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U.S. Citizenship and Immigration Services

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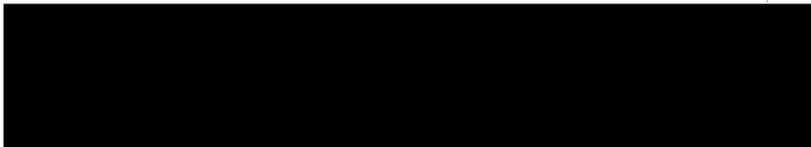
File: WAC 07 245 50118 Office: CALIFORNIA SERVICE CENTER Date: JUL 03 2008

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

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in 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 limited liability company organized under the laws of the State of Nevada, is allegedly in the motion picture business.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive position.

The petitioner subsequently filed an appeal, which was forwarded to the AAO for review.¹ On appeal, counsel asserts that the petitioner established that the beneficiary was employed abroad in an executive capacity.

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

¹Although it appears that the director considered the appeal as a motion to reopen or reconsider, the director dismissed the motion on November 13, 2007 because the petitioner did not state new facts for the director's consideration. Consequently, as the director decided not to take favorable action on the appeal, she properly forwarded the appeal to the AAO in accordance with 8 C.F.R. § 103.3(a)(2)(iv). The matter is now properly before the AAO for consideration.

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.

The primary issue in the present matter is whether the petitioner has established that the beneficiary was employed abroad in a primarily managerial or executive capacity.

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

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

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

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

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

The petitioner does not clarify in the initial petition whether the beneficiary primarily performed managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. While the petitioner describes the beneficiary as a manager of an essential function in its response to the director's Request for Evidence, counsel asserts on appeal that the beneficiary was employed abroad in an executive capacity. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary was employed in either a managerial *or* an executive capacity and will consider both classifications.

The foreign employer described the beneficiary's employment abroad in a letter dated August 10, 2007 as follows:

[The beneficiary] is [the foreign employer's] Executive Manager, and he has worked for [the foreign employer] in this capacity since April 2006. His duties have included executive-level management and coordination of the business operations of the company, and he is the steward of Audience Alliance's intellectual property. He is also the essential link between the companies and its customers.

On August 25, 2007, the director requested additional evidence. The director requested, *inter alia*, the foreign employer's payroll records pertaining to the beneficiary's foreign employment; an organizational chart for the

foreign employer identifying all employees under the beneficiary's supervision by name and job title; a description of the job duties, educational levels, and annual salaries of all employees under the beneficiary's supervision; and a more detailed description of the beneficiary's duties abroad, including a breakdown of the amount of time the beneficiary devoted to each of his ascribed duties.

In response, counsel submitted a letter dated September 10, 2007 in which he further describes the beneficiary's foreign employment as follows:

The beneficiary was hired by the foreign company on 13 April 2006 as its Media Response Manager. He has held only this position since his date of hire.

Neither counsel nor the petitioner addressed why the beneficiary's foreign position was described as "executive manager," and not as "media response manager," in the initial petition.

In response to the director's request for an organizational chart and job descriptions for all subordinate employees, counsel explained the following in the September 10, 2007 letter:

The foreign company does not maintain an organisational chart, but the following summarises the executive staffing of the company:

- [REDACTED] Managing Director and Chief Executive Officer
- [REDACTED] – Director of Marketing and Communications
- [The beneficiary] – Media Response Manager
- [REDACTED] – Digital Production Manager
- [REDACTED] – Administration Manager

The beneficiary's job duties are directly related to public and media response to the company's clients' advertising campaigns [citation omitted], a core element of the company's business. Thus, the beneficiary is an *essential function* manager under 8 CFR 214.2(1)(1)(ii)(B)(2) which does not require the supervision of employees. However, the follow-ing [sic] personnel have been under the beneficiary's supervision at the company:

- [REDACTED] – employee
- [REDACTED] – employee
- [REDACTED] – employee
- [REDACTED] – contractor
- [REDACTED] contractor
- [REDACTED] – contractor
- [REDACTED] – contractor
- [REDACTED] contractor
- [REDACTED] – contractor

However, the petitioner did not submit descriptions of the job duties or supervisory structure of these claimed

subordinate employees and contractors.

