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File: EAC 07 024 52151 Office: VERMONT SERVICE CENTER Date: OCT 02 2007

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

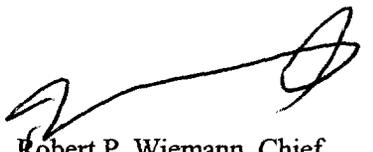
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, 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 filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Georgia corporation, states that it intends to operate a gas station and convenience store. It claims to be an affiliate of Comfort Shoes, located in Hyderabad, India. The petitioner seeks to open a new office in the United States and has requested that the beneficiary be granted an approximately two-year period in L-1A classification to serve as its vice president.¹

The director denied the petition on January 30, 2007, concluding that the petitioner did not establish: (1) that within one year of approval, the U.S. company will support an executive or managerial position; and (2) that the beneficiary's services are to be used for a temporary period and that the beneficiary would be transferred to an assignment abroad upon completion of his temporary duties in the United States. The director's conclusion that the U.S. company would not support a primarily managerial or executive position within one year was based on a finding that the petitioner submitted insufficient evidence to establish the size of the United States investment and the financial ability of the foreign organization to remunerate the beneficiary and commence doing business in the United States.

On appeal, counsel for the petitioner contends that the beneficiary intends to depart the United States if and when the petitioning entity ceases operations and/or upon the expiration of his L-1A status, if granted. Counsel suggests that the fact that the petitioner "had acquired two service stations with that income and had already begun doing business in them" should be sufficient to show that the petitioner has a financial investment sufficient to commence operations in the United States. Counsel submits a brief and evidence in support of the appeal.

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

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

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

¹ Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

- (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(1)(3)(v) also provides 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 in the United States, the petitioner shall submit evidence that:

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

The first issue in this matter is whether the petitioner established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. The director's finding with respect to this issue was based solely on a determination that there was insufficient evidence of the size of the United States investment and the financial ability of the foreign entity to commence doing business in the United States. Accordingly the AAO will first address whether the petitioner satisfied the regulatory requirement set forth at 8 C.F.R. § 214.2(1)(3)(v)(C)(2).

The nonimmigrant petition was filed on November 3, 2006. The petitioner stated on Form I-129 that it is an affiliate of the foreign entity, M/s Comfort Shoes, based on common majority ownership by the beneficiary, who is claimed to own a 51 percent interest in both companies. In support of the petition, the petitioner submitted a letter from AmSouth Bank in Pensacola, Florida, indicating that the beneficiary had a checking account balance of \$35,632.11 as of October 23, 2006. The petitioner attached a copy of the check for

\$10,000 issued from the beneficiary's account on October 12, 2006 to "Cleveland Amaco," which counsel stated was for "the purchase of his gas station."

The petitioner also attached a "Business Sale Agreement" signed on October 5, 2006, which counsel claims establishes that the the petitioner has acquired a gas station and convenience store. The agreement states that it is for the business known as "Cleveland Amaco," and identifies a total purchase price of \$270,000. The terms of the agreement indicate that the buyer will provide \$25,000 in earnest money to a broker, while the remaining balance of \$245,000 would be paid in cash upon consummation of the sale. The agreement indicates that the sale is contingent upon the execution of a new lease or sublease between the owner and the buyer, and subject to the approval of an L-1 visa petition for the beneficiary. The document represents a "preliminary agreement," with the sale to be consummated on or before November 1, 2006. The document does not identify the seller. The document appears to be signed by the beneficiary and the petitioner's company president, Irfan Jiwani, as buyers. The petitioner attached photographs of a BP branded gas station as additional evidence of its purchase of the business known as "Cleveland Amaco."

