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U.S. Citizenship
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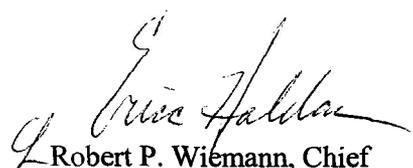
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

IN BEHALF OF PETITIONER:
[Redacted]

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 president 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 a "consulting firm."

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 manage an essential function within one year of petition approval. In support, counsel submits additional evidence and a brief.

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.

The primary issue in this matter is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

The petitioner described the beneficiary's proposed duties in the United States as follows:

Oversee and Manage all Operations of U.S. Corporation. [The beneficiary] will continue to oversee the distributorships of the [foreign employer].

On February 26, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties, a list of all employees in the United States, job descriptions for the United States employees, breakdowns of the number of hours devoted to each of the employees' duties on a weekly basis, and evidence that funds have been invested in the United States operation by the foreign employer.

In response, the foreign employer submitted a letter dated March 6, 2007 in which it describes the beneficiary's proposed duties and the objectives of the United States enterprise as follows:

As a result of our corporate decision to further expand our business and to seek new sources of supply and representations for the Brazilian market, we decided to open a branch office in the United States with [the beneficiary] as the C.E.O. of our newly incorporated company, [the petitioner]. Her experience and insight into the working philosophy of all of our customers, as well as the confidence that the directors of this company have on her capabilities, makes her the ideal executive to manage this new expansion phase of our business.

The objectives of the expansion of the [foreign employer] with the opening of the [petitioner] is to provide our customers in Brazil and South America in general with consulting to meet their demands for the acquisition of industrial equipments of high technology, as well as, to seek and identify new opportunities and possible representations for the Brazilian and South American market for products manufactured in the United States. Also, to purchase and ship these products, effect payments and to build credit in the marketplace.

The petitioner also submitted a letter signed by the beneficiary dated March 12, 2007 in which the proposed United States enterprise is further described as follows:

The objective of the expansion of [the foreign employer] in Brazil, through the opening of the newly created [petitioner] in the United States, is to offer our experience of over 12 years in the international market in order to establish promotional policies for new exports from the U.S. into Brazil, through a consulting service, extensive marketing research and new agreements and representations with firms in the U.S.A., especially in the industrial and technological sectors. In my capacity as President of the new created [petitioner], I will apply all my experience in the Brazilian market with a special emphasis on those export activities that will benefit the entry of new technological advances from companies in the United States into Brazil.

The petitioner vaguely outlines its proposed services in the letter dated March 12, 2007. The petitioner indicates that it will "develop and consolidate business opportunities," focus on commercial transactions, assist its customers, identify products, and evaluate markets. However, the petitioner failed to provide any details regarding its proposed services, products, customers, or markets.

Finally, the petitioner submitted bank statements indicating that it had a balance of \$3,073.00 at the time the instant petition was filed. While the bank statements also indicate that the petitioner received a wire transfer of approximately \$9,450.00, these funds were apparently received on March 12, 2007, approximately 2 weeks after the filing of the instant petition.

Although requested by the director, the petitioner failed to provide any information regarding the number and types of employees to be hired by the U.S. company, and the job duties of the beneficiary's proposed subordinates.

On April 10, 2007, 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.

On appeal, counsel asserts that the petitioner has established that the beneficiary will manage an essential function within one year of petition approval. In support, counsel submits a letter from the foreign employer dated April 24, 2007 which explains that the beneficiary is being transferred to the United States "to serve the needs of our clients for United States goods for the petrochemical, cement and pulp and paper industries." The foreign employer further describes the United States operation as follows:

- a) Market Research for new industrial solutions for high-temperature processes;
- b) Solicit requests for new representations of U.S. manufacturers of goods specifically for the above mentioned industries;
- c) Obtain quotes and proposals for customer requests for equipment, spares and raw materials;
- d) Place orders with suppliers and accompany the complete process to include all of the logistics involved in the receiving and packing of the goods ready for shipment according to the rigorous Brazilian customs laws;
- e) Coordinate the export logistics for shipping of the goods to our customers, including the contracting of freight forwarding services and all related processes;
- f) Supervise and coordinate the packaging of the goods ready for export;
- g) Prepare all export documentation, i.e., invoices, packing lists, certificates of origin, and all other pertinent documents for the total process;
- h) Present all documents for collection with the customers and/or banking institutions;
- i) Pay all suppliers involved for the goods and services provided.

