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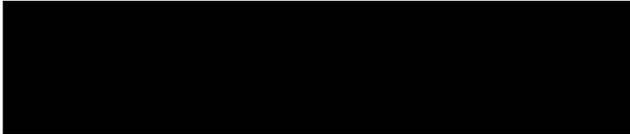
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U.S. Citizenship
and Immigration
Services

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File: SRC 04 193 50352 Office: TEXAS SERVICE CENTER Date: OCT 02 2007

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a Florida corporation and is allegedly an import/export business. The petitioner sought to employ the beneficiary as its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner claims a qualifying relationship with [REDACTED] (hereinafter "Codebras" or "the foreign employer").

The director subsequently revoked the petition on or about June 19, 2006 concluding that the petitioner had failed to overcome a finding by Citizenship and Immigration Services (CIS), after an investigation, that the petitioner did not have a qualifying relationship with the foreign employer because it appears that [REDACTED] was not doing business at the time of the investigation. Specifically, the director took note of several inconsistencies in the record concerning the location, ongoing existence, and business activities of the foreign employer which indicated that the foreign entity was not doing business. Also, the director made her decision to revoke the petition after concluding that the petitioner had not responded to the Notice of Intent to Revoke sent on May 4, 2006.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that it did file a timely response to the Notice of Intent to Revoke on June 5, 2006, and argues that the director's decision to revoke the petition because of this alleged failure to respond, when in fact it did respond, was in error. In support of this contention, the petitioner provides evidence that a package was delivered to the Texas Service Center on June 5, 2006. Counsel also resubmits the June 5, 2006 response on appeal. In that response, counsel attempts to resolve the various inconsistencies identified by the director in the Notice of Intent to Revoke regarding the foreign employer's business address, continued existence, and business activities.

Furthermore, on May 3, 2007, the AAO sent a Notice of Consideration of Derogatory Information pursuant to 8 C.F.R. § 103.2(a)(16)(i) to counsel and the petitioner. In response, counsel further attempts to establish that Codebras was "doing business" in 2005 and that it has a qualifying relationship with the petitioner.

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

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

As a threshold matter, the procedural posture and proper jurisdiction of the AAO must be addressed. As explained above, the petitioner asserts on appeal that the matter should be reopened, and the evidence considered, because the petitioner filed a timely response to the Notice of Intent to Revoke. As indicated above, the director declined to consider the motion and forwarded the matter to the AAO for review. While the AAO agrees that it is more likely than not that the petitioner filed a timely response to the Notice of Intent to Revoke, it is noted that the director revoked the petition for specific substantive reasons discussed *infra*. Importantly, the director did not revoke the petition because the petitioner had been deemed to have "abandoned" the petition by failing to respond to the Notice of Intent to Revoke.

In view of the above, the appeal will be considered by the AAO as an appeal from the decision of the director to revoke the petition for those specific and substantive reasons discussed therein. The matter will not be remanded to the director. Even if the director had committed a procedural error by failing to properly consider the June 5, 2006 response in revoking the petition, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to supplement the record with evidence that should have been considered in the first instance. Therefore, in reviewing the director's substantive reasons for revoking the instant petition, the AAO will fully consider both the petitioner's response to the Notice of Intent to Revoke filed on or about June 5, 2006, which was attached to the instant appeal, and the petitioner's response to the AAO's Notice of Consideration of Derogatory Information filed on or about June 7, 2007.

Therefore, the primary issue in this matter is whether, after full consideration of the record, the director's revocation of the petition was proper. Upon review, the AAO has determined that the revocation was proper, and the appeal will be dismissed.

Under CIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the

time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B). In the present matter, the director provided a detailed statement of the grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation. Upon review, the director revoked the approval on the bases of 8 C.F.R. § 214.2(l)(9)(iii)(A)(1) (the foreign employer is no longer a qualifying organization) and 8 C.F.R. § 214.2(l)(9)(iii)(A)(3) (a qualifying organization violated requirements of section 101(a)(15)(L) and these regulations), as further explained below.