The petitioner also submitted a three-year business plan, which identifies "start-up funding" requirements of \$37,000 and "start-up expenses to fund" requirements of \$253,000, and a "total funding required" in the amount of \$290,700. The plan indicates that the company's planned investment will include \$100,000 from the beneficiary and \$90,700 from the petitioner's other shareholder. The plan indicates an additional long-term liability of \$100,000. According to the information in the business plan, the petitioner intends to operate one gas station and convenience store with a total of five employees, including the beneficiary, during the first three years of operation.

The petitioner submitted Indian bank statements for an account held by [REDACTED] and income tax returns for [REDACTED], which are identified as the foreign entity's documents. As discussed further below, the foreign entity appears to be a sole proprietorship operated by the beneficiary's father, rather than a partnership that is majority owned by the beneficiary, as claimed by the petitioner.

The director issued a request for additional evidence on November 14, 2006. The director requested, in part, evidence to establish the size of the United States investment and the financial ability of the foreign organization to remunerate the beneficiary and commence doing business in the United States. Specifically, the director requested: (1) additional documentary evidence that the foreign entity has the ability to invest in the United States entity, to include copies of the foreign entity's bank statements for the last six months; (2) copies of bank wire transfers to document the transfer of funds from the foreign entity; and (3) documentary evidence to establish that the foreign entity has been in contact with the United States entity during the incorporation process, including copies of canceled checks, monetary transfers, or other documentary evidence of funds used for the incorporation.

The director also noted that the petitioner appeared to have purchased an ongoing business, and questioned whether it qualified as a "new office." In this regard, the director requested evidence of the financial status of the U.S. company, including copies of the latest quarterly statements and income tax return, bank statements for six months, phone records for six months, and evidence of doing business in the United States.

In a response dated January 15, 2007, counsel for the petitioner clarified that the petitioner is a new office incorporated on October 10, 2006. Counsel noted that the petitioner sold the business known as "Cleveland

Amaco" and purchased a Texaco gas station on November 10, 2006. With respect to the financial investment in the United States entity, counsel stated the following:

To address the issue of whether the foreign organization can remunerate the beneficiary and commence doing business, we believe the current financial situation of the US entity acts as prima facie evidence that the foreign entity has such ability. First of all, [the beneficiary] is 51% owner of both the foreign entity and the US entity (as previously established), both of the entities are affiliates. The money used to purchase the new gas stations in the United States was obtained by virtue of [the beneficiary's] income as an executive of the foreign entity. So whatever operating and start-up costs are not covered by the new income from the gas stations has and will continue to be covered by income that [the beneficiary] derived from his work with M/s Comfort Shoes.

* * *

[The beneficiary] has operated with income from the foreign entity to build business in the US entity. The fact that [the beneficiary] has used his M/s Comfort Shoes-derived income to purchase gas stations in the United States qualifies as a proper transaction for the purposes of L-1 visa, and should in and of itself show that the foreign entity has the ability, explanation of which was requested by the Service.

Counsel emphasized that since the petitioner is a new business, it cannot provide tax returns or payroll documentation. Counsel stated that the petitioner "has been doing business through its two newly acquired subsidiaries," but that it cannot gather "a full array of documentary evidence that older organizations have." The petitioner submitted recent bank statements, utility bills, sales and use tax returns, and photographs for "R & F Inc. d/b/a [REDACTED] to demonstrate that the claimed newly-acquired gas station is operational. The petitioner submitted the beneficiary's bank statements for the months of October and November 2006, the latter of which reflects a balance of approximately \$43,000.

With respect to the claimed newly-acquired gas station, the petitioner submitted another "business sale agreement" for [REDACTED] with a total purchase price of \$242,000, \$231,000 of which is to be paid by the buyers in cash. Like the previous agreement, the document does not identify the seller or sellers of the business. The agreement is signed by "Ameen" as seller, and by the beneficiary and [REDACTED] as buyers, and is contingent upon the approval of the beneficiary's L-1 visa petition, and upon the execution of a new lease or sublease between the owner of the premises and the buyer. There is no time or place indicated for the final consummation of the sale.

