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U.S. Citizenship
and Immigration
Services

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File: SRC 05 255 51136 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)

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 petition seeking to employ the beneficiary in the position of president to open a new office in the United States 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 corporation organized under the laws of the State of Florida, claims to be a "private investment company" which has allegedly purchased a convenience store in St. Petersburg, Florida. The petitioner alleges to have a qualifying relationship with the beneficiary's sole proprietorship, a private mail delivery business, in New Zealand.

The director denied the petition concluding that the petitioner failed to establish that (1) the beneficiary has been employed abroad in an executive or managerial capacity, or (2) the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

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, counsel asserts that the beneficiary has been employed abroad in an executive or managerial capacity. Counsel also asserts that the director applied the wrong standard in adjudicating the petition. Counsel argues that the director incorrectly applied the criteria applicable to fully operational businesses rather than applying the "new office" criteria found in 8 C.F.R. § 214.2(l)(3)(v).

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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states 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, 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 involved 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 proceeding is whether the beneficiary has been employed abroad in a managerial or executive capacity as required by 8 C.F.R. § 214.2(l)(3)(v)(B).

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

The petitioner described the beneficiary's job duties abroad in a letter dated August 15, 2005 as follows:

[The beneficiary] has owned and operated his own business in New Zealand from June 2003 until the present. In this position he has had the following duties: 39% on strategic thinking/planning, 24% on plan measurement/monitoring, 14% on internal communication, 11% on crisis management/solving acute problems, and 10% on other. Additionally, he was responsible for contract negotiations, hiring/firing personnel, customer service development plans, establishing and implementing financial and budget plans.

The petitioner also provided a copy of an "Owner Driver Agreement" which indicates that the beneficiary is an independent contractor who provides courier services to customers of Express Couriers Limited in New Zealand. While this agreement permits the beneficiary to delegate the performance of courier services to other authorized drivers, Express Couriers Limited reserves the right in paragraph 10.5 to require the

beneficiary to perform the courier services himself. The agreement also provides in paragraph 20 that the beneficiary generally may not compete against Express Couriers Limited by providing similar services to other companies.

The petitioner also provided tax documents and an organizational chart which indicate that the beneficiary, in his capacity as a "self-employed courier," employs a driver and a secretary.

On September 23, 2005, the director requested additional evidence. The director requested, *inter alia*, job descriptions for the beneficiary and his two employees in New Zealand.

In response, the petitioner provided job descriptions for the two subordinate employees. These descriptions indicate that both the driver and the secretary are performing the tasks necessary to provide a service. The descriptions state that both the driver and the secretary have earned university degrees. The petitioner also provided evidence that the beneficiary hired a third employee after the filing of the instant petition to operate his "business" as an "office manager" after the beneficiary is transferred to the United States.

On November 21, 2005, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary has been employed abroad in an executive or managerial capacity.

On appeal, counsel to the petitioner argues that, because the beneficiary is not personally delivering packages, he is therefore employed in an executive or managerial capacity. The operational tasks of the business have been allegedly delegated to the driver and the secretary.

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

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 being 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 is acting in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary engages in "strategic thinking/planning," "plan measurement/monitoring," "internal communication," and "crisis management/solving acute problems." However, the petitioner offers no explanation regarding what, exactly, the beneficiary does on a day-to-day basis. The petitioner does not explain what strategies are being planned, what plans are being measured or monitored, or what crises or problems are being managed and/or solved. All that can be gleaned from this job description and the record as a whole is that the beneficiary is an independent contractor employed by a courier service and that he employs two people to assist him in providing services under the independent

contractor agreement.¹ 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). Without a clear explanation of the beneficiary's job duties, it cannot be confirmed that the beneficiary is truly employed primarily in a managerial capacity and is not "primarily" performing the non-qualifying tasks necessary to the provision of a service. 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 petitioner has also failed to establish that the beneficiary supervises and controls the work of other supervisory, managerial, or professional employees, or manages an essential function of the organization. As explained above, the beneficiary appears to employ a driver and a secretary. However, the job descriptions for these employees reveal that they are engaged in performing the tasks necessary to the provision of courier services and are not supervisory or managerial employees. 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.

Moreover, the petitioner has not established that the beneficiary manages 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 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

¹In addition, the petitioner submitted evidence that the beneficiary has hired a third employee, an "office manager," in New Zealand to operate his business in his absence. It is noted that, based on the letter submitted as evidence, the "office manager" was hired after the filing of the instant petition. 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). Therefore, the hiring of the "office manager" after the filing of the instant petition is irrelevant to these proceedings.

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 either of the beneficiary's subordinate employees. Therefore, the petitioner has not established that the beneficiary is employed primarily in a managerial capacity.²

Similarly, the petitioner has failed to establish that the beneficiary is acting in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary is acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary does on a day-to-day basis. Moreover, as explained above, the beneficiary appears to be a first-line supervisor of non-professional employees. Therefore, the petitioner has not established that the beneficiary is employed primarily in an executive capacity.

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

²While the petitioner has not specifically argued that the beneficiary manages an essential function of the organization, the record nevertheless would not support this position even if taken. 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(I)(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 are managerial functions, if any, and what proportion are non-managerial. Also, as explained above, the record establishes that the beneficiary is primarily a first-line supervisor of non-professional employees. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties are 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).

Act. However, it is appropriate for Citizenship and Immigration Services (CIS) to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). 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, 8 U.S.C. § 1101(a)(44).

Accordingly, the petitioner did not establish that 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 as required by 8 C.F.R. § 214.2(l)(3)(v)(B), and for this reason the petition may not be approved.

