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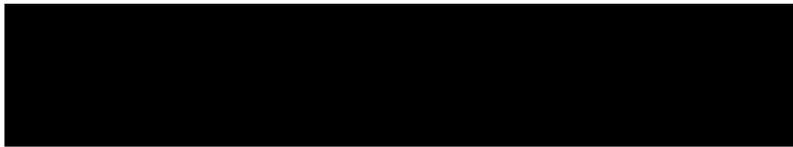
File: SRC 05 097 50342 Office: TEXAS SERVICE CENTER Date:

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 visa petition seeking to extend the employment of its president and 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 corporation organized under the laws of the State of Georgia and is an importer and exporter of silver jewelry. The petitioner claims a qualifying relationship with Grupo Apolo of Mexico. 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 extend the petition for three years.

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 executive or managerial capacity. The director also declined to consider the petition under the "new office" criteria using the remaining balance of the beneficiary's approved period of admission to the United States in L-1 visa status citing the beneficiary's admission to the United States in December 2004 in B-2 visa status.

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, the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of an executive or a "function manager." The petitioner also argues that delays in getting the L-1 visa issued at the Embassy in Mexico City resulted in the beneficiary's inability to fully establish the United States operation and that the petitioner should be given time to complete this process.

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.

Before discussing the substantive issues in this appeal, several threshold matters must be addressed.

First, the petitioner filed the current petition on February 17, 2005. The petition clearly indicates on the first page of the Form I-129 that it is seeking the "[c]ontinuation of previously approved employment without change." According to the Form I-797 approving the previous "new office" petition, the petition was approved from January 21, 2004 until January 21, 2005. The regulations at 8 C.F.R. § 214.2(l)(14)(i) state that a "petition extension may be filed only if the validity of the original petition has not expired." Therefore, as the current extension petition was filed after the expiration of the "new office" petition, the petition may not be approved. The AAO, beyond the decision of the director, will dismiss the appeal for this reason in addition to those grounds articulated below.

Second, since the record establishes that the petitioner has been doing business in the United States since September 2003, the current petition cannot be considered to be a second "new office" petition. The regulations define a "new office" as an "organization which has been doing business in the United States" for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). Likewise, the regulations define "doing business" as "the regular, systematic, and continuous provision of goods and/or services." As asserted by the petitioner in its letter dated February 2, 2005, the United States operation has grown "at a steady pace." In support of its petition, the petitioner has provided copies of invoices, bank statements, organizational documents, and tax returns all indicating business activity in both 2003 and 2004. Therefore, even if the current petition was not

filed as a petition to extend the previously approved "new office" petition, it cannot be considered to be a second "new office" petition since the petitioner has been "doing business" in the United States for more than one year.¹ However, for purposes of considering the substantive issues in the petition, the AAO will consider the petition as one seeking an extension of the previously approved "new office" petition.

Third, counsel claims on appeal that the beneficiary was not given enough time to establish the petitioner, making it ineligible for an "extension" of its "new office" status using the "new office" criteria at 8 C.F.R. § 214.2(l)(3)(v), because the beneficiary was unable to obtain an L-1 visa from the United States Embassy in Mexico for several months after the approval of the initial "new office" petition. First, the record is devoid of any evidence that this delay was unjustified or was the fault of the consular section and not the beneficiary. Second, the petitioner does not seek such an extension in its petition. Third, and most important, CIS lacks the power to grant such an extension. 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 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. The fact that the beneficiary was unable to obtain a nonimmigrant visa pursuant to the approved "new office" petition is simply not relevant to the analysis, especially when there is no evidence that this was the fault of the United States government. Therefore, as the petitioner has exhausted its one-year "new office" period, it is ineligible for any extension of the petition unless it can demonstrate that it qualifies under 8 C.F.R. §§ 214.2(l)(3) and 214.2(l)(14)(ii).²

¹Regardless, even if the petitioner had not been "doing business," the petitioner may not be granted a second "new office" L-1A visa approval. The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business. The regulations allow for a one-year period for a United States petitioner to commence doing business and develop to the point that it will support a managerial or executive position. By allowing multiple petitions under the more lenient standard, Citizenship and Immigration Services (CIS) would in effect allow foreign entities to create under-funded, under-staffed or even inactive companies in the United States, with the expectation that they could receive multiple extensions of their L-1 status without primarily engaging in managerial or executive duties. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii).