The primary issue in this matter is whether the director properly revoked the approval of the petition because the petitioner and the foreign employer, [REDACTED] are not qualifying organizations as defined by the regulations.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States 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). If one individual or company owns a majority interest in a petitioner and a foreign employer, and controls those entities, then the entities will be deemed to be "affiliates" under the definition. 8 C.F.R. § 214.2(l)(1)(ii)(L). The petitioner must also establish that it and the foreign employer are "doing business." "Doing business" is defined as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii)(H).

In this matter, because the record as a whole does not establish that the foreign employer, [REDACTED], was "doing business" under the regulations in 2005, the foreign employer ceased to be a qualifying organization and the director properly revoked the petition on these grounds.

After conducting an investigation, CIS issued a Notice of Intent to Revoke on May 4, 2006. In this Notice, the director stated the following:

It has been discovered that inconsistencies exist. Please address the following and submit convincing evidence in support of your petition.

1. The LIA classification was granted in part due to the claimed qualifying relationship between the foreign entity and the U.S. entity. The foreign entity was claimed to be called [REDACTED] and claimed to be located at [REDACTED] [REDACTED] with the phone number of [REDACTED]. Neither the address or phone number appears to be related to the claimed foreign entity. Please explain.
2. Please submit evidence of a qualifying relationship continuing to exist between the U.S. and the foreign entity.
3. Submit convincing evidence that both entities are conducting business now, and have been since the filing of the petition.

4. The failure of a L1A business in the U.S. to have a parent company or affiliate to continue to do business in at least one foreign country is in violation of Immigration law as set out in 9 FAM 41.54 N10.

In response to the Notice of Intent to Revoke, counsel submitted a letter dated June 1, 2006 which explains that Codebras was located at [REDACTED] at the time the Form I-129 was filed on July 7, 2004. However, counsel explains that, on January 12, 2006, Codebras changed its address to [REDACTED]. In support of this assertion, counsel submits a lease agreement and amended articles of incorporation. Counsel also submitted a letter from the foreign employer's Brazilian attorney dated March 8, 2006 explaining the following:

[U]pon moving from the address [REDACTED] Belo, we established ourselves temporarily at the address of our accounting firm, [REDACTED] attention [REDACTED] BELTRAME, located at Largo do Paissandu [REDACTED] pending our final move to our present address [Largo do Paissandu [REDACTED]

As is customary under Brazilian law, a company in the process of restructuring and reorganization may follow the procedure indicated above, inasmuch as all suppliers and customers were duly notified, the firm's accountant being regarded as its legal representative.

This is how [the beneficiary] proceeded with the U.S. Consulate in Sao Paulo, giving notice by telephone of the change of address and telephone number in April 2005 to a member of Ms. Sarah's team, which was in charge of processing her L1 application.

Finally, counsel submits a variety of business and financial documents pertaining to [REDACTED]. The documents include bank statements, a lease, balance sheet, photos, Brazilian tax records, utility bills, company brochure, client list, advertisements, invoices, and investment information. The foreign employer's invoices to customers, which are not translated, appear to all date from 2006. The record does not contain any invoices from [REDACTED] to customers from 2005. While the record contains five 2005 invoices to [REDACTED] these invoices are also untranslated, and the petitioner offers no explanation of their significance. Without certified translations of the invoices, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Overall, while the business records submitted by the petitioner in response to the Notice of Intent to Revoke may establish generally that the foreign employer maintained its legal existence to some degree in 2005, the record is devoid of evidence of "the regular, systematic, and continuous provision of goods and/or services." The record does not contain any evidence that [REDACTED] provided any services or products in 2005. Importantly, the definition of "doing business" does not include "the mere presence of an agent or office of the qualifying organization."