Moreover, while the foreign employer asserts that the petitioner "will proceed to hire employees, as needed," the letter provides no details regarding the number of employees or their proposed titles or duties.

Finally, the foreign employer asserts in the April 24, 2007 letter that the beneficiary will administer the petitioner's relationship with a third party consulting company, that it is planned for the petitioner to be "self-sufficient" within one year, and that the petitioner's goals are as follows:

Strategic Business and Marketing Goals: [The petitioner's] goals involve the representation of a selection of the 5 best U.S. companies within the scope of supplies and products for the control and automation of high temperature applications for the petrochemical, cement and pulp and paper industries in the South American market.

The petitioner also submits a document titled "business plan." The plan generally repeats both the goals and the nine services identified in the letter dated April 24, 2007.

Upon review, the petitioner's assertions and additional evidence are not persuasive in establishing that the United States operation will support a functional manager within one year.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. 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(1)(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.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id.

For several reasons, the petitioner in this matter has failed to establish that the United States operation 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 petitioner has failed to sufficiently describe both the beneficiary's and her subordinates' proposed duties after the petitioner's first year in operation; has failed to establish that a sufficient investment has been made in the United States operation; and has failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C).

First, as correctly noted by the director, the petitioner has failed to establish that the beneficiary will be performing primarily "managerial" or "executive" duties after the petitioner's first year in operation. When examining the proposed executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the proposed 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 that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.*

In this matter, 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 after one year in operation. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes inflated duties such as "[o]versee and [m]anage all [o]perations of U.S. Corporation" does not

establish that the beneficiary will actually perform managerial duties after the first year of operations. Specifics are clearly an important indication of whether a beneficiary's duties will be 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). Furthermore, the petitioner failed to provide a more detailed description of the beneficiary's duties as requested by the director in the Request for Evidence. 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).

Likewise, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to perform the non-qualifying tasks inherent to her duties and to the operation of the business in general. The petitioner failed to specifically describe its staffing plan. While the foreign employer asserts that the petitioner will hire staff as needed, the petitioner failed to identify any of these prospective positions or describe any of the duties associated with these prospective employees even though this evidence was 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. *Id.* As the petitioner fails to explain what tasks the beneficiary and her subordinate staff will perform after the petitioner's first year in operation or to explain how much time the beneficiary will devote to performing non-qualifying tasks, it cannot be confirmed that she will be "primarily" employed as a manager or executive. 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; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

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. The petitioner has failed to specifically describe the duties of the proposed subordinate employees. 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). Absent job descriptions for the subordinates, it cannot be concluded that the beneficiary will supervise and control other supervisory, managerial, or professional employees.

Moreover, even though counsel argues on appeal that the beneficiary will be a "function" manager after the petitioner's first year in operation and, implicitly, will not directly supervise any subordinate employees, this assertion does not excuse the petitioner from establishing that the beneficiary will be relieved from performing the non-qualifying tasks inherent to the operation of a relatively new business by a subordinate staff. As the petitioner has failed to establish that it will employ or contract with workers who will relieve the beneficiary of the need to perform these tasks, it has failed to establish that the beneficiary will be primarily performing qualifying duties as a "function manager" after the first year in operation. 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 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 duties related to the function. Absent a clear and credible breakdown of what the beneficiary and all subordinate workers will do on a day-to-day basis, the AAO cannot determine what proportion of her 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).

Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial or executive capacity after the petitioner's first year in operation.

Second, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because it failed to establish that a sufficient investment was made in the enterprise. 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In this matter, the record indicates that the petitioner had a bank account balance of \$3,073.00 at the time the instant petition was filed. Although the petitioner failed to project its income, expenses, and revenue for the first year in operation (*see infra*), it is not credible that this meager investment will be sufficient to permit the United States operation to grow to the point that, after one year in operation, it will be able to support a primarily managerial or executive employee. Furthermore, it is noted that the petitioner submitted evidence that it received a wire transfer for approximately \$9,450.00 on March 12, 2007, approximately 2 weeks after the filing of the instant petition. However, this purported investment is not relevant because it was received after the filing of the petition. 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). Accordingly, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year for this additional reason.

