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File: EAC 06 188 52975 Office: VERMONT SERVICE CENTER Date: DEC 26 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

The petitioner filed this nonimmigrant visa petition seeking to extend the employment of its general manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a limited partnership organized under the laws of the State of Texas and is allegedly in the residential construction business. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to continue the beneficiary's employment.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel to the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of a manager or an executive.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The primary issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

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

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

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an

assignment within an organization in which the employee primarily:

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

The petitioner does not clarify in the initial petition whether the beneficiary will be primarily engaged in performing 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 petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The foreign entity described the beneficiary's job duties in a letter dated June 6, 2006 as follows:

[The beneficiary] will continue to be responsible for the creation and implementation of daily operations for [the petitioner] from importation, sales and marketing operations, to business investment plans. He will plan, develop, implement and execute business strategies for the distribution of our services and the expansion of [the] business. [The beneficiary] continues to formulate company policies and execute expansion strategies for [the petitioner]. He handles all facets of sales and distribution, as well as the financial arrangements, and oversees [the] overall financial administration. Furthermore, [the beneficiary] is responsible for cultivating and sustaining strategic business relations with associates, potential clients and providers. [The beneficiary] continues to exercise a wide latitude in discretionary decision-making. [The beneficiary] accomplishes these goals by exercising his decision-making over the daily operations of [the petitioner]. Finally, [the beneficiary] has the authority to negotiate and enter into contracts on behalf of the company, as well as the recruitment, retention and supervision of indirect/contractual employees, such as residential designers, realtors, project managers and construction workers.

The petitioner claims in the Form I-129 to be engaging the services of six "indirect – contract" workers.

Also, the petitioner submitted an organizational chart for the United States operation. The chart portrays the beneficiary as supervising an accounting firm, a provider of house plans, a construction company, an engineering company, and two real estate companies in their alleged provision of services to the petitioner.

On June 22, 2006, the director requested additional evidence. The director requested, *inter alia*, complete position descriptions for the beneficiary and for all of the petitioner's employees; a breakdown of the amount of time the beneficiary and the other employees will devote to each of the ascribed duties; copies of 2005 Forms W-2 for all employees; a copy of the petitioner's payroll records for May 2006; the petitioner's

quarterly tax return for the first quarter of 2006; and evidence establishing the number of contractors employed and a description of the duties performed.

In response, the petitioner submitted a materially identical job description for the beneficiary along with a breakdown by percentages of the beneficiary's duties as follows:

Supervise construction work performed	32 hrs.	26%
Supervise the sale of homes	2 hrs.	2%
Supervise the closing of homes	5 hrs.	4%
Obtain lots for construction of homes	8 hrs.	6%
Obtain bank credit for new construction projects	3 hrs.	2%
Negotiate prices of materials and construction workers	2 hrs.	2%
Search for new construction projects	10 hrs.	8%
Meet with contractors to review contracts and payment	4 hrs.	3%
Review paperwork and contracts	3 hrs.	2%
Compile reports of income and debt	10 hrs.	8%
Compile and complete invoices and/or contracts	6 hrs.	5%
Administrative duties on behalf of business	35 hrs.	28%
Administrative procedures with the San Antonio water system	5 hrs.	4%
TOTALS	125 hrs.	100%

The petitioner also submitted a letter from its accountant dated August 8, 2006 indicating that the beneficiary has not received any salary payments from the petitioner "due to the fact that the company has shown net losses for book and tax purposes for 2005 and for 2006 through June 30th." The petitioner did not submit any Forms W-2, payroll records for subordinate employees or contractors, quarterly tax returns, or descriptions of its six "indirect – contract" workers. While the petitioner provided documentation indicating that it has consulted and utilized the services of third party vendors in conjunction with its purported business activities, the petitioner did not describe the nature or frequency of the petitioner's utilization of these services.

On September 5, 2006, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel to the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of a manager or an executive.

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

Title 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in Citizenship and Immigration Services (CIS) regulations that allows for an extension of the one-year "new office" period. If

the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the United States operation has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(1)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will devote a majority of his time to supervising "construction work" and performing "administrative duties on behalf of business." However, the petitioner does not explain what, exactly, the beneficiary will be "supervising" given that the petitioner allegedly contracts with construction and engineering businesses to perform these services. The record does not establish that the petitioner has employees or even engages specific subcontractors to perform construction related tasks. Furthermore, the petitioner fails to specifically define any of the "administrative duties" to be performed by the beneficiary. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated duties does not establish that the beneficiary will actually perform managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, the petitioner's description and breakdown of the beneficiary's duties indicate that the beneficiary will be primarily performing non-qualifying administrative or operational tasks which will not rise to the level of being managerial or executive in nature. For example, the petitioner states that the beneficiary will spend 68% of his time obtaining lots and bank credit; negotiating prices; searching for new construction projects; meeting with contractors and reviewing contracts; compiling reports, invoices, and contracts; and performing administrative duties. However, all of these duties are non-qualifying administrative or operational tasks necessary to the provision of a service or the production of a product. As the record fails to identify any employees or contractors who will relieve the beneficiary of the need to perform the non-qualifying tasks inherent to both these duties and the management of the business in general, it must be concluded that he will perform these tasks. 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). While the outsourcing of construction related tasks may relieve the beneficiary of the need to perform the labor necessary to construct homes, the petitioner nevertheless does not employ a subordinate staff capable of relieving the beneficiary of performing the other non-qualifying tasks inherent to the operation of

the business.