The director denied the petition on January 30, 2007, concluding that the evidence fails to demonstrate the size of the U.S. investment and the financial ability of the foreign entity to commence doing business in the United States. Accordingly, the director concluded that the intended U.S. operation would not grow to a point where it would employ the beneficiary in a managerial or executive capacity within one year. The director noted that the \$10,000 check provided to document an investment from the foreign entity was from the beneficiary's personal checking account, not from the foreign entity. The director also found other evidence submitted, including the beneficiary's bank statements and bank statements for [REDACTED] to be irrelevant to the issue of whether the foreign entity has the financial ability to commence doing business in the United States. The director noted that the foreign entity reported gross income of approximately \$17,560 in its

most recent documentation, "hardly evidence that the foreign company has the financial ability to invest in the United States entity."

On appeal, counsel for the petitioner asserts that the beneficiary, "as owner of both the foreign and U.S. entities, has invested income derived from his overseas operation to make the investment." Counsel asserts that the beneficiary "was able to show that the petitioner acquired two service stations with that income and had already begun doing business in them." Counsel states that each gas station employs at least five employees, therefore demonstrating that the company will achieve the growth anticipated in the business plan. Counsel suggests that the director placed unfair demands on the petitioner's "new office" based upon the petitioner's failure to submit evidence that was improperly requested, such as tax returns, payroll records, and evidence of business activities. Counsel asserts that the petitioner's inability to submit such documentation "placed the entire petition in a negative and suspicious light."

Upon review, the petitioner has not submitted sufficient evidence of the size of the investment in the United States entity or the financial ability to commence operations in the United States, nor does the totality of the evidence support a finding that the beneficiary would be employed in a primarily managerial or executive capacity within one year.

Preliminarily, the AAO notes for the record that the petitioner does qualify as a "new office" pursuant to the definition at 8 C.F.R. § 214.2(l)(1)(ii)(F). While it appears the director had some questions regarding this issue at the time the request for evidence was issued, the decision reflects that the director properly applied the regulations governing new office petitions. Contrary to counsel's claims, there is nothing in the director's decision to suggest that the petitioner was regarded in a negative light due to its inability to produce evidence that it was doing business at the time of filing.

In this matter, the petitioner claims that the beneficiary, rather than the foreign entity, is the majority owner of the U.S. entity. As the beneficiary is the majority owner, the AAO disagrees with the director's position that evidence of the beneficiary's finances is not relevant to this matter and that the petitioner must show direct financing from the foreign entity.

However, the petitioner has not demonstrated that the U.S. company has received or will receive the amount of funds required to commence doing business in the United States, as identified in the company's business plan. This plan indicates that petitioner's start-up expenses will be met, in part, by a \$100,000 capital investment from the beneficiary. There is no evidence in the record that the beneficiary has \$100,000 available to invest in the U.S. entity or that he has invested any money at all to date. 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)). Furthermore, as discussed below, the beneficiary's claimed ownership interest in the foreign entity has not been adequately documented. For this reason, the funds of the foreign entity cannot be considered to be available to the beneficiary for investment in the U.S. business.

Counsel appears to rely on a single \$10,000 check written by the beneficiary and two "business sale agreements" as evidence that the petitioner has the ability to commence doing business in the United States, and even goes so far to suggest that the petitioning company already has two operational subsidiaries.

However, upon review of the record, there is no evidence that the U.S. company even has a bank account, much less two operational subsidiaries.