Beyond the decision of the director, a related issue in this matter is whether the petitioner has established that the beneficiary has been employed abroad by a "qualifying organization." As explained above, the beneficiary is a self-employed courier who is a party to an agreement with a third party company called Express Couriers Limited. While the beneficiary is an independent contractor who allegedly employs two people to assist him in performing his duties under the Owner Driver Agreement, it is simply not credible to classify the beneficiary's "business" as a qualifying organization which is owned and controlled by the beneficiary. The Owner Driver Agreement strictly defines and limits the beneficiary's provision of services to Express Couriers Limited's clients. Express Couriers Limited may insist that the beneficiary perform the courier services himself, and not through subordinate employees, and may generally prohibit the beneficiary from working for competitors. Such control over the beneficiary and his business indicates that the beneficiary is more correctly described as being employed by Express Couriers Limited. As Express Couriers Limited does not have a qualifying relationship with the petitioner, the petitioner has not established that the beneficiary has been employed abroad by a qualifying organization. For this additional reason, the petition may not be approved.

The second issue in this proceeding is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

In the initial petition, the petitioner asserts that it plans to open a "new office" in the United States as the operator of a newly acquired "convenience store" in St. Petersburg, Florida. The petitioner submitted a bill of sale indicating that it has acquired the convenience store for one dollar and evidence that it has taken assignment of a lease. The petitioner also submitted an organizational chart for the United States operation indicating that it plans to hire, in addition to the beneficiary, a store manager, a cashier, and a cashier/stocker.

On September 23, 2005, the director requested additional evidence. The director requested, *inter alia*, evidence that an investment has been made in the United States operation and job descriptions for the cashier and the cashier/stocker.

In response, the petitioner described the cashier and the cashier/stocker as performing the tasks necessary to the operation of a convenience store. The petitioner also provided a written explanation regarding the capitalization of the United States operation and a variety of bank statements and related documents allegedly

establishing that funds had been transferred to the petitioner. However, none of the bank documents submitted is directly related to the petitioner.

On November 21, 2005, the director denied the petition. The director concluded that, based on the petitioner's description of the convenience store, the intended United States operation, within one year of the approval of the petition, will not support an executive or managerial position. The director concluded that the beneficiary, after the cashier and the cashier/stock are hired, will be a first-line supervisor and will not be performing executive or managerial duties.

On appeal, counsel to the petitioner asserts that the director applied the wrong standard in adjudicating the petition. Counsel argues that the director incorrectly applied the criteria applicable to fully operational businesses rather than applying the "new office" criteria found in 8 C.F.R. § 214.2(l)(3)(v). Counsel further argues that the director incorrectly interpreted the proposed organizational chart for the United States operation and ignored the petitioner's plan to hire a "store manager." Since this "store manager" will be the first-line supervisor, and not the beneficiary, the petitioner argues that the director's decision was made in error.

Upon review, counsel's assertions are not persuasive.

As a threshold issue, it must be noted that the director properly applied the criteria applicable to "new offices" found in 8 C.F.R. § 214.2(l)(3)(v). The director did not impose upon the petitioner an obligation to establish that the beneficiary will be employed primarily in an executive or managerial capacity immediately upon his arrival in the United States. To the contrary, the director clearly based his denial of the petition on the petitioner's failure to establish that (1) the beneficiary has been employed abroad in an executive or managerial capacity (*see supra*), or (2) the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. Both of these criteria are applicable to "new offices." While the director addressed the beneficiary's proposed job duties in the United States, and the organizational structure of the United States entity, in denying the petition, the director did this in the context of analyzing whether the petitioner had proposed to operate a business which, after one year of operation, will support an executive or managerial position. The director concluded that the petitioner failed to meet this criterion. The director's analysis was entirely consistent with the "new office" regulations.

In view of the above, when a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

Id.

In this matter, the petitioner has failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. As explained above, the petitioner has described the proposed United States operation as a single location "convenience store" which will employ the beneficiary, a store manager, a cashier, and a cashier/stocker. It is not credible that this proposed business, with the proposed staffing plan, will result in the need for an executive or managerial employee after its first year in operation. While counsel correctly states that the director failed to consider its proposal to hire a "store manager," the record is devoid of any evidence that this proposed employee will relieve the beneficiary of the need to perform non-qualifying tasks after the first year in operation. In fact, the record is devoid of any information regarding the duties of the proposed "store manager" and of any evidence credibly establishing that the business will require a subordinate manager or supervisor. Inflated job titles and artificial tiers of subordinate employees are not probative and will not establish that an organization will be sufficiently complex to support a managerial or executive position. Therefore, it appears that the beneficiary, after the first year in operation, will be primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) 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. at 604. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Moreover, the record is devoid of any evidence credibly establishing the scope or financial goals of the United States operation or the size of the United States investment. As explained above, the petitioner has failed to

define with any specificity its proposed United States operation other than to indicate its intent to operate a single location, four-employee "convenience store." This description failed to establish the financial goals of the business, its proposed market, or its proposed products. The petitioner has not described a business operation which will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. 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)).

While not directly addressed by the director, the petitioner has also not established that an investment has been made in the United States operation. While the petitioner provided a written explanation regarding the capitalization of the United States operation and submitted a variety of bank statements and related documents allegedly establishing that funds had been transferred to the petitioner, none of the bank records submitted is directly related to the petitioner. These bank records relate to the beneficiary and third parties. The record is devoid of any evidence that money has been transferred to an account owned by the petitioner or to the seller of the convenience store. While the petitioner provided a copy of a bill of sale allegedly establishing that the petitioner has purchased the convenience store, the consideration listed in this document is one dollar. As a whole, the record does not establish that there has been any investment made in the United States operation, and the petitioner may not be approved for this additional reason.

Accordingly, the petitioner has not established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and for this reason the petition may not 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).

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

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.