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FEB 17 2005

File: SRC 03 240 52474 Office: TEXAS SERVICE CENTER Date:

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, Director
Administrative Appeals Office

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 president and chief operating officer 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 engaged in the retail sale of general merchandise and souvenir gifts, and claims to be a branch office of [redacted], located in Karachi, Pakistan. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that (1) the petitioner did not establish that the beneficiary had been and will continue to be employed in the United States in a primarily managerial or executive capacity; and (2) that the petitioner had failed to establish that a qualifying relationship existed between the petitioner and a foreign entity.

On appeal, counsel for the petitioner asserts that "the conclusions reached by [Citizenship and Immigration Services (CIS)] were based solely upon supposition and imagination and not upon the evidence as it was submitted." In support of this contention, counsel submits a brief and 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, counsel submitted a letter from the U.S. petitioner, dated August 25, 2003, outlining the beneficiary's duties while employed in the United States. Specifically, the petitioner alleged that the beneficiary's duties were executive in nature, and described his duties as follows:

> In his position as President/Chief Operating Officer, [the beneficiary] oversees administration and operation of our U.S. enterprise, including hiring management staff, setting up inventory, sourcing general merchandise from our parent company and other suppliers within and outside the U.S., and establishing sound financial footing. [The petitioner] is at a critical stage in its development and further growth of the company requires [the beneficiary's] continued presence at this time.

The petitioner also provided a copy of the beneficiary's resume, which listed his duties while employed in the United States during the previous year. Some of these duties were identified as follows:

- Invested and established a new enterprise in USA on behalf of [redacted], Pakistan.
- Examined viability of different business options such as, manufacturing, exports/imports, retail, computer systems, etc.
- Selected a viable business based in the tourist district of French Quarter in New Orleans.
- Hired employees, set up the initial inventory, and opened the business operations on Oct. 1, 2002.
- Oversee administration and operation of U.S. enterprise.
- Hire and fire management staff.
- Have plans to launch online business and e-commerce web sites for general merchandising B2B (business to business) operation.

On September 18, 2003, the director requested additional evidence establishing that the beneficiary was employed in a capacity that was primarily managerial or executive in nature. Specifically, the director

requested copies of all pay stubs from July 2003 and August 2003, an organizational chart for the U.S. entity, and quarterly tax returns for the past two quarters.

On September 30, 2003, the petitioner submitted the specific documentation requested by the director. On October 14, 2003, however, the director denied the petition. The director determined that the evidence in the record did not establish that the beneficiary would be employed in a primarily managerial or executive capacity. Specifically, the director found that the evidence failed to establish that the beneficiary would be engaged primarily in managerial or executive tasks. Noting that two of the four employees of the U.S. entity were part-time employees and that the third employee was recently hired, the director concluded that it was reasonable to presume that the beneficiary was required to perform a number of the day-to-day tasks essential to the operation of the business.

On appeal, counsel for the petitioner asserts that the director's decision was erroneous, and states that the beneficiary's duties are in fact primarily executive in nature. Counsel restates the definition of "executive capacity" as it pertains to the beneficiary's stated duties, and further concludes that the small staffing of the U.S. entity did not warrant a finding that the beneficiary was not primarily engaged in managerial or executive activities. Counsel further alleges that the director's request for evidence regarding the staffing of the U.S. operation was erroneous, and that there was no such requirement in order to grant a nonimmigrant visa to the beneficiary. The AAO will address each of these issues separately.

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.

Prior to adjudication of the petition, the petitioner contended that the beneficiary had been employed in a capacity that was primarily executive in nature. These duties included setting up inventory, hiring management staff, and overseeing the administration and operation of the U.S. enterprise.

The AAO, upon review of the record of proceeding, concurs with the director's finding that the beneficiary has not been and will not be employed in a primarily managerial or executive capacity. Whether the beneficiary is a manager or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner claims that the beneficiary's duties are exclusively executive, yet the list of duties provided in response to the director's request for evidence includes a significant amount of non-executive tasks. For example, the petitioner states that the beneficiary sets up inventory and sources merchandise from suppliers. Clearly, the beneficiary is personally responsible for purchasing goods to be sold in the petitioner's retail store. 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).

