

identifying data deleted to
prevent clearly **unwarranted**
invasion of personal privacy



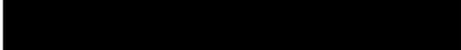
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D7



File: SRC 05 169 50877 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 international sales manager 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 limited liability company organized under the laws of the State of Texas, claims to be engaged in the sale and manufacture of wooden doors and alleges that it is the subsidiary of Puertas Finas de Madera Montealban, S.A. de C.V., located in Oaxaca, Mexico.

The director denied the petition concluding that the petitioner failed to demonstrate (1) that sufficient physical premises to house the new office have been secured; (2) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position based on the failure to establish that an investment had been made in the United States operation; or (3) that the beneficiary has been employed by the foreign entity for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the petitioner has secured sufficient physical premises in the United States because it leases a warehouse in Laredo, Texas; that the petitioner has made a substantial United States investment of both money and inventory; and that the beneficiary has been employed abroad as an executive or manager. In support of the appeal, counsel submitted a brief and additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

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

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 petitioner has established that sufficient physical premises to house the new office have been secured as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

In the initial petition, the petitioner failed to provide any evidence that it has secured physical premises to house the new office. On June 20, 2005, the director requested additional evidence including a copy of a lease evidencing the securing of physical premises. In response, the petitioner provided an "Apartment Lease Contract" dated November 9, 2004. This lease, in which the lessee is the beneficiary, concerns a residential

apartment and not a commercial space. According to paragraph 1, the lease is for a "private residence only," and paragraph 19 generally prohibits the conduct of business in the apartment.

On September 29, 2005, the director denied the petition. The director concluded that the petitioner failed to establish that it has secured sufficient physical premises to house the new office.

On appeal, counsel to the petitioner asserts that, in addition to the apartment described in the Apartment Lease Contract, the petitioner has leased warehouse space in Laredo, Texas, since 2003. Counsel provided a copy of this lease with a translation on appeal.

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

As a threshold issue, it must be noted that the director clearly requested a copy of the petitioner's lease agreement in the Request for Evidence. In response, the petitioner chose to provide a copy of the beneficiary's apartment lease. The petitioner did not provide a copy of a lease for the warehouse space. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

In view of the above, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office. The lease submitted by the petitioner is clearly a residential apartment lease which generally prohibits the conduct of business from the apartment. Moreover, the beneficiary is the lessee, not the petitioner. As there is no evidence that the lease has been assigned to the petitioner for the conduct of its business, the petitioner has not established that it has secured sufficient physical premises to house the new office. For this reason, the petition must be denied.

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. In the initial petition, the petitioner indicated in an undated letter that it intends to expand into more "territorial areas of the United States." However, the petitioner provided no evidence regarding the proposed nature of the office, the scope of the entity, its organizational structure, its financial goals, the size of the United States investment, the foreign entity's financial ability to remunerate the beneficiary and to commence doing business in the United States, or the organizational structure of the foreign entity.

On June 20, 2005, the director requested additional evidence. The director requested, *inter alia*, a copy of the petitioner's business plan and evidence of an investment in the United States entity.

In response, the petitioner provided a two-page document titled "business plan;" a letter from US Bank dated August 24, 2005 confirming that the foreign entity has maintained a checking account since 2000 which has an average balance of \$25,300.00; and personal bank account information for the beneficiary. The petitioner also provided an undated letter in which the president of the foreign entity explains that, because

the petitioner does not yet have a tax identification number, the beneficiary is holding part of the invested funds in a personal bank account.

On September 29, 2005, the director denied the petition. The director concluded that the petitioner failed to establish that a sufficient investment has been made in the United States operation.

On appeal, counsel to the petitioner asserts that the petitioner has made a substantial United States investment of both money and inventory. Counsel submitted additional documentation on appeal concerning these claims. Counsel also asserts that the director failed to consider the foreign entity's account with US Bank.

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

As a threshold issue, it must be noted that the director clearly requested evidence regarding an investment in the United States entity in the Request for Evidence. In response, the petitioner chose to provide only a copy of bank statements relating to the beneficiary and a letter from US Bank confirming the foreign entity's maintenance of a checking account. The petitioner did not provide any information regarding an investment of inventory in response to the Request for Evidence. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits additional evidence regarding inventory and bank accounts on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764; *Matter of Obaigbena*, 19 I&N Dec. 533. The appeal will be adjudicated based on the record of proceeding before the director.¹

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.

