



U.S. Citizenship  
and Immigration  
Services

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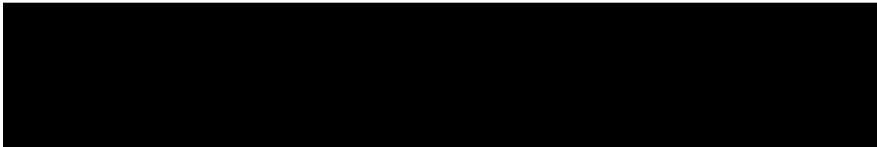
File: LIN 04 102 51913      Office: NEBRASKA SERVICE CENTER      Date: **MAR 01 2007**

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, Nebraska Service Center, initially approved the nonimmigrant visa petition. Upon further review, the acting director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the acting director properly served the petitioner with notice of his intent to revoke the approval, and the approval was subsequently ordered revoked. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Michigan limited liability company allegedly engaged in the marketing and sale of mechanical parts. The petitioner originally sought to employ the beneficiary to open a new office in the United States as its president 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 claims a qualifying relationship with Qianjiang Spring Factory of Hangzhou, China.

The director subsequently revoked the petition on or about May 5, 2005 concluding (1) that the beneficiary will not be employed in a managerial or executive capacity after the petitioner's first year in operation because the beneficiary admitted that there are no plans to hire additional staff; (2) that sufficient premises to house the new office have not yet been secured because the petitioner leased "virtual" office space consisting only of a mailing address and telephone number; and (3) that the petitioner has not established that the foreign entity is "doing business." Also, the director made her decision to revoke the petition after concluding that the petitioner had not responded to the Notice of Intent to Revoke sent to counsel to the petitioner on March 18, 2005.

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 it did file a timely response to the Notice of Intent to Revoke on April 11, 2005, and argues that the director's decision to revoke the petition solely because of this alleged failure to respond, when in fact it did respond, was in error. In support of this contention, the petitioner provides evidence that a package with a reference title of "[REDACTED]" was delivered to the Nebraska Service Center on April 11, 2005.

Counsel also resubmits the April 11, 2005 response as additional evidence on appeal. In that response, counsel asserts that (1) the petitioner now employs two people in addition to the beneficiary, thus demonstrating that the Consulate General's and the director's determination that the petitioner does not intend on hiring more staff was incorrect; (2) the "virtual" office secured by the petitioner was sufficient temporary physical premises for the new office; and (3) the beneficiary's husband has no intention of abandoning his position as president of the foreign entity and applied for an L-2 visa to facilitate travel to the United States.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

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

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office, the petitioner shall submit evidence that:

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

As a threshold matter, the procedural posture and proper jurisdiction of the AAO in this appeal must be addressed. As explained above, the petitioner asserts on appeal that the revocation should be withdrawn because it was based "solely for the reason that [Citizenship and Immigration Services (CIS)] claims that the Petitioner failed to respond to the notice of intended revocation." A review of the director's decision, however, establishes that the petitioner's characterization of the decision is not accurate. While the director did state that CIS had not received a response to the Notice of Intent to Revoke, the director did make specific substantive determinations regarding the revocation of the petition. Specifically, the director concluded (1) that the beneficiary will not be employed in a managerial or executive capacity after the petitioner's first year in operation because the beneficiary admitted that there are no plans to hire additional staff; (2) that sufficient premises to house the new office have not yet been secured because the petitioner leased "virtual" office space consisting only of a mailing address and telephone number; and (3) that the petitioner has not established that the foreign entity is "doing business." Importantly, the director did not revoke the petition because the petitioner had been deemed to have "abandoned" the petition by failing to respond to the Notice of Intent to Revoke.

In view of the above, this appeal will be considered by the AAO as an appeal from the decision of the director to revoke the petition for those specific and substantive reasons discussed therein.

That being said, the proper consideration of the petitioner's response to the Notice of Intent to Revoke must be addressed. As asserted by counsel, the petitioner responded to the Notice of Intent to Revoke on April 11, 2005. In support of this contention, counsel provides a variety of Federal Express receipts and tracking documents evidencing receipt of a package called "██████████" by the Nebraska Service Center on April 11, 2005. The AAO agrees with the petitioner that it is more likely than not, given this evidence, that the Nebraska Service Center received the timely response to the Notice of Intent to Revoke but, for reasons unknown, the director did not have this response available when rendering his decision on the revocation. However, since the petitioner resubmitted the April 11, 2005 response on appeal, the AAO will properly consider this evidence in its adjudication of the appeal rather than withdraw and remand the matter to the director. Even if the director had committed a procedural error by failing to properly consider the April 11, 2005 response in revoking the petition, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to supplement the record with evidence that should have been considered in the first instance.

Therefore, the primary issue in this matter is whether, after full consideration of the response to the Notice of Intent to Revoke originally submitted on April 11, 2005, the director's revocation of the petition was proper. Upon review, the AAO has determined that the revocation was proper and the appeal is dismissed.