Rather, the evidence shows that the beneficiary, in his personal capacity, ostensibly intended to purchase a gas station known as "Cleveland Amaco" and paid \$10,000 as a brokerage fee or deposit on this business. Although counsel initially stated in response to the request for evidence that this business was sold, and appears to state on appeal that the U.S. company is in fact operating the business, there is no evidence that would support a conclusion that either the beneficiary or the U.S. company actually completed the purchase of this business. Such a purchase would have required the beneficiary and [REDACTED] to pay the seller \$245,000 in cash at the consummation of the sale scheduled for November 1, 2006. As discussed above, it has not been established that the beneficiary ever had the funds to complete this purchase or that arrangements had been made to borrow the funds. Such a sale was also contingent upon the approval of the instant petition, and upon the execution of a new lease agreement, two events that have not occurred. Furthermore, the purchase agreement was executed 15 days before the U.S. company was incorporated, so the U.S. company was clearly not a party to the agreement. Had the beneficiary and [REDACTED] eventually completed the purchase, it does not automatically follow that the business would belong to the U.S. company. A corporation is a separate and distinct legal entity from its owners or stockholders. *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).

Absent evidence that the beneficiary and [REDACTED] completed the purchase of the gas station and transferred ownership to the U.S. company, and evidence that the U.S. company actually obtained the lease agreement, and licenses needed to operate the gas station, counsel's claim that the petitioner has already started doing business as "Cleveland Amaco" is not persuasive. Also, as noted above, counsel previously indicated that this business was "sold" and a new gas station was acquired on November 10, 2006. On appeal, counsel appears to represent that the petitioner is currently operating both service stations. 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).

Counsel claims that the petitioner purchased a second gas station on November 10, 2006. All the deficiencies discussed above also apply to this second purchase, as there is no evidence that the U.S. company was a party to the transaction and no evidence that the transaction was ever completed. If the purchase occurred in November 2006 and the U.S. company is actually operating the business, the petitioner should reasonably be able to submit an executed lease agreement for the premises, business licenses and permits issued to the U.S. company, and evidence of business activities, such as purchase orders, sales and use tax returns, payroll records and other documents identifying the petitioning entity by name. 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. at 591. The photographs and evidence that "R&F Go Inc." was operating the gas station as of October 2006 do not establish the petitioner's current ownership and operation of the business.

For the foregoing reasons, the petitioner has not sufficiently established the size of the financial investment or the financial ability of the U.S. company to commence business operations in the United States. The petitioner has not submitted evidence on appeal to overcome the director's findings.

Although not specifically addressed by the director, a related issue is whether the petitioner established that the beneficiary will be employed in a managerial or executive capacity by the United States entity. In addition to establishing the financial investment in the U.S. entity, the petitioner is required to provide a detailed description of the beneficiary's proposed duties, and provide evidence regarding the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals. *See* 8 C.F.R. §§ 214.2(l)(3)(ii) and (v)(C)(1).

The petitioner described the beneficiary's proposed duties as follows in its letter dated October 31, 2006:

[The beneficiary] will oversee [the petitioner's] anticipated growth in the Gas Station & Convenience Store industry. [The petitioner] has recently purchased a gas station in Georgia. As Vice President, [the beneficiary] will be an executive as the company expands its operations into new venues. He will head up the sales and finances of [the petitioning company], and will be in charge of all of the employees at the abovementioned gas stations, as well as hiring new employees. He will also be integral in the researching, purchasing, and opening of future gas stations. [The beneficiary] will oversee all of the negotiations his business takes regarding licensing. In short, he will decide whose gasoline and products to sell.

With respect to the proposed scope and organizational structure of the U.S. entity, the petitioner's three-year business plan indicates that the petitioner anticipates having a total of five employees throughout this period, including the beneficiary, one manager, two full-time cashiers and one part-time cashier.

Counsel asserts on appeal that the petitioner currently operates two gas stations and states that the beneficiary's initial plan "intended on acquiring another station or two, which would bring the possibility that [the beneficiary's] operations could very easily employ upwards of 10 to 15 employees."

Overall, the evidence submitted does not establish that the beneficiary's duties will be in a primarily managerial or executive capacity, or that the petitioner's organization would support such a position within a one-year period. While the position description suggests that the beneficiary will exercise authority over the business, it does not identify with any specificity what he will do on a day-to-day basis as the vice president of the U.S. 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).

