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FEB 23 2005

File: SRC 03 219 52421 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/owner 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 Texas that is engaged in the retail sale of jewelry. The petitioner claims that it is the subsidiary of M/S Victory Bearings, 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 for three years.

The director denied the petition concluding that (1) the petitioner did not establish that the beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition, and (2) the petitioner did not establish that the United States entity had a qualifying relationship with the foreign entity.

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 for the petition disputes the director's findings and asserts that the director placed undue emphasis on the petitioner's staffing levels, rather than considering the beneficiary's actual job duties which counsel claims are primarily executive in nature. The petitioner also submits that the beneficiary is the sole owner of the foreign entity and majority owner of the United States entity, and that the petitioner has established a qualifying relationship. In support of the appeal, counsel submits a lengthy brief and additional supporting 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 would be employed by the United States entity in a primarily managerial or executive capacity under the extended petition.

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 filed on August 6, 2003, the petitioner described the beneficiary's job duties as follows:

Manage all aspects of the business operations for the parent and the subsidiary. Direct and coordinate activities of the organization; formulate and administer company policies; develop long-range goals and objectives of the parent company and the subsidiary operations. Direct and coordinate activities of managers and employees. Review and analyze activities, costs, and operations and forecast data to determine progress towards stated goals and objectives. Discuss with the management and employees to review achievements and discuss required changes in goals or objectives of the company.

The petitioner indicated on Form I-129 that it had two employees at the time of filing, but provided no further description of the beneficiary's duties or the company's staffing levels.

On September 27, 2003, the director requested additional evidence, including an organizational chart showing all employees and their positions, and copies of the petitioner's last two Texas Employer's Quarterly Reports. In a response received on December 19, 2003, the petitioner submitted its organizational chart, the requested quarterly reports, and an additional description of the beneficiary's duties. The organizational chart depicts the beneficiary as president, a contract accountant, a store manager, a purchase manager listed as "contract to hire," and part-time sales associates. The petitioner's quarterly reports confirm payments to the beneficiary and to the employee identified as the store manager. The petitioner also submitted copies of checks paid to its contract accountant in June, July and August 2003.

In a letter dated December 17, 2003, counsel for the petitioner provided the following description of the beneficiary's duties:

[The beneficiary] is acting as an executive for the [petitioner]. In other words, the Beneficiary: (1) manages essential activities or functions of the organization; (2) functions at a senior level within the organization; and (3) exercises direction over the day-to-day activity of the functions for which the Beneficiary has authority. The specific functions, which the Beneficiary manages and has executive capacity over, are illustrated in the functional flow chart found under Exhibit E.

The above-referenced "functional flow chart" delineates the following responsibilities for the beneficiary:

- (1) Marketing and business development for the U.S. entity and foreign entity;
- (2) Investment in retail trade and services (exploring service businesses and viable investment opportunities);
- (3) Oversees finance and accounting functions (budgeting, directing finance activities, tax and regulatory matters) for the U.S. entity and foreign entity.
- (4) Directs overall management, establishes goals and policies, exercises wide latitude in discretionary decision-making.
- (5) Directs overall management of foreign parent company, establishes goals and policies related to automotive parts business.

On January 5, 2004, the director denied the petition concluding that the beneficiary would not be performing primarily managerial or executive duties under the extended petition. The director noted that since the petitioner employs only two employees, it appears the beneficiary must be involved in the day-to-day running of the business. The director concluded that the beneficiary, while responsible for running the company, is also responsible for all operational aspects of the company, including non-qualifying duties.

On appeal, counsel for the petitioner asserts that the beneficiary performs primarily managerial and executive duties and that the director failed to take into consideration the reasonable needs of the organization when reviewing the company's staffing levels. Counsel also asserts the director failed to consider the petitioner's employment of contract employees, and asserts that the store manager performs all of the non-managerial duties, thereby relieving the beneficiary from direct involvement in the routine store operations. Finally, counsel states that even if the beneficiary does perform some non-qualifying duties, he is only required to perform *primarily* managerial or executive level duties and is therefore not precluded from performing other duties as necessary. Counsel submits copies of previous federal district court and AAO decisions in support of these arguments.

