

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

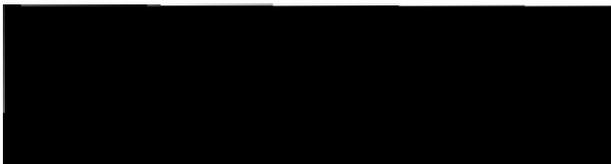
PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D7



File: EAC 06 187 52900 Office: VERMONT SERVICE CENTER Date: APR 03 2008

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of managing director to open a new office in the United States 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 under the laws of the State of Florida, is allegedly in the business of marketing and selling cell phone products.

The director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

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, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval.

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

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

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

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.

A threshold issue in this matter is whether the petitioner is a "new office" as defined by the regulations and, consequently, whether the director should have applied the more lenient "new office" criteria found in 8 C.F.R. § 214.2(l)(3)(v) to the instant petition.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(F) defines a "new office" as:

[A]n organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

Moreover, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as:

[T]he 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.

In this matter, the petitioner indicates in the Form I-129 that the beneficiary is coming to the United States to open a "new office." However, the petitioner also asserts that it was established in 2005, submits its articles of incorporation filed on June 1, 2005, submits a 2005 federal tax return claiming \$236,493.00 in gross receipts, and submits a series of invoices, using the petitioner's business address in Florida, establishing that the petitioner began conducting business in May 2005. The instant petition was filed on June 9, 2006, over one year after the record establishes that the petitioner began regularly, systematically, and continuously providing goods and/or services.

On September 11, 2006, the director denied the petition after apparently concluding that the petitioner met the definition of a "new office" in 8 C.F.R. § 214.2(l)(1)(ii)(F). The director applied the "new office" criteria at 8 C.F.R. § 214.2(l)(3)(v) and determined that the petitioner failed to establish that the beneficiary will primarily

perform managerial or executive duties within one year of petition approval.

Upon review, the AAO concludes that the petitioner does not meet the definition of a "new office" in 8 C.F.R. § 214.2(l)(1)(ii)(F) because the record establishes that it has been "doing business" in a regular, systematic, and continuous fashion for over one year before the filing of the instant petition. Therefore, the director's application of the more lenient "new office" criteria in 8 C.F.R. § 214.2(l)(3)(v) was in error, and, to the extent the petitioner was treated as a "new office," the decision is hereby withdrawn. The director should not have excused the petitioner from establishing that the beneficiary will primarily perform qualifying duties immediately upon his arrival in the United States. That being said and as discussed *infra*, the director correctly determined, even applying the more lenient "new office" criteria, which permit both the beneficiary to perform primarily non-qualifying duties for the first year in operation and the consideration of future hiring plans, that the petitioner failed to establish that the beneficiary will primarily perform qualifying duties.

In view of the above, the AAO will apply the more stringent criteria in 8 C.F.R. § 214.2(l) applicable to fully formed entities, and the primary issue in this matter is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity immediately upon his arrival in the United States.

The petitioner describes the beneficiary's proposed duties in a letter dated May 22, 2006 as follows:

Upon his transfer, [the beneficiary], the designated manager responsible for setting up operations, will be engaged in a variety of activities not normally performed by him in the Chinese parent company. After a smooth expansion, [the beneficiary's] duties will be primarily managerial in nature instead of the performance of the day-to-day tasks necessary to provide services.

As Managing Director, [the beneficiary] will plan, direct, and establish policies and objectives of our U.S. subsidiary. Specifically, he will confer with company officials to plan business objectives and develop organizational policies to coordinate functions and operations between departments; establish responsibilities and procedures for attaining objectives; resolve problems arising from distribution of goods and services and arrive at mutual agreements with vendors and merchants; review activity reports and financial statements to determine progress and status in attaining objectives and revise objectives and plans in accordance with current conditions; direct and coordinate the formulation of financial programs to provide funding for new or continuing operations; plan and develop organizational policies and goals to ensure flow of surface traffic moving to the U.S. destinations; direct and coordinate activities of subordinate managerial personnel thereby effecting operational efficiency and establishing quality control standards; direct subordinate administrative personnel to develop new markets and cultivate relationships with potential U.S. companies; and review operational records and reports to project sales and to determine profitability.

The petitioner also indicated in the Form I-129 that it currently has one employee.

On June 23, 2006, the director requested additional evidence. The director requested, *inter alia*, a description of the petitioner's staff including the number of employees, job titles, duties, and management structure.

In response, the petitioner submitted a document titled "business plan" which indicates that the petitioner currently has one employee and has plans to hire six additional employees, including the beneficiary. While the petitioner does not specifically identify the duties and job title of the one existing employee, it appears that the petitioner's current single employee is a "product representative" based upon the petitioner's proposed organizational structure, listing three "product representatives," and the petitioner's assertion that it will hire two additional product representatives within one year of petition approval. The petitioner describes the duties of the product representative in the business plan as performing primarily sales related tasks.

Upon review, the petitioner has not established that the beneficiary will primarily perform managerial or executive duties immediately upon his arrival in the United States.