¹It should be noted that, even if the AAO considered the evidence concerning the investment of "inventory" in the United States entity, the evidence provided on appeal would not establish that any investment has been made. The record on appeal is devoid of any evidence that title to this inventory has ever been transferred to the petitioner. The simple movement of inventory from Mexico to a warehouse in the United States without any evidence that ownership and control of this inventory shifted to the United States petitioner will not generally establish that an investment has been made in the "new office."

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 therefor. Most importantly, the business plan must be credible.

Id.

The petitioner has failed to present evidence sufficient to prove that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. The petitioner provided no information regarding an investment in the United States entity other than evidence that a bank account had been opened by the beneficiary; that it had a balance of \$7,766.29 on or about August 17, 2005; that the foreign entity has maintained a checking accounting in the United States since October 12, 2000; and that the average balance of this account has been \$25,300.00. However, the letter from US Bank does not reveal the current balance of the checking account or the source of any of the deposits into this account. Moreover, while the petitioner maintains that it did not open a bank account because it does not yet have a tax identification number, this explanation is not credible. According to the Form SS-4 submitted on appeal, the petitioner did not even apply for a tax identification number until at least October 12, 2005, approximately two weeks after the director denied the instant petition. In view of the above, the petitioner has not established that an investment has been made in the United States operation. The evidence regarding the beneficiary's bank account is irrelevant to the petition and the evidence regarding the foreign entity's checking account lacks sufficient specificity to confirm the size and source of the investment, if any. For this reason, the petition may not be approved.

Likewise, and beyond the decision of the director on this issue, the petitioner failed to submit a business plan establishing that the enterprise will likely 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. While the petitioner outlined a basic strategy of establishing the business in the United States, the vague, self-serving business plan provided by the petitioner does not outline a credible plan, especially when coupled with the lack of evidence of any U.S. investment, for expansion beyond the initial start-up phase. Also, the petitioner failed to corroborate its plan, including financial goals and the scope of the entity, with any documentation, studies, or independent analyses. 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)).

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.

The third issue in the proceeding is whether the petitioner has established that the beneficiary has been employed by the foreign entity 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).

Title 8 C.F.R. § 214.2(l)(3)(v)(B) requires that the petitioner prove 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 and that the proposed employment involved executive or managerial authority over the new operation."

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 have been 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 have been 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.

In the initial I-129 petition, the petitioner provided virtually no information regarding the beneficiary's duties with the foreign employer. While the petitioner characterized the beneficiary as the "international sales manager" responsible for coordinating all sales and exportation of products to the United States from Mexico, his exact duties or job description were never disclosed.

On June 20, 2005, the director requested additional evidence. The director requested, *inter alia*, evidence that the beneficiary has been employed primarily in an executive or managerial capacity, an organizational chart for the foreign entity, and a description of the beneficiary's subordinate employees.

In response, the petitioner provided an undated letter in which the beneficiary's duties abroad were described as follows:

[The beneficiary's] primary duties are to develop markets, and expand the marketing territory in the United States. [The beneficiary's] executive duties include making critical decisions as to involvement with certain vendors and the decision to develop a territorial market. His responsibilities include overseeing the purchase order, coordinating with the support staff to produce the product, and ensuring the product is delivered to its proper destination. He is instrumental from the inception of the product to the delivery to the vendor in the United States.

The petitioner also provided an organizational chart showing the beneficiary supervising two unnamed sales executives and five unnamed United States sales representatives. The chart does not reveal whether these are actual positions, prospective positions, or vacant positions. The chart also does not reveal the duties or educational levels of these subordinate staff members or explain whether these staff members are employees or independent contractors.

On September 29, 2005, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary has been employed by the foreign entity for one continuous year in the three-year period preceding the filing of the petition in an executive or managerial capacity.

On appeal, counsel to the petitioner asserts that the beneficiary has been employed as an executive or manager. Counsel submitted additional documentation on appeal concerning these claims.

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

As a threshold issue it must be noted that the director clearly requested evidence regarding the beneficiary's job duties abroad and the names, titles, and duties of all subordinate employees. In response, the petitioner chose to provide only a letter from the president of the foreign employer and a vague organizational chart. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits additional evidence regarding job duties and purported subordinate employees on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764; *Matter of Obaighbena*, 19 I&N Dec. 533. The appeal will be adjudicated based on the record of proceeding before the director.

