U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D7

[redacted]

File: SRC-04-129-50255 Office: TEXAS SERVICE CENTER Date: OCT - 7 2004

IN RE: Petitioner: [redacted]
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:

[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, Director
Administrative Appeals Office

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DISCUSSION: The Director, Texas 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 extend the employment of its Managing Director 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 is a corporation organized in the State of Louisiana that is engaged in wholesale distribution. The petitioner claims that it is the subsidiary of DM Industries Limited located in Sri Lanka.

The beneficiary was previously granted a one-year period of stay in L-1A status to open a new office in the United States, under petition number SRC-01-226-73330, valid from September 10, 2001 to September 9, 2002. The petitioner filed a petition (SRC-02-222-51912) to extend the beneficiary's stay, yet the director denied that petition on November 18, 2002. The petitioner filed an appeal from the director's denial, and the AAO dismissed the appeal. The petitioner also filed a new petition (SRC-03-100-53899), again seeking to classify the beneficiary as an L-1A intracompany transferee for a one-year period of stay to open a new office in the United States. That petition was granted for a period from April 5, 2003 to April 5, 2004. On April 2, 2004, the petitioner filed the present petition to extend the beneficiary's stay. The director denied the petition on May 13, 2004. On May 24, 2004, the petitioner filed this appeal. The records of Citizenship and Immigration Services (CIS) reflect that, on July 29, 2004, the petitioner filed a fifth I-129 petition (SRC-04-209-50046), once again seeking to extend the beneficiary's stay as an L-1A intracompany transferee.

The director denied the present petition concluding that (1) the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity, and (2) the petitioner did not establish that it has been doing business for the year prior to filing the petition.

The petitioner subsequently filed this appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the beneficiary has been working in an executive capacity for over one year, and that it has submitted sufficient evidence to show that it is has conducted regular business for over one year. In support of these assertions, the petitioner submits additional evidence.

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

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

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

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

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and

(E) Evidence of the financial status of the United States operation.

The first issue in the present matter is whether the beneficiary will be employed by the United States entity 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.

In the initial petition, the petitioner described the beneficiary's job duties as follows: "Managing, directing, overseeing all executive and managerial duties of manufacturing plant, sales, and administrative levels of company. . . . Establishment and promotion of business with [U.S.] buyers in charge of [U.S.] trading office."

On April 9, 2004, the director requested additional evidence. Regarding the beneficiary's employment capacity, the director requested: (1) payroll records from April 2003 to April 2004 for the petitioner; (2) a current organizational chart for the petitioner; (3) a definitive statement describing the U.S. employment of the beneficiary; (4) if the beneficiary supervises employees, the number of employees who directly report to the beneficiary, a brief description of their job titles, duties, and educational backgrounds; (5) if the beneficiary does not supervise other employees, a description of the essential function within the organization that he manages; and (6) copies of the petitioner's Employer's Quarterly Tax Returns with all attachments for the previous four quarters, including proof that payments were made to the Internal Revenue Service for the petitioner.

In response, the petitioner submitted: (1) an organizational chart for the petitioner; (2) an organizational chart for the foreign entity; (3) a document providing a brief job description for the beneficiary and three additional employees, including their titles; (4) copies of the petitioner's Employer's Quarterly Tax Returns with all attachments for the first, second, third and fourth quarters of 2003; (5) copies of checks and deposits payable to Hibernia National Bank, labeled as "FICA" and "Federal Tax Deposits," and dated May through December 2002; (6) 2003 Forms W-2, Wage and Tax Statement, for the beneficiary and one additional employee; and (7) a Form W-4, Employee's Withholding Allowance Certificate, for a third employee, dated December 30, 2003.

