



U.S. Citizenship
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File: EAC 07 085 53022 Office: VERMONT SERVICE CENTER

Date:

MAY 20 2008

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of 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 California, is allegedly in the business of manufacturing electrical components.

The director denied the petition concluding that the petitioner failed to establish: (1) that it has a qualifying relationship with the foreign employer; (2) that the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year within the three years preceding the filing of the petition; or (3) 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 it is an affiliate of the foreign employer, that the beneficiary was employed abroad for at least one year within the past three years in an executive or managerial capacity, and that the beneficiary will perform qualifying duties within one year of petition approval.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was

managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

The first issue in this matter is whether the petitioner has established that it has a qualifying relationship with the foreign entity.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). If one individual owns a majority interest in the petitioner and the foreign employer, and controls those entities, then the entities will be deemed to be "affiliates" under the definition. 8 C.F.R. § 214.2(l)(1)(ii)(L).

In this matter, it is asserted that both the petitioner and the foreign employer, [REDACTED] are principally owned and controlled by the same person, [REDACTED]. While the petitioner submitted a

stock certificate and organizational documents indicating that [REDACTED] is the 100% owner of the petitioner, a translated organizational document for the Taiwanese company dated July 31, 2006 indicates that [REDACTED] owns 50,206 shares of stock. Three other stockholders own 164,133 shares, 160,000 shares, and 9,586 shares respectively.

In view of the apparent lack of affiliation between the petitioner and the foreign employer, the director requested additional evidence on March 14, 2007. The director requested, *inter alia*, evidence establishing that the two entities are qualifying organizations such as stock certificates, stock ledgers, articles of incorporation, and any pertinent agreements.

In response, the petitioner submitted a translation of a "Corporate Change Registration Form" which indicates that [REDACTED] owns 377,652 shares of stock in the foreign employer out of a total of 750,000 authorized shares. The other stockholders are shown to own 133 shares, 1,000 shares, and 9,586 shares respectively. It is noted that the English language translation of the Corporate Change Registration Form is undated. The record is also devoid of stock certificates, stock ledgers, or other evidence indicating when, exactly, [REDACTED] ownership interest increased from 50,206 shares to 377,652 shares.

On October 17, 2007, the director denied the petition. In concluding that the petitioner failed to establish that it has a qualifying relationship with the foreign employer as an affiliate, the director noted that the Corporate Change Registration Form submitted in response to the Request for Evidence includes a seal from the Taipei municipal government bearing the Chinese version of the date June 4, 2007. Accordingly, as the record otherwise fails to establish when [REDACTED] became the owner of a controlling interest in the foreign employer, the director concluded that the record indicates that [REDACTED] ownership interest was acquired after the filing of the instant petition on February 5, 2007 and denied the petition accordingly.

On appeal, counsel asserts that the record establishes that [REDACTED] owns 387,238 shares of the foreign employer. In support, counsel submits a translated Taiwanese "directory of business registration." However, counsel does not indicate when, exactly, [REDACTED] acquired this purported controlling interest or directly address the director's determination that it appears that [REDACTED] acquired this interest at some point after the filing of the instant petition on February 5, 2007.

Upon review, counsel's assertions are not persuasive.

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.

In this matter, the petitioner has failed to establish that it has a qualifying relationship with the foreign employer, [REDACTED]. The petitioner has failed to establish that the same individual, [REDACTED] owns and controls both the foreign employer and the petitioner. Accordingly, the petitioner has failed to establish that the two entities are "affiliates" as defined by the regulations. As correctly noted by the director, the petitioner originally submitted evidence indicating that [REDACTED] owns a minority interest in the foreign employer. While the petitioner submitted evidence on appeal, and in response to the Request for Evidence, that [REDACTED] has acquired a majority ownership interest in the foreign employer, the record is devoid of evidence establishing when, exactly, or under what circumstances, he acquired this majority interest. 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, as noted by the director, as all of the evidence pertaining to [REDACTED]'s acquisition of a majority interest in the foreign employer is dated after the filing of the instant petition, the record is not persuasive in establishing that the two entities were affiliates at the time the instant petition was filed on February 5, 2007. 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, it appears more like than not that Chung-Ye Liu, even if he owns a majority interest in the foreign employer, did not acquire this interest until after the filing of the instant petition.

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

The second issue is whether the petitioner has established that the beneficiary was employed abroad for one continuous year in the three-year period preceding the filing of the instant petition 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.

