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U.S. Citizenship and Immigration Services

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File: LIN 06 034 54172 Office: NEBRASKA SERVICE CENTER Date: AUG 0 3 2007

IN RE: Petitioner: [redacted]
Beneficiary:

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

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of marketing manager to open a new office in the United States as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a corporation organized under the laws of the State of Washington, claims to be a jewelry business, and alleges a qualifying relationship with [redacted], a purported "spousal partnership" located in Israel.

The director denied the petition concluding that the petitioner failed to demonstrate (1) that the beneficiary has been employed abroad in a managerial or executive capacity; (2) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position; (3) that the petitioner has secured sufficient premises to house the new office; or (4) that the petitioner and the foreign employer have a qualifying relationship.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel asserts that the petitioner had submitted adequate evidence to entitle it to an approval of the petition. In support of the appeal, counsel submitted 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.

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

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

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

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

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

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

(3) The organizational structure of the foreign entity.

The first issue in this proceeding is whether the beneficiary has been employed abroad in a managerial or executive capacity as required by 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.

The petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

As the petitioner did not submit a description of the beneficiary's duties abroad with the initial petition, the director issued a request for additional evidence on November 17, 2005. The director requested, *inter alia*, job descriptions for the beneficiary and all other employees abroad as well as an organizational chart for the foreign employer.

In response, the petitioner submitted an organizational chart identifying the beneficiary as the "sales and marketing manager" for the foreign entity. He is not portrayed as supervising any employees. The chart also identifies the beneficiary's spouse, the production manager/creative director, who is portrayed as supervising one designer. The petitioner also submitted the following description of the beneficiary's job duties abroad:

Tasks	Time
Planning and supervision of marketing	75%
Accounts	5%
Graphic design of the products catalogue	10%
Supervision of orders and shipping	10%
Total	100%

On February 10, 2006, the director denied the petition. The director concluded, *inter alia*, that the petitioner failed to establish that the beneficiary has been employed primarily in a managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary's duties are primarily those of an executive or manager. Counsel asserts that the director in denying the petition placed too much emphasis on the size of the organization and the number of employees supervised.

Upon review, the petitioner'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) and (iv). The petitioner's description of the job duties must clearly describe the duties being 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. As explained above, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary is acting in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary primarily "plans and supervises marketing" and is engaged in "customer relations." However, the petitioner offers no explanation regarding what, exactly, the beneficiary does on a day-to-day basis to plan and supervise marketing or to work with customers. This is especially important in this matter because the operational and administrative tasks inherent to marketing, sales, and customer relations (e.g., designing advertisements, assembling brochures, and sales calls), do not rise to the level of being managerial or executive in nature when the beneficiary performs those tasks himself. Without a clear explanation of the beneficiary's job duties, it cannot be confirmed that the beneficiary is truly employed primarily in a managerial capacity. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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).

Moreover, given that the foreign entity does not appear to employ a subordinate staff which could relieve the beneficiary of the need to perform non-qualifying marketing, sales, and customer relations duties, it must be concluded that the beneficiary is "primarily" performing these tasks himself. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary supervises and controls the work of other supervisory, managerial, or professional employees, or manages an essential function of the organization. As explained in the organizational chart, the beneficiary supervises no employees. Further, the record does not establish that the beneficiary manages an essential function 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 an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., 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. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function.

In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions, if any, and what proportion would be non-managerial. Also, as explained above, given the lack of a subordinate staff, it appears that the beneficiary is performing those non-qualifying tasks inherent to his claimed planning and supervising of marketing. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties would be managerial, nor can it deduce whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Therefore, the petitioner has not established that the beneficiary is employed primarily in a managerial capacity abroad.

Similarly, the petitioner has failed to establish that the beneficiary is acting in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. *Id.* Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making"

and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary is acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary does on a day-to-day basis. Moreover, as explained above, the beneficiary appears to be performing marketing and sales tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary is employed primarily in an executive capacity

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 approving a visa for a multinational manager or executive. *See* § 101(a)(44)(C) of the Act; *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570 (N.D. Ga. 1988). However, it is appropriate for Citizenship and Immigration Services (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). Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act. Accordingly, in this matter, the petitioner has failed to establish that the beneficiary is primarily performing managerial or executive duties, and the petition may not be approved for that reason.

Accordingly, the petitioner did not establish that 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 as required by 8 C.F.R. § 214.2(l)(3)(v)(B), and for this reason the petition may not be approved.

The second issue in this proceeding 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).

In the initial petition, the petitioner asserts that it plans to open a "new office" in the United States as an extension of the foreign employer's Israel-based jewelry business. As the director determined that the petitioner's description of the goals and scope of the "new office" was not sufficient to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position, the director requested additional evidence on November 17, 2005. The director requested, *inter alia*, the petitioner's business plan and audited financial statements establishing that the foreign entity is able to remunerate the beneficiary and to commence doing business in the United States.