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As explained above, it appears that the beneficiary will not supervise any subordinate employees because the petitioner does not have any employees. While the petitioner asserts that it employs independent contractors, the supervision or management of independent contractors will not permit a beneficiary to be classified as a managerial employee as a matter of law. See section 101(a)(44)(A)(ii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). The Act is quite clear that a managerial employee must manage *employees* in order to be classified as a manager for purposes of this visa classification. Regardless, it has not been established that the beneficiary will supervise and control the work of these independent contractors even assuming that the supervision and control of such persons could be qualifying under the Act. As indicated above, the petitioner purports to utilize an accounting firm, a provider of house plans, a construction company, an engineering company, and two real estate companies in the provision of services. However, the petitioner has not established that the beneficiary truly "supervises and controls" these third party fee-for-service vendors. To the contrary, the petitioner is simply paying these third parties to perform services on an intermittent basis, and it has not been established that the manner in which these services are performed is being supervised or controlled by the beneficiary. Finally, as the petitioner has failed to describe the skills necessary to perform any of the duties of the contractors, or even to describe their specific duties, the petitioner has not established that the beneficiary will manage professional employees.¹ Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.²

¹In 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 or a professional certification by a subordinate worker does not automatically lead to the conclusion that an employee will be employed in a professional capacity as that term is defined above. In the instant case, in addition to failing to show that any of the beneficiary's claimed subordinates were actual employees of the petitioner, the petitioner has not, in fact, established that a bachelor's degree or professional certification is actually necessary to perform services for the petitioner. This is primarily due to the petitioner's failure to describe the contractors' duties even though this evidence was requested by the director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

²The petitioner also has not established that the beneficiary will manage an essential function of the organization. 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

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

It is noted that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in approving a visa for a multinational manager or executive. See § 101(a)(44)(C) of the Act. However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily"

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(l)(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 tasks related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions, if any, and what proportion would be non-managerial. Also, as explained above, the record establishes that the beneficiary will primarily perform the non-qualifying operational or administrative tasks related to the "function." 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 will be managerial, nor can it deduce whether the beneficiary will primarily perform 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).

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, in this matter, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary had been employed abroad for at least one continuous year in a position that was managerial, executive, or involved specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(iii) and (iv).

In support of the petition, the foreign entity submitted a letter dated June 6, 2006 describing the beneficiary's duties abroad as follows:

Since July 2001, [the beneficiary] has held the executive position of General Director. In this executive capacity, [the beneficiary] is responsible for planning, directing, and coordinating activities concerned with the construction of homes through subordinate supervisory personnel. [The beneficiary] participates in the conceptual development of [the] company's construction projects and oversee its organization and implementation. [The beneficiary] directs and monitors the progress of construction activities and ensures compliance with plans and schedules. As a liaison, he meets regularly with owners, other constructors, trade contractors, vendors, architects, engineers, and others to identify and coordinate new construction projects for the company. In addition, [the beneficiary] participates in the establishment of the company's policies and procedures. He plans and formulates the company's business and financial goals and strategies. He is credited with creating the various channels for our services and completing new contracts with our clients. [The beneficiary] has made great contributions to the growth and expansion of our parent company to its present level.

The petitioner also submitted a Spanish language organizational chart for the foreign employer. However, the chart has not been translated into English, and the petitioner does not describe the duties of any of the beneficiary's purported subordinates.

Upon review, the petitioner has not described the beneficiary as having performed primarily qualifying duties abroad. 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 did on a day-to-day basis. For example, the petitioner asserted that the beneficiary planned and formulated goals, strategies, policies, and procedures. However, the petitioner did not specifically define any of these goals, strategies, policies, and procedures. Once again, 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). Furthermore, the petitioner did not describe the duties or skill levels of the beneficiary's purported subordinates and failed to provide a translation of the foreign organizational chart. Absent a certified translation of the organizational chart, CIS cannot determine whether the evidence supports the petitioner's claims, and it will not be accorded any weight in this proceeding. *See* 8 C.F.R. § 103.2(b)(3).

In view of the above, the beneficiary would appear to have been primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. Section 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. As indicated above, 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; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner failed to establish that the beneficiary was employed abroad performing qualifying duties for at least one continuous year, and the petition may not be approved for this additional reason.