Counsel described the beneficiary's claimed employment abroad as "production manager" for the foreign employer in a letter dated January 25, 2007 as follows:

As previously noted, [the beneficiary] has served in both a managerial and executive capacity for the overseas affiliated company since 2004. In this role, [the beneficiary] has gained valuable experience in every aspect of the management and running of the subject business. During his tenure as the production manager overseeing the production and manufacturing departments, the overseas affiliated company has achieved unprecedented success.

The petitioner also submitted a letter from the foreign employer indicating that the beneficiary has been employed as a production manager since 2004. However, the petitioner submitted a copy of the beneficiary's resume which indicates that the beneficiary had only worked for the foreign employer from June 1998 until October 1999 as a "network administrator."

On March 14, 2007, the director requested additional evidence. In the Request for Evidence, the director noted that, as Citizenship and Immigration Services (CIS) records indicate that the beneficiary was present in the United States in F-1 visa (student) status from March 14, 2003 until September 12, 2005, it is unclear how the beneficiary could have been employed in Taiwan by the foreign employer since 2004. Accordingly, the director requested, *inter alia*, evidence establishing that the beneficiary was employed full-time for one continuous year within the three years prior to February 5, 2007; a copy of the beneficiary's most recent foreign tax return and, if applicable, tax withholding statement indicating the name of the employer; copies of the foreign employer's payroll documents reflecting the beneficiary's period of employment and his salary; a more detailed description of the beneficiary's duties abroad; and complete position descriptions for each employee supervised by the beneficiary, including breakdowns of the number hours devoted to each duty on a weekly basis, including a breakdown for the beneficiary's duties.

In response, the petitioner submitted a list of 24 claimed employees of the foreign employer, which includes the beneficiary, and a copy of the same letter from the foreign employer submitted with the initial petition which indicates that the beneficiary has been employed abroad since 2004. The petitioner did not submit job descriptions for the beneficiary or the other alleged foreign workers, tax returns, or payroll documents. The petitioner also did not reconcile, or otherwise address, the director's observation that the beneficiary was present in the United States in F-1 student status until September 2005 with its claim that the beneficiary has been employed abroad since 2004.

On October 17, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary was employed abroad for one continuous year in the three-year period preceding the filing of the instant petition in a primarily managerial or executive capacity.

On appeal, counsel argues that the petitioner has established that beneficiary was employed abroad for one year in an executive or managerial capacity. Specifically, counsel argues that the beneficiary's position as "production manager" is a managerial position and that, even if he was in the United States until September 2005 as a student, the beneficiary's employment abroad after that date, which is more than one year prior to the filing of the instant petition, would still constitute qualifying employment.

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(l)(3)(iii)-(iv). 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 has failed establish that the beneficiary was employed abroad in a managerial or executive capacity. The petitioner failed to specifically describe the beneficiary's job duties abroad. 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). 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 fact that the petitioner has given the beneficiary a managerial title and has described him vaguely as "overseeing the production and manufacturing departments" will not establish that the beneficiary actually performed qualifying managerial or executive duties.

Furthermore, the petitioner failed to submit any of the evidence requested by the director pertaining to the beneficiary's purported qualifying employment abroad since 2004. The petitioner failed to submit the beneficiary's most recent foreign tax return, a tax withholding statement indicating the name of the beneficiary's employer, the foreign employer's payroll documents reflecting the beneficiary's period of employment and his salary, a more detailed description of the beneficiary's duties abroad, complete position descriptions for each employee supervised by the beneficiary, or breakdowns of the number hours devoted to each ascribed duty on a weekly basis for both the beneficiary and his subordinate workers. 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). Absent detailed descriptions of the duties of both the beneficiary and his 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.

Finally, the record contains material inconsistencies which undermine the petitioner's claim that the beneficiary was employed abroad since 2004. First, the beneficiary's resume which was submitted for the record fails to list any employment by the foreign employer other than employment as a network administrator from 1998 until 1999. The petitioner offers no explanation for why the beneficiary chose to omit his alleged employment as a manager or executive abroad from his resume. Second, as noted by the director, it appears that the beneficiary was in the United States in F-1 (student) status until September 2005. Even though this inconsistency was identified by the director in the Request for Evidence, the petitioner chose not to resolve this inconsistency. Instead, counsel on appeal argues that this inconsistency is harmless since it was possible for the beneficiary to have been employed abroad for one year between the end of his studies in the United States and the filing of the instant petition. However, this argument, in the absence of a credible explanation addressing how and why this error was made in the first place, is not persuasive. 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. As the petitioner failed to resolve or to explain the inconsistencies in the record pertaining to his claimed foreign employment, the petition may not be approved.

