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U.S. Citizenship  
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Services

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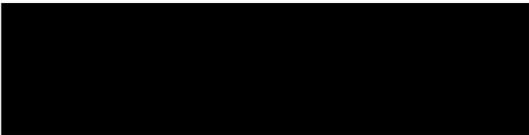
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File: SRC 04 196 50156 Office: TEXAS SERVICE CENTER Date: JUL 06 2007

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

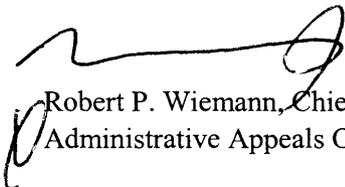
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to 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 Florida limited liability company, states that it intends to engage in the construction of residential developments. The petitioner claims that it is the affiliate of MG Wood, located in the United Kingdom. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States for a one-year period.

The director denied the petition concluding that the petitioner did not establish that beneficiary has been employed by the foreign entity 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 for the petitioner asserts that the director ignored evidence regarding the size of the foreign entity and based the denial on an erroneous view of the evidence. Counsel further asserts that the director did not clearly state the concise reason for its denial and thus it is unclear whether the director considered the beneficiary's current foreign employment or proposed U.S. employment to be in a non-qualifying capacity.

Counsel indicated on Form I-290B that a brief and/or evidence would be submitted to the AAO within 30 days. The appeal was filed on January 19, 2005. As of this date no additional evidence was been incorporated into the record of proceeding. The AAO attempted to contact counsel by facsimile in order to determine whether a brief or evidence had been submitted within 30 days of filing the appeal as stated on the Form I-290B; however, counsel's facsimile number was no longer in service. Accordingly, the record will be considered complete.

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.

If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

The sole issue addressed by the director is whether the beneficiary has been employed by the foreign 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 nonimmigrant petition was filed on July 9, 2004. In a letter dated June 5, 2004, the petitioner stated that the beneficiary is the sole proprietor and general manager of the foreign entity, and described his current duties as the following:

As general manager of [the foreign entity], [the beneficiary] was responsible for negotiating and entering into contracts involving the provision of contracting services for construction of residential development[s]. He was also responsible for overseeing the execution of the aforementioned contracts, including supervision of employees, their hiring and firing, and the promotion of [the foreign entity] as a first rate contractor. [The beneficiary] directs the management of the organization, establishes its goals and policies, exercises sole discretion in company decision-making and is the top level executive.

The petitioner provided U.K. tax documents evidencing payments the foreign entity made to a total of 14 subcontractors during the fiscal year ended on April 5, 2003.

The director issued a request for additional evidence on September 11, 2004, instructing the petitioner to provide a list of all duties performed by the beneficiary for the foreign entity, the percentage of time spent on each duty, the number of employees who report to the beneficiary and a brief description of their job titles and duties, and payroll evidence of the claimed staff.

In a response dated December 2, 2004, the petitioner provided the following description of the beneficiary's duties as general manager of the foreign entity:

1. Negotiating and entering into contracts and overseeing their execution. This includes developing and allocating budget and cost controls and obtaining information regarding types, quantities and specifications of materials for construction projects. In addition, this task involves creating production schedules and priorities to optimize time and efficiency. – 30%
2. Supervising employees. This includes planning, directing and coordinating production activities and establishing production priorities for construction projects to obtain effective operations and cost factors. This task also involves reviewing and analyzing construction operations to determine causes of nonconformity with specifications. The General Manager must visit the construction site and consult with the foreman regarding any operation problems or setbacks. - 15%
3. Hiring and firing employees. This includes reviewing budget and cost controls to identify areas in which reductions or increases can be made. Then, hiring or firing employees as needed to maintain budget and cost controls. - 2%
4. Selecting and coordinating the work of outside contractors. This task involves consulting with outside contractors in relation to construction materials and equipment needed to improve production. In addition, this task includes directing and coordinating the activities of outside contractors by communicating with them by telephone, email or in person in order to effect operational efficiency and economy. – 28%
5. Formulating and implementing marketing strategies and promoting the company. This task involves directing and coordinating the promotion of [the foreign entity] to develop new markets, increase our share of market, and to obtain a competition [sic] position in the construction industry. This task involves consulting with advertising sales representatives to publicize the services offered by [the foreign entity]. – 15%
6. Establishing company goals and policies. This task involves planning, developing and implementing the company's policies and goals through employee consultation and management. – 10%