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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary has acted 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 develops markets, expands marketing territory, and ensures product delivery. However, the petitioner does not explain, exactly, what the beneficiary does to fulfill these duties. Given that sales, marketing, and product delivery tasks do not rise to the level of being managerial or executive duties when the tasks inherent to these functions are performed by the beneficiary, it is vital that the petitioner provide a full explanation regarding how the beneficiary primarily manages these functions rather than performs the related non-qualifying tasks. As the petitioner has provided a vague job description and has failed to disclose the duties, or confirm the existence, of subordinate staff members, it cannot be concluded that the beneficiary is "primarily" employed as a manager or executive abroad. The fact that the petitioner has given the beneficiary a title and has prepared a vague job description which includes lofty duties does not establish that the beneficiary is actually performing 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988). 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).

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. As explained above, while the petitioner provided an organizational chart for the foreign entity, the petitioner failed to reveal the identities, job duties, or educational backgrounds of the subordinate employees. Therefore, the petitioner has not established that these staff members are primarily engaged in performing supervisory or managerial duties or are professionals. In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional staff members, the provider of actual services, or a combination of both. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.

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

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, the petitioner did not establish that the petitioner and the organization which employs the alien overseas are qualifying organizations as required by 8 C.F.R. § 214(l)(3)(i).

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (*i.e.*, one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). A subsidiary is a firm, corporation, or other legal entity (including a limited liability company) of which a parent owns more than half of the entity and controls the

entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). In this matter, the petitioner asserts that it is 100% owned by the foreign entity.

In support of its petition, the petitioner provided a certificate of organization dated April 12, 2005. In response to the director's Request for Evidence which sought evidence of ownership of the petitioner, the petitioner also provided a copy of the petitioner's articles of organization. These articles identify the beneficiary as the registered agent and organizer of the limited liability company. The articles list four individuals in Mexico as the managers. The initial member or members are not identified in the articles. The petitioner did not supply any other organizational documents for the United States entity.

While limited liability companies generally do not issue share certificates like corporations, the petitioner has failed to provide sufficient evidence demonstrating the ownership of the United States entity. Texas limited liability companies formed in 2005 are regulated by the Texas Limited Liability Company Act. *Tex. Rev. Civ. Stat. Ann. Art. 1528n.*² This law provides guidance on how to interpret the articles of organization of a Texas limited liability company as these relate to ownership interests, and how a Texas limited liability company can evidence ownership interests by members.

Sections 3.02 and 4.01 permit a person to become a member of a limited liability company upon formation and to be identified as an "initial member" in the articles of organization. *Tex. Rev. Civ. Stat. Ann. Art. 1528n, §§ 3.02 and 4.01.* Section 4.01 also permits new members to be added after formation of the limited liability company. *Id.* Furthermore, section 2.22 requires Texas limited liability companies to maintain records including, but not limited to, a list identifying each member by name, address, and percentage of ownership; a written statement of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the date on which each member became a member; and copies of the regulations of the limited liability company, if any. *Tex. Rev. Civ. Stat. Ann. Art. 1528n, § 2.22.*

In the current case, the only evidence provided by the petitioner to prove that the foreign entity "owns" the petitioner was a copy of the articles of organization which fails to identify the foreign entity as the "initial member." The petitioner did not provide a copy of the list, which it is compelled to maintain by Texas law, identifying the members of the limited liability company or any other company records which could have proven who, as of the date of the petition, are the members of the limited liability company.

Moreover, the Form SS-4, which was submitted on appeal, contains information which calls into question the petitioner's claim that the foreign entity is the sole member of the limited liability company. This document states that the petitioner is a "multiple member" limited liability company. However, this averment directly contradicts the petitioner's assertion that the foreign entity is the sole owner of the petitioner. The petitioner offers no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies

²While the Texas Limited Liability Company Act was substantially amended in 2005, and was made effective in 2006, these revisions do not generally affect limited liability companies formed in 2005, such as the petitioner. The petitioner, therefore, is still regulated by the Act as it appeared in 2005. *Tex. Bus. Org. Code Ann. Chapter 101.*

in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Therefore, given the lack of evidence and contradictory information, the petitioner has not established that the petitioner and the organization which employed the beneficiary abroad are qualifying organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The owners or owner of the petitioner have not been adequately identified. For this additional 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.