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's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" or "executive" 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 plan, direct, and establish policies and objectives; will plan business objectives; and will direct and coordinate the formulation of financial programs. However, the petitioner does not specifically define the policies, objectives, and programs that will be planned by the beneficiary. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated duties does not establish that the beneficiary will actually perform managerial or executive 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 petitioner's description of the beneficiary's duties fails to establish that the beneficiary will be primarily performing qualifying administrative or operational tasks upon his arrival in the United States which will rise to the level of being managerial or executive in nature. For example, the petitioner states that upon his arrival in the United States, the beneficiary "will be engaged in a variety of activities not normally performed by him in the Chinese parent company" and that, only after a "smooth expansion," will the beneficiary cease performing "day-to-day tasks necessary to provide services." However, performing the day-to-day tasks necessary to the function of the business, or performing administrative tasks related to the expansion of the enterprise, are not qualifying duties. Furthermore, as the record fails to identify any employees who will relieve the beneficiary of the need to perform the non-qualifying tasks inherent to the administration of the business

in general, it must be concluded that he will perform these tasks. While the beneficiary will be aided by a "product representative," this employee apparently performs sales related 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). Finally, while the petitioner asserts that it plans to hire additional employees, future hiring plans may not be used to qualify a beneficiary as an intracompany transferee primarily performing managerial or executive duties immediately upon arrival in the United States. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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 above, it appears that the beneficiary will supervise one subordinate employee, a "product representative." However, it has not been established that this employee is a supervisory, managerial, or professional employee. To the contrary, it appears that this employee will perform the tasks necessary to produce a product or to provide a service, e.g., sales related tasks. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. See § 101(a)(44) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. Finally, as the petitioner has failed to establish the skills and education required to perform the duties of the product representative, the petitioner has not established that the beneficiary will manage a professional employee.¹ Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.²

¹In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

²The petitioner also has not established that the beneficiary will manage an essential function of the organization. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential

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 be acting 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 has not been established that the beneficiary will primarily perform qualifying duties and, thus, not primarily perform the tasks necessary to produce a product or to provide a service and/or serve as a first-line supervisor. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

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. However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. §

function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the tasks related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions, if any, and what proportion would be non-managerial. Also, as explained above, the record fails to establish that the beneficiary will primarily perform qualifying duties and, thus, not primarily perform operational or administrative tasks related to the "function" and/or serve as a first-line supervisor. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

1101(a)(44). Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.³

Beyond the decision of the director, the petitioner has also failed to establish that the beneficiary was employed abroad in a position that was managerial, executive, or involved specialized knowledge. 8 C.F.R. § 214.2(l)(3)(iv).

The petitioner described the beneficiary's job duties abroad in a letter dated May 22, 2006. As this letter is in the record, the job description will not be repeated here. Generally, the beneficiary is described vaguely as managing the foreign employer's business operation through subordinate managers. The petitioner also submitted an organizational chart for the foreign employer. While this chart portrays the beneficiary at the top of the organization supervising "directors" and "managers" in a multi-tiered hierarchy, the petitioner failed to describe the specific duties of any of subordinate staff members. An organizational chart depicting a complex organizational structure, without corresponding job descriptions establishing that these subordinate workers are truly supervisory or managerial employees, is not probative of an organization having the necessary complexity requiring the employment of a managerial or executive employee. Once again, 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, *aff'd*, 905 F.2d 41. 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.

Accordingly, the petitioner has failed to establish that the beneficiary performed qualifying duties abroad, and the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has also failed to establish that it has a qualifying relationship with the foreign employer.

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

³The AAO further notes for the record that, even if the more lenient "new office" criteria found in 8 C.F.R. § 214.2(l)(3)(v) were applied to the instant petition, the petition should also be denied. The petitioner has not only failed to establish that the beneficiary will perform qualifying duties upon his arrival in the United States, the petitioner also failed to establish, as noted by the director, that the beneficiary will likely perform qualifying duties within one year of petition approval. The petitioner's description of the beneficiary's duties, both immediately and after one year, is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Furthermore, the petitioner has failed to establish that the subordinate staff proposed in the business plan will relieve him of the need to primarily perform non-qualifying duties. Finally, the petitioner has failed to establish that any of the subordinate staff members will truly be supervisory, managerial, or professional employees. Therefore, one year after petition approval, it is more likely than not that the beneficiary will be primarily performing non-qualifying tasks and/or will be serving as a first-line supervisor.

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). A "subsidiary" is defined in part as a corporation "of which a parent owns, directly or indirectly, more than half the entity and controls the entity." 8 C.F.R. § 214.2(l)(1)(ii)(K).

In this matter, the petitioner asserts that it is 100% owned by the foreign employer, a Chinese limited liability company. In support of this assertion, the petitioner submitted a stock certificate purporting to represent the issuance of 1,000 shares of stock to the foreign employer on June 5, 2005. However, the petition contains several inconsistencies that undermine the petitioner's assertion that it is owned and controlled by the foreign employer. For example, in the petitioner's 2005 Form 1120, U.S. Corporation Income Tax Return, the petitioner avers that it is not a subsidiary in a parent-subsidiary controlled group, that no entity owns 50% or more of the petitioner's stock, and that no foreign person owns at least 25% of the petitioner's stock. All three of these averments contradict the petitioner's assertion that it is 100% owned by the Chinese parent company. Furthermore, the petitioner's articles of incorporation indicate that it shall have the authority to issue 100 shares of stock. However, the stock certificate submitted for the record purports to represent the issuance of 1,000 shares of stock. The petitioner offers no explanation addressing these fundamental inconsistencies in the record. 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). 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. *Id.* at 591.

Accordingly, the petitioner has failed to establish that it has a qualifying relationship with the foreign employer, and the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has not established that the beneficiary's services will be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon completion of the temporary assignment in the United States. 8 C.F.R. § 214.2(l)(3)(vii).

In this matter, the petitioner claims to be 100% owned and controlled by the foreign employer, which is allegedly 55% owned by the beneficiary. As a purported owner of the company, the petitioner is obligated to establish that the beneficiary's services will be used for a temporary period and that he will be transferred to an assignment abroad upon completion of the assignment. *Id.* However, the record is devoid of any evidence establishing that the beneficiary's services will be used temporarily. Once 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Accordingly, as the petitioner has not established that the beneficiary's services will be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon completion of the temporary assignment in the United States, the petition may not be approved 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 denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if 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. 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.