



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



D7

File: WAC 05 079 50578 Office: CALIFORNIA SERVICE CENTER Date: FEB 01 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, California 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 extend the employment of the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a sole proprietorship organized in the State of California that claims to be engaged in the import and export business, seeks to employ the beneficiary as its owner. The petitioner claims that it is the subsidiary of K & P Craft, located in Kathmandu, Nepal. The beneficiary was initially granted a one-year period of stay to open a new office, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition, concluding that the petitioner did not establish that (1) a qualifying relationship with a foreign entity existed; or (2) the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner filed an appeal in response to the denial. On appeal, counsel for the petitioner claims that the director "misread and misinterpreted the evidence on record," and claims that the petitioner has in fact satisfied all criteria for the benefit sought. In support of this contention, counsel submits 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.

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 first issue in the present matter is whether the petitioner and the foreign organization are qualified organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation defines the term "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which:

- (1) 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;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Additionally, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

- (I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.
- (J) "Branch" means an operating division or office of the same organization housed in a different location.

- (K) “Subsidiary” means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) “Affiliate” means
- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
 - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or
 - (3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In this case, the petitioner claims that the foreign entity and the U.S. entity are affiliates. Specifically, the petitioner asserts that both entities are owned and controlled entirely by the beneficiary.

Upon review of the record, the director concluded that, based on the evidence of record and the petitioner’s own admission, the U.S. petitioner was a sole proprietorship. The director denied the petition based upon the petitioner’s failure to establish that it had satisfied the criteria for a qualifying relationship with a foreign entity, noting that a sole proprietorship was not considered a separate legal entity affiliated with a foreign entity for purposes of this analysis.

On appeal, newly-retained counsel for the petitioner submits evidence establishing the incorporation of the petitioner in the State of California as of May 12, 2005. The documentation submitted indicates that the beneficiary is the sole owner of the newly-formed U.S. corporation. Based on this adjustment, counsel asserts that the newly-formed corporation is an independent legal entity from its owners and thus satisfies the requirements for a qualifying relationship. In addition, counsel contends that by virtue of the initial petition’s approval, which accepted the sole proprietorship as a qualifying organization, Citizenship and Immigration Services (CIS) is “estopped from now denying a lack of qualifying relationship between [the] two entities.”

The AAO disagrees. As a matter of law, the beneficiary is ineligible for the classification sought. It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. In order to meet the definition of "qualifying organization," there must be a United States employer. See 8 C.F.R. 214.2(l)(1)(ii)(G)(2). As discussed above, the petition includes evidence, including an IRS Form 1040 with Schedule C, which demonstrates that the beneficiary has been doing business as a sole proprietorship. As noted by the director in the denial, a sole proprietorship is a business in which one person operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual proprietor. See *Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984).

Counsel makes two arguments in support of his position that a qualifying relationship has been established. First, counsel asserts that by virtue of the petitioner's incorporation in May of 2005, the question of whether a qualifying relationship exists is moot since the petitioner is now a corporate entity with the same owner as the foreign entity. This argument, however, is not persuasive. Although the newly-submitted evidence does establish the existence of a U.S. employer, the evidence cannot establish the petitioner's eligibility as a qualifying organization in this proceeding. The regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). 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). In this case, the petition was filed on January 25, 2005. The fact that the petitioner relies on the creation of a corporate structure that allegedly took place on May 12, 2005, one week after the denial of the petition, is of no relevance to these proceedings since such an interest was acquired several months after the filing of the petition.

It is further noted that the petitioner's incorporation appears to have been undertaken as a direct attempt to overcome this basis for the denial, since the denial, issued on May 5, 2005, was based on the fact that the petitioner was ineligible for the benefit sought because it was a sole proprietorship. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Counsel's second argument is that, regardless of the petitioner's status at the time of the filing of the extension request, the fact that CIS approved the initial petition based upon the erroneous finding that the sole proprietorship satisfied the qualifying organization precludes CIS or the AAO from denying the petition on this basis. This argument, however, is misplaced. Although the director's decision does not indicate whether he reviewed the prior approval of the initial nonimmigrant petition, if the previous petition was approved based on the same unsupported and contradictory assertion that is contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on

behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Therefore, contrary to counsel's contention, the prior approval does not preclude CIS from denying the extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

There is no evidence to contradict the finding that prior to adjudication, the petitioner was actually the individual beneficiary doing business as a sole proprietorship, with no authorized branch office of the foreign employer or separate legal entity in the United States. As a result, there was no U.S. entity to employ the beneficiary and therefore no qualifying organization at the time of filing. For this reason, the petition may not be approved.

The second issue in this 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.