Furthermore, the director advised the petitioner that the submitted position description was insufficient, and requested a comprehensive position description for the beneficiary, including a breakdown of the number of hours he would devote to each of his duties on a weekly basis. The director further requested similar information for the beneficiary's proposed subordinates. The petitioner did not respond to this request. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. *See* 8 C.F.R. § 103.2(b)(8). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In addition, as discussed above, the petitioner has not established that it actually operates two businesses as claimed. The petitioner's business plan is based on an assumption that the company will operate a single gas station and convenience store with no more than five employees anticipated during the first three years of operations. Counsel's claims that the petitioner intends to employ 10 to 15 employees and operate one or two additional gas stations during the first year of operations are not supported by the evidence. Without documentary evidence to support the claim, 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).

Therefore, the evidence submitted suggests that the petitioner intends to operate one gas station and convenience store which will employ the beneficiary, a full-time manager, two full-time cashiers, and one part-time cashier. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

The AAO will assume that the petitioner's gas station and convenience store, given the nature of this business, would be open daily for twelve or more hours, or at least 84 hours per week. It is not clear how the non-managerial, day-to-day operational and first-line supervisory duties of such a business could be performed by one manager, two cashiers, and one part-time cashier. It appears that this staffing structure would allow no more than one cashier to be on duty at any time. The manager would presumably also be in the store for forty hours per week. That would leave only the beneficiary to work in the store during the forty or more hours per week when the manager is off-duty. 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner has not established that its organizational structure would support the beneficiary in a primarily managerial or executive position within one year, or even within three years, based on the company's business plan.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity or that the petitioner could support the beneficiary in such capacity within one year. Accordingly, the appeal will be dismissed.

The second issue addressed by the director in this matter is whether the petitioner has established that the beneficiary's employment in the United States is for a temporary period. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) requires:

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 evidence that the beneficiary will be transferred to an assignment abroad upon completion of the temporary services in the United States.

The petitioner indicates that the beneficiary owns a 51-percent interest in both the United States and foreign entities. The petitioner indicated its intent to employ the beneficiary for a two-year period, but did not

specifically state in its letter dated October 31, 2006 that the beneficiary would be transferred to the foreign entity upon completion of his assignment.

In the request for evidence issued on November 14, 2006, the director requested evidence that the beneficiary's services would be for a temporary period, and that he would be transferred to an assignment abroad upon completion of such temporary duties.

In response, counsel for the petitioner stated the following in his letter dated January 15, 2007:

Currently, [the beneficiary] has no immigrant intent and does not have any immigrant visa petition pending with the United States Government. And if the business of [the petitioner] concludes, it is planned and likely that [the beneficiary] will return to work for M/s Comfort Shoes in India. However, the L-1 visa is a dual-intent visa, which means the beneficiary is under no obligation to submit the evidence your office has requested.

The director denied the petition based on the petitioner's failure to submit evidence in response to this request.

On appeal, counsel argues at considerable length that no such requirement to establish the temporary nature of the beneficiary's employment exists. Counsel asserts that the limitations placed on the number of years a beneficiary may remain in the United States in L-1A or L-1B "superseded the requirement that aliens in L visa petitions overcome the burden that they possess immigrant intent." Counsel suggests that the beneficiary's employment must be considered temporary as it would be limited to a maximum period of seven years by the regulation at 8 C.F.R. § 214.2(l)(12), and because the beneficiary has "never had any intention of going out of status." Counsel nevertheless submits a statement from the beneficiary, dated January 10, 2007, who indicates his intention to leave the United States when his visa expires or when the petitioner's operations have ceased to operate.

Upon review, the petitioner has not overcome the director's determination with respect to this issue.

