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U.S. Citizenship and Immigration Services

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File: SRC 04 118 50173 Office: TEXAS SERVICE CENTER Date: AUG 0 4 2006

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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, 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 employ the beneficiary 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 limited liability company organized in the State of Texas that intends to operate a chain of retail convenience stores and engage in the importation, marketing and distribution of various products. The petitioner claims that it is the subsidiary of Modern Gifts, Novelties & Communication, located in Hyderabad, India. The petitioner seeks to employ the beneficiary as the president and general manager of its new office in the United States for a one-year period.

The director denied the petition concluding that the petitioner had not established: (1) that the foreign entity has funded the United States entity; or (2) that the beneficiary had been employed by a qualifying foreign entity for at least one continuous year in the three years preceding the filing of the petition. The director determined that the petitioner had not met the requirements for a new office petition at the time of filing.

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 petitioner asserts that the foreign entity has sufficient funds to invest in the U.S. company and will transfer such funds upon approval of the beneficiary's L-1A petition. With respect to the beneficiary's employment abroad, counsel asserts the beneficiary has been in the United States as a business visitor, performing duties on behalf of the foreign entity. Counsel submits a brief and copies of previously submitted evidence in support of the appeal.

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)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive of managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The first issue in this matter is whether the petitioner has established that the claimed foreign parent company has invested in the U.S. entity. Pursuant to 8 C.F.R. § 214.2(l)(3)(v)(C)(2), the petitioner is required to submit evidence of the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States.

The nonimmigrant petition was filed on March 19, 2004. The petitioner stated that the U.S. company is a wholly owned subsidiary established by the foreign entity. The petitioner submitted its articles of organization identifying the beneficiary and the foreign entity as its members, as well as a copy of its membership certificate number one issuing 1,000 units of membership interest to the foreign entity. The petitioner also submitted the foreign entity's certificate of registration with the government of Hyderabad, India as a sole proprietorship owned by the beneficiary. The petitioner noted that it was submitting the foreign entity's "audited financial statements . . . to demonstrate the financial capability of the foreign entity backing up the U.S. Company." The petitioner attached balance sheets and profit and loss statements for the foreign

entity for the years ending on March 31, 2002 and March 31, 2003, and a bank statement summarizing the foreign entity's account activity from January 2001 through March 2004.

The director issued a request for additional evidence on May 20, 2004, in part instructing the petitioner to submit evidence of the funding or capitalization of the United States company, such as copies of wire transfers showing transfers of funds from the foreign organization or copies of bank statements for U.S. checking accounts.

In a response dated August 19, 2004, counsel for the petitioner stated:

> [The petitioner] is a wholly owned subsidiary of [the foreign entity]. [The foreign entity] is the Parent of [the petitioner] having complete control over its managerial and financial functions. As soon as [the beneficiary's] L-1A petition is approved, we intend to transfer funds sufficient to meet the goals of the directors and shareholders of the foreign company. Shareholders and Directors of the Parent company feel that they might not be able to meet their goals without [the beneficiary's] presence in [the] U.S. in the role of full-time executive. Therefore, they are reluctant to commit to hugh [sic] amount of resources. We are submitting following information of [the foreign entity] to demonstrate the financial capability of the foreign entity backing up the U.S. company.
>
> - Bank statement from 1/2001 to 3/2004
> - Audited financials for last 3 years
> - Separate funds in an account

The petitioner attached copies of documents that were submitted with the initial filing, as well as the foreign entity's financial statement for the year ended on March 31, 2001. The referenced evidence of "separate funds in an account" consists of a "term deposit receipt" indicating that on September 12, 1999, the beneficiary paid the State Bank of India six lakhs as an interest-bearing deposit repayable on September 11, 2006.

The director denied the petition on October 13, 2004. The director acknowledged the evidence submitted with respect to the financial status of the foreign entity, but concluded that the evidence did not establish that the foreign entity has made a sufficient investment in the U.S. company as required for new offices by 8 C.F.R. § 214.2(l)(3)(v).

On appeal, counsel for the petitioner repeats, verbatim, the argument recited above with respect to the foreign entity's intention to transfer funds upon approval of the beneficiary's L-1A visa petition.