In response, the petitioner submitted a "business plan" which generally states the petitioner's intent to market its products at exhibitions and to retail stores owned by third parties. The petitioner vaguely predicts, without any corroborating studies or analyses, that "[i]t is anticipated that revenues and profits will grow steadily and that there will be need to increase the number of employees." The petitioner also submitted financial statements indicating that the foreign business had $77,950.00 in gross revenue and $31,628.00 in income, before taxes, in 2004. The unaudited, and unsubstantiated, estimate of the foreign employer's gross revenue as submitted with the

initial petition for the period January 1, 2005 through August 15, 2005 was $67,092.00. The petitioner did not account for 2005 expenses and did not provide any estimates for the foreign employer's net income during this period. The instant petition was filed on November 14, 2005.

On February 10, 2006, the director denied the petition. The director determined that the petitioner failed to demonstrate that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. The director found that the petitioner's business plan did not establish that, after one year, the petitioner will employ a subordinate staff of personnel who will relieve the beneficiary of the need to perform non-qualifying duties. The director also found that the petitioner failed to establish that the foreign entity is able to commence doing business in the United States or to remunerate the beneficiary.

On appeal, counsel to the petitioner asserts that the petitioner established that the foreign entity is able to remunerate the beneficiary and to commence doing business in the United States. In support of the appeal, counsel submits updated financial data attempting to establish the foreign employer's business activities after the filing of the instant petition.

Upon review, the petitioner's assertions are not persuasive.

As a threshold matter, it must be noted that the financial data submitted on appeal relating to the foreign employer's business activities after the filing of petition will not be considered. 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). The appeal will be adjudicated based on the record of proceeding before the director.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

> The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

Id.

The petitioner has failed to present evidence sufficient to prove that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. The petitioner has submitted a vague "business plan" which states only the petitioner's intent to market its products to United States retailers. Not only does this plan fail to articulate any financial, organizational, or hiring goals, the petitioner's goal of selling products to certain retailers and at events is entirely unsupported by independent studies or analyses. The plan, and the record as a whole, fails to establish the financial goals, scope, organizational structure, or nature of the United States operation. The petitioner has not described a business operation which 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. 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).

Likewise, the petitioner has failed to establish that the foreign business is currently capable of remunerating the beneficiary and of doing business in the United States. As indicated above, the petitioner has provided audited financial statements through the end of 2004. These statements show that the foreign employer, apparently an unincorporated entity, generated $31,628.00 in income, before taxes, in 2004. The petitioner proposes to pay the beneficiary $40,000.00 per year. Assuming that this financial data, which describes the foreign entity's financial status almost one year prior to the filing of the instant petition, could be relevant to these proceedings, this data establishes that the foreign business would not be able to remunerate the beneficiary as proposed. While the foreign business allegedly had gross revenues of $77,950.00 in 2004, the audited financial statement reveals that the expenses and costs deducted from that amount did not include any salaries. As the record is devoid of any evidence regarding the elimination of any of these expenses in 2005, the petitioner has not established that the foreign business is able to remunerate the beneficiary or is able to commence doing business in the United States.

Moreover, the record is devoid of any credible evidence establishing the foreign employer's current financial state of affairs. The petitioner did not provide any information regarding the availability of funds, accounts receivable, or accounts payable. While the petitioner did provide an unaudited, unsubstantiated financial statement indicating

that the foreign entity generated approximately $67,092.00 in gross revenue between January 1, 2005 and August 15, 2005, the accountant did not estimate the foreign employer's expenses or net income during that time. As the record is devoid of any evidence that the foreign employer's expenses will differ materially in 2005 from 2004, it must be concluded that the foreign entity is in a similar financial state as in previous years and, consequently, will not be able to remunerate the beneficiary or commence doing business in the United States.

In addition, while not directly addressed by the director, the petitioner has also failed to establish that an investment has been made in the United States operation as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*). The petitioner provided two documents with the initial petition titled "Form of Offer to Purchase Stock." These documents indicate that both the beneficiary and his spouse have offered to purchase stock from the petitioner and that the purchase price will "be paid when required by the Corporation." However, the record is devoid of any evidence that this investment has ever been made. Therefore, as the petitioner has not provided evidence of any investment in the United States operation, it has failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position for this additional reason.

Accordingly, the petitioner has not established that 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), and for this reason the petition may not be approved.

The third issue in this proceeding is whether the petitioner has secured sufficient physical premises to house the new office as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

In the initial petition, the petitioner provided a copy of a one-year lease dated September 1, 2005 for 300 square feet of general office space. In the Request for Evidence, the director requested photographs of the interior and exterior of the leased premises. In response, the petitioner provided several photographs allegedly of the interior and exterior of the leased premises. The director denied the petition concluding that the 300 square foot space was not "adequate space to grow the business and employ additional individuals."

