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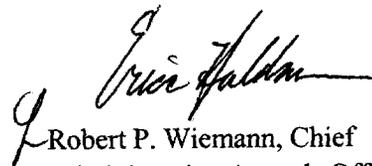
IN RE: Petitioner:  
Beneficiary:

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)

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

The petitioner states that it is engaged in the shipping management business. The petitioner claims that it is a branch office of Lomar Shipping Limited, located in the United Kingdom. Accordingly, the United States entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The beneficiary was initially granted a one-year period of stay in L-1A status to open a new office, and now the petitioner seeks to extend the beneficiary's stay in order to continue to fill the position of chairman for a two-year period.

The director denied the petition on December 28, 2005, concluding that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a primarily executive or managerial capacity by the U.S. company. The director noted that it did not appear that the beneficiary supervises a staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties, and thus the beneficiary will be primarily involved in performing the day-to-day services essential to running a business.

Counsel for the petitioner filed a timely appeal on January 26, 2006. On appeal, counsel for the petitioner asserts that the operations manager, the position supervised by the beneficiary, is a first-line supervisor position and a professional position. Counsel also states that the beneficiary will be employed in a primarily managerial capacity because he supervises a first-line supervisor and his duties are primarily managerial in nature. In addition, counsel contends that the Service cannot look at the company's size alone but must also take into account the reasonable needs of the organization. Counsel submits a brief in support of the appeal.

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) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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), provides:

The term "executive capacity" means 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 November 28, 2005. The Form I-129 indicates that the beneficiary will be employed in the position of chairman for the petitioner, which claimed to have four employees. In a support letter dated November 11, 2005, the petitioner explained the beneficiary's current and proposed duties as the following:

- directing the recruitment search for U.S. based employees;
- managing the exploration of financial opportunities for the business;
- managing the logistics of specialized and diverse charter requirements;
- exploring any possibility of equity and debt placing issues;
- overseeing the U.S. business' financial budgets and management, ensuring forecasts are set and met or exceeded;
- attracting new clients for ship ownership;
- managing [the petitioner's] existing agreements and contracts;
- soliciting and attracting new agreements and contracts with clients and business partners;
- establishing the goals and policies of [the petitioner's] U.S. operations;
- overseeing the direction of the U.S. business; and
- exercising wide latitude of discretionary decision making authority in the areas of executive management of the company.

The petitioner submitted payroll records for the month of March 2005, at which time the U.S. company employed three workers.

On December 6, 2005, the director determined that the petitioner did not submit sufficient evidence to process the petition and the director requested that the petitioner submit: (1) evidence that establishes the duties performed by the beneficiary in the past year and the duties he will perform if the petition is extended; (2) evidence of the staffing of the United States organization, including the position titles and duties; and, (3) a description of the management and personnel structure of the United States organization.

In a response letter to the director's request, dated December 15, 2005, the petitioner submitted the following description of the duties the beneficiary performed in the past year and the duties he will perform in the position of chairman for the U.S. company:

In the past year, [the beneficiary] managed and directed [the petitioner's] U.S. based vessel management services and has been charged with managing the Halcyon Enterprises Limited account, [the petitioner's] largest and most material client. In addition, [the beneficiary] has secured another significant account in the provision of management services, First Belgravia Capital Limited, which is in the process of establishing a U.S. office. In managing the account of [the petitioner's] most significant client and securing a U.S. based client with significant potential, [the beneficiary] has met the expectations and goals for the U.S. business in its first year of business. He has been a key and critical component of [the petitioner's] success in the U.S.

In addition to those duties outlined in our letter dated 11 November, in the last year, [the beneficiary's] specific duties have included the following:

- managing the significant divestment of direct vessel ownership, taking advantage of the unique shipping market cycle, utilizing specialized knowledge of this market;
- overseeing specialized management responsibilities for retained vessels;
- sourcing potential buyers for vessels, negotiating terms of sale and executing contracts;
- overseeing shipping interests and assessing risks in the industry;
- managing and directing the transactions for the sales of major sea-faring vessels;
- preparing and executing [the petitioner's] diversification into investment and hospitality sectors, securing a significant new client;
- researching the financial and hospitality markets, assessing risks and advising [the petitioner's] U.K. executives of strategies and business plans for developing there markets;
- managing and directing an Operations Manager, who in turn, manages the day to day functions of the U.S. office and personnel and staffing issues.

In addition to those duties outlined in our letter of 11 November, in the next two years, [the beneficiary's] specific duties will include the following:

- reviewing investment business opportunities in the U.S., including a specific multi-million dollar opportunity in the hospitality sector and overseeing the transaction on fruition;
- consulting with financial and professional advisors on the potential for specific deals, exercising wide latitude of discretion in determining the business' course of action;
- working closely with the executives of [the petitioner's] U.S. based clients in advising on and executing management services;
- providing specialized and high-level advice on significant deals and transactions in the areas of shipping, finance and hospitality;
- researching and identifying new business opportunities and developing and executing business plans of action;
- managing and directing the Operations Manager and other professionals employed as the business expands.