Under CIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B). In the present matter, the director provided a detailed statement of the grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation. Upon review, the director revoked the approval on the bases of 8 C.F.R. §

214.2(l)(9)(iii)(A)(2) (the alien is no longer eligible under section 101(a)(15)(L) of the Act) and 8 C.F.R. § 214.2(l)(9)(iii)(A)(5) (approval of the petition involved gross error), as further explained below.<sup>1</sup>

The first issue in this matter is whether approval of the petition involved gross error because the intended United States operation, within one year of the approval of the petition, will not support an executive or managerial position. See 8 C.F.R. § 214.2(l)(3)(v)(C). As explained by the director, the beneficiary admitted to the United States Consulate General in Shanghai, China, that she is the only manager of the petitioner and that the petitioner does not intend on hiring any additional staff during the next year. In response to the Notice of Intent to Revoke, the petitioner provided a letter dated April 1, 2005 in which it asserts that the petitioner has already hired a sales person and a part-time administrative assistant, thus contradicting the information collected by the Consulate General. The petitioner does not state when these employees were hired. The petitioner also refers to the organizational chart and business plan provided with the original petition to support its position. Indeed, a review of the business plan and other documentation submitted in support of the original petition confirms that the petitioner has maintained from the start an intention of hiring no more than one more person during its first year in operation.

In view of the above, the AAO concludes that the approval of the petition involved gross error because the intended United States operation, within one year of the approval of the petition, will not support an executive or managerial position.

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<sup>1</sup>The term "gross error" is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. See *Black's Law Dictionary* 562, 710 (7th Ed. 1999) (defining the types of legal "error" and legal terms using "gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's II New College Dictionary* 491 (2001).

As the term "gross error" was created by regulation, it is most instructive to examine the comments that accompanied the publication of the rule in the Federal Register. The term "gross error" was first used in the regulations relating to the revocation of a nonimmigrant L-1 petition. In the 1986 proposed rule, an L-1 revocation would be permitted if the approval had been "improvidently granted." 51 Fed. Reg. 18591, 18598 (May 21, 1986) (Proposed Rule). After receiving comments that expressed concern that the phrase "improvidently granted" might be given a broader interpretation than intended, the agency changed the final rule to use the phrase "gross error." 52 Fed. Reg. 5738, 5749 (Feb. 26, 1987) (Final Rule). As an example of gross error in the L-1 context, the drafter of the regulation stated:

This provision was intended to correct situations where there was gross error in approval of the petition. For example, after a petition has been approved, it may later be determined that a qualifying relationship did not exist between the United States and the foreign entity which employed the beneficiary abroad.

*Id.*

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

The petitioner has failed to present evidence sufficient to prove that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

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 this matter, the petitioner has presented evidence in the form of a business plan, and corroborated by the beneficiary's interview before the United States Consulate General, that the petitioner plans to hire no more than one more person during its first year in operation. The record does not establish that this employee (a sales person), who apparently has already been hired along with a part-time employee, is a professional employee. Therefore, in view of the record, it appears that the beneficiary will be employed as a provider of actual services, a first-line manager, or a combination of both, after the first year in operation. 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). A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. at 604.<sup>2</sup>

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

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<sup>2</sup>While the petitioner has not specifically argued that the beneficiary will manage an essential function of the organization after its first year in operation in the United States, the record nevertheless would not support this position even if taken. 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 job description fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. Absent a clear and credible breakdown of the time to be 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 will be 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).

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, the petitioner has failed to prove that the beneficiary, who will manage no more than two nonprofessional employees who are apparently engaged in providing services to customers, will be acting primarily in an executive capacity.

Accordingly, the director's approval of the petition involved gross error and the petition will be revoked pursuant to 8 C.F.R. § 214.2(l)(9)(iii)(A)(5).

The second issue in this matter is whether the petitioner is no longer eligible under the Act, or approval of the petition involved gross error, because the petitioner has not secured sufficient physical premises to house the new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

As confirmed by counsel in her letter of April 8, 2005, and as admitted by the beneficiary in her interview before the United States Consulate General, the address used by the corporation in the initial Form I-129 petition as its "registered address" and not its actual place of business. This address is the residence of an acquaintance, which was used solely as a physical address for the petitioner's incorporation. As first explained in a letter dated May 24, 2004 provided in response to the director's request for evidence, the petitioner's business address is actually 900 Wilshire Blvd., Suite 202, Troy, Michigan. Counsel to the petitioner explained as follows:

Please find enclosed a copy of the signed office lease agreement entered into between the Petitioner and the landlord. The Intelligent Office, located at 900 Wilshire Boulevard, Suite 202, Troy, Michigan.

At the present time, the Petitioner is conducting sales/marketing and administrative related functions from this office. Inventory (parts) are shipped directly from the Petitioner's warehouse in China, to its U.S. clients, based on **just-in-time shipping protocol**. Since the U.S. company is new, it is the Petitioner's business plan to keep overhead costs, such as lease payments, etc., as low as possible, by storing inventory at the factory in China.

In the future, if there is a need to store inventory in the U.S., the Petitioner is prepared to secure the necessary warehouse space.

Also enclosed, please find color photographs of the exterior of the office building, the office directory with the name of the Petitioning company clearly indicated, the conference room, and [the beneficiary's] office.