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, and the petition may not be approved for this reason.

The third issue in this matter is whether the petitioner has established that the proposed 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).

As indicated above, 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:

- (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.

In support of its claim to have received an investment sufficient to commence doing business in the United States, the petitioner submitted bank statements and checks indicating that it deposited \$100,000.00 into its bank account on August 10, 2006. The source of these funds was a check for \$25,000.00 from Dynabest, Inc. and a check for \$75,000.00 from an unknown source.

The petitioner also submitted a business plan which indicates its intention to "immediately enter the American market as one of the foremost importers of Asian and Chinese food products into the United States" but also claims to make "high quality, customized electrical components in the United States."

On March 14, 2007, the director requested additional evidence. The director requested, *inter alia*, evidence establishing the source of the \$100,000.00 investment, "such as copies of the foreign entity's audited or reviewed financial statements and tax returns or copies of the Customs Form 4790's that were executed to document the transfer of funds between the foreign business and the United States entity."

The petitioner responded to the director's Request for Evidence on June 8, 2007. However, the petitioner did not respond to the director's request pertaining to the sources of, or circumstances surrounding, the claimed \$100,000.00 "investment" in the United States operation.

On October 17, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the United States operation will, within one year of petition approval, support an executive or managerial position because the petitioner failed to establish that an "investment" was made in the United States operation.

On appeal, counsel argues that the presence of \$100,000.00 in the petitioner's bank account sufficiently establishes that an investment has been made in the enterprise.

Upon review, counsel's assertions are not persuasive.

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(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.

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 his subordinates' proposed duties after the petitioner's first year in operation; has failed to establish that an investment has been made in the United States operation; has failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office; and has failed to sufficiently describe the organizational structure of the foreign entity. 8 C.F.R. § 214.2(l)(3)(v)(C).

First, 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. 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. 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, *aff'd*, 905 F.2d 41. 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.

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 his duties and to the operation of the business in general. The petitioner failed to specifically describe the duties of the proposed subordinate employees or to explain how, exactly, these prospective employees will relieve the beneficiary from performing non-qualifying tasks. As the petitioner fails to explain what tasks the beneficiary and his 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 he 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. at 604.

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 noted above, the petitioner has failed to specifically describe the duties of the proposed subordinate employees. Therefore, it cannot be confirmed that the beneficiary will supervise and control other supervisory, managerial, or professional employees. 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. 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 an "investment" was made in the enterprise. 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In this matter, the record indicates that petitioner received a total of \$100,000.00 from two sources. However, the petitioner failed to establish that these funds constitute a bona fide "investment" in the United States operation. As explained above, the director specifically requested additional evidence pertaining to the source of these funds. The petitioner, however, chose not to respond to this request. 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). As the source, and the circumstances surrounding the petitioner's receipt, of the \$100,000.00 is essential to discerning whether this transfer was a bona fide "investment" in the United States operation, the petitioner's choice not to respond to the director's request precluded a material line of inquiry into the scope and nature of the operation as well as the enterprise's ability to do business in the United States and to grow to the point that it will support a managerial or executive position within one year. Therefore, the petition may not be approved 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 fails to specifically describe the petitioner's proposed products, services, customers, or competitors. The plan also fails to provide any credible projections regarding revenue, income, expenses, staffing, or financial goals. Absent a detailed, credible description of the petitioner's proposed United States business operation addressing the petitioner's proposed products, 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.

Furthermore, the petitioner's vague description of its proposed enterprise contains inconsistencies which undermine its claim to be a bona fide business entity. For example, the petitioner claims that it will "immediately enter the American market as one of the foremost importers of Asian and Chinese food products into the United States." However, the petitioner also claims to make "high quality, customized electrical components in the United States." The petitioner offers no explanation for this inconsistency. Once again, 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. at 591-92.

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.

Fourth, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because the petitioner failed to describe the organizational structure of the foreign entity. 8 C.F.R. § 214.2(l)(3)(v)(C)(3). The record is devoid of evidence addressing the duties of the subordinate workers abroad or the organizational structure of the foreign employer. 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).

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.

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.