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity. 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(I)(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.* In addition, 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 the petitioner identifies the beneficiary's position as owner and president of the U.S. company as executive in nature. However, rather than providing a specific description of the beneficiary's duties, the petitioner generally paraphrased the statutory definition of executive capacity. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). For instance, the petitioner depicted the beneficiary as "directing the overall management of the organization, establishing goals and policies of the organization and exercising wide latitude in discretionary decision-making." However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. 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 1988942 at \*5 (S.D.N.Y.).

Since the job description primarily paraphrases the regulatory definition of executive capacity, the petitioner's description fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include "directing marketing and business development," and "developing long-term goals and objectives," but the petitioner does not clarify who actually performs marketing and business development duties or define the beneficiary's goals and objectives. 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). 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. at 1103.

On appeal, counsel for the petitioner grants that the beneficiary may occasionally perform non-managerial duties related to operating the petitioner's retail store, but claims that the beneficiary only needs to primarily perform executive or managerial duties in order to establish eligibility for the benefit sought. This claim is correct; the beneficiary of an L-1A petition need not perform *only* executive and managerial duties. However, counsel's claim is not supported by actual evidence that the beneficiary in this case is *primarily* performing the executive functions outlined in the petitioner's job descriptions. 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). Based on the current record, the AAO is unable to determine whether the claimed executive and managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is executive or managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). As discussed above, the petitioner's description of the beneficiary's job duties conveys very little understanding

of the actual he performs on a daily basis. Without a meaningful job description to evaluate, the director reasonably evaluated other factors, such as the petitioner's staffing levels, to determine whether the vaguely defined executive responsibilities were credible within the context of the petitioner's business.

On appeal, counsel asserts that the Service erred in "continually emphasizing the number of subordinate employees as dispositive on managerial and executive capacity," citing *Mars Jewelers, Inc. vs. INS*, 702, F. Supp. 1570 (N.D. Georgia 1988). Specifically, counsels states that the U.S. District Court found that "to limit the term 'manager' to those persons who supervise a large number of employees (or limit the term 'executive' to those persons who supervise large enterprises) would exclude small foreign corporations from expanding in the United States through subsidiary operations." However, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. In this matter, it is not evident that the director denied the petition on the basis that the beneficiary did not supervise a large number of employees or because the beneficiary did not supervise a large enterprise.

Although the director clearly considered the petitioner's staffing levels, it was entirely appropriate for her to do so. Counsel is correct that, pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" 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 does not have sufficient staffing after one year to relieve the beneficiary from performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

At the time of filing, the petitioner was a one-year-old company operating a retail jewelry store. The evidence shows that the firm employed the beneficiary as president and a store manager, and utilized the services of an accountant on a contract basis. In response to the director's request for evidence, the petitioner stated that its staff also included a purchase manager on "contract to hire" and part-time sales associates, but the record is devoid of any evidence that the petitioner ever employed these additional staff on a contract or other basis. Going on record without supporting evidence 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. In addition, on appeal, counsel mentions only the store manager as being among the petitioner's staff, which raises questions as to the validity of the petitioner's previous assertion that it utilized the services of a purchase manager and sales associates. Doubt cast on any aspect of the petitioner's proof may, of course, lead to reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Counsel asserts that the store manager, who receives monthly wages of \$1,500, “is paid sufficient wages to cover over sixty (60) hours of work per week” and performs all of the “ministerial duties of waiting on customers, ordering inventory, receiving shipments, etc.” Counsel further claims that the store requires no more than one person to wait on customers, and that the store manager is able to perform all other non-qualifying duties when there are no customers present. Again, since the petitioner previously stated that its organization supported part-time sales representatives and a purchasing manager in addition to the store manager, counsel’s assertions on appeal that the store manager, as the beneficiary’s sole subordinate, works during most or all of the petitioner’s operating hours and single-handedly performs essentially all of the routine tasks associated with operating a retail jewelry store are not credible. 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. Further, if CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner has not provided sufficient evidence that it employs a subordinate staff that can relieve the beneficiary from performing non-qualifying duties. Based on the petitioner’s and counsel’s representations, it does not appear plausible that a retail store which employs only two people could support an employee who works in the store, but who spends the preponderance of his time performing bona fide executive duties rather than participating in the daily operations of the store. Furthermore, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

On appeal, counsel asserts that the director overlooked the petitioner’s representations that the beneficiary oversees essential functions of the organization. The term “function manager” applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing or directing an essential function within the organization. See sections 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary’s daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary’s daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. 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 this matter, the petitioner stated that the beneficiary oversees the “marketing and business development function” and the “finance and accounting function.” However, other than a contract accountant whose duties have not been described, the petitioner does not employ any staff who are claimed to perform any marketing, business development or finance-related duties. Therefore, it is reasonable to conclude that the beneficiary himself actually performs the duties related to these functions. Further, as noted above, the petitioner has not provided a comprehensive

and detailed description of the beneficiary's duties, nor has it established the proportion of the beneficiary's daily duties dedicated to managing these functions. Thus, the petitioner has not established that the beneficiary will primarily manage or direct an essential function of the organization.

