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U.S. Citizenship and Immigration Services

D7

[redacted]

FILE: SRC 06 114 53042 Office: TEXAS SERVICE CENTER Date: JUL 12 2007

IN RE: Petitioner:
Beneficiary: [redacted]

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: SELF-REPRESENTED

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.

Erica Feldman

Robert P. Wiemann, Chief
Administrative Appeals Office

**DISCUSSION**: The Director, Texas Service Center, denied the petition for a nonimmigrant visa and denied a subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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, a corporation organized in the State of Florida, claims to be the affiliate of Britannia Ship Services, located in Nassau, Bahamas. The petitioner claims to operate as ship chandlers, caterers, and concessionaires for cruise vessels and seeks to employ the beneficiary as its executive pastry chef.

The director denied the petition concluding that the petitioner did not establish that the beneficiary was employed abroad in a primarily managerial or executive capacity or that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Additionally, the director noted that the L-1A classification sought was erroneous in light of the existing visa classification for nonimmigrant crewmembers under section 101(a)(15)(D) of the Act, 8 U.S.C. § 1101(a)(15)(D).

The petitioner filed an appeal in response to the denial. On appeal, the petitioner contends that the beneficiary does in fact qualify as a manager or executive and submits a brief and additional evidence in support thereof.

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.

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 first issue in this matter is whether the beneficiary was employed abroad in a primarily managerial or executive capacity.

In a letter dated February 10, 2006, the petitioner stated that the petitioner operates and caters aboard the Discovery Cruise Line vessel m/v Discovery Sun. According to the documentation provided, the beneficiary

had been employed abroad as a pastry chef. In a document entitled "Shipboard Job Description," the petitioner outlined the duties of the beneficiary while working in this position for the foreign entity. Specifically, this document indicated that the beneficiary reported to the executive chef, the culinary department, and the corporate pastry chef. A description of the beneficiary's job was also provided and included such duties as:

- Work as a team member. Does not make any changes without the knowledge of the Exec. Chef, who will notify the Corporate Pastry Chef and Office awaiting approval before changes take place.
- Must participate in the daily Exec. Chef / Chef meeting and prepare daily preparation forecast and requisitions.
- Ability to supervise bakery dept., ensure standards of quality and quantity are met. Must be able to trouble shoot.
- Signs the food requisitions for the Pastry Dept.
- Keep the Executive Chef / Chef informed of any problems or daily needs.
- Follow Company's recipes ensuring that all Pastries are prepared and presented according to the provided photos using proper yields and portion control.
- Responsible for Pastry Shop food consumption in accordance to recipes and Exec. Chef guidelines.
- Responsible for the set-up of the pastry display FOR all the buffets.

The beneficiary's resume indicated that he had been employed abroad as a Pastry Chef since 1995, and his resume provided the following overview of his experiences:

> Responsible for all pastry and dessert on board 5 star cruise vessels, with up to 2500 passengers and 1000 crewmembers. Supervising Pastry and dessert services four times a day at buffets, restaurants, and specialty dining rooms. Ensuring United States Public Health standards and procedures are fully complied with at all times.

The director found the initial evidence to be insufficient to warrant approval, and consequently issued a request for evidence on March 9, 2006. The director requested convincing evidence to show that the beneficiary was in fact primarily employed abroad as a managerial or executive employee to satisfy the requirements of the requested visa classification.

On April 24, 2006, the petitioner responded to the director's request. In its response, the petitioner indicated that the beneficiary would be transferring from his position aboard the Discovery Sun to the petitioner's Florida headquarters. An organizational chart was submitted, showing that the beneficiary supervised ten crewmembers while working abroad. The chart lists the beneficiary as executive pastry chef and shows that he oversaw the following persons: head pastry; cook pastry; three assistant pastries; utility pastry; head baker; cook baker; and two assistant bakers. The chart also showed that the beneficiary reported directly to the executive chef and the bar manager. The response also included some recent evaluations the beneficiary completed for subordinate employees.