The petitioner provided an organizational chart for the foreign entity that depicts the beneficiary as general manager responsible for supervising a construction foreman, who in turn supervises an administrative bookkeeper and eleven bricklayers. The petitioner stated that the construction foreman is responsible for assisting the beneficiary in supervising and coordinating the activities of construction workers, inspecting work in progress to ensure conformance with specifications and adherence to work schedules, and requisitioning tools, equipment and supplies. The petitioner indicated that the administrative bookkeeper is

responsible for maintaining and organizing the company's financial records, balancing the company's accounts, and performing clerical duties.

In response to the director's request for evidence of payments made to the foreign entity's employees, the petitioner re-submitted its April 2003 U.K. Inland Revenue Contractor's Annual Return and "updated Inland Revenue reports on employees, payments made to them, and taxes deducted." The submitted "Tax Payment Vouchers" indicate payments to the construction foreman, payments to two individuals identified as bricklayers, and additional payments to three individuals not identified on the organizational chart. Finally, the petitioner submitted tax payment vouchers paid to companies, Hanbury Dev. Ltd. and Top Flight Construction. The payments appear to be for the months of September and October 2004.

The director denied the petition on December 16, 2004, concluding that the petitioner had failed to establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. The director acknowledged the beneficiary's stated responsibilities and noted that "the other employees claimed consist of a Construction Foreman and an Administrative Bookkeeper." The director observed that when a company has a very limited number of employees, "it becomes questionable as to whether the operator of the business is engaged in primarily managerial or executive duties." The director determined that the beneficiary is required to perform a number of non-managerial daily functions associated with running the business, and that such non-qualifying duties would be his primary duties.

On appeal, counsel for the petitioner asserts that the director "improperly ignored evidence submitted of the size and number of employees of the foreign affiliate and based its denial on an erroneous view of the evidence."

Upon review, the petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

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's initial description of the beneficiary's duties, in part, merely paraphrased the statutory definition of executive capacity. See section 101(a)(44)(B) of the Act. The petitioner indicated that the beneficiary "directs the management of the organization, establishes its goals and policies, exercises sole discretion in company decision-making and is the top-level executive." Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

While the petitioner provided a more detailed position description in response to the director's request for evidence, the description is insufficient to establish that the beneficiary performs primarily managerial or

executive duties. It is evident based on the position description submitted and a review of the record as a whole that the beneficiary himself is solely responsible for marketing and selling the foreign entity's services. Although the petitioner indicates that the beneficiary is "directing and coordinating" the promotion of the foreign entity, the petitioner has not identified any subordinate employees who would relieve the beneficiary from performing marketing tasks. Similarly, the beneficiary alone appears to be responsible for preparing contract bids and proposals and securing contracts for the company. Overall, these sales and marketing duties, which account for 45 percent of the beneficiary's time, have not been shown to be primarily managerial or executive in nature.

The petitioner further indicates that the beneficiary devotes 25 percent of his time to "selecting and coordinating the work of outside contractors," and notes that this involves "consulting with outside contractors in relation to construction materials and equipment needed to improve production." This duty is ambiguously described, but appears to involve nothing more than the purchase of materials and equipment needed for the petitioner's construction projects. Furthermore, the petitioner has indicated that the foreign entity's construction foreman is responsible for requisitioning tools, equipment and supplies, and has not explained the apparent overlap between the duties performed by the general manager and foreman. Regardless, absent further explanation, the petitioner has not established that "consulting . . . in relation to construction materials and equipment" would fall under the statutory definitions of managerial or executive capacity. 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. at 1108.

