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FILE: WAC 05 260 51468 Office: CALIFORNIA SERVICE CENTER Date: MAY 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)

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, California 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 filed this nonimmigrant petition seeking to extend the employment of 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, a corporation organized in the State of California, claims to be the subsidiary of [REDACTED], located in Hyderabad, India.¹ The petitioner claims to be engaged in the retail sale of Indian-made garments and accessories.

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

Counsel for the petitioner filed an appeal in response to the denial. On appeal, counsel for the petitioner alleges that the director's decision was erroneous and constituted an abuse of discretion. In support of this contention, counsel submits a detailed brief and additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) provides 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.

¹ It should be noted that, according to California state corporate records, the petitioner's corporate status in California has been suspended. Therefore, as the petitioner has lost all rights and powers for failure to meet statutory filing requirements, the company can no longer be considered a legal entity in the United States. Therefore, even if the issues raised on appeal were overcome, given the petitioner's current corporate status in the United States, it appears the petition could not be approved for this additional reason alone.

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

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

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

- (I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.
- (J) "Branch" means an operating division or office of the same organization housed in a different location.
- (K) "Subsidiary" means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) "Affiliate" means
 - (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
 - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or

- (3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In this case, the petitioner makes two simultaneous claims regarding the nature of the relationship between the entities. Initially, the petitioner claims that the U.S. office is a branch of the foreign entity. In the same document, however, the petitioner claims that the foreign entity owns 100% of the U.S. entity, thereby suggesting a subsidiary relationship. As addressed by the director, the AAO will also review the evidence for eligibility under both relationships.

In a letter of support dated September 26, 2005, the petitioner indicates that the U.S. corporation was acquired in lieu of monetary consideration. Specifically, the U.S. entity owed the foreign entity \$15,298, and in exchange for forgiveness of the debt, ownership of the U.S. entity passed to the foreign entity. The issue on appeal is whether the necessary elements of a qualifying relationship have been demonstrated between the two parties.

As discussed by the director, the initial claim that the U.S. office is a branch of the foreign entity is invalid. Specifically, the director correctly noted in the denial that, if the petitioner submits evidence to show that it is incorporated in the United States, then that entity will not qualify as "an . . . office of the same organization housed in a different location," since that corporation is a distinct legal entity separate and apart from the foreign organization. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). In this matter, definitive evidence has been submitted to show that the U.S. entity was incorporated in California in 1993. If the claimed branch is incorporated in the United States, Citizenship and Immigration Services (CIS) must examine the ownership and control of that corporation to determine whether it qualifies as a subsidiary or affiliate of the overseas employer. As a result, therefore, the issue to be determined is whether the U.S. entity is a wholly-owned subsidiary of the foreign entity, as claimed by the petitioner.

The petitioner claimed prior to adjudication and again on appeal that the petitioner's corporate income tax returns for the year 2000 are acceptable evidence of the transfer of ownership of the U.S. entity to the foreign entity. Specifically, the petitioner asserts that the presence of the \$15,298 figure under "other assets" on Part III of its 1120A for the tax year 2000 is sufficient evidence of the foreign entity's acquisition of the U.S. entity. The AAO disagrees.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control to determine whether a stockholder maintains ownership and control of a corporate entity. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In this matter, the petitioner has submitted insufficient corporate documentation to corroborate its claims. 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)). Additionally, the AAO notes that under the "other assets" reference where the figure of \$15,298 appears, the petitioner refers to "Schedule 1" for an explanation as to the meaning of other assets. Interestingly, however, "Schedule 1" was not submitted for the record.

Furthermore, although not discussed by the director in the denial, the AAO notes that the record contains a document entitled "Minutes" of the U.S. entity, dated July 16, 2000. This document, which is unsigned, provides that "[redacted] stated he has transferred his Shares of [the petitioner] for the value received as per the buy and sell agreement." This document is of little relevance since it is unsigned, but it does suggest that a buy and sell agreement may in fact have been executed and recorded, which would serve as evidence of the transfer of ownership. However, no copies of this document were submitted, nor has any evidence of the formal transfer of Mr. [redacted]'s shares to the foreign entity been provided. As stated above, 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. Additionally, despite counsel's strong contentions on appeal that the 2000 tax return evidences the transfer of ownership, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Based on the lack of evidence of the current ownership of the U.S. entity, the crucial elements of ownership and control cannot be determined, and thus a qualifying relationship has not been established. For this reason, the petition may not be approved.

