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File: WAC 07 178 53139 Office: CALIFORNIA SERVICE CENTER Date: **FEB 14 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)

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. 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 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, which is described as a sole proprietorship, states that it operates a photography studio. The petitioner claims to have a joint venture relationship with [REDACTED] Express Studios and Laboratories, located in Jordan. The petitioner seeks to employ the beneficiary as the manager of its new office in the United States.

The director denied the petition concluding that the petitioner did not establish: (1) that the U.S. company has sufficient physical premises to house the new office; (2) that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity; or (3) that the U.S. entity and the beneficiary's foreign employer have a qualifying relationship.

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 for the petitioner asserts that the director "did not fairly consider the evidence and the circumstances of the Petitioner and the Beneficiary's background." Counsel contends that the evidence satisfied the minimum for warranting favorable action on the petition. Counsel submits a statement on Form I-290B, Notice of Appeal to the Administrative Appeals Office, but no brief or additional 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.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

The first issue in this matter is whether the petitioner established that it has secured sufficient physical premises to house the new office in the United States, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

At the time of filing on May 30, 2007, the petitioner indicated on Form I-129 that the beneficiary's worksite would be located at 6000 West Addison in Chicago, Illinois. The petitioner did not submit a lease agreement or other evidence that it had secured physical premises at this location sufficient to operate its intended photography studio business.

The director issued a request for additional evidence on June 6, 2007, in part requesting that the petitioner provide evidence that sufficient physical premises had been secured for the new office. The director requested that the petitioner provide: (1) a complete copy of the U.S. company's lease indicating the total square footage of the premises; (2) a letter from the owner or property management company confirming that the U.S. company is actually occupying and maintaining the lease agreement; (3) if the property is subleased, a letter from the owner

or property management company confirming that the property owner has granted permission for the sublease; (4) color photographs of the U.S. business premises; (5) the floor plan for all spaces secured; (6) the business's phone number and business hours; (7) proof of insurance and an occupancy permit for the premises; and (8) information regarding the type of business to be operated and the type of space secured.

In response to the director's request, the petitioner submitted a letter from \_\_\_\_\_ who is claimed to be the 75% owner of the petitioning company. He stated that he and the petitioner's minority owner "agreed to save operating expenses by using part of my existing business location as the beginning of our venture." Mr. \_\_\_\_\_ stated that he has divided his existing store and dedicated a distinct portion of it to the photography studio business. Finally, he indicated that the petitioner would eventually buy or lease another property if and when the business is sufficiently profitable.

In support of its response, the petitioner provided a "certificate of liability insurance" and "evidence of property insurance" issued to the U.S. business on July 23, 2007, with a policy date effective from March 13, 2007. The property description indicates that the premises is a "convenience/food/gasoline store." The address indicated is 6000 W. Addison in Chicago, Illinois. The petitioner provided copies of photographs of the U.S. business, which appears to be sharing physical premises with a cellular phone store, and other evidence indicating 6000 W. Addison as the company's business address, including copies of checks, cash register receipts, and advertising materials for the business.

The director denied the petition on September 12, 2007, concluding that the petitioner failed to establish that the U.S. company had secured sufficient physical premises to house the new office. The director noted the extensive evidence requested, but stated that the only response received was a fax from counsel dated August 29, 2007 in which he stated that he had sent the documents via a courier.<sup>1</sup> The director concluded that since the petitioner had failed to submit the requested lease agreement, it had failed to establish that sufficient physical premises were secured.

On appeal, counsel for the petitioner asserts that this issue was "poorly considered" by the director. Counsel emphasizes that the new entity is utilizing a portion of an existing Chicago business site in order to keep its operating expenses low. Counsel asserts that the evidence included photographs of the business and provided exact location and contact information that was amenable to verification or investigation. Counsel also provides evidence that a package containing photographs, proof of insurance and an explanation from the petitioner's owner that the petitioner was sharing a premises with an existing business also owned by him was in fact submitted to the director prior to the issuance of the notice of decision.