On May 3, 2007, the AAO sent a Notice of Consideration of Derogatory Information pursuant to 8 C.F.R. § 103.2(a)(16)(i) to counsel and the petitioner. This Notice gave the petitioner thirty days to respond to the following derogatory information:

Both the petition and the beneficiary's visa application indicated that the address of the foreign entity, [REDACTED], was [REDACTED]

[REDACTED] and that the company's phone number was [REDACTED]

On August 15, 2005, the United States Consulate General in Sao Paulo, Brazil, called this phone number and, after indicating that [REDACTED] was not located there, was told by the beneficiary's sister-in-law that [REDACTED] had moved to another address but that she did not know where. On or about August 15, 2005, the beneficiary was contacted by the Consulate General and she informed the caller that the new address of [REDACTED] was Largo do [REDACTED] with a phone number of [REDACTED]. The Consulate General called this number shortly thereafter and was informed by the answerer that Codebras was not located at that address. The person who answered the phone told the Consulate General that a company called "[REDACTED]" was located at that address. Therefore, it appears that the foreign entity ceased to exist and/or ceased doing business in 2005.

In response, counsel submitted a letter dated May 22, 2007 which further explains the foreign employer's temporary cohabitation with its accounting firm, [REDACTED] Sao Paulo. Counsel explains that Codebras signed a sublease agreement governing its temporary occupancy in [REDACTED] from April 2005 until April 2006 and asserts that this explains why the person who answered the Consulate General's call on or about August 15, 2005 indicated that "[REDACTED]" was located there. As for why the answerer denied that Codebras was located within [REDACTED] offices, counsel states the following:

The employees at [REDACTED] accounting office knew that the office and phone number during this period were being shared with Codebras. Inexplicably, an office employee did not either understand or was unaware of this information on or around August 15, 2005, when the U.S. Consulate called the aforementioned number. The company can only surmise that perhaps it was a cleaning person or casual office employee who answered the phone, who was never involved in the day[-]to[-]day activities of the business.

Finally, counsel explained that during the foreign employer's "transition period in 2005" during which it shared space with [REDACTED] Codebras "remained registered and active according to the [Brazilian] National Registry." In support, counsel submitted business documents, invoices, reference letters, Brazilian tax and registration records, financial statements, payment receipts, and payroll information.

However, once again, these business records do not contain any evidence that Codebras actually provided goods or services, or actively had employees, in 2005. While there is evidence that Codebras maintained a legal existence, paid the bills related to maintaining its legal status, and continued to have assets, the record is devoid of evidence that Codebras was a qualifying organization that engaged in "the regular, systematic, and continuous provision of goods and/or services" in 2005. To the contrary, it appears that, during its "transition period in 2005," Codebras may have maintained the "mere presence of an agent or office," which is insufficient under the regulations to establish that a qualifying organization was "doing business." 8 C.F.R. § 214.2(l)(1)(ii)(H).

Furthermore, even if it were established that Codebras was doing business at the time the petition was filed or that it resumed doing business after it moved into permanent quarters in 2006, such facts would not compel a withdrawal of the revocation of the petition. As explained in the regulations, a qualifying organization must be doing business "for the duration of the alien's stay in the United States as an intracompany transferee." 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). Furthermore, 8 C.F.R. §§ 214.2(l)(9)(iii)(A)(1) and (3) require the revocation of the petition once an entity ceases to be a "qualifying organization" or if the qualifying organization violates the Act or the regulations. In this case, since it has not been established that Codebras was doing business during its "transition period" in 2005, it was no longer a qualifying organization and the revocation of the petition was proper.

Moreover, the fact that the Consulate General called [REDACTED] accounting firm on August 15, 2005 and was told by the answerer that Codebras was not located in that office further undermines the petitioner's assertion that Codebras was "doing business" in 2005. The petitioner offers no credible explanation for this occurrence other than to surmise that the answerer was "inexplicably" unaware of the foreign employer's occupancy of space within the accounting office. Based on the record, however, it is more likely than not that the answerer of the Consulate General's phone call was unaware of the foreign employer's presence because the foreign employer was not "doing business" as defined by the regulations. Codebras was not providing any goods or services in a regular, systematic, or continuous fashion. While Codebras may have been using its accountant's office as its physical address for legal, banking, and tax purposes, the foreign employer's maintenance of an office or physical address will not alone establish that Codebras was "doing business." See 8 C.F.R. § 214.2(l)(1)(ii)(H).