Upon review, the petitioner has not submitted sufficient evidence of the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*).

The record contains several deficiencies with respect to the funding of the new U.S. office in the United States. First, the petitioner has not identified the capitalization requirements of its proposed business. The

petitioner indicates that it intends to operate a chain of retail convenience stores, and also engage in the "import, marketing and distribution of various products," but has not identified the amount of funds needed to commence doing business in the United States, including funds to purchase or lease real property, purchase office equipment and inventory, obtain licenses and insurance, pay salaries and wages, and pay other start up costs associated with the intended U.S. operations. Without this information, it is impossible for Citizenship and Immigration Services (CIS) to evaluate the petitioner's claims that the foreign entity has sufficient funds to cover the costs inherent in establishing a new business.

Second, even if the AAO did consider the foreign entity's financial documentation as evidence of the ability to pay these unspecified costs, all of the submitted documents provide figures in Indian rupees. The petitioner has not provided the applicable currency exchange rates and the evidence therefore is insufficient to support the petitioner's claims that the foreign entity has the ability to pay the beneficiary's proposed salary and commence doing business in the United States.

Finally, there is no evidence that any investment had been made in the United States entity as of the date the petition was filed, as the petitioner failed to submit the requested copies of wire transfers and bank statements showing that the United States entity had in fact been funded. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The petitioner's statement that the foreign entity intends to transfer monies to the U.S. entity upon approval of the L-1A petition is not sufficient. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner has not submitted evidence on appeal to overcome the director's decision on this issue. For this reason, the appeal will be dismissed.

The second issue in this matter is whether the petitioner established that the beneficiary 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, as required by 8 C.F.R. § 214.2(l)(3)(iii).

The petitioner stated in its March 18, 2004 letter: "The transferee currently serves as the full-time Managing Director for [the foreign entity] working out of its corporate office in Hyderabad, India." The evidence submitted with the petition indicated that the beneficiary established the foreign entity as a sole proprietorship in India in May 1998. The petitioner submitted a March 4, 2004 letter from an accountant stating that the beneficiary had been employed by the foreign entity since May 1998.

The petitioner also submitted evidence establishing that the beneficiary was admitted to the United States in B-2 status on April 13, 2002, and was subsequently granted two extensions of stay. Therefore, at the time of filing, the beneficiary had been physically present in the United States for more than 23 months.

In her May 20, 2004 request for evidence, the director requested evidence of wages paid to the beneficiary for one year, from April 2001 to March 2002, and instructed the petitioner to explain how the beneficiary has continued to work as managing director of the foreign entity when he has been in the United States.

In response, the petitioner re-submitted the March 4, 2004 letter from the foreign entity's accountant confirming the beneficiary's employment with the foreign entity since May 1998. The petitioner's response also included the beneficiary's Indian tax documents for the 2001, 2002 and 2003 years, showing that he received "income from business or profession" as opposed to income from salary.

The director denied the petition on October 13, 2004, noting the petitioner's failure to submit evidence of wages paid to the beneficiary from April 2001 to March 2002 or an explanation of how the beneficiary could have worked abroad for one year when he has been in the United States.

On appeal, counsel for the petitioner states:

> Visitors for Business **[9 FAM 41.31 N.4-8 or O.I. Sec. 214.2(b)]** engaging in commercial transactions not involving gainful employment e.g. negotiating contracts, litigation, consulting with clients or business associates.
>
> [The beneficiary] entered U.S. as a visitor entering temporarily for business or pleasure. The shareholders and directors of [the foreign entity] desire to establish business presence in U.S. market by establishing. While in U.S. [the beneficiary] visited with business contacts and consulted representing his company in the foreign country. In furtherance of these goals he has established [the petitioning company].

(Emphasis in original.)

Upon review, the AAO finds sufficient evidence that the beneficiary was employed by the foreign entity for one year in the three years preceding the filing of the petition. Although the petitioner did not submit the requested payroll records for the one-year period prior to the beneficiary's admission to the United States in B-2 status, the evidence in the record is sufficient to show that he received his income from the net profits of the foreign business as its sole proprietor. Since the beneficiary had been in the United States for slightly less than two years at the time the petition was filed, he still possessed one year of employment with the foreign entity within the three years preceding the filing of the petition.