In the appellate brief, counsel summarizes the regulatory definition of "executive capacity" in an attempt to demonstrate the executive nature of the beneficiary's duties, and refers to the previously submitted statements from the petitioner outlining these duties. Although in this case the petitioner and counsel conclude that the beneficiary is employed in a capacity that is primarily executive, there is no independent evidence to support this claim. In fact, counsel's restatement of the duties on appeal appears to heavily paraphrase the regulatory definition of "executive capacity." Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The actual duties themselves reveal the true nature of the employment. *Fedin Bros.*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Since the record contains insufficient evidence to support the assertion that the beneficiary is primarily employed in an executive capacity, the AAO cannot conclude that the beneficiary will be employed in a primarily executive or managerial capacity.

Since it does not appear from the beneficiary's duties that he will be functioning in a primarily executive capacity, the AAO will alternatively look for the beneficiary's qualifications in a managerial capacity. The petitioner claims, in its list of the beneficiary's duties, that the beneficiary exercises authority over the other employees and that he "hires and fires management staff." 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.

The petitioner provided an abbreviated description of the positions of the beneficiary's subordinates in the organizational chart submitted in response to the request for evidence. Although two of the subordinates, namely, [redacted] and [redacted], retain the title of "manager," this minimal information is insufficient to establish that these employees possess or require an advanced degree, such that they could be classified as professionals. Nor has the petitioner shown that any of the employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. at 604. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). In this case, counsel continually asserts that the beneficiary's position and duties associated therewith meet the regulatory definitions. In addition, counsel and the petitioner rely on the beneficiary's title of President/Chief Operating Officer as a conclusory measure from which to determine that he is performing high-level responsibilities. However, the second part of the test has not been satisfied. While the petitioner indicates in the organizational chart that it employs the beneficiary, a

manager/supervisor, two cashiers, a sales representative, and a janitor, wage reports and payroll records clearly establish that the only two persons employed full-time by the U.S. entity are the beneficiary and the manager/supervisor.

The payroll records indicate that the sales representative has been on unpaid leave since August of 2003, and that the two cashiers are only employed in a part-time capacity. There is no documentation to confirm that the petitioner employs a janitor, and the pay stubs further indicate that the petitioner's manager/supervisor, Ms. [redacted] had only received one paycheck from the petitioner. This suggests that this employee only recently commenced her position with the U.S. entity.

This minimal information does not address who performs the day-to-day tasks of the organization. It is unrealistic to conclude that the beneficiary, as one of only two full-time employees of the organization, does not perform any low level or administrative tasks essential to the operation of the business. Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* section 101(a)(44)(C), 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See e.g. Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Based on the current record, the AAO is unable to determine whether the claimed managerial and/or executive duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Counsel's assertions on appeal lack supporting evidence establishing the percentage of time the beneficiary devotes to each of these duties. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano,* 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980).

Finally, counsel alleges that the director erred in requesting evidence regarding the staffing of the U.S. operation, and further contends that the director's reliance on the number of employees in the U.S. entity is flawed. The AAO disagrees. The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(d) 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 supporting evidence including 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. Based on the above, it is entirely reasonable for the director to review the current status of the U.S. organization, including its staffing levels and the number of employees it retains, in determining whether the beneficiary is engaged primarily in managerial or executive duties.

In this case, the petitioner has failed to establish that the beneficiary is principally engaged in managerial or executive duties. Consequently, it does not appear that the U.S. entity can support the beneficiary in a capacity that is primarily managerial or executive. Although counsel for the petitioner alleges that the U.S. entity is still developing and that its retail operations have only been in existence for eight months, this assertion does not excuse the petitioner from the regulatory requirements. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation *one year* within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. The petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. For this reason, the petition may not be approved.

The second issue in the present matter is whether the petitioner and the foreign organization are qualified organizations as defined by 8 C.F.R. § 214.2(l)(1)(ii)(G). The regulation defines the term "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which:

> *(1)* Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
>
> (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

Additionally, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

> (I) "Parent" means a firm, corporation, or other legal entity which has subsidiaries.
>
> (J) "Branch" means an operating division or office of the same organization housed in a different location.
>
> (K) "Subsidiary" means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
>
> (L) "Affiliate" means
>
> > *(1)* One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

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

(3) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

In this case, the petitioner claims that the U.S. entity is a branch office of the foreign entity located in Pakistan. Specifically, the petitioner asserts that the beneficiary is the majority shareholder of both the U.S. entity and the foreign entity.