Generally, the petitioner for an L-1 nonimmigrant classification needs to submit only a simple statement of facts and a listing of dates to demonstrate the intent to employ the beneficiary in the United States temporarily. However, where the beneficiary is claimed to be the owner or a major stockholder of the petitioning company, a greater degree of proof is required. *Matter of Isovich*, 18 I&N Dec. 361 (Comm. 1982); *see also* 8 C.F.R. § 214.2(l)(3)(vii).

In response to the director's request for evidence and on appeal, counsel has asserted that the regulations do not require evidence that the beneficiary's services will be for a temporary period or evidence that the beneficiary will be transferred abroad upon completion of his assignment. The petitioner has not submitted additional evidence in compliance with the requirements at 8 C.F.R. § 214.2(l)(3)(vii). Counsel's contention that such a requirement does not exist, when the requirement is stated in the plain language of the regulations, is not persuasive. The beneficiary's statement alone is not sufficient, especially in light of the petitioner's failure to respond to the director's request for evidence. 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. Furthermore, where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of*

Obaigbena, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the U.S. company and the foreign entity have a qualifying relationship. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

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.

Here, as noted above, the petitioner claims that the beneficiary owns a 51-percent ownership interest in both the U.S. and foreign entities. This claim has not been adequately documented. As evidence of ownership in the foreign entity, the petitioner has submitted an affidavit executed by the beneficiary's father, [REDACTED] on October 26, 2006. [REDACTED] states that he is the managing partner of the foreign entity and that his son, the beneficiary, "is the 51% share holder" in the firm. However, none of the supporting documentary evidence supports a finding that the beneficiary owns any interest in the business known as "M/s Comfort Shoes."

This evidence includes: (1) a "Renewal of Certificate of Registration" for Comfort Shoes for the year ended December 31, 2005 which identifies the "name of the employer" as [REDACTED] (2) Indian income tax returns, showing business income earned by [REDACTED] as an individual for the 2005-2006 assessment year and several previous years; (3) financial statements for [REDACTED] (Prop. Comfort Shoes), signed by [REDACTED] "Proprietor", and whose status is listed as "individual"; and (4) a trade license receipt for the 2005-2006 year from the Government of [REDACTED] identifying the licensee as [REDACTED] (Comfort Shoes)." Based on this evidence, it is reasonable to conclude that the foreign entity is a sole proprietorship owned and operated by the beneficiary's father. The AAO acknowledges that the foreign entity could have been reorganized as a partnership between 2005 and October 2006; however, no evidence of such change in ownership has been provided. The submission of an affidavit in lieu of an official document such as a partnership deed filed with the proper authorities in India is questionable. 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. at 591-92. The beneficiary's claimed ownership in the foreign entity has not been established.

Furthermore, the only evidence submitted to establish the beneficiary's ownership in the U.S. company is an IRS Form 2553, Election by a Small Business Corporation, which identifies the beneficiary as the owner of

51 shares out of 100 shares of stock in the U.S. company. While this information is consistent with the petitioner's claims, USCIS typically reviews, at a minimum, stock certificates and stock transfer ledgers, when evaluating a petitioner's claims the ownership and control of a corporation. Regardless, as the evidence does not demonstrate the beneficiary's ownership in interest in the foreign entity, the claimed affiliate relationship cannot be found. For this additional reason, the petition cannot be approved.

A second issue not addressed by the director is whether the petitioner had secured sufficient physical premises to house the new office as of the date the petition was filed, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

At the time of filing, the petitioner indicated that the beneficiary would be working at [REDACTED] [REDACTED]. The petitioner has not submitted a lease agreement for this address or for any other location. Although the petitioner claims to be operating two gas stations, as discussed above, there is no evidence that the petitioner actually purchased these businesses, and no lease agreements have been submitted. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner has not submitted documentary evidence to establish that it had secured any physical premises as of the date the petition was filed. Accordingly, the petition cannot be approved.

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

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

The petition will be denied and the appeal dismissed 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.

ORDER: The appeal is dismissed.