In the initial petition, former counsel for the petitioner submitted a letter dated January 8, 2005 in which it discussed the beneficiary's qualifications and duties in the United States. Specifically, counsel stated:

[The beneficiary] will supervise the team, set standards for their work and general guidelines for assignments which must be followed and execut[ed] by the team. He will coordinate the various teams to assure that each task is serviced adequately on schedule. The team will be responsible for the day-to-day activities of the [petitioner]. [The beneficiary] will be responsible for setting the broad goals for the company and providing leadership to the team.

a) [The beneficiary] will direct the management of the U.S. entity[.]

[The beneficiary] will be responsible for hiring staff for [the petitioner]. The staff currently consists of a General Manager, a Financial Manager, and a Secretary/Office Assistant. [The beneficiary] will supervise the General Manager who, in turn, will supervise the other employees. [The beneficiary] will set standards for the General Manager and ensure that each task is serviced adequately and on schedule.

* * *

b) [The beneficiary] will establish the goals and policies of the U.S. entity.

[The beneficiary] will be responsible for setting the broad goals and policies for [the petitioner]. Ultimately, we would like the departmental structure of the U.S. entity to be similar to the departmental structure of the foreign entity. [The beneficiary] will determine the feasibility of setting up such a departmental structure. The General Manager will obtain and organize survey data around the location of the U.S. entity. Based upon this data, [the beneficiary] will determine whether the demand for our products is increasing in the area. Also, [the beneficiary] will determine the strengths and weaknesses of competitors in the area. Taking these factors into account, [the beneficiary] will determine the appropriate price for our products.

c) [The beneficiary] will exercise wide latitude in discretionary decision making[.]

[The beneficiary] will be the highest authority at [the petitioner]. He has the authority to make the major financial decisions for the U.S. entity. For example, he will be the one to decide the organizational structure of the company, whether to increase or decrease the size of the staff, and whether new departments are needed. He will also decide which employee will have to report to which supervisor.

[The beneficiary] will also decide which markets to target and the price for products. He has already determined that the major weakness of competitors in the area is that they are not diversified, their products are expensive, and they lack quality. He has, therefore, decided that diversity, competitive cost, and high quality are the main areas to emphasize when marketing the products for [the petitioner].

d) [The beneficiary] does not have any supervisors.

As the owner of [the petitioner], [the beneficiary] has the highest authority at the firm. He does not have any supervisor.

e) [The beneficiary] will be managing a subordinate staff of managerial personnel who relieve him from performing operational activities[.]

[The beneficiary] will continue to direct the General Manager of the U.S. company. The General Manager will continue to direct the Financial Manager and Secretary/Office Assistant. In the future, the General Manager will also direct the Marketing Manager and Personnel Manager. Therefore, [the beneficiary] will be relieved from performing the operational duties.

f) [The beneficiary will be primarily directing operational functions through the work of others[.]

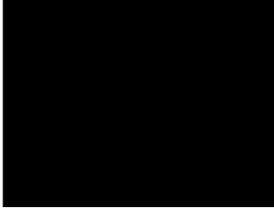
The operational functions of the company will be taken care of by the General Manager. [The beneficiary] will direct the General Manager who will direct the other employees. Therefore, [the beneficiary] will be responsible for directing the operational functions of the U.S. company through the work of [his] employees.

In addition, counsel provided a weekly breakdown of the beneficiary's duties on a daily basis, noting that, among other tasks, he would conduct telephone conference calls with the foreign entity, attend meetings, and meet with personnel.

On February 1, 2005, the director requested additional evidence. The request asked the petitioner to submit documentation outlining the organizational hierarchy of the entity including details on all employees, more details regarding the beneficiary's duties, and copies of quarterly wage reports. In a response dated April 18, 2005, the petitioner submitted the requested evidence. Through counsel, the petitioner explained that it had recently opened a second store in Big Bear Lake, California and that, as a result, the beneficiary would be required to engage in the same functions with regard to this second business location as he engaged in for the petitioner's primary establishment. The petitioner indicated that it now employed a total of five employees, which included a newly hired salesperson/office assistant.

Additional details regarding the beneficiary's duties was presented; however, the additional description incorporated the same headings and details contained in the initial letter of support dated January 8, 2005. Furthermore, in support of its claim that it employed a staff of five persons, the petitioner submitted a copy of

its quarterly wage report for the quarter ending March 31, 2005, which verified that during that period, the following persons were employed:



Salesperson/Office Assistant (date of hire: January 3, 2005)

General Manager (date of hire: April 1, 2004)

Financial Manager (date of hire: January 2, 2005)

On May 5, 2005, the director denied the petition. The director found that the evidence in the record failed to establish that the beneficiary would be functioning in a primarily managerial or executive capacity. Specifically, the director concluded that the beneficiary would be performing the day-to-day tasks of the organization. The director further concluded that the petitioner had not yet reached the point where it could employ the beneficiary in a primarily managerial or executive capacity, since it appeared that the beneficiary would merely be involved in training, accounting, and customer service functions.