In an attached letter, the petitioner stated that "the beneficiary supervises the merchandiser, consultant, [and] imports manager . . . [and] as President and CEO, he oversees the consultant who is also a director . . . [with] a PhD." In the document that provides job descriptions for the petitioner's employees, the petitioner described the beneficiary's duties as follows:

> President/CEO: Responsible for the companie's [sic] requerments, [sic] sales, supply, sourcing, importing fabrics and enserleries [sic] from various countries and assembling in Sri Lanka production plant and reship to U.S.A. Arranging finace [sic] for the [U.S.] orders Cordinating [sic] with main production from Sir Lanka after developmens. [sic]

On May 13, 2004, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Specifically, the director stated that "[t]he petitioner has not demonstrated the beneficiary manages or directs the management of a department, function, or component of the organization," and that "[t]he petitioner has not established the beneficiary will be involved in the supervision and control of the work of other supervisory, professional or managerial employees who will relieve him from performing the services of the business." The director highlighted that, despite her request, the petitioner failed to provide attachments to its quarterly tax returns. The director further noted that the organizational chart submitted for the petitioner did not indicate what employees fill the given positions. The director pointed out that the petitioner failed to provide documentation to support its assertion that the consultant that the beneficiary manages is a professional with a PhD. The director concluded that the majority of the beneficiary's work time would be spent in the non-executive day-to-day operations of the business.

On appeal, counsel for the petitioner asserts that the beneficiary has been working in an executive capacity for over one year. The petitioner further describes the beneficiary's duties as follows:

> [The beneficiary] is the Chief Executive Officer of both the foreign [company] and [the petitioner]. He receives no supervision of those above him. He establishes all goals and policies, decision making, and directs to the employees said policies to be carried out. [The beneficiary] manages the general hierarchy.

The petitioner asserts that the beneficiary manages a professional, and provides copies of a resume and academic credentials for an individual listed as the petitioner's consultant. Finally, the petitioner provides a

copy of a Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2004, including an attachment listing the petitioner's employees.

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)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In the instant case, the petitioner initially asserted that the beneficiary is primarily engaged in both managerial duties and executive duties. The petitioner stated that the beneficiary is responsible for "Managing, directing, [and] overseeing all executive and managerial duties of [the] manufacturing plant, sales, and administrative levels of [the] company." On appeal, the petitioner refers to the beneficiary as an executive, yet it references his managerial responsibility over three individuals as evidence of his eligibility for L-1A classification.[1] Therefore, as the petitioner is indicating that the beneficiary is both a manager and an executive, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive duties under section 101(a)(44)(B) of the Act, and the statutory definition for managerial duties under section 101(a)(44)(A) of the Act.

The beneficiary's job description submitted by the petitioner is brief and vague, such as "[m]anaging, directing, [and] overseeing all executive and managerial duties of [the] manufacturing plant, sales, and administrative levels of [the] company." Other portions of the beneficiary's job description paraphrase the definition for "executive capacity" given in section 101(a)(44)(B) of the Act, while providing little additional detail, such as the assertion that "[h]e establishes all goals and policies, decision making, and directs to the employees said policies to be carried out." This general information provides little insight into the true nature of the tasks that the beneficiary will perform. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.* Conclusory assertions regarding the beneficiary's employment capacity are not sufficient.

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[1] The AAO notes that if the petitioner now intends to represent that the beneficiary is exclusively an executive, this is a material change from the petitioner's description of the beneficiary's duties in the initial petition. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). As discussed above, keeping with the petitioner's representations in the initial petition, the AAO will adjudicate this appeal under the requirements of both sections 101(a)(44)(B) and 101(a)(44)(A) of the Act.

Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The provided job description does not allow the AAO to determine the actual tasks that the beneficiary will perform, such that they can be classified as managerial or executive in nature.

The petitioner asserts that the beneficiary manages subordinates, including a merchandiser, consultant, and imports manager. Yet, the petitioner has not provided sufficient documentation to show that it employs more than one individual in addition to the beneficiary. On appeal, the petitioner submits a copy of a Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2004, including an attachment listing the petitioner's employees. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In the instant matter, the director issued a request for evidence, specifically instructing the petitioner to submit copies of the petitioner's Employer's Quarterly Tax Returns with all attachments for the four quarters prior to filing the petition. In its response, the petitioner failed to provide the quarterly tax return and attachments for the first quarter of 2004, the quarter immediately preceding the filing of the petition. The petitioner now provides this quarterly return and the attachments on appeal. However, the petitioner was put on notice of this required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. The AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Accordingly, the petitioner's Form 941, Employer's Quarterly Federal Tax Return, and attachments for the first quarter of 2004 will be given no weight in this proceeding.

