the record that the petitioner has neither purchased nor leased a retail location and it would thus not be prepared to commence doing business upon the approval of the petition. With respect to the office space secured, the AAO notes that the lease agreement appears to have been signed between the petitioner and the lessor approximately six weeks before the U.S. company was even incorporated. The lease agreement does not contain the street address of the physical premises, and there is no evidence in the record that the petitioner, which apparently does not have a bank account, has made rent payments.<sup>2</sup> Even if the petitioner had established that a 450 square foot office is sufficient to house the new office, the AAO has doubts as to the validity of the submitted agreement.

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

Beyond the decision of the director, the evidence of record does not established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner indicated that the beneficiary served as general manager of the foreign company. In support of the initial petition, the petitioner provided a letter from the foreign entity in which the beneficiary was described as being responsible to: "look after day to day work in the area of accounting, Finance and general aspect of the company"; "look after Sales Tax, Income Tax, Excise and Import and export procedures"; "to handle various Government authority"; "to control Inventory"; and "to control Account Receivable, Payable and Banking." This description suggested that the beneficiary has performed a combination of managerial and non-managerial duties associated with the company's financial and inventory operations, and did not clearly establish that he has been employed in primarily managerial capacity as defined at section 101(a)(44)(A) of the Act. 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).

Accordingly, the director requested additional evidence to establish that the beneficiary's employment abroad has been in a managerial or executive capacity. In response, the petitioner submitted a letter, ostensibly from the proprietor of the foreign entity although not on the same letterhead as the other letters in the record. The letter, dated December 22, 2005, included a list of 21 duties allegedly performed by the beneficiary as general manager of the foreign entity. The duties included: "study furniture industry and trends, fashion and style information, economic highlights and new of related issues"; "keep abreast of the news of the furniture industry, including information about product releases, fashion and style trends"; and "identify and analyze proven marketing tactics that have been utilized by most successful businesses in the furniture industry across the U.S." The foreign entity, by all accounts in the record of proceeding, is a pharmaceutical company

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<sup>2</sup> According to publicly available records held by the Kentucky Secretary of State, (*See* <http://apps.sos.ky.gov/business>), 1007 Brookhaven Road, Apt. 34A, Franklin, Kentucky 42134, the address utilized by the petitioner on Form I-129, continues to be used by the landlord, "Team Work Enterprises, Inc." as its principal office address. The beneficiary, who is the petitioner's registered agent, and the registered agent for Team Work Enterprises, [REDACTED] both report having the same address: 926 South Main Street, Franklin, KY 42134. This address is identified as the beneficiary's residential address on Form I-129.

specializing in distribution of generic formulations, marketing of active pharmaceutical ingredients, testing services, and research activities. The job description contained in the letter is clearly not an accurate depiction of the duties performed by the beneficiary as general manager of the foreign entity and bears no resemblance whatsoever to the initial job description submitted by the petitioner. These discrepancies, considered with the fact that the letter was not printed on the foreign entity's company stationery, create doubt as to whether the letter was even reviewed or signed by the owner of the foreign entity. In addition, counsel for the petitioner included a description of the beneficiary's duties with the foreign entity in her letter dated January 6, 2006, in which she stated that the beneficiary's duties included: "Manage, direct, oversee and control the day-to-day operations, activities and development of *Ceramics Point* on an on-going basis." (Emphasis added). The foreign entity is "BCM Corporation," not *Ceramics Point*. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the AAO may reasonably conclude that the evidence of the beneficiary's employment with the foreign entity is not credible. For this additional reason, the petition cannot be approved.

Although not specifically addressed by the director, the record is not persuasive in establishing that the beneficiary would be employed by the petitioner in a primarily managerial or executive capacity within one year, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). The petitioner initially provided only a vague description of the beneficiary's proposed role as president/director which fails to establish what he would primarily do on a day-to-day basis. For example, the petitioner stated that the beneficiary would "look after day to day activities," "explore various other business potential," "develop new business in retail industries," and "maintain Bank Accounts and creditability." 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 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).

In response to the director's request for additional evidence to establish that the beneficiary would be employed in a primarily managerial or executive capacity, counsel for the petitioner, in a letter dated January 6, 2006, provided a six-page description of the beneficiary's proposed duties suggesting that he would spend the majority of his time analyzing sales, studying customer traffic, and establishing employee training and development programs. While the description was extremely detailed, it did not expand upon the duties included in the initial description and did not clearly establish that the beneficiary's duties would be primarily managerial or executive in nature.

The petitioner has also failed to provide a clear and consistent description of the proposed organizational structure of the U.S. entity. At the time of filing, the petitioner stated that the petitioner anticipated hiring a general manager, sales manager, assistant manager and assistant secretary during the first year of operations. Counsel indicated in her letter dated January 6, 2006 that the petitioner would employ one manager, two assistant managers, one accountant/financial analyst, and six sales/administrative assistants. The petitioner also submitted a proposed organizational chart in response to the request for evidence, which indicated that the company would employ an assistant general manager, two assistant managers, one cashier, four assistant cashiers, and two cashier/stockpersons. According to the petitioner's business plan, the company will employ "management staff" and "three individuals" at the end of its first year of operation. The AAO is not in a position to determine which of these anticipated organizational structures is most likely valid. 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.

Finally, it is noted that the petitioner's business plan, while lengthy, contains various statements which lead the AAO to doubt the validity of the petitioner's claims. The record indicates that the petitioner intends to operate gas station/convenience stores in the United States. Several portions of the business plan clearly do not refer to the instant petitioner. For example, the plan indicates: "Because our customers tend to be top corporate managers, it is important that our company's chief executive officer and senior managers present our product in an effective and appealing way to our customer base." The business plan also states that "[the petitioner] has chosen to use its personnel as a direct sales force because our products require considerable customer education and post-sales support." The plan refers to "hot-line service" for customers enrolled in a "maintenance/support program," and "OEM staff" who will refer support issues to the petitioner, and indicates that it will develop technical articles "written by key executives or engineers" for publication in trade journals and technical conferences. The petitioner refers to its "sales and tech support teams," and states its desire to portray the company "as the leading supplier of state-of-the-art dynamic products." Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

As the petitioner has not provided a credible business plan or evidence of investment, the AAO cannot determine whether any of its four proposed staffing structures is feasible. Overall, the evidence submitted is insufficient to establish that the U.S. entity will support the beneficiary in a primarily managerial or executive position within one year, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). For this additional reason, the petition cannot be approved.

The final issue to be addressed is whether the petitioner established that it is a qualifying organization for the purpose of this visa classification. It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. In order to meet the definition of "qualifying organization," there must be a United States employer, which would include a firm, corporation or other legal entity, such as a registered branch office of the foreign company. See 8 C.F.R. 214.2(l)(1)(ii)(G)(2). The instant petition was filed on September 12, 2005. However, the record shows that the U.S. company was not incorporated in Kentucky until September 23, 2005. Thus, it was not a legal entity at the time the petition was filed, and was not a qualifying U.S. employer. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). For this additional reason, the petition cannot be approved.

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

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 and the appeal dismissed 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.