The AAO concurs with counsel that the director failed to adequately address the documentation submitted in response to the request for evidence. However, upon review, the evidence is not sufficient to establish that the petitioner had secured sufficient physical premises to house the new office as of the date the petition was filed.

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<sup>1</sup> The record shows that on August 29, 2007, the service center received both a fax from counsel, with attached documentation, and a package of documents delivered by courier. While it is true that the majority of the requested documentation, including the lease agreement, were not included in either response, it is unclear whether the director had an opportunity to fully review the documentation submitted.

The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The evidence submitted does appear to confirm that the petitioner was doing business as of July 2007 and was in fact sharing space in a retail store. However, the petitioner's failure to provide a lease agreement, ownership deed, occupancy permit, or other evidence requested by the director prohibits a finding that such premises were actually secured at the time the petition was filed. Mr. [REDACTED]'s statement that he owns two businesses that are sharing the same premises is also not sufficient to meet the petitioner's burden to show that it had in fact secured the premises for the purpose of operating a photography studio. The petitioner has not identified the company with which it claims to share a premises, nor provided corroborating evidence that Mr. [REDACTED] in fact owns both businesses or evidence that he rents or owns the claimed premises. 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, 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, while the petitioner has submitted evidence of insurance for the premises, the insurance indicates that the business insured is a gas station/convenience store, while the photographs clearly depict a retail cellular phone store with a photography studio. 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).

Overall, the absence of primary evidence that the petitioner had secured the claimed premises as of the date of filing precludes a finding that the petitioner had complied with the physical premises requirement set forth at 8 C.F.R. § 214.2(l)(3)(v)(A) as of the date of filing. The petitioner has not offered any additional evidence on appeal to overcome the director's determination. Accordingly, the appeal will be dismissed.

The second issue in this matter is whether the petitioner established that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B).

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

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

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

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

In support of the petition, the petitioner provided a "Certificate of Experience and Appreciation" from the foreign entity, which described the beneficiary's foreign employment as follows:

The Administration of [the foreign entity] hereby certifies that [the beneficiary] is working within our concern as a "Photographer" and studio manager since 1987, and then as a "Manager of the Digital Lab" for film printing, coordination and photograph dubbing using the Adobe Photoshop Program since 2000. He is professional in the photographic designing principles, video films dubbing, which thereby raised the level of our studios productivity, as well as building a high name of our studios in the area, with a really bright reputation in the digital photography line.

In the request for additional evidence, the director requested evidence to establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. Specifically, the director instructed the petitioner to provide the following: (1) the total number of employees at the foreign location where the beneficiary is employed; (2) a detailed organizational chart for the foreign entity identifying the beneficiary's position and the names, job titles, job duties and educational level for all employees working under his supervision; and (3) a more detailed description of the beneficiary's duties abroad, to include specific tasks performed and the percentage of time spent on each of the listed duties.

In a response dated August 28, 2007, counsel for the petitioner stated "the Beneficiary's history of employment is evidenced by the previously submitted and translated job letter from the Jordanian entity."

The director denied the petition, concluding that the petitioner had failed to establish that the beneficiary was employed in a primarily managerial or executive capacity with the foreign entity. The director noted the petitioner's failure to submit the requested evidence, and thus found that the petitioner had not demonstrated that the beneficiary supervises and controls the work of supervisory, professional, or managerial employees, that he manages an essential function of the foreign entity, or that he otherwise has a subordinate staff sufficient to relieve him from performing non-qualifying duties.

On appeal, counsel states that the beneficiary's foreign job experience "was adequately described and could have easily been verified, if such evidence was challenged or thought to have been untrue." Counsel emphasizes that the director failed to articulate an adverse claim regarding the submitted evidence that would allow the petitioner "appropriate rebuttal opportunity." Counsel states that the initial application included a letter from the foreign employer establishing the beneficiary's experience and qualifications.