On appeal, counsel seems to suggest that the beneficiary's time spent in the United States in B-2 and B-1 status should be considered qualifying employment with the foreign entity because he was "representing his company." This argument is not persuasive. The definition of intracompany transferee at 8 C.F.R. § 214.2(l)(ii)(A) states that "brief trips to the United States for business or pleasure shall not be considered interruptive of the one year of continuous employment abroad but such trips shall not be counted toward fulfillment of that requirement." In this case, the beneficiary's 23-month stay in the United States as a visitor cannot be considered "brief" and therefore must be deemed interruptive of his employment abroad.

Regardless, the petitioner was still able to establish that the beneficiary was employed for more than one year within the three years preceding the filing of the petition.

The AAO will therefore withdraw the director's findings, in part. Although the beneficiary possesses the requisite one year of employment with the foreign entity, the petitioner did not establish that he was employed in a primarily managerial or executive capacity during that time. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

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 its March 18, 2004 letter, the petitioner stated that the foreign entity has been a "wholesaler and distributor of gifts, novelties, and wireless communication products and equipment to individual and commercial clients since 1998." The petitioner's letter included a description of the beneficiary's duties as managing director, which will be addressed below.

On May 20, 2004 the director requested additional evidence to establish that the beneficiary had been employed in a primarily managerial or executive capacity by the foreign entity. Specifically, the director instructed the petitioner to submit: (1) a detailed description of the beneficiary's duties; (2) the number of subordinate managers, supervisors or other employees who report directly to the beneficiary and their job titles and duties; (3) a statement describing the staffing of the foreign company, including the number of employees, their job titles and job duties, and their work schedules; (4) evidence of wages paid to employees; and (5) an organizational chart for the foreign entity.

The petitioner's August 19, 2004 response to the director's request for evidence included a statement presumably intended to describe the beneficiary's foreign job duties. However, the petitioner refers to "Ms. Sultan" as the managing director of the foreign entity since May 1998, and indicates that this person supervises employees who run the day-to-day operations of the business. Although the director requested a more detailed description of the beneficiary's duties, the job description is nearly identical to that provided with the initial petition and included the following duties:

1. Developing, implementing and consistently applying business-related policies to optimize the quality of the organization and employees (30%);
2. Negotiating client contracts and promotes sales of products and services (15%);
3. Recruitment, hiring, promotion, discipline and discharge of the personnel (15%);
4. Developing and implementing marketing strategies using current market information, competitive economic conditions, and innovative programs (10%);
5. Developing pricing strategies and responding to internal and external customer inquiry (10%); and
6. Meeting with appropriate officials to propose transactions, negotiating confidentiality and service agreements, coordinating the due diligence process with in-house counsel and outside auditors, and directing the preparation and completion of sales contracts and other related documents (10%).

The petitioner attached an organizational chart depicting the beneficiary as managing director supervising a "chief accountant," a marketing staff comprising a marketing supervisor, marketing manager and assistant manager, and a sales staff including a sales director, a sales manager and an assistant sales manager. The petitioner did not provide job descriptions for the beneficiary's subordinates, their work schedules or evidence of wages paid to employees.

Upon review, the petitioner has not established that the beneficiary was employed by the foreign entity 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(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.*

In the instant matter, the initial job description submitted by the petitioner was vague and provided little insight into the true nature of the tasks the beneficiary will perform. The director specifically requested that

the petitioner submit a more detailed description of the beneficiary's duties, but the petitioner chose to re-submit the same job description in response to the request for evidence, and also attributed these duties to a "Ms. Sultan." 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). While the AAO notes that this may have been a clerical error, it is also possible that the petitioner or counsel simply re-used a job description that was previously provided in connection with another matter rather than providing a description of the instant beneficiary's actual duties. Doubt cast on any aspect of the petitioner's proof may undermine 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). Furthermore, while the petitioner added a breakdown of the percentage of time the beneficiary spent on various duties, the petitioner has not articulated how each duty was managerial or executive in nature.