²It must be noted that, in the June 14, 2005 Notice of Intent to Deny, the director indicated that she would consider granting the petitioner an extension until, approximately, the first anniversary of the beneficiary's entry into the United States in L-1 status under the approved "new office" petition. This was offered presumably because, as explained above, the beneficiary experienced a delay in obtaining her L-1 visa from the United States Embassy in Mexico City. The director ultimately denied this relief (which was never requested by the petitioner) in the decision dated July 15, 2005 concluding that, because the beneficiary had most recently been admitted to the United States on a B-2 visa (even though she still had a valid L-1 visa), the petitioner was not entitled to the extension. In support of this conclusion, the director cites 8 C.F.R. § 214.1(c)(4). However, the director's reliance on this regulation was misplaced since the petitioner was not seeking an extension of stay for the beneficiary. While the director correctly chose not to approve the

In view of the above, the primary issue in the present matter is whether the beneficiary will be employed in a primarily managerial or executive capacity as the president and general manager of the petitioner.

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 is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under

petition, even for the abbreviated stay described in the Notice of Intent to Deny, the director should have relied instead on the petitioner's failure to establish that the beneficiary will be employed primarily in an executive or managerial capacity. Therefore, to the extent the director denied the petition pursuant to 8 C.F.R. § 214.1(c)(4), those statements are withdrawn.

section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary is acting as an executive *or* a manager, and will consider both classifications.

In the Form I-129 petition, the petitioner describes the beneficiary's duties as follows:

[D]irects and oversees all operations; she has been responsible of [sic] overseeing all aspects of operations, and has directed and coordinated all activities of such. She has directed the financial activities of the company, and ordered the preparation of reports which summarize the actual position of the business and forecast the future business activity and financial position of the company. She has planned, developed, established and supervised the execution of all policies and major economic objectives.

The petitioner repeated the materially identical job description in a letter appended to the initial petition dated February 2, 2005.

On March 3, 2005, the director requested additional evidence. Specifically, the director requested evidence establishing that the beneficiary will be employed in a managerial or executive capacity such as information regarding the other employees of the petitioner, tax returns, and an organizational chart.

In response, counsel to the petitioner provided a letter dated May 31, 2005 in which he explained that the petitioner does not have an organizational chart because the petitioner does not yet have any employees other than the beneficiary. While counsel blames the beneficiary's inability to obtain a visa in Mexico City for the petitioner's failure to expand its workforce, counsel does not assert that the petitioner's statements in the initial petition regarding the growth and vibrancy of its United States operations, as supported by evidence, were made in error.

On June 14, 2005, the director sent a Notice of Intent to Deny indicating that she would consider approving the petition for the "balance of the 1 year New Office" if the petitioner provided a copy of the L-1 visa and the Form I-94. While the petitioner responded as directed, the director declined to approve the petition for the reasons discussed in footnote 2, *supra*.

On July 15, 2005, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in an executive or managerial capacity.

On appeal, the petitioner asserts that the beneficiary's duties are primarily those of an executive or a "function manager."

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

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, 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 United States operation. See 8 C.F.R. § 214.2(l)(14)(ii)(D). As thoroughly explained above, 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. In the instant matter and for the reasons discussed herein, 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(l)(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 must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. As explained above, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner's description of the beneficiary's job duties has failed to prove that the beneficiary will act 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 policies and oversees the operations of the business. The petitioner did not, however, define these policies or explain who or what she is overseeing since the petitioner does not employ any other employees. Given the vague job description and the apparent lack of a subordinate staff, the petitioner has not established that the beneficiary will be relieved of the need to perform the tasks necessary to produce a product or provide a service. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). 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). 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 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 within the organization. As the petitioner does not have any employees other than the beneficiary, the record does not establish that she will manage other supervisory, managerial, or professional employees. Moreover, the record does not establish that the beneficiary will manage an essential function. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead

is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(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 duties related to the function.