Upon review, the petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner has failed to provide a description of the beneficiary's duties sufficient to establish that he was employed by the foreign entity in a primarily managerial or executive capacity. The only information provided by the petitioner is that the beneficiary held the title "manager of the digital lab" and was responsible for "film printing, coordination and photograph dubbing using the Adobe Photoshop Program." The foreign entity's "certificate of experience" also emphasized the beneficiary's professional skills in photographic designing principles and video film dubbing. Based on this minimal description of the beneficiary's duties, it appears that he performs the operational tasks necessary to provide the foreign entity's products and services. 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). The fact that the foreign entity assigned the beneficiary a managerial job title is irrelevant absent evidence that his duties were primarily managerial in nature as defined at section 101(a)(44)(A) of the Act. The actual duties themselves 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).

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather U.S. Citizenship and Immigration Services (USCIS) must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the

organizational hierarchy. Accordingly, the director requested both a detailed description of the beneficiary's duties, and an organizational chart for the foreign entity that would demonstrate the beneficiary's role within the company and the number and types of subordinate employees he supervises, if applicable. As noted above, the petitioner failed to provide the evidence requested, and instead suggested that the director review the previously submitted letter from the foreign employer, which was already found to be insufficient.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). 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).

Although the director specifically cited the petitioner's failure to respond to the request for evidence in her decision, neither the petitioner nor counsel provide any additional evidence regarding the beneficiary's employment abroad in support of the appeal. Counsel's assertion that the beneficiary's position with the foreign entity was "adequately described" and "could have been easily verified" is a poor substitute for a description of the beneficiary's actual duties and evidence of the foreign entity's organizational structure, which, in addition to being requested by the director, is specifically required by the regulations at 8 C.F.R. § 214.2(l)(3)(v)(C)(3). 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). Furthermore, the director did in fact attempt to verify the information contained in the foreign entity's letter by seeking clarification from the petitioner as to the details of the beneficiary's employment and the organizational structure of the foreign entity. The petitioner had ample opportunity to provide evidence in support of its claim that the beneficiary has been employed in a primarily managerial or executive capacity abroad and declined to do so.

Finally, counsel suggests that the director erred by not articulating an adverse claim, such as challenging the evidence submitted or providing a basis for questioning its credibility. Again, the evidence to which counsel refers consists solely of a brief letter from the foreign entity that failed to identify any managerial duties performed by the beneficiary during his employment abroad. The director did in fact challenge the quantity and quality of the evidence submitted by requesting a more detailed position description and additional evidence relevant to the beneficiary's employment with the foreign entity. As discussed above and in the director's decision, the foreign entity's letter suggested that the beneficiary has been responsible for providing the services of the foreign entity, rather than primarily performing managerial duties, managing a subordinate staff or professionals, managers or supervisors, or managing an essential function of the foreign entity. Without the additional evidence requested, the director could not have reasonably determined that the beneficiary had been employed in a primarily managerial or executive capacity, and thus this evidence was absolutely material to the adjudication of the petition. As emphasized above, the petitioner's failure to submit requested evidence that precludes a material line of inquiry is in fact a legitimate basis for the denial of the petition. *See* 8 C.F.R. § 103.2(b)(14).

Based on the foregoing discussion, the petitioner has not established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity, and the appeal will be dismissed.

The third and final issue addressed by the director is whether the petitioner 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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

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

\* \* \*

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

\* \* \*

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

On the Form I-129 petition, the petitioner stated that the U.S. company and the foreign entity have a joint venture relationship. Where asked to describe the stock ownership and control of each company, the petitioner indicated that the U.S. entity is owned by [REDACTED] who is purported to have a 75% interest in the company, and [REDACTED], who is stated to own the remaining 25% interest. The petitioner stated that [REDACTED] is the sole owner of the foreign entity.