On May 9, 2006, the director denied the petition. The director noted that the petitioner had failed to show that the beneficiary had been employed abroad in a qualifying capacity. On appeal, the petitioner restated its claim that the beneficiary, by virtue of overseeing ten to fifteen cooks, bakers and assistants, was employed in a qualifying capacity.

Upon review, the AAO concurs with the director's findings. 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 definitions of executive and managerial capacity have two main 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 the initial petition, the supporting evidence indicated that the beneficiary had been employed abroad as a pastry chef. In response to the request for evidence, the beneficiary's position was upgraded to that of *executive* pastry chef without explanation. In sum, the initial description appeared to have the beneficiary doing more of the actual work, while the second iteration of the job has the beneficiary managing more of the actual work done in the petitioner's operation.

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). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

The initial description of the duties of the beneficiary as pastry chef indicated that he was responsible for many of the day-to-day tasks of the kitchen. Specifically, the record indicates that he was primarily responsible for such essential duties as setting up the pastry display for all the buffets, as well as making sugar pieces and chocolate pieces. Furthermore, he was required to present cooking demonstrations during the cruise. Clearly, the required duties of the beneficiary indicate that he was performing most of the necessary tasks rather than supervising others in the performance of such tasks. The actual duties themselves 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). 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). Based on the nature of the duties described and the beneficiary's role therein, it cannot

be determined that the beneficiary was primarily employed in a managerial or executive capacity abroad. For this reason, the petition may not be approved.

Moreover, it is unclear whether the beneficiary, as pastry chef, served as an employee of the foreign entity, an employee for the cruise ship, or as an independent contractor. Although not addressed by the director, this raises the question of whether the beneficiary has actually been *employed* by a qualifying organization for one full year out of the three years immediately preceding the filing of the petition. *See* 8 C.F.R. §214.2(l)(3)(iii). Furthermore, it is unclear who will be his employer when he enters the United States.

Specifically, the Crew Agreement submitted in the record indicates that the vessel upon which the beneficiary serves will be deemed his employer. Furthermore, payroll records from the m/v Discovery Sun for the period from November 1, 2005 through January 31, 2006 clearly indicate wages paid to the beneficiary by the Discovery Sun, not by the foreign entity. Absent clarification with regard to the source of the beneficiary's wages, the AAO cannot determine whether the beneficiary was actually employed by the foreign entity for one full year out of the three years immediately preceding the filing of the petition. 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. 582, 591-92 (BIA 1988). In addition, it is unclear to whom the beneficiary will render his services in the United States. 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)). For this additional reason, the petition may not be approved.

The second issue in this matter is whether the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

In the February 10, 2006 letter of support, the petitioner claimed that the beneficiary would be transferred to the United States to assume the role of Executive Pastry Chef. With regard to his proposed duties, the petitioner stated:

> Petitioner would like to transfer Beneficiary to the United States to fill the position of Executive Pastry Chef. The major responsibility of the position is overall responsibility of the pastry department, which includes hiring and training of pastry personnel, assist with menus and recruiting of new hired personnel. The Executive Pastry Chef identifies and sources new training initiatives for shipboard development. He is held accountable for the entire cycle of the crew rotation operation, which includes crew scheduling, crew training, crew turnovers for the pastry department. Liaise daily with Scheduling Manager for future crew needed.

The petitioner also submitted a list of the executive pastry chef's tasks and responsibilities, which included vessel pastry operation inspection, evaluations, development of photographs, monitoring pastry equipment,

onboard management training, pastry crew movement planning, monitoring crew, staff, and other menus, and monitoring quality of ingredients.

The director found the initial evidence to be insufficient to warrant approval and consequently issued a request for evidence on March 9, 2006. The director noted that the beneficiary appeared to be a crewman, and thus was ineligible for classification under the L visa category. The director requested convincing evidence to show that he was in fact a manager or executive employee to satisfy the requirements of the requested visa classification. In a response dated April 24, 2006, the petitioner provided a brief statement, claiming that the beneficiary would be transferred to the petitioner's headquarters in Florida and would spend 75% of his time there. The petitioner also provided an updated list of tasks and responsibilities for the proposed position in the United States.