On appeal, counsel asserts the following:

> The Service Center's complaint about the size of the office ignores that it is only for the first year, when the beneficiary will be working there alone, and it can easily be expanded thereafter. There should be no requirement to rent larger space at the outset, when it is not necessary and will only be a financial burden.
>
> The size of the premises is reasonably suited to the work of one manager during the first year of start up activities and development according to the business plan.

Upon review, counsel's assertions are not persuasive.

Title 8 C.F.R. § 214.2(l)(3)(v)(A) requires only "sufficient" physical premises be secured by the petitioner. While "sufficient" is not defined in the regulations, the regulations are clear that this requirement relates to the

petitioner's first year in operation during which time it must expand and move away from a developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. In this matter, the petitioner has vaguely asserted in its business plan that it foresees the hiring of additional staff. However, as the petitioner has not provided plans describing how it intends to use the 300 square feet of space once additional staff is hired and has failed to explain how many additional staff members it intends to hire by the end of the first year in operation, the petitioner has failed to carry its burden of establishing that the leased space is "sufficient" to house the new office. Therefore, the petition may not be approved for this reason.

The fourth issue in this proceeding is whether the petitioner has established that it has a qualifying relationship with the foreign entity as required by 8 C.F.R. § 214.2(l)(3)(i).

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (*i.e.*, one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

In the current case, the petitioner alleges that the beneficiary and his spouse each own 50% of both the foreign employer and the petitioner and, thus, own and control both enterprises as affiliates. In support, the petitioner submitted corporate organizational documents and stock certificates indicating that, on September 1, 2005, 1,000 shares of stock were issued to both the beneficiary and his spouse. However, as the petitioner did not provide any evidence establishing the ownership and control of the foreign business, the director requested additional evidence. In response, the petitioner submitted a letter from counsel dated January 2006 indicating that the foreign business is not incorporated. Counsel explained that the beneficiary and his spouse "jointly operate the business as a spousal partnership." In support, the petitioner provides copies of various tax and financial documents. The notes on the 2004 income statement state that "[t]he business is registered with the Israel Tax Authority in the name of [the beneficiary's spouse]. However, in reality it is a spousal partnership between her and her husband."

On February 10, 2006, the director denied the petition concluding that the record did not establish the ownership and control of the foreign entity.

On appeal, counsel asserts that the tax and financial documentation in the record establishes that the beneficiary and his spouse jointly own and operate the incorporated foreign business operation.

Upon review, counsel's assertions are not persuasive.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right

and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In this matter, the petitioner has failed to establish ownership and control of the foreign business. As explained above, the petitioner's has presented evidence that the "business" is registered to the beneficiary's spouse. However, the petitioner has also presented evidence that "in reality" the business is a "spousal partnership" between the beneficiary and his spouse. This explanation, when considered with the record as a whole, is not sufficient for two reasons. First, the petitioner offers no evidence to substantiate the claims made in the financial statement regarding ownership. The petitioner does not explain why the business is registered solely in the beneficiary's spouse's name or what legal basis the accountant uses to conclude that the business is a "spousal partnership" despite its registration. 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. Second, the record is devoid of any explanation regarding the significance of a "spousal partnership" under Israeli law and the effect this may have on ownership and control. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). For these reasons, the petitioner has failed to establish the ownership and control of the foreign entity.

Moreover, as explained above, the petitioner has not established that the beneficiary and his spouse have paid for the stock issued to them by the petitioner. The petitioner provided two documents with the initial petition titled "Form of Offer to Purchase Stock." These documents indicate that both the beneficiary and his spouse have offered to purchase stock from the petitioner and that the purchase price will "be paid when required by the Corporation." However, the record is devoid of any evidence that the stockholders have ever paid for the stock. As ownership is a critical element of this visa classification, the means by which stock ownership is acquired may be as relevant as the issuance of paper stock certificates to the stockholders. Therefore, as the petitioner has failed to establish the means by which the stockholders acquired their shares, the petitioner has also failed to establish the ownership and control of the United States operation.

Finally, and beyond the decision of the director, the petitioner has failed to establish that the foreign employer is a "qualifying organization" because it failed to establish that the foreign employer is currently "doing business" as defined in the regulations. As explained above, the record is devoid of any evidence of current business activity. The unaudited, unsubstantiated financial statements do not establish that the foreign employer has current business activity. Therefore, for this additional reason, the petition may not be approved.

Accordingly, the petitioner did not establish that the petitioner and the organization which employed the alien overseas are qualifying organizations as required by 8 C.F.R. § 214(l)(3)(i), and for this 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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.