Finally, the petitioner described the beneficiary's duties abroad as follows:

- Executive management of certain business and commercial operations of the company;
- Management of third-party relationships for call handling and communications technology components of client advertising campaigns;
- Recruiting, training and managing the staff employed by and contracted to the company in relation to media response to clients' advertising campaigns;
- Hiring and firing such staff or recommending these and other personnel actions;
- Exercising day-to-day authority over the activities of the foreign company's Media Response division; and
- Reporting on campaign Key Performance Indicators and operations to company management and client stakeholders.

However, the petitioner did not submit a breakdown describing how much time the beneficiary devoted to each of these ascribed duties.

On September 28, 2007, the director denied the petition concluding that the petitioner failed to establish that the beneficiary was employed abroad in a primarily executive or managerial capacity.

On appeal, counsel asserts that the petitioner established that the beneficiary was employed abroad in an executive capacity. Specifically, counsel argues that the beneficiary performed "high level supervision and management duties" because he was directing the performance of the tasks of the media response division by subordinate employees and contractors. Counsel further describes the beneficiary's claimed duties abroad as "media response manager" as follows:

The day-to-day activities of the Media Response Division include the physical handling of calls through a telephony solution, the capture of respondent data, the subsequent population of respondent data into databases, the tabulation of that data into meaningful reporting of caller activities, and the provision of caller fulfillment details to other divisions of [the foreign employer] for the purpose of marketing fulfillment. The day-to-day management of the division includes the appropriate scheduling of people to provide coverage of call volumes, monitoring and reviewing agent and third party performance, interrogation of data resulting from reporting tools used, liaising directly with client's senior management, and liaising with other divisions in areas of shared stakeholding. In performing these duties, the beneficiary reported directly to the Managing Director on a monthly basis.

Counsel also asserts that all of the subordinate workers who allegedly performed the media response tasks "reported to and were directed by the beneficiary." In support, counsel submitted an organizational chart for the foreign employer showing the beneficiary administering the media response division.

Upon review, counsel's assertions are not persuasive.

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(1)(3). The petitioner's description of the job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were either in an executive or managerial capacity. *Id.*

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary acted in a "managerial" or "executive" capacity abroad. The petitioner submitted a vague and inconsistent job description which fails to sufficiently describe what the beneficiary did on a day-to-day basis. The petitioner states in the initial petition that the beneficiary was employed as the foreign employer's "executive manager" since April 2006 and that his duties "included executive-level management and coordination of the business operations of the company, and he is the steward of Audience Alliance's intellectual property." However, in its response to the director's Request for Evidence, the petitioner claims that the beneficiary was employed as the foreign employer's "media response manager" since April 2006. The petitioner offers no explanation for why it changed its description of the beneficiary's foreign employment in its response to the Request for Evidence. 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.

Regardless, the petitioner's description of the beneficiary's job duties as "media response manager" is so vague that it is impossible for Citizenship and Immigration Services (CIS) to deduce with any degree of certainty what, exactly, the beneficiary did on a day-to-day basis for the foreign employer. For example, the petitioner claims that the beneficiary managed "third-party relationship for call handling and communications technology components of client advertising campaigns," recruited, trained, supervised, and fired his subordinate staff members, and reported to company management on his activities. However, broad executive-sounding duties are not probative of the beneficiary actually performing qualifying duties. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary actually performed managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties were 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).

Consequently, the petitioner has failed to establish that the beneficiary primarily performed primarily managerial or executive duties abroad. This failure is exacerbated by the petitioner's failure to respond to several of the director's evidentiary requests. For example, the petitioner failed to describe the supervisory structure of the beneficiary's subordinate workers, to specifically describe the day-to-day duties of the

subordinate workers, or to submit a breakdown of the beneficiary's duties, which describes how much time the beneficiary devoted to each of his ascribed duties. 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). Absent a clear and credible description of both the beneficiary's duties and the duties of his subordinates, it is impossible for CIS to conclude that the beneficiary was employed in a "primarily" managerial or executive capacity. As currently constituted, the record indicates that the beneficiary was more likely than not, at most, a first-line supervisor of non-professional employees and contractors engaged in collecting data for the media response division. First-line supervisory tasks are not considered qualifying managerial or executive duties. 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).

As alluded to above, 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 asserted on appeal, the beneficiary "directly" supervised a variety of employees and contractors engaged in performing tasks associated with the media response division of the foreign employer. However, as the record is devoid of evidence addressing the duties or supervisory structure of these workers, it has not been established that any of these workers is a supervisory or managerial employee. Once again, 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 view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional workers, the provider of actual services, or a combination of both. 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. Moreover, as the petitioner failed to establish the skills required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary managed professional employees.² Therefore, the petitioner has not established that the beneficiary was employed primarily in a managerial capacity.³

²In evaluating whether the beneficiary will manage 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).