On appeal, newly-retained counsel for the petitioner restates the beneficiary's qualifications and submits a brief explanation as to how the beneficiary's proposed duties conform to the regulatory provisions. Furthermore, counsel asserts that the beneficiary has doubled its operations since the start date and that it will continue to grow on this path. A final assertion is that the denial should not be based solely on the staffing levels of the organization, particularly since this is the first year of operations for the petitioner.

Upon review, the petitioner's assertions are not persuasive. Whether the beneficiary will be a manager or executive employee turns on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. In this case, the petitioner asserts that the beneficiary is a qualified manager or executive by virtue of his position title, experience abroad, and associated duties in the United States. However, the description of duties, though lengthy, is vague and fails to specify the exact nature of the claimed executive duties. In fact, it appears that the petitioner, though counsel, merely paraphrases the regulatory definition of executive capacity without specifically pinpointing the distinctive nature of the beneficiary's duties in comparison to those of his subordinates. 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).

The description of the beneficiary's proposed duties, provided in the initial letter of support and expanded upon in the response to the request for evidence do not correspond with the rest of the evidence in the record. For example, the petitioner claims that by virtue of his supervision of subordinate staff members such as the general manager, financial manager, and secretary/office assistant, he has not been engaging in non-qualifying duties because these employees relieved him of such duties. While irrelevant for purposes of determining the beneficiary's proposed duties, it is important to note that the financial manager and sales associate/office assistant were hired only a few weeks prior to the filing of the petition. In addition, the general manager was hired in November of 2004, approximately ten months after the initial petition was granted. Thus, it appears unlikely that the beneficiary has been relieved of performing non-qualifying duties during the past year as claimed.

While it is understood that in the first year of operations, the petitioner is considered in the "start-up" phase and a beneficiary will be permitted to engage in non-qualifying duties as a result thereof, the quarterly wage report suggests that his subordinate staff members are only employed part-time. Although counsel argues on appeal that this is not the case and that the record indicates that the three employees identified as being on the payroll were technically full-time employees for the entire first quarter of 2005, which is the document on record with regard to their salaries. Specifically, in response to the request for evidence, the petitioner indicated that the three employees were hired on November 14, 2004, January 2, 2005 and January 3, 2005. Assuming the accuracy of the petitioner's claim that all three all full-time employees, their wages for the period from January 1, 2005 through March 31, 2005 should reflect this claim.

Upon review, however, the General Manager, the beneficiary's alleged second-in-command, earned only \$3,115.12 during this period. The sales person/office assistant earned \$3,700.00, and the financial manager earned \$1,680. By calculating an annual salary for each employee based on this quarterly breakdown, their annual salaries, therefore, would be as follows:

[REDACTED] Salesperson/Office Assistant: \$14,800.00

[REDACTED] General Manager: \$12,460.48

[REDACTED], Financial Manager: \$6,720

Considering that the minimum wage in California for 2005 was \$6.75 per hour, a person employed full-time for minimum wage in the state during that period would earn an annual salary of \$14,040.00 prior to taxes. Consequently, it appears that the financial manager and the general manager were earning less than minimum wage, thereby suggesting that they could not have been employed on a full-time basis as claimed by the petitioner. Furthermore, the fact that the sales assistant/office manager's income just slightly exceeds minimum wage is also subject to scrutiny. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

As at least two of the three staff members worked only a part-time schedule, it stands to reason that the beneficiary would be performing many of the operation's non-qualifying duties, particularly if a second retail location is currently in operation as alleged by the petitioner's counsel. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). It is evident, therefore, that without sufficient staff, the beneficiary will be required to perform the duties that would normally be delegated to subordinate employees in order to keep the business operational. The petitioner claims on appeal that the beneficiary is qualified under each aspect of the

regulatory definitions; however, this contention is not persuasive in light of the current status and stage of development of the petitioner's business.

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 the present matter, however, the petitioner has been afforded one year in which to establish an organization that can support the beneficiary in a primarily managerial or executive capacity. The regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

With regard to the petitioner's employees, counsel correctly observes that, when staffing levels are used as a determining factor in denying a visa to a multinational manager or executive, the reasonable needs of the organization in relation to its overall purpose and stage of development must be considered and addressed. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, there is no indication in this matter that the reasonable needs of the organization were not considered by the director. On the contrary, it appears the reasonable needs were considered, and the director concluded that the petitioner was incapable based on its overall purpose and stage of development to support a primarily managerial or executive position as defined by sections 101(a)(44)(A) and (B) of the Act.

In addition, it is important 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). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Beyond the decision of the director, the petitioner indicates that the beneficiary is the sole owner of both companies. If this fact is established, it remains to be determined that the beneficiary's services are for a temporary period. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that, if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of his services in the United States.

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

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

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

ORDER: The appeal is dismissed.

FURTHER ORDERED: Due to the evident lack of a qualifying relationship during the initial new office petition, the director shall review the prior L-1 nonimmigrant petition approved on behalf of the beneficiary for possible revocation pursuant to 8 C.F.R. §214.2(1)(9).