In support of the petition, the petitioner provided a translated "Professions License" issued to the foreign entity by the [REDACTED] in Jordan for the 2007 calendar year. The license identifies the licensee as [REDACTED] & Brother Company" operating as "[REDACTED] Express Studio & Laboratories." The majority of the documentation submitted with respect to the foreign entity was written in the Arabic language and was not accompanied by an English translation.

In a letter dated May 15, 2007, counsel referred to a "joint venture" between the foreign and U.S. entities and noted the ownership of each company as stated on Form I-129. No other information or evidence relevant to the companies' claimed qualifying relationship was submitted.

On June 6, 2007, the director issued a request for evidence, in part, instructing the petitioner to submit additional documentation to establish the claimed qualifying relationship. Specifically, the director requested that the petitioner submit: (1) the foreign entity's annual report, meetings of relevant shareholder meetings, a list of the foreign entity's owners, and official evidence of its formation, such as articles of incorporation, articles of organization, limited partnership agreement, or registration as a sole proprietorship; (2) proof of the foreign entity's purchase of stock in the U.S. company; (3) the petitioner's articles of incorporation; (4) copies of all of the U.S. company's stock certificates issued to date; (5) a copy of the petitioner's stock ledger; (6) a detailed list of owners of the U.S. company indicating the percentage interest owned by each; and (7) if applicable, a copy of the petitioner's limited partnership agreement, sole proprietorship registration documents, franchise agreement, or evidence that the U.S. company has been authorized by the appropriate state authorities to operate as a branch office.

In response, counsel for the petitioner stated:

Please consider that [the petitioner] is a sole proprietorship, 75% owned by the U.S. Citizen, [REDACTED]. He and the owner of the Jordanian entity, [REDACTED] Express Studio & Laboratories, [REDACTED], who owns the remaining 25% of the U.S. entity, are the sole owners of both entities."

In an attached letter [REDACTED] stated that he owns 75% of the petitioning company, and that [REDACTED] is his partner. The petitioner re-submitted the foreign entity's 2007 license and provided a copy of Mr. [REDACTED]'s U.S. Certificate of Naturalization. No other evidence of the ownership or control of either company was submitted.

The director denied the petition concluding that the petitioner had not established that the U.S. and foreign entities have a qualifying relationship. The director noted that since the petitioner claims that one individual owns 75 percent of the U.S. company, and another individual owns 25 percent of the company, the petitioner is not a joint venture. The director observed that the petitioner had not responded to her request for additional evidence regarding the ownership of both companies and clarification regarding the qualifying relationship. The director considered whether the petitioner and the foreign entity met the criteria for a parent-subidiary or an affiliate relationship, but determined that neither relationship has been established, based on the evidence submitted.

On appeal, counsel asserts the following:

[T]he relationship between joint venturers was clearly stated from the initial application, where the investing parties were clearly identified and described as an American sole proprietorship and foreign owned entity. Evidence was submitted establishing the foreign company's current licensure in the business it claims it runs in Jordan, and evidence was also submitted showing financial transactions, although translation for its financial statements were not provided.

The decision refered [sic] to issues that were not applicable to the Petitioner, since it ignored the Petitioner's organizational status, sole proprietorship, and unfairly considered the lack of formal organizational charts of the foreign entity as dispositive of its failure to exist as a bona fide investing party to a joint venture.