The petitioner claims that the beneficiary supervises a consultant, yet no documentation has been provided to affirm this assertion. The petitioner submitted a resume and business card for this individual, but these documents do not serve as evidence of services he has provided to the petitioner, or payments the petitioner made to him for such services. In fact, the petitioner has provided no description of what consulting services this individual offers. 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). Thus, the petitioner has not established that the beneficiary manages a consultant.

As the sole evidence to support that the petitioner employs an individual hired in December 2003, the petitioner submits a Form W-4, Employee's Withholding Allowance Certificate. However, this document, by itself, does not show that this employee actually provided services to the petitioner. In the absence of documentary evidence, such as pay stubs and payroll records, the petitioner has not established that the petitioner employs this claimed subordinate staff member. 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. at 190. Thus, the petitioner has not conclusively established that the beneficiary manages this employee.

The petitioner has established that it employs one person in addition to the beneficiary. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. In evaluating whether the beneficiary managed professional employees, the AAO must evaluate whether the subordinate positions required 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). Despite the director's request, the petitioner declined to provide the academic credentials this individual possesses, or a clear indication of her job duties such that the AAO can determine the requirements for her position. Thus, the AAO is unable to determine whether this employee is supervisory, professional, or managerial, such that the beneficiary manages supervisory, professional, or managerial subordinates. *See* section 101(a)(44)(A)(ii) of the Act. Again, 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).

Further, as the Form W-2, Wage and Tax Statement, for this employee indicates that she received compensation of $5,200 for the year of 2003, it appears that she is not a full-time employee. With one part-time employee, it is doubtful that the beneficiary is relieved from performing the day-to-day tasks of the petitioner. Thus, the evidence suggests, and the petitioner has not proven otherwise, that the beneficiary must perform significant duties that are non-managerial and non-executive. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3). For this reason, the appeal will be dismissed.

The second issue in the present matter is whether the petitioner has been doing business for the past year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

With the initial petition, the petitioner submitted evidence that it has been doing business over the one-year period prior to filing, including: (1) copies of records of 10 wire transfers from the petitioner to the foreign entity marked as "sewing charge payments" and "bill settlements," dated from September 4 to December 5, 2003 and totaling approximately $225,000; (2) copies of the petitioner's bank statements, dated from April to December 2003, showing a regular pattern of cash flow, including significant deposits and transfers to the foreign entity; (3) copies of documents that record numerous export letters of credit issued on behalf of the petitioner, dated March 2003 to February 2004; (4) a copy of a customs bond dated June 13, 2003; (5) copies of numerous invoices, bills of lading, and packing lists issued to the petitioner by shipping companies, dated

January 2003 to March 2004; (6) a copy of a commercial lease for the period from July 2003 to June 2004; (7) copies of phone bills dated in 2003 and 2004; and (8) a copy of the petitioner's 2003 U.S Corporation Income Tax Return.

On April 9, 2004, the director requested additional evidence. Regarding the petitioner's business activity, the director requested: (1) evidence that the foreign entity is currently doing business, such as current financial records, tax records, employee rosters, annual reports, as well as evidence of business conducted, such as invoices, bills of sale, and product brochures of goods and services sold or produced by the company; (2) evidence that the petitioner has been doing business for one year, including bank statements, payroll records, invoices, sales records, bills of sale, shipping receipts, and orders of goods and services; (3) payroll records from April 2003 to April 2004 for the petitioner; (4) a copy of the occupancy license for the petitioner; (5) copies of the petitioner's Employer's Quarterly Tax Returns with all attachments for the past four quarters, including proof that payments were made to the Internal Revenue Service for the petitioner; and (6) an indication as to who provides shipping and handling for the petitioner and foreign entity.

In response, the petitioner submitted previously provided documentation, as well as: (1) copies of the petitioner's Employer's Quarterly Tax Returns with all attachments for the first, second, third and fourth quarters of 2003; (2) copies of checks and deposits payable to Hibernia National Bank, labeled as "FICA" and "Federal Tax Deposits," and dated May through December 2002; (3) 2003 Forms W-2, Wage and Tax Statement, for the beneficiary and one additional employee; and (4) a Form W-4, Employee's Withholding Allowance Certificate, for a third employee, dated December 30, 2003.