The second issue in this matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In a letter dated September 26, 2005, the petitioner explained that it currently operated two store [REDACTED] and that it would be opening a third, 1 Gram Gold, in the coming weeks. In addition, a statement

providing an overview of other employees in the company indicated that the beneficiary oversaw two employees; namely: Prem Guragain, "manager" of [REDACTED] Kids, who until August of 2005 worked as a sales representative for [REDACTED], "manager" of [REDACTED]. Finally, the petitioner claimed that the beneficiary supervised a certified public accountant, who worked for the petitioner as an independent contractor on an as-needed basis.

Quarterly tax returns for the most recent quarter ending June 2005 confirmed the employment of [REDACTED] as well as a third employee, [REDACTED] identified as a part-time sales representative. With regard to the beneficiary's role in the United States, the petitioner provided a breakdown of the percentage of time the beneficiary devoted to all tasks and indicated that 10% of her time would be devoted to directing the activities of the organization; 30% of her time would be devoted to analyzing operations to evaluate performance of the company and staff to determine areas of cost reduction and program involvement; 10% of her time would be devoted to conferring with the manager to establish policies and formulate plans; 30% of her time would be devoted to reviewing financial statements and sales and activity reports; 10% of her time would be devoted to assigning or delegating responsibilities to subordinates as necessary; and 10% of her time would be devoted to developing the business mission, objectives, goals and policies of the petitioner.

On November 4, 2005, the director requested additional evidence pertaining to the nature of the beneficiary's position in the U.S. business. The request specifically asked the petitioner to submit a list of all employees under the beneficiary's supervision as well as a more detailed description of the beneficiary's duties, including the percentage of time devoted to each duty.

The petitioner submitted a response dated November 10, 2005. The petitioner provided an overview of a typical workweek for the beneficiary, broken down into daily and hourly intervals, and provided a list of additional responsibilities attributed to the beneficiary. For example, the petitioner claimed that in addition to the previously-submitted overview, the beneficiary also assumed responsibility for "holding together the entire infrastructure of the entire company," "recruitment, hiring[,] training, evaluation and compensation of employees" and "overseeing the entire operation of the various locations."

On January 16, 2006, the director denied the petition. The director found that the evidence in the record was insufficient to establish that the beneficiary would primarily be employed in a managerial or executive capacity. The director concluded that the documentary evidence submitted did not establish that the beneficiary would function at a senior level within the organization or that the beneficiary had sufficient subordinate staff to relieve her from performing non-qualifying duties.

On appeal, counsel for the petitioner attempts to refute the director's basis for the denial by providing documentation verifying the current staffing of the organization, and restates the beneficiary's duties and claims that the petitioner has in fact satisfied the regulatory requirements. Additional documentation regarding the current status of the petitioner is submitted as well as a final assertion by counsel that, as prior petitions were approved based on the same set of evidence, the instant petition should likewise be approved. The AAO, however, disagrees with counsel's assertions.

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 definitions of executive and managerial capacity have two main 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).

The description of duties provided, both in the initial letter of support and in response to the request for evidence, simply adopt many of the key phrases used in the regulatory definitions of both managerial and executive capacity. General statements such as “overseeing the entire operation” and “directing, planning and implementing policies” do little to clarify the exact nature of the beneficiary’s duties. 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.). 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 answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The petitioner, however, attempted to answer this question by providing a daily schedule for the beneficiary. From the breakdown of a typical week, however, it appears that the beneficiary’s typical workday is Monday to Friday from 10:00 a.m. until 4:30 p.m. During the hours of 12:00 p.m. and 2:00 p.m., the petitioner stated that the beneficiary is typically out to lunch. Each day appeared to be broken up the same way, i.e., from 10:00 a.m. to 12:00 p.m. the beneficiary would look over accounting tasks; from 12:00 p.m. until 2:00 p.m. she would be out to lunch but would make necessary phone calls or visit clients during this period as required; and from 2:00 p.m. to 4:30 p.m. she would typically take care of pending matters and return phone calls.