In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. This failure of documentation is important since there is no subordinate staff available to relieve her of performing the tasks necessary to provide a service or produce a product. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her duties would be managerial, nor can it deduce whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Similarly, the petitioner has failed to prove 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.* As indicated above, while the petitioner may have provided a vague job description, the petitioner has failed to establish that the beneficiary, who has no subordinate employees and who apparently must perform the tasks necessary to produce a product or provide a service, will be acting primarily in an executive capacity. Therefore, it must be concluded that the reasonable needs of the petitioner, in light of the overall purpose and stage of development of the organization, cannot support the services of an executive capacity employee.

It is appropriate for 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).

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity as required by 8 C.F.R. § 214.2(l)(3).

Beyond the decision of the director, a related issue is whether the petitioner has established that it has a qualifying relationship with the foreign entity.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) states that a petition to extend a "new office" petition filed on Form I-129 shall be accompanied by:

- (A) Evidence that the United States and the foreign entity are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section[.]

Title 8 C.F.R. § 214.2(i)(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." An "affiliate" is defined in pertinent part as "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual."

The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In this case, the petitioner asserts that "[t]he shareholders of [the foreign entity] own 100% of the outstanding shares of the US company." This affiliate relationship was further described in a letter dated February 2, 2005, in which the petitioner states "the owners of 100% of the stock of [the foreign entity] are the owners of the totality of the outstanding shares of the US Company. Therefore, effective control of the US Company, rests in the hands of [the beneficiary], her husband and son." The petitioner, however, did not provide any organizational documents supporting this position or describe the proportions of ownership; instead, the petitioner refers to the documentation submitted in support of the initial "new office" petition.

The record does not support the petitioner's description of the ownership and control of the petitioner. First, the petitioner's 2003 Form 1120 indicates in the attachment to Schedule K that the beneficiary owns 100% of the petitioner's stock. This directly contradicts the petitioner's assertion that it is owned by three individuals. Second, in response to the request for evidence, the petitioner provided a copy of a stock certificate issuing 1,000 shares of stock to the foreign entity along with a letter from counsel to the petitioner dated May 31, 2005 asserting that the foreign entity owns all of the authorized shares of the petitioner. A stock ledger or registry was not provided. This stock certificate directly contradicts both the petitioner's assertion that it is owned by three individuals and the tax return which purports that the petitioner is solely owned by the beneficiary. The petitioner does not explain or attempt to reconcile these serious inconsistencies in the record.

In view of the above, the petitioner has not established that it has a qualifying relationship with the foreign entity. As explained above, the petitioner has provided three inconsistent versions of the petitioner's ownership and control and has failed to establish which assertion is correct. 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). In the absence of a consistent explanation of the ownership and control of the United States entity, the petitioner has not established that it has a qualifying relationship with the foreign entity.

Even in the absence of any inconsistencies in the record regarding ownership and control, the petitioner has failed to provide sufficient evidence of ownership and control for all three versions contained in the record. The director specifically requested evidence regarding the ownership and control of the United States entity. The petitioner provided a stock certificate and articles of incorporation. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Accordingly, the petitioner has not established that it has a qualifying relationship with the foreign entity, and for this additional reason the petition may not be approved.

Beyond the decision of the director, according to Georgia state corporate records, the petitioner's corporate status in Georgia is "automated administrative dissolution/revocation." Therefore, as the State of Georgia has forfeited the petitioner's corporate privileges and it may only engage in business necessary to wind up and liquidate its affairs, the company can no longer be considered a legal entity in the United States. *See Ga. Code Ann. § 14-2-1421*. Therefore, as this clearly and unequivocally renders the petitioner ineligible for the classification sought, the petition could not be approved for this additional reason even if the appeal were otherwise sustainable.

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 petitioner's qualifications. *Texas A&M Univ.*, 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