The director found the initial evidence submitted with the petition to be insufficient to qualify the petitioner for the benefit sought, and consequently issued a request for evidence on September 18, 2003. In the request, the director required the petitioner to submit evidence that definitively established its qualifying relationship with the foreign entity. On September 30, 2003, the petitioner submitted a detailed response to the director's request which was accompanied by numerous corporate documents for the U.S. and foreign companies, as well as additional documentary evidence in support of the claimed affiliation.

The director concluded that the record showed that the owners of both the U.S. and foreign entities did not own the same share or proportion of both entities as required by the regulations. Specifically, the director noted that although the beneficiary owned a majority interest in the U.S. entity, the ownership of the foreign entity appeared to be equally divided between the beneficiary and another party. Consequently, the director concluded that the petitioner's claim of affiliation with the foreign entity was invalid, and as a result, the petition was denied on October 14, 2003.

Counsel for the petitioner appealed the decision, asserting that the documentation submitted in support of the qualifying relationship was identical to the documentation previously submitted and accepted by the director in support of the petitioner's prior petition in this matter. Counsel alleges that the director's refusal to approve the petition in the present matter on this ground is erroneous in light of the prior approval issued based upon the same evidence.

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. at 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 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*, 19 I&N Dec. at 595.

In this case, the petitioner has provided documentary evidence outlining the shareholder interests in the U.S. and foreign entities, and has supplemented this evidence with explanatory statements which discuss the percentages of shareholder ownership. Specifically, the statements of counsel accompanying the initial petition claimed that the beneficiary was the majority shareholder in both the U.S. and the foreign entity. The corporate documentation submitted in support of this contention, however, indicates that although the beneficiary owned a majority of the U.S. entity and controlled the U.S. entity by way of a 60% interest, the beneficiary merely shared ownership and control of the foreign entity equally with another party.

Upon review of the record of proceeding, the AAO concurs with the director's finding that the U.S. and foreign entities are not affiliates as defined by the regulation at 8 C.F.R. §214.2(l)(1)(ii)(L), since they are not owned and controlled by the same parent or individual, with each individual owning approximately the same share or proportion of each entity.[1]

The definition of affiliate requires that two entities be owned and controlled by the same parent or individual, or owned and controlled by the same group of individuals who own approximately the same amount of shares in each entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L). The record clearly indicates that at the time of the filing of the petition, the petitioning enterprise did not maintain a qualifying "affiliate" relationship with the overseas company. The beneficiary owned a majority of the U.S. entity by way of his 60% ownership interest, and thus the beneficiary controlled the U.S. entity. The ownership of the foreign entity, however, is more complicated.

The record indicates that the foreign entity, established in 1986, was originally owned by three individuals, namel[redacted] and [redacted] The undated Articles of Incorporation for this entity indicate that these three individuals owned equal shares in the company. A subsequent affidavit included in the record indicates that these three shareholders sold their shares to [redacted]n September 17, 1990. The final documentation submitted in support of the ownership of the foreign entity is a Deed of Partnership dated August 8, 1995 between [redacted] and the beneficiary. This document establishes that the beneficiary is an "investor partner" in the foreign entity with a right to 50% of the profits of the entity. There is no discussion of the issue of control of the foreign entity.

Therefore, there is no evidence that the two entities were owned and controlled by the same parent or individual or same group of individuals, as set forth in 8 C.F.R. § 214.2(l)(1)(ii)(L)(*1*). As general evidence of a petitioner's claimed qualifying relationship, 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.*, 19 I&N Dec.

[1] The AAO notes that although the petitioner claimed that the U.S. entity was a branch of the foreign entity and not an affiliate, the corporate documentation submitted indicates that if a relationship does exist between the parties, the proper designation of their relationship would be that of affiliates.

at 362. Without full disclosure of all relevant documents, CIS is unable to determine the crucial element of control.

On appeal, counsel does not address the deficiencies cited by the director in an attempt to overcome the denial. Instead, counsel merely contends that the corporate documentation submitted is acceptable to establish that a qualifying relationship exists between the parties, since the prior petition's approval was based upon this documentation. The AAO disagrees.

Based on the evidence presented, the petitioner has not established that the U.S. company and the foreign entity have a qualifying relationship as required by the regulations.

The director's decision does not indicate whether she reviewed the prior approval of the previous nonimmigrant petition filed in this matter. If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of a prior approval that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. at 597. It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even though the service center director approved the previous nonimmigrant petition on behalf of the beneficiary, the AAO is bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Another issue in this proceeding, although 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. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of his services in the United States.

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 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 director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.