Based on this overview, it appears that the beneficiary works at most 32.5 hours per week, including the time between 12:00 p.m. and 2:00 p.m. when she takes her lunch break. As the petitioner indicated on the Form I-129 that the beneficiary was to be employed on a full-time basis, this leaves largely unaccounted between seven and a half and seventeen and a half hours of the beneficiary’s proposed duties. Regardless, the petitioner continues to claim that she is working in a qualifying capacity based primarily on the fact that she has a subordinate staff of professionals to relieve her from non-qualifying duties.²

² It should be noted that the description of duties provided in the initial petition and in response to the request for evidence paraphrased the regulatory definitions of both managerial *and* executive capacity, and the petitioner failed to specify whether the beneficiary was primarily a manager or an executive. The evidence and description of duties discussed above infers that the beneficiary is employed in the United States in a managerial capacity. On appeal, however, counsel makes a specific claim for the first time that the beneficiary is employed primarily in an executive capacity by virtue of her title as president of the petitioner. This claim follows the director’s denial based largely on a finding that the beneficiary did not supervise a

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. A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in approving a visa for 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 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.*

In this matter, the evidence in the record confirms that at the time of filing, the petitioner employed the beneficiary, a "manager" for [REDACTED] a former sales representative turned "manager" for [REDACTED] and one part-time sales representative. The petitioner also claimed that the beneficiary oversaw an accountant who worked as an independent contractor on an as-needed basis. There are some unexplained inconsistencies in this scenario. Essentially, the petitioner claims to operate two retail clothing stores, and will shortly open a third. It has one designated manager for each store, and one part-time sales representative whose hours and place of work [REDACTED] was not specified. Further, as determined above, the beneficiary as an alleged full-time manager or executive, works at most 32.5 hours per week. Based on this figure, it is questionable whether her subordinate employees work more hours than she does, and it particularly raises questions with regard to the nature of the part-time sales representative's hours, considering the quarterly tax return shows that he makes significantly less than all other employees.

In the instant matter, it is unclear how the beneficiary can engage only in managerial or executive tasks as claimed, particularly when the position descriptions of her two subordinate employees also include only managerial duties, thereby leaving no one except one part-time sales associate to actually interact with customers, ring sales, and take care of housekeeping and administrative duties. The petitioner claims that the beneficiary oversees a subordinate staff of managerial and/or professional employees, and is thus qualified for an extension of the petition. Based on the evidence presented, however, the employment situation presented before the AAO is not credible.

A critical analysis of the nature of the petitioner's business undermines counsel's assertion that the subordinate employees relieve the beneficiary from performing non-qualifying duties. Rather, it appears from the record that the only individual performing any non-managerial or non-executive function would be the part-time

subordinate staff of professional, managerial or supervisory employees. Upon review of the record, the director correctly evaluated the beneficiary's stated duties for compliance under both regulatory definitions based upon the petitioner's failure to specify in which capacity the beneficiary was employed. On appeal, the AAO is likewise obligated to provide a similar review of the stated duties for compliance under both definitions, despite counsel's specific claim of the beneficiary's executive capacity.

sales representative, and this is only inferred from his job title and significantly lower wages. As the two store "managers" include no sales, marketing, or administrative duties in their position descriptions outlined in the September 26, 2005 letter, it can only be assumed, and has not been proven otherwise, that the beneficiary and these two persons are together performing all sales, marketing, and customer-service related tasks. At the time of filing, it is confirmed by records provided that the beneficiary, the two store managers, and a part-time sales associate were the only employees. There is no reasonable explanation for how two clothing stores could operate profitably (as claimed by the petitioner) without all employees, including the beneficiary, engaging in non-managerial functions.

Furthermore, the fact that a third store is scheduled to open shortly only makes this inconsistent situation more questionable. Based on the record of proceeding, and absent evidence to the contrary, the beneficiary's job duties appear to be principally composed of non-qualifying duties that preclude her from functioning in a primarily managerial or executive role. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). In either case, the AAO is left to question the validity of the petitioner's claim and the remainder of the beneficiary's claimed duties. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Moreover, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Although a third store is scheduled to open soon, according to the petitioner, and new staff members will be hired, the fact remains that at the time of filing, the petitioner did not have sufficient subordinate staff to relieve her from primarily performing non-qualifying duties.

Counsel for the petitioner noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. However, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The prior approvals do not preclude CIS from denying an extension

of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

Based on the evidence presented, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. For this reason, the petition may not be approved.

Beyond the decision of the director, the petitioner indicates that the beneficiary is the sole owner of both companies. Even if this claim was substantiated, it remains to be determined that the beneficiary's services are for a temporary period. The regulation at 8 C.F.R. § 214.2(1)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that she will be transferred to an assignment abroad upon completion of her services in the United States.

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

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

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

ORDER: The appeal is dismissed.