Upon review, the petitioner has not established that the U.S. company and the foreign entity have a qualifying relationship. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As observed by the director, the record does not contain evidence of a joint venture or other qualifying relationship between the petitioner and the foreign entity, as required by 8 C.F.R. § 214.2(l)(1)(3)(i). Citizenship and Immigration Services (CIS) accepts the interpretation that a 50-50 joint venture creates a subsidiary relationship for purposes of section 101(a)(15)(L) of the Act. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). Neither the Act nor the regulations provides a definition of the term "joint venture." However, the AAO has applied a broad definition of joint venture in prior decisions. *Matter of Hughes* states that a joint venture is "a business enterprise in which two or more economic entities from different countries participate on a permanent basis." *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982) (quoting a definition from Endle J. Kolde, *International Business Enterprise* (Prentice Hall, 1973)). *Matter of Siemens Medical Systems, Inc.* states: "Where each of two corporations (parents) owns and controls 50 percent of a third corporation (joint

venture), the joint venture is a subsidiary of each of the parents.” *Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362, 364 (BIA 1986). In order to meet the definition of “qualifying organization,” a joint venture must be formed as a corporation or other legal entity. 8 C.F.R. § 214.2(l)(1)(ii)(G). A business created by a contract as opposed to one created under corporation law is not be deemed a “legal entity” as used in section 101(a)(15)(L) of the Immigration and Nationality Act. *Matter of Hughes*, 18 I&N Dec. at 294; *see also Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970).

Here, the petitioner indicates that one individual owns 75 percent of the U.S. company, and another individual owns 25 percent of the company. This ownership structure, even if corroborated by documentary evidence, would not qualify as a “joint venture” for the purpose of establishing the petitioner’s eligibility for this visa classification, as the regulations contemplate a 50-50 joint venture. *See* 8 C.F.R. § 214.2(l)(1)(ii)(K). Further, the petitioner did not submit any other supporting evidence, such as a joint venture agreement, that would clarify the intent of the two parties.

In addition, the petitioner is also referred to as a sole proprietorship. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. *Black’s Law Dictionary* 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual proprietor. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). The petitioner’s claim that it has two owners is therefore inconsistent with the petitioner’s claim that the U.S. entity is a sole proprietorship.

The petitioner has failed to clarify the type of entity formed in the United States and how the claimed qualifying relationship satisfies the regulatory requirements set forth at 8 C.F.R. § 214.2(l)(1)(ii). Furthermore, the petitioner’s claims are further undermined by its failure to provide any documentation of the qualifying relationship or the ownership and control of either company. The director provided the petitioner with an extensive list of documentation that could be submitted to establish each company’s ownership. The petitioner failed to provide any documentation in response, other than the petitioner’s and counsel’s unsupported statements. 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 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).

It cannot be determined based on the evidence presented that the U.S. company is even a “legal entity,” as the petitioner has not provided evidence of its registration as a sole proprietorship, partnership, limited liability company, corporation, or branch office of the foreign entity. As noted by the director, even if CIS accepts the petitioner’s unsupported claims regarding the ownership and control of each company, the petitioner has indicated that the sole owner of the foreign entity owns only a 25% interest in the U.S. company, and has not been shown to control the company with his minority interest. Therefore, the petitioner has failed to establish that the two companies are affiliates based on common ownership and control.

On appeal, counsel fails to address the director’s findings and simply reiterates that “the relationship between joint venturers was clearly stated,” and a copy of the foreign entity’s license was provided. As discussed above, the petitioner’s unsupported statements regarding a “joint venture” relationship and the foreign entity’s

commercial license are not sufficient to establish the claimed qualifying relationship. The petitioner has not submitted evidence on appeal to overcome the director's determination. Accordingly, the appeal will be dismissed for this additional reason.

Beyond the decision of the director, the petitioner has not established that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity within one year, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

The record contains no description of the beneficiary's proposed duties as manager of the company, no business plan, hiring plan, or other evidence of the proposed nature of the office, the scope of the entity, its organizational structure, and its financial goals, and no evidence of the size of the U.S. investment or the financial ability to commence doing business in the United States. It is noted that this evidence was specifically requested by the director in the request for evidence issued on June 6, 2007, and the petitioner failed to submit the evidence in response. Again, the AAO notes that 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). The only information provided by the petitioner is that the beneficiary will be the "manager" of its new photography studio. 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 at 165. For this additional reason, the petition may not 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 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.