The director denied the petition, finding that the proposed position did not warrant approval because the beneficiary would not be functioning in a primarily managerial or executive position. The director further noted that the beneficiary's proposed position appeared to be that of a crewman and, therefore, the beneficiary was ineligible for classification as an L-1A manager or executive. On appeal, the petitioner acknowledges that all onboard employees are referred to as crewmen, but argues that such a reference "should not impact the perception of the managerial capacity of the Beneficiary."

Upon review, the AAO again concurs with the director's findings. As discussed with regard to the beneficiary's foreign employment above, the petitioner again submitted an updated and expanded list of duties in response to the request for evidence with regard to the proposed position in the United States. The petitioner expanded the list of the beneficiary's duties, adding items such as administrative duties, ordering and inventory responsibilities, onboard management training and planning, and special events. Once again, the initial description of duties included more hands-on duties with regard to the preparation of pastries, while the second list has the beneficiary managing more of the actual work done in the petitioner's operation. Furthermore, on appeal, the petitioner claims that the executive pastry chef would also have extensive human resource responsibilities, including the hiring and firing of personnel.

Again, 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). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. In this matter, the description of the proposed duties of the beneficiary is insufficient to warrant a finding that the beneficiary will be employed in the United States in a managerial or executive capacity. The beneficiary's position appears to require both managerial and non-managerial duties. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-qualifying administrative or operational duties. Although convincing evidence was specifically requested by the director, the petitioner's description of the beneficiary's proposed job duties does not establish what proportion of the beneficiary's duties will be managerial or executive in nature, and what proportion will actually be non-managerial or non-executive. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as developing photographs for new menus, developing new recipes, reviewing maintenance requests, and inspecting pastry operations do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary will primarily perform 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).

Furthermore, the organizational chart provided for the United States entity indicates that the beneficiary will oversee a corporate chef, who in turn will supervise two culinary administrative assistants and one operations analyst. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

Though requested by the director, the petitioner did not provide any details with regard to the manner in which he would be managing these alleged subordinates, and omitted any discussion with regard to the nature of their duties or their job descriptions. Any 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 petitioner has not established that these employees possess or require an advanced degree, such that they could be classified as professionals. Nor has the petitioner shown that any of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Although the corporate chef is listed above the analyst and the administrative assistants, there is no discussion in the record of his role with regard to these employees. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Additionally, the record consistently claims that the beneficiary will be responsible for overseeing bakers and chefs, but the organizational chart provided reflects only a very small culinary department made up of one corporate chef, two administrative assistants, and an analyst. 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. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a 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).
Furthermore, the director noted that the Act clearly contains a nonimmigrant classification that is specifically structured toward crewmen. Under section 101(a)(10) of the Act, 8 U.S.C. § 1101(a)(10), a "crewman" is defined as "a person serving in any capacity on board a vessel or aircraft." It would appear, therefore, that if the beneficiary is coming to the United States to render his services aboard cruise ships, he would properly fit under this visa classification and not the L classification.

Despite the director's discussion of this in the request for evidence as well as in the denial, the petitioner fails to directly address this question as it pertains to the beneficiary. More fundamentally, the petitioner's argument on appeal ignores the basic structure of the INA as it relates to alien crewmembers. Congress has provided a specific nonimmigrant visa classification for these aliens. INA § 101(a)(10) and (15)(D), 8 U.S.C. § 1101(a)(10) and (15)(D). Crewmembers are subject to special restrictions. These restrictions reflect the fiction that an alien crewmember is "one of the agencies which brought the ship in, rather than an alien brought in by the ship." *Osaka Shosen Line v. United States*, 300 U.S. 98, 103 (1937). Although the petitioner failed to address or acknowledge this issue, the AAO finds it crucial to the outcome in this matter.