Counsel further refers to an unpublished decision involving an employee of the Irish Dairy Board. In the unpublished decision, the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the Irish Dairy Board matter. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. at 190. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In sum, the lack of a detailed description of the beneficiary's actual duties, considered in conjunction with the inconsistent information provided by counsel and the petitioner with respect to the beneficiary's subordinates, precludes a finding that the beneficiary would be performing primarily managerial or executive duties under the extended petition. The fact that an individual manages a small business and is assigned a managerial or executive job title does not necessarily establish eligibility as an intracompany transferee. While the beneficiary may exercise discretionary authority over the U.S. company, the record is not persuasive in demonstrating that the beneficiary has been or will be employed in a *primarily* managerial or executive capacity.

The petitioner indicates that it plans to hire additional managers and employees in the future. However, 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). Furthermore, as noted above, 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. In the instant matter, 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 has established that it has a qualifying relationship with the foreign entity.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in pertinent part:

(G) *Qualifying organization* means a United States or foreign firm, corporation or other legal entity which meets exactly one of the qualifying relationships in the definitions of a parent, branch, affiliate or subsidiary specified paragraph (l)(1)(ii) of this section.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, director or indirectly, more than half of the entity and controls the entity; or owns, director 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.

On the supplement to the I-129 petition, the petitioner indicated that it is the subsidiary of the foreign entity. Specifically, the petitioner stated that the beneficiary owns the majority of the shares of the petitioner and is the sole owner of the foreign entity. In support of this statement, the petitioner submitted an excerpt from the minutes of a shareholders meeting indicating that the U.S. company's shares would be distributed as follows: [REDACTED] – 5002 shares; [REDACTED] 2499 shares; and [REDACTED] 2499 shares. The petitioner also submitted three stock certificates, numbered three through five, which indicate distribution of shares in the above-described proportions. The stock certificates indicate on their face that the company is authorized to issue a total of 10,000 shares. The petitioner also submitted its 2002 Form 1120, U.S. Corporation Income Tax Return, which indicates that the beneficiary owns 50.02 percent of the company's voting stock. There record establishes that the beneficiary is the sole owner of the foreign entity.

In the request for evidence dated September 27, 2003, the director requested that the petitioner submit copies of the U.S. company's stock register and all of its stock certificates. The petitioner submitted a copy of its stock ledger showing issuance of stock certificates numbered three through five, and copies of the same three stock certificates submitted with the initial petition. Counsel for the petitioner explained that the prior share certificates numbered one and two were not recorded in the ledger because they were voided due to clerical errors.

The director denied the petition concluding that the ownership of the United States company could not be verified. On appeal, counsel for the petitioner again explains that the first two stock certificates were voided and therefore never recorded on the company's stock ledger. The petitioner submits copies of the two voided share certificates in the amounts of 200 shares and 302 shares, both of which were issued to the beneficiary. The second certificate was not fully completed, but both voided certificates appear to have been issued on the same date as the three valid certificates.

The AAO finds sufficient evidence in the record to establish an affiliate relationship between the foreign entity and the U.S. entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(K), based on common ownership by the beneficiary. Therefore, the AAO withdraws the director's decision with respect to this issue. Although the

petitioner failed to provide the voided certificates previously, the petitioner has not made inconsistent statements regarding its ownership, nor is there any evidence to suggest that anyone other than the beneficiary owns a majority of the shares in the U.S. company.

Although not addressed by the director, a remaining issue to be examined is whether the petitioner has established that the beneficiary's services are for a temporary period. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In this matter, the record shows that the beneficiary is the major stockholder of the U.S. company. On the petition, the petitioner indicated that the beneficiary's services would be required for three years. No evidence of the claim was provided. 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 the position in the United States. Therefore, the petition may not be approved on this basis as well.

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 to deny the petition will be affirmed.

**ORDER:** The appeal is dismissed.