³While the petitioner on appeal has apparently abandoned its claim that the beneficiary managed an essential function of the organization, the record would nevertheless not support this position even if maintained. 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

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 acted primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary did on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary was primarily employed as a first-line supervisor and performed the tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary was employed primarily in an executive capacity.

Accordingly, the petitioner has failed to establish that the beneficiary primarily performed managerial or executive duties, and the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary "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." 8 C.F.R. § 214.2(l)(3)(iii).

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 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 managed an essential function. The petitioner's vague job description fails to document that the beneficiary's duties were primarily managerial. Also, as explained above, the record indicates that the beneficiary was primarily a first-line supervisor of non-professional employees and/or performed non-qualifying operational or administrative tasks. 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 were managerial, nor can it deduce whether the beneficiary was primarily performing 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).

The petitioner claims that the beneficiary has been employed abroad by the foreign entity since April 2006. However, other than the foreign employer's letter dated August 10, 2007, the record is devoid of evidence establishing that the beneficiary was employed abroad.

On August 25, 2007, the director requested additional evidence, including the foreign employer's payroll records pertaining to the beneficiary's foreign employment. In response, the petitioner submitted a two-page document titled "card transactions" which lists various credit and debit transactions and which repeatedly refers to the beneficiary. However, the significance of this document is unclear, and it does not establish that the beneficiary was an employee of the foreign employer. The petitioner did not submit copies of pay stubs or payroll documents. 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 Treasure Craft of California*, 14 I&N Dec. 190. 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Accordingly, as the petitioner has failed to submit evidence establishing that the beneficiary was indeed employed abroad for one continuous year by the foreign employer, the petition will not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that it has a qualifying relationship with the foreign employer, Keystone Media Pty. Ltd., an Australian proprietary limited company.

Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "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." An "affiliate" is defined, in part, as "[o]ne of two legal entities owned and controlled by the same group of individuals." 8 C.F.R. § 214.2(l)(1)(ii)(L)(2).

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; *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.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of membership interests into the means by which these membership interests were acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for the membership interests. The director also requested the names of all account holders, other than the foreign employer and its

stockholders, depositing funds with the petitioner and a description of their affiliation with the foreign or United States entity.

In this matter, the petitioner claims to be an affiliate of the foreign employer. The petitioner claims that both it and the foreign employer are owned and controlled by the same two individuals, [REDACTED] and [REDACTED]. However, as evidence that the [REDACTED] purchased their interests in the petitioner, counsel submits documents which indicate that both members paid \$100.00 for their respective interests. However, the record also indicates that the petitioner's primary funding source was not the foreign employer or its stockholders. Instead, most of the petitioner's funding originated with third parties such as a Hong Kong company called Audience Alliance Motion Picture Studios Limited and two Wyoming limited liability companies. The record is devoid of evidence establishing that either the Hong Kong company or the Wyoming limited liability companies are qualifying organizations. In fact, the record is devoid of evidence addressing the exact affiliation of these primary funding sources to the petitioner even though this was specifically requested by the director. Once again, 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).

While the funding of the petitioner and its enterprise by third parties is not alone disqualifying, it calls into question whether the petitioner is truly controlled by the two members of the limited liability company or, whether, control has been ceded to the various entities providing funds. It must be emphasized that the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Absent full disclosure of the conditions related to the funding of the petitioner by third parties, it is impossible for CIS to discern the exact control of the petitioner, and the petition will not be approved for his additional reason.

Additionally, the petitioner submitted an operating agreement for the U.S. company. The operating agreement lists [REDACTED] as the only member of the limited liability company and as the member who owns 100 percent interest in the company. In response to the director's request for proof of the stock purchase, the petitioner submitted a one-page document entitled, "Admission of New Member," signed by [REDACTED] and [REDACTED] on July 15, 2007, stating that [REDACTED] contributed \$100.00 and is admitted as a full member of the company. The petitioner did not submit cancelled checks, wire transfers or other proof that the two individuals purchased the stock. Also, in reviewing the operating agreement for the U.S. company, under section VII General Provisions, the agreement states that, "a list of the names and addresses of the current membership of the LLC also shall be maintained at this address, with notations on any transfers of members' interests to nonmember or persons being admitted into membership in the LLC." However, the petitioner did not provide this documentation with the petition. 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)).

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. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.