The petitioner stated that the beneficiary devotes 15 percent of his time to "supervising employees," including "planning, directing and coordinating production activities and establishing production priorities," "reviewing and analyzing construction operations," and visiting construction sites. Again, some of these duties appear to overlap with the responsibilities performed by the claimed construction foreman, and the AAO cannot determine to what extent the beneficiary is engaged in the first-line supervision of non-professional employees performing the petitioner's bricklaying work, or what specific tasks are involved in "directing and coordinating production activities," or "analyzing construction operations," such that they can be classified as managerial or executive in nature.

The definitions of executive and managerial capacity have two specific requirements. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower-level employees or the performance of the duties of another type of non-managerial or non-executive position.

The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(15)(L)

of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive"). While the AAO does not doubt that the beneficiary exercises discretion over the foreign entity's day-to-day operations and has the appropriate level of authority, the petitioner has failed to demonstrate that his duties have been primarily in a managerial or executive capacity.

Counsel suggests on appeal that the director "ignored evidence submitted of the size and number of employees of the foreign affiliate and based its denial on an erroneous view of the evidence." The AAO observes that the only employees specifically referenced in the director's decision are the construction foreman and the administrative bookkeeper, while the petitioner also claims to employ eleven bricklayers on a contract basis.

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for U.S. Citizenship and Immigration Services (USCIS) 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 USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Upon review, the AAO finds insufficient evidence in the record to establish the actual staffing of the foreign entity as of July 2004, when the instant petition was filed. The petitioner twice submitted its U.K. annual return of payments to subcontractors for the tax year ended on April 5, 2003, as well as an accountant's financial report for the same fiscal year, but this evidence does not assist in determining the beneficiary's employment capacity as of the date of filing. The petitioner did not provide any evidence of its financial status, business operations, or evidence of payments to contractors or employees for the first half of 2004. Accordingly, the AAO cannot determine the number or type of contractors regularly utilized by the foreign entity as of the date of filing, the extent of their services, and, as a result, cannot determine whether the contracted employees would have reasonably relieved the beneficiary from performing non-qualifying duties associated with operating the business. Although the petitioner claims the foreign entity employs an administrative bookkeeper, the petitioner has not identified this employee by name and his or her employment cannot be verified.

Finally, although the AAO acknowledges evidence of payments to the individual identified as "construction foreman" in the 2002 to 2003 period, and two payments made to him in September and October 2004, this evidence is insufficient to establish that he is regularly employed by the foreign entity in the claimed supervisory position and is able to relieve the beneficiary from the non-managerial tasks of supervising bricklayers and other construction workers. The AAO notes that this employee's wages for the months of September and October 2004 were essentially equivalent to the wages paid to an individual identified as a bricklayer. Going on record without supporting documentary evidence is not sufficient for purposes of

meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Thus, while the director did not discuss the deficiencies in the evidence regarding the staffing of the foreign entity in detail, the AAO finds that the director was justified in concluding that the petitioner had not established that the foreign entity's staffing levels are sufficient to relieve the beneficiary from performing non-qualifying duties. The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium size businesses. However, the AAO has also consistently required the petitioner to establish that the beneficiary's position consists of primarily managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks. Here, as discussed above, the petitioner's description of the beneficiary's job duties suggests his involvement in sales, marketing and purchasing tasks, and the record is unclear with respect to the beneficiary's role in supervising the day-to-day activities of the company's lower-level workers. The petitioner's evidence of the foreign entity's staffing levels does not adequately support its claims that the beneficiary has subordinates to perform the non-qualifying first-line supervisory, administrative, financial and operational tasks inherent to operating a construction contracting business.

The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties.

The petitioner has not submitted evidence on appeal to overcome the director's determination with respect to this issue. Accordingly, the appeal will be dismissed.