The "lease" provided by the petitioner, however, is actually titled "membership agreement" and is devoid of any customary lease terms regarding physical space and possession of premises.

As confirmed by the beneficiary's interview before the Consulate General (and as later confirmed by counsel in her letter dated April 8, 2005), the petitioner's "lease" of Suite 202 at 900 Wilshire Boulevard is actually a "virtual" lease of space. The "membership agreement" entitles the petitioner to signage in the lobby, telephone and mail service, and access to some shared facilities. The petitioner is not actually leasing an office or any physical space to house the new office. Counsel to the petitioner asserts that this is a temporary situation and that the petitioner intends on securing permanent office space once the beneficiary is permitted to return to the United States. Counsel does not offer any explanation as to why this was not fully explained in her May 24, 2004 response to the Request for Evidence or why she chose to characterize the "membership agreement" as an "office lease agreement" at that time.

Title 8 C.F.R. § 214.2(l)(3)(v)(A) requires that the petitioner submit evidence that "sufficient physical premises to house the new office have been secured." While the regulations do not define what type of premises could be considered "sufficient" for purposes of the "new office" regulations, the regulations do clearly require the petitioner to secure "physical" premises. In this matter, the petitioner admits that it did not secure physical premises to house the new office. Therefore, for this reason alone, the petition may not be approved. Regardless, even if the petitioner's "membership agreement" permitting it to have limited access to shared facilities could be considered to be the securing of "physical" premises, the record is devoid of any evidence that these premises would be "sufficient" to house the new office. Given that the petitioner intends on hiring additional employees, the petitioner did not submit any documentation with its petition, in response to the Request for Evidence, or with its appeal, which proves that the "virtual" location would be "sufficient" for the "new office." In fact, given the petitioner's admission that the "virtual" office was meant to be a "temporary" situation, it appears that even the petitioner acknowledges that this arrangement is insufficient. Moreover, in the letter dated April 1, 2005, the petitioner indicates that it has already hired two employees. However, the petitioner does not explain how or where these employees are employed given the lack of office space. The petitioner does not offer any explanation for this serious inconsistency. 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).

Accordingly, the director's approval of the petition involved gross error and the petition will be revoked pursuant to 8 C.F.R. § 214.2(l)(9)(iii)(A)(5). Moreover, since the petitioner had not yet acquired sufficient physical premises when counsel replied to the Notice of Intent to Revoke (April 8, 2005), the petition will also be revoked pursuant to 8 C.F.R. § 214.2(l)(9)(iii)(A)(2) since the beneficiary is no longer eligible under section 101(a)(15)(L) of the Act.

The third issue in this matter is whether the petitioner is no longer eligible under the Act because the beneficiary's husband, who is the sole owner of the foreign employer, has applied for an L-2 visa in conjunction with the beneficiary's application for an L-1 visa thus casting doubt on the foreign entity's ability to continue to do business and maintain its classification as a "qualifying organization."

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition 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.

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" and "is or will be doing business." "Doing business" is defined 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." 8 C.F.R. § 214.2(i)(l)(ii)(H).

In this matter, the United States Consulate General learned during its interview of the beneficiary that her husband had applied for an L-2 visa even though he is the sole owner of the foreign employer. The director, in his Notice of Intent to Revoke, indicated that this fact has made it unclear how the foreign employer will continue to operate. In response to the Notice of Intent to Revoke, counsel to the petitioner indicated in her letter dated April 8, 2005 that the beneficiary's husband has no intention of relinquishing his position with the overseas entity and that he applied for an L-2 visa to facilitate easier travel into the United States for business trips. The petitioner provided a similar explanation in a letter dated April 1, 2005 and added that acquiring the L-2 visa would allow her husband to avoid reapplying for a B-1 visa.

While the explanation provided by both the beneficiary and the petitioner's counsel is arguably sensible, the petitioner nevertheless fails to address the concern raised by both the director and the Consulate General. The petitioner failed to provide any details regarding the ongoing business operations of the foreign entity, to predict the number of "business trips" the beneficiary's husband plans to make to the United States, or to explain how the foreign entity will be managed during these business trips. 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)). Title 8 C.F.R. § 214.2(l)(9)(iii)(B) permits the petitioner to submit evidence in rebuttal of the Notice of Intent to Revoke. In this matter, the petitioner chose not to submit supporting evidence. Therefore, the director properly revoked the petition.

Accordingly, the petition will be revoked pursuant to 8 C.F.R. § 214.2(l)(9)(iii)(A)(2) since the beneficiary is no longer eligible under section 101(a)(15)(L) of the Act because it has not been established that the foreign entity will continue to do business and maintain its classification as a "qualifying organization."

Beyond the findings in the previous decision, the remaining issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioning entity and a foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner has not demonstrated that the petitioner and the foreign entity each meet the definition of one of the qualifying relations specified in the regulations, i.e., a parent, branch, affiliate, or subsidiary. For this additional reasons, the appeal must be dismissed and the petition denied.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if 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 at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met this burden.

**ORDER:** The appeal is dismissed.