The director denied the petition on May 13, 2004, in part based on a finding that the petitioner had not established that is had been doing business as defined in the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H).

On appeal, the petitioner asserts that it has submitted ample documentary evidence to show a continuous flow of business for over one year.

On review, the AAO finds that the petitioner has provided sufficient evidence to demonstrate that it has engaged in a regular pattern of business over the one-year period prior to filing the petition. As listed above, this evidence includes numerous shipping receipts, bills of lading, and packing lists, reflecting the regular transfer of goods to and from the petitioner. The record contains documentation of letters of credit, evidencing that third-party banks have agreed to guarantee the petitioner's transactions in amounts exceeding $1,000,000. The petitioner's 2003 tax return reflects gross receipts in excess of $1,000,000. The petitioner's bank statements show a regular pattern of cash flow, including significant deposits and transfers to the foreign entity. The petitioner has established that it had a commercial lease during the relevant period, and it provided phone bills. In aggregate, this evidence reflects that the petitioner was doing business as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). Therefore, the director's decision on this issue will be withdrawn.

Based on the foregoing analysis, the director's decision will be withdrawn in part, and affirmed in part.

Beyond the decision of the director, the petitioner has not established that a qualifying relationship exists between the petitioner and the claimed overseas entity. 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 context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra.* Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

On the Form I-129 petition, the petitioner indicated that it was a "subsidiary" of the foreign parent company, [redacted] After the director requested additional evidence, the petitioner claimed that beneficiary owned 100 percent of both the U.S. petitioner and the foreign company, thereby qualifying the two as "affiliates." In the request for evidence, the director specifically requested documentary evidence to establish the ownership and control of both the foreign and U.S. entities. In response, the petitioner submitted a partially illegible copy of [redacted] Share Certificate," annotated as "Certificate No. 18," that represents the beneficiary as the owner of 138,000 shares. The petitioner did not submit evidence of the share certificates numbered one through seventeen, or any other documentary evidence that would demonstrate the total number of shares issued by the foreign company and the resulting percentage ownership held by the beneficiary. Accordingly, the AAO cannot determine whether the beneficiary actually owns and controls the claimed foreign affiliate. In the alternative, considering the petitioner's conflicting claim that it is the subsidiary of the foreign entity, the petitioner has submitted no evidence to establish that the foreign entity owns the U.S. company. For this additional reason the petition must be denied.

Another issue in this proceeding, also not raised by the director, is whether the employment offered to the beneficiary is temporary. Generally, the petitioner for an L-1 nonimmigrant classification need submit only a simple statement of facts and a listing of dates to demonstrate the intent to employ the beneficiary in the United States temporarily. However, where the beneficiary is claimed to be the owner or a major stockholder of the petitioning company, a greater degree of proof is required. *Matter of Isovic*, 18 I&N Dec. 361 (Comm. 1982); *see also* 8 C.F.R. § 214.2(l)(3)(vii). The record indicates that the beneficiary is the majority owner of the petitioning organization and a shareholder in the foreign company. Therefore, the beneficiary's stay in the U.S. does not appear to be temporary. The petition is denied for this reason, as well.

Finally, again beyond the decision of the director, it is noted that the petitioner indicated under penalty of perjury in Part 4 of the Form I-129 petition that the beneficiary had never been denied the requested classification. This petition was filed on April 2, 2004. As noted in the recitation of the procedural history of this matter, the beneficiary's first "new office" extension petition (SRC 02 222 51912) was previously denied by the director on or about November 18, 2002. The regulations at 8 C.F.R. § 214.2(l)(2)(i) state that "[f]ailure to make a full disclosure of previous petitions filed may result in a denial of the petition." As the petitioner indicated on the form that the beneficiary had never been denied the requested classification, and the petitioner failed to fully disclose the previously filed petitions, this petition will be denied as a matter of discretion.

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).

In visa 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 petition will be denied.

ORDER: The appeal is dismissed.