Third, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because the petitioner has failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(1). The petitioner's "business plan" vaguely describes the United States operation as a consulting firm for the "petrochemical, cement and pulp and paper industries." However, the plan fails to specifically describe the petitioner's proposed products, services, customers, or competitors. The plan also fails to make any projections regarding revenue, income, expenses, or financial goals. The record does not contain any independent analysis, contracts, or purchase orders. Absent a detailed, credible description of the petitioner's proposed United States business operation addressing the petitioner's proposed product, marketing plan, customers, staffing, and income/expense projections, it is impossible to determine whether the proposed 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. Accordingly, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year for this additional reason.

Accordingly, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and the petition may not be approved for the above reasons.

Beyond the decision of the director, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

In support of the petition, the petitioner submitted a copy of a "Self-Storage Lease" for space in a U-Store-It "self-service storage facility" in Margate, Florida. The size of the space is described as 10 feet by 23 feet. The "Self-Storage Lease" submitted by the petitioner consists of paragraphs 1 through 8 which appear on one side of a single sheet of paper. However, the following statement appears at the bottom of the lease: "Paragraphs number 9 through 30 appear on the back of this agreement and are a part of this lease." The petitioner did not provide a copy of paragraphs 9 through 30. The petitioner also submitted photographs allegedly of its physical premises.

Upon review, the petitioner has not established that the space leased in the self-storage facility will be sufficient to permit the United States operation to 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. First, it is not credible that the size and character of the leased space would be conducive to the growth and maturation of a consulting firm. Second, as the petitioner failed to disclose over two-thirds of the lease terms by failing to provide the second page of the lease, it is impossible to discern whether the lease would even permit the type of enterprise vaguely described by the petitioner to do business at this location. 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.

Accordingly, as the petitioner has failed to establish that it has secured sufficient physical premises to house the new office, the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary was employed in a primarily managerial or executive capacity with the foreign entity for one year within the preceding three years. 8 C.F.R. § 214.2(l)(3)(v)(B).

The foreign employer described the beneficiary's job duties abroad in a letter dated March 6, 2007 as follows:

Since 1999, [the beneficiary] has managed our firm in Brazil, with duties and responsibilities in the nature of setting goals and working strategies for all of the diverse departments and has been involved in the processes of market research, interpreting the current commercial and customs practices in accordance with the current legislation in Brazil with emphasis in the United States market.

Likewise, the beneficiary described her foreign duties in a letter dated March 12, 2007 as follows:

For the past several years, I have been a managing partner in a firm in Brazil – [the foreign employer]. Among my duties for our firm are the coordination of all export and import activities including the management of the company in Brazil, elaboration of business plans and the coordination of all of the departments involved in these activities and their respective processes, as well as market research and the accompaniment of commercial and customs related trends in the export/import sectors in which our company acts.

Finally, the petitioner submitted an organizational chart for the foreign employer. The chart portrays the beneficiary as reporting to the president and overseeing a third party "accounting" contractor called Inforservice.

Upon review, the petitioner has failed to establish that the beneficiary has been employed in a primarily managerial or executive capacity with the foreign entity for one year within the preceding three years. The petitioner's description of the beneficiary's duties is so vague that it cannot be discerned what, exactly, she did on a day-to-day basis. For example, the foreign employer asserts that she set "goals and working strategies." However, these goals and working strategies are not defined. 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, *aff'd*, 905 F.2d 41. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad even though this evidence 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). Absent detailed descriptions of the duties of both the beneficiary and her purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary has been employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(3)(v)(B), and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner 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 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 of the entity and controls the entity." 8 C.F.R. § 214.2(l)(1)(ii)(K).

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.

In this matter, the petitioner asserts that it is 60% owned, and thus controlled, by the foreign employer. In support of this assertion, the petitioner submitted two stock certificates. However, these stock certificates are not valid under Florida law and, therefore, do not establish that the foreign employer owns and controls the petitioner. First, the certificates do not list the number of shares issued to each stockholder. Instead, the certificates state a percentage of ownership, which is not appropriate under Florida law. Section 607.0625(2)(c), Fla. Stat. (2007). Second, the share certificates are not signed, which is required under Florida law. Section 607.0625(4)(a), Fla. Stat. (2007). Therefore, the petitioner has failed to submit evidence establishing that it is owned and controlled by the foreign employer.

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.

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, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.