In addition, the petitioner stated that the three individuals employed by the U.S. company fill the positions of operations manager, facility cleaner, and courier/driver. The petitioner stated that the facilities cleaner and the courier/driver are service level employees. The petitioner described the position of operations manager as the following:

██████████ is responsible for managing the actual running of the U.S. office while [the beneficiary] is overseeing and executing the management of the business. ██████████ duties, while including some administrative responsibilities, primarily include managing marketing functions and events, managing the provision and maintenance of all communication systems, including wireless services, and managing the provision of contract and temporary services. ██████████ exercises discretion in hiring contractors and temporary employees, including additional administrative assistants, and also manages personnel issues.

The petitioner also submitted a resume for the individual who holds the position of operations manager. The position of operations manager is further explained on the resume as follows:

- Providing support in all aspects of running a US branch office of UK based shipping company
- Responsible for communications involving renovations, repairs and art/furniture acquisitions.
- Accountable for maintaining all computer, phone and entertainment systems.
- Purchased and maintained all technical support systems (i.e., T-1 date line, router, network server).
- Organize all travel, hotels, excursions, etc.
- Responsible for all sub-contractor and vendor relations.

- Negotiated office leases; residential purchases; various agreements with designers, contractors, etc.
- Planned special events including parties, catered dinners and client gatherings.

The petitioner also submitted an invoice issued to the U.S. entity for services provided by a temporary worker who filled the position of administrative assistant for one week in September 2005. The petitioner indicated that the U.S. entity occasionally utilizes the services of temporary workers when there is a business need.

The director denied the petition on December 28, 2005 on the ground that insufficient evidence was submitted to demonstrate that the beneficiary would be employed in a primarily executive or managerial capacity by the U.S. company. The director noted that it did not appear that the operations manager, the cleaner and the driver would relieve the beneficiary from performing the day-to-day tasks of running the business. The director also stated that the duties performed by the operations manager appear to be similar to the duties of a personal assistant.

On appeal, counsel for the petitioner asserts that the operations manager, the position supervised by the beneficiary, is a first-line supervisor position and a professional position. Counsel states that the operations manager is not a personal assistant, and instead manages the marketing and administrative functions of the U.S. entity. Counsel compares the position of operations manager to that of a meeting and convention planner as listed on O'Net. Counsel also states that the beneficiary will be employed in a primarily managerial capacity because he supervises a first-line supervisor and his duties are primarily managerial. Counsel disputes the director's conclusion that the petitioner submitted "no evidence that the beneficiary performs the stated duties." In addition, counsel contends that CIS cannot look at the company's size alone but must also take into account the reasonable needs of the organization.

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary will be employed in a 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 definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove 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).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial operational duties. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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. at 604.

Here, while the beneficiary evidently exercises discretion over the day-to-day operations of the business, the petitioner's description of his proposed duties suggest that the beneficiary's actual duties include a number of non-managerial and non-executive duties.

The beneficiary's proposed job description includes vague duties such as: "managing the exploration of financial opportunities for the business"; "managing the logistics of specialized and diverse charter requirements"; "establishing the goals and policies of [the petitioner's] U.S. operations"; "overseeing the direction of the U.S. business; and "exercising wide latitude of discretionary decision making authority in the areas of executive management of the company." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *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). Many of these duties merely paraphrase the statutory definition of executive capacity. See section 101(a)(44)(B) of the Act. 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.).

In addition, the job duties required of the beneficiary include several duties that are not clearly managerial in nature, such as: "exploring any possibility of equity and debt placing issues"; "overseeing the U.S. business' financial budgets and management, ensuring forecasts are set and met or exceeded"; "attracting new clients for ship ownership"; "managing existing [the petitioner's] agreements and contracts"; "soliciting and attracting new agreements and contracts with clients and business partners"; "reviewing investment business opportunities in the U.S., including a specific multi-million dollar opportunity in the hospitality sector and overseeing the transaction on fruition"; and "researching and identifying new business opportunities and developing and executing business plans of action." Since the petitioner has not explained that the U.S. company has hired any employees in accounting, market research or financial development, or employees to provide consulting services to the petitioner's clients, it appears that the beneficiary will be providing the services of accounting, finance, and market research, and directly servicing client accounts rather than directing such activities through subordinate employees. Again, based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Counsel correctly observes that a company's size alone may not be the determining factor in denying a visa to a multinational manager or executive. 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 petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. Again, there is no provision in CIS regulations that allows for an extension of this one-year period.