The petitioner indicated that the beneficiary devoted 30 percent of his time "developing, implementing and consistently applying business-related policies." However, the petitioner has not provided sufficient information to allow the AAO to understand exactly what these "business-related policies" entailed or what tasks are associated with implementing them. The petitioner also indicated that the beneficiary devoted a total of 25 percent of his time to "marketing strategies" and "sales promotions" including "negotiating client contracts and promot[ing] sales of products and services," and "developing and implementing marketing strategies using current market information." Without additional explanation, it is not clear that these responsibilities did not require the beneficiary to engage in the routine sales, marketing and market research tasks of the business. Similarly, the petitioner did not explain how the beneficiary's responsibility for "responding to internal and external customer inquiry" qualified as either a managerial or executive duty. Finally, the petitioner stated that the beneficiary allocated 20 percent of his time to "meeting with appropriate officials to propose transactions, negotiating confidentiality and service agreements, coordinating the due diligence process with in-house counsel and outside auditors." The petitioner did not however, identify the "appropriate officials" with whom the beneficiary met or the types of "transactions" the beneficiary proposed, identify why "confidentiality and service agreements" were needed, identify any service staff in its organization, or indicate that it employed "in-house counsel" or utilized the services of outside auditors.

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *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). Thus, the beneficiary's job description does not allow the AAO to determine whether the beneficiary primarily performed in a managerial or executive capacity as defined in sections 101(a)(44)(A) and (B) of the Act, while employed by the foreign entity.

When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's and/or foreign entity's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of

subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position.

The record in this matter contains only a vague description of the beneficiary's duties with the foreign entity, and very little description of the staffing of the foreign entity or the type of business it operates. Accordingly, the AAO has no meaningful context in which to evaluate the claimed managerial or executive duties of the beneficiary. The director specifically requested that the petitioner submit job descriptions for all of the beneficiary's subordinates, as well as each employee's work schedule and evidence of wages paid to the foreign entity's employees. The petitioner chose to provide only the job titles of the foreign entity's employees, and did not clarify whether the organizational chart submitted identifies the foreign entity's current staffing levels, or the staffing levels during the beneficiary's one year of qualifying employment abroad. Furthermore, the AAO notes that every staff member in the eight-person company has been given a supervisory or managerial job title, while the petitioner has not identified any employees who would perform administrative, clerical, lower-level sales and marketing tasks, or any other essential tasks, such as purchasing, inventory and coordinating product distribution. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The evidence requested by the director is critical as it would have established whether the beneficiary supervises professional, managerial or supervisory employees, and whether the foreign entity's staff was sufficient to relieve the beneficiary from performing primarily non-qualifying operational or administrative duties. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The fact that the beneficiary managed a small business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(44)(A) and (B) of the Act. The petitioner's assertion that the beneficiary worked through his management and supervisory-level employees and did not directly "run the day-to-day operations" is not supported in the record. The AAO will not assume that any of the employees identified on the petitioner's organizational chart performed supervisory or managerial duties without evidence that the foreign entity actually employed them and without reviewing the job descriptions that were specifically requested by the director. 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). For this reason, the appeal will be dismissed.

Another issue not addressed by the director is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as required by 8 C.F.R. § 214.2(l)(3)(v)(C). Although the petitioner has provided a general description of the duties to be performed by the beneficiary, the petitioner has not submitted a business plan or other evidence clearly describing the nature of the proposed office, the scope of the entity, its organizational structure, the size of the United States investment, the financial ability of the foreign entity to remunerate the beneficiary, and the financial ability of the petitioner to commence doing business in the United States, evidence that is specifically required by 8 C.F.R. § 214.2(l)(3)(v). The petitioner stated on Form I-129 that it estimates that the company will employ

six employees, but it failed to provide a proposed organizational chart, a timeline for hiring these employees, or a description of the duties these proposed employees would perform. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). The minimal evidence submitted with this petition does not demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. For this additional reason, the petition cannot be approved.

Finally, the record does not establish that the petitioner has sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A). The petitioner has not described its anticipated space requirements for its chain of gas stations/convenience stores. The lease agreement provided does not specify the amount or type of space secured, or indicate the authorized use for the premises, although it is clear that the leased space is not a retail gas station/convenience store. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner has secured sufficient space to house the new office. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.