The AAO notes that counsel expresses some confusion as to the grounds for denial of the petition. Counsel states that it is not clear from the notice of decision whether the director concluded that the beneficiary's proposed position in the United States would not be in a primarily managerial or executive capacity. As discussed above, the sole ground for denial of the petition related to the beneficiary's employment capacity with the foreign entity. However, beyond the decision of the director, the AAO finds insufficient evidence to establish the petitioner's and beneficiary's eligibility under the regulations at 8 C.F.R. § 214.2(l)(3)(v), which govern the establishment of a "new office" in the United States.

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. Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of

approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.* This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

Although the petitioner has provided a copy of a lease agreement and a job description for the beneficiary and six proposed employees, the record does not adequately demonstrate that the U.S. entity is prepared to commence business operations or that it would employ the beneficiary in a managerial or executive capacity within one year. The petitioner has not provided a business plan outlining the proposed nature of the U.S. company, provided evidence of the size of the investment required to commence operations, nor submitted any evidence that any financial investment had been made in the United States as of the date of filing. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

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

*Id.*

Although the petitioner did not submit a business plan detailing the proposed nature of the office describing the scope of the entity and its financial goals, it did submit a proposed employee structural plan indicated that several employees would need to be hired, that subcontractors would need to be hired, that marketing operations would commence, and that resources necessary to complete any contracts acquired would need to be purchased. However, the petitioner failed to detail how this would be achieved and what, if any, amount of money had been invested in the petitioner. As the petitioner has not provided a sufficient business plan or evidence of investment, the AAO cannot determine whether its proposed staffing structure is feasible for the first year of operations. In response to the director's request for evidence related to the proposed U.S. entity, counsel for the petitioner acknowledged the requirements set forth at 8 C.F.R. § 214.2(l)(3)(v), yet failed to

submit the majority of the required evidence. For example, in response to the director's request for evidence of the funding or capitalization of the U.S. entity, the petitioner submitted the foreign company's April 2003 accountant's report showing net profit of £32,225 and an October 2003 bank statement for the beneficiary's U.K. business account with an ending balance of £452. Contrary to counsel's assertions, this evidence is not probative of the size of the financial investment in the U.S. entity and its ability to commence doing business in the United States. 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. at 165.

Overall, the evidence submitted is insufficient to establish that the U.S. entity will support the beneficiary in a primarily managerial or executive position within one year, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). For this additional reason, the petition cannot be approved.

Finally, beyond the decision of the director, the AAO finds insufficient evidence to establish that the foreign entity is a qualifying organization doing business as defined in the regulations. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner initially submitted the foreign entity's U.K. tax return for the tax year ended on April 5, 2003, accountant's financial reports for the fiscal years ended in April 2002 and April 2003, evidence of employer's liability insurance valid through August 2004, a bank statement for October 2003, and two purchase orders for the foreign entity's bricklaying services, both of which were dated in 2002. On September 11, 2004, the director requested evidence of the viability of the foreign entity, including current financial and tax records, employee rosters, annual reports, and evidence of business conducted, such as copies of invoices, bills of sale, and/or product brochures of goods sold or produced by the company abroad.

In response, the petitioner submitted: an October 5, 2004 letter from Hanbury Developments Ltd., addressed to the beneficiary thanking him for his tender and accepting his quotation; an undated letter from Hurtsbridge Homes, accepting the beneficiary's tender to build a house; and, the above referenced tax payment vouchers issued to subcontractors in September and October 2004.

Upon review, the petitioner has not submitted sufficient evidence to show that the foreign entity was doing business in a regular, systematic and continuous manner as of the date of filing. The petitioner's 2003 accountant's report is not sufficient evidence of its ongoing operations as of July 2004, nor does the AAO find the two invoices from 2002, and the minimal evidence submitted in response to the request for evidence sufficient to document the foreign entity's status as a qualifying organization doing business abroad as defined in the regulations at 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683

(9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or 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.