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

At the time of filing, the petitioner provided "ship management services to ship-owning businesses," including "advice to business on crewing, insurance and technical operations and other ship management functions." The petitioner claimed to have a gross annual income of \$350,000. The U.S. entity employed the beneficiary as chairman, one operations manager, one cleaner and one driver/courier. In reviewing the brief job descriptions of the employees at the U.S. entity, submitted by the petitioner in a letter dated December 15, 2005, it appears that the operations manager is engaged in the administrative and operational tasks for the office and the event planning operations for the business. Based on the evidence submitted, it appears that the beneficiary will be performing many of the various operational tasks inherent in running the business, such as negotiating contracts, acquiring new clients, preparing budgets and financial statements, researching the market, customer service and providing the actual consulting services to the clients on ship management functions. As noted on the invoices issued to the U.S. entity's clients, the description of the work done by the U.S. entity is indicated as "consultancy services of [the beneficiary]." Thus, it appears that the beneficiary is the only employee who is providing the consultancy services for the U.S. entity. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. It does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as the chairman and one operations manager, one cleaner and one driver/courier. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

In addition, although counsel states that the petitioner has occasionally utilized contractual employees in the areas of administrative assistance, the petitioner has not explained how the services of the contracted employees obviate the need for the beneficiary to primarily conduct the petitioner's business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In addition, although the beneficiary is not required to supervise personnel, if it is claimed that his managerial duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. The record

established that the beneficiary will supervise an operations manager, who in turn, supervises one cleaner and one driver/courier.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the administrative tasks and the event planning functions of the subordinate supervised by the beneficiary. Rather, based on the job description of the operations manager, the operations "manager" would necessarily be involved in the routine administrative and clerical tasks for the office, which cannot be considered professional in nature. Although the operations manager is also involved in planning events for the U.S. entity, the petitioner did not provide a detailed description of these duties and it is not clear if this is a majority of the work done by the operations manager, and if the events are solely planned by the operations manager or with the assistance of other event planners. Based on the documentation provided, it does not appear that the beneficiary supervises professional employees. Regardless, the record does not show that personnel supervision is the beneficiary's primary role within the company.

Furthermore, on appeal, counsel asserts that the position offered to the beneficiary is executive in 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, 8 U.S.C. § 1101(a)(44)(B). 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 managerial 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.* 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. 593, 604 (Comm. 1988). As the beneficiary supervises one operations manager, the U.S. company has not established a complex organizational structure that would elevate the beneficiary beyond a first-line supervisor, nor does the

record demonstrate that the beneficiary primarily focuses on the broad policies and goals of the organization. In the instant matter, the petitioner has not established evidence that the beneficiary is in an executive capacity with the U.S. entity.

As discussed above, the beneficiary's job description was not sufficient to establish that he would be employed in a primarily managerial or executive capacity, and the petitioner has not identified sufficient employees within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from providing the consulting services of the business. The fact that the beneficiary has been given a managerial job title and general oversight authority over the business is insufficient to elevate his position to that of an executive or manager as contemplated by the governing statute and regulations.

The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium size businesses. However, the AAO has also long 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. It is the petitioner's obligation to establish however, through independent documentary evidence that the day-to-day non-managerial and non-executive tasks of the petitioning entity are performed by someone other than the beneficiary. Here, the petitioner has not met this burden.

On appeal, counsel cites *Mars Jewelers, Inc. v. INS*, 702 F.Supp 1570 (N.D. Ga. 1988), to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Mars Jewelers, Inc. v. INS*. It is noted that the case cited by counsel relates to immigrant visa petitions, and not the extension of a "new office" nonimmigrant visa. As the new office extension regulations call for a review of the petitioner's business activities and staffing after one year, the case cited by counsel is distinguishable based on the applicable regulations. See 8 C.F.R. § 214.2(l)(14)(ii).

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. For this reason, the appeal will be dismissed.

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 claims that the U.S. entity is a branch office of the foreign company. In support of this claim, the petitioner submitted a letter from the foreign company's secretary confirming that the U.S. office is branch office of the foreign company. In addition, the petitioner submitted a letter from the Internal Revenue Service confirming the U.S. entity's employer identification number.

In defining the nonimmigrant classification, the regulations specifically provide for the temporary admission of an intracompany transferee "to the United States to be employed by a parent, branch, affiliate, or subsidiary of [the foreign firm, corporation, or other legal entity]." 8 C.F.R. § 214.2(l)(1)(i) (emphasis added). The regulations define the term "branch" as "an operating division or office of the same organization housed in a different location." 8 C.F.R. § 214.2(l)(1)(ii)(J).

Probative evidence of a branch office would include the following: a state business license establishing that the foreign corporation is authorized to engage in business activities in the United States; copies of Internal Revenue Service (IRS) Form 1120-F, U.S. Income Tax Return of a Foreign Corporation; copies of IRS Form 941, Employer's Quarterly Federal Tax Return, listing the branch office as the employer; copies of a lease for office space in the United States; and finally, any state tax forms that demonstrate that the petitioner is a branch office of a foreign entity. The petitioner failed to provide probative evidence that the U.S. entity is a branch office of the foreign company. *See* 8 C.F.R. § 214.2(l)(14)(ii)(A). As the director did not raise this issue in the request for evidence or in the decision, the AAO notes this deficiency for the record and will not examine the issue further.

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 the decision. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.