Accordingly, as Codebras ceased to be a qualifying organization in 2005 and thus violated both the Act and the regulations, the petition was properly revoked pursuant to 8 C.F.R. §§ 214.2(l)(9)(iii)(A)(1) and (3).

Beyond the decision of the director, upon further review, the petition will also be revoked pursuant to 8 C.F.R. § 214.2(l)(9)(iii)(A)(5) (approval of the petition involved gross error). The initial approval of the petition involved gross error because, upon review, the petitioner failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.¹

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

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

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

rule to use the phrase "gross error." 52 Fed. Reg. 5738, 5749 (Feb. 26, 1987) (Final Rule). As an example of gross error in the L-1 context, the drafter of the regulation stated:

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

Id.

of directors, or stockholders of the organization.

The petitioner does not clarify in the initial petition whether it is claiming that the beneficiary will be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

In this matter, the petitioner described the beneficiary's proposed job duties in the United States in an undated letter attached to the initial petition as follows:

1. To plan, develop and establish policies and objectives in accordance with corporation charter;
2. Supervise and direct activities of subordinate managers and personnel;
3. Coordinate functions and operations between division and departments;
4. Direct and coordinate financial and fiscal policies;
5. Supervise compilation of financial data and reporting of same;
6. Plan and develop public relations policies designed to improve Company's image and relationship with clients.

The petitioner also submitted its wage reports and payroll records. These wage reports reveal that, during the quarter immediately preceding the filing of the petition, the petitioner employed no more than one person at any one time.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. As explained above, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will establish policies and objectives and will plan and develop public relations policies. However, the petitioner does not explain what policies and objectives will be established or what, exactly, the beneficiary will do to "plan and develop" public relations policies. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating

the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, the record fails to identify any workers who will relieve the beneficiary of the need to perform the non-qualifying tasks inherent to the many duties ascribed to her. For example, the petitioner states that the beneficiary will "coordinate" functions and operations between departments, "direct and coordinate" financial and fiscal policies, and "supervise compilation of financial data and reporting of same." However, as the petitioner does not describe a subordinate staff capable of relieving the beneficiary of performing the non-qualifying duties associated with the operation of the business, it must be concluded that she will perform these tasks. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The record indicates that the petitioner has one employee. The petitioner has not established that the reasonable needs of the United States operation compel the employment of a managerial or executive employee to oversee one or more subordinate supervisors. To the contrary, it is more likely than not that both the beneficiary and her single subordinate employee will primarily perform non-qualifying tasks. See generally *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As explained in the record, it appears that the beneficiary will supervise a single staff member. However, the petitioner has not established that this employee is primarily engaged in performing supervisory or managerial duties. To the contrary, it appears that this employee, given that he or she is the only other employee, is performing the tasks necessary to produce a product or to provide a service. In view of the above, the beneficiary will likely be primarily a first-line supervisor of a non-professional employee, the provider of actual services, or a combination of both. A managerial 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. Section 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner did not establish the skill level or educational background required to perform the duties of the subordinate position, the petitioner has not established that the beneficiary will manage a professional employee. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than

the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary will be primarily employed as a first-line supervisor and will perform tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary is employed primarily in an executive capacity.

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).

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will be primarily performing managerial or executive duties, and the petition will be revoked pursuant to 8 C.F.R. § 214.2(l)(9)(iii)(A)(5) for this additional reason.

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 revoked for the above stated reasons, with each considered as an independent and alternative basis for revocation. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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

ORDER: The appeal is dismissed.