Beyond the decision of the director, the petition must also be denied as untimely pursuant to 8 C.F.R. § 214.2(l)(14)(i). Title 8 C.F.R. § 214.2(l)(14)(i) clearly states that an extension petition may only be filed if the validity of the original petition has not expired. The previous petition was approved until June 7, 2006. The instant extension petition was filed on June 12, 2006, and the petitioner clearly indicates that its basis for the classification sought is the "continuation of previously approved employment without change with the same employer." However, since the validity of the original petition expired on June 7, 2006, the instant extension petition filed on June 12, 2006 must be denied as untimely. Accordingly, the petition will be denied for this additional reason.

Beyond the decision of the director, the petitioner failed to establish that it has a qualifying relationship with the foreign employer. The petitioner failed to establish the ownership and control of both the United States operation and the foreign employer. The petitioner also failed to establish that the foreign employer is currently "doing business" or that the petitioner is doing business "as an employer in the United States."

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." *See also* 8 C.F.R. § 214.2(l)(14)(ii)(A). Title 8 C.F.R. § 214.2(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business . . . as an employer in the United States." "Doing business" is defined in pertinent part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H). A "subsidiary" is defined in part as a legal entity "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity."

In this matter, the petitioner claims to be a limited partnership organized under the laws of the State of Texas. The petitioner submitted a certificate of limited partnership and a limited partnership agreement in which the general partner is identified as El Quijote Management Group, L.L.C.³ According to the limited partnership

³It should be noted that, according to Texas state corporate records, the general partner's corporate status in Texas is not in good standing. Therefore, as the State of Texas has forfeited the corporate privileges of the petitioner's general partner, this calls into question the viability of the petitioner, a limited partnership, and, in

agreement, "exclusive control" over the partnership is vested in the general partner. Furthermore, the limited partner, identified as the foreign employer, shall not have the right to participate in the control of the partnership's business. The petitioner also submitted articles of organization for the general partner, a Texas limited liability company. The articles, dated October 19, 2004, indicate that the initial member of the limited liability company is the foreign employer. However, the petitioner did not submit any evidence addressing the current ownership and control of the general partner of the petitioner even though this evidence was specifically requested by the director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Upon review, the petitioner has failed to establish that the foreign employer owns and controls the petitioner, a limited partnership, because it failed to establish that the foreign employer owns and controls the petitioner's general partner, the entity that has been vested with control over partnership business. While limited liability companies do not issue share certificates like corporations, the petitioner has failed to provide sufficient evidence demonstrating the ownership of the general partner. Texas limited liability companies formed in 2004 are regulated by the Texas Limited Liability Company Act. Tex. Rev. Civ. Stat. Ann. Art. 1528n.⁴ 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 this matter, the only evidence provided by the petitioner to establish that the foreign entity "owns" the general partner was a copy of the 2004 articles of organization. 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. Therefore, the petitioner has not established that it is owned and controlled by the foreign employer, and the petition may not be approved for that reason.

turn, would call into question the continued eligibility of the petitioner for the benefit sought if the appeal were not being dismissed for the reasons set forth herein.

⁴ [REDACTED] Act was substantially amended in 2005, and was made effective in 2006, these revisions do not generally affect limited liability companies formed in 2004, such as the petitioner. The petitioner, therefore, is still regulated by the Act as it appeared in 2004. Tex. Bus. Org. Code Ann. Chapter 101.

Moreover, the petitioner has failed to establish the ownership and control of the foreign employer even though this evidence was requested by the director. Once again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The only evidence in the record that appears to address the ownership and control of the foreign employer has not been translated into English. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. See 8 C.F.R. § 103.2(b)(3). Likewise, the petitioner has failed to establish that the foreign employer is currently "doing business," and is thus a qualifying organization, because all evidence in the record addressing foreign business activity has also not been translated into English. Therefore, the petition may not be approved for these additional reasons.

Finally, the petitioner has not established that it is a qualifying organization because it has failed to establish that it "is or will be doing business . . . as an employer in the United States." 8 C.F.R. § 214.2(l)(1)(ii)(G). As indicated above, the petitioner does not have any employees. Even the beneficiary has not been established to be an employee of the petitioner. Not only does the definition of "qualifying organization" require the petitioner to establish that it is or will be "doing business" as defined in 8 C.F.R. § 214.2(l)(1)(ii)(H), it must also establish that it is or will be doing business as an *employer*. As the record is devoid of evidence that the petitioner will employ anyone, the petitioner has failed to establish that it meets the definition of a qualifying organization.

Accordingly, the petitioner has failed to establish that it has a qualifying relationship with the foreign employer, and the petition may not be approved for this additional reason.

The initial approval of an L-1A new office petition does not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. See section 291 of the Act, 8 U.S.C. § 1361.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews 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 of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER:

The appeal is dismissed.