The first distinction between crewmembers and other aliens who arrive on a vessel or aircraft is that the crewmembers are not even subject to inspection, if they are not actually going to leave the vessel or aircraft. *Matter of SS Greystoke Castle and M/V Western Queen*, 6 I&N Dec. 112, 122 (BIA 1954; A.G. 1954). If the crewmember will remain aboard, no visa is required. *Id.* If the crewmember is supposed to remain on board, the carrier is subject to a fine if the carrier fails to prevent the crewmember from leaving the vessel or aircraft. INA § 254(a), 8 U.S.C. § 1284(a).

Second, if the crewmember is permitted to land, the crewmember is subject to more exacting restrictions than other nonimmigrants. A crewmember who seeks to land, like other nonimmigrants, is subject to inspection, and must have the appropriate visa. INA §§ 212(a)(7)(B) and 235(a)(3), 8 U.S.C. §§ 1182(a)(7)(B) and 1225(a)(3). But if the crewmember is permitted to land, the crewmember must leave the United States on the same vessel or aircraft on which the crewmember arrived, unless the immigration inspector permits the crewmember to leave on a different vessel or aircraft. INA § 252(a), 8 U.S.C. § 1282. In no case may a crewmember remain in the United States more than 29 days. *Id.* The carrier may not discharge the crewmember from employment while the crewmember is in the United States without permission of the immigration authorities. *Id.* § 256, 8 U.S.C. § 1286.

If a crewmember absconds, but is apprehended before the vessel or aircraft leaves, the immigration authorities may expel the crewmember summarily, without having to resort to immigration court procedures. *Id.* § 252(b), 8 U.S.C. § 1282(b). If an alien crewmember is placed in removal proceedings, the alien crewmember is ineligible for cancellation of removal. *Id.* §240A(c)(1), 8 U.S.C. § 1229b(c)(1). A crewmember is not

eligible for adjustment of status, *id.* § 245(c)(2), 8 U.S.C. § 1225(c)(2), nor for a change of nonimmigrant status, *id.* § 248(1), 1258(1).[1]

This comprehensive statutory framework shows that Congress intended for aliens who are serving as crewmembers aboard international air or sea carriers to be subject to strict controls. By definition, these restrictions apply to an alien serving in "***any*** capacity on board a vessel or aircraft." INA § 101(a)(10), 8 U.S.C. § 1101(a)(10)(emphasis added). Approving an L-1A petition based on ordinary crewmember duties would thwart this statutory framework for the regulation of nonimmigrant crewmembers. In this case, the beneficiary, as executive pastry chef, is and would continue to merely be operating in a capacity that is required for normal operation and service on board the vessel. *See* Section 101(a)(15)(D)(i), 8 U.S.C. § 1101(a)(15)(D). Furthermore, the record contains a document signed by the beneficiary entitled "Crew Agreement," which outlines his terms of employment. Although the petitioner contends that the beneficiary will be coming to the U.S. to render 75% of his services to the Florida headquarters, it failed to clarify where the remaining 25% of his time will be spent. It stands to reason, therefore, that this time will be spent aboard various cruise ships upon which the petitioner's services are required. For this additional reason, the petition may not be approved.

Beyond the decision of the director, it is unclear whether the foreign entity and the petitioner are qualifying organizations for purposes of this analysis. The alleged foreign affiliate claims to be a Bahamian-based corporation that provides food and beverage concessions aboard the m/v Discovery Sun. The U.S. petitioner, a Florida-based corporation, also exists for the purpose of providing catering services aboard the m/v Discovery Sun. Both entities are 100% owned by the same person.

In this case, the petitioner claims that both entities operate out of and on board the same cruise ship. As a result, the record is unclear with regard to the exact location and nature of the businesses of the two organizations. To allow for a thorough analysis of this issue, the petitioner should have established where the entities actually conduct their business, i.e., in a U.S. port, in a foreign port, on a U.S. owned and flagged ship while on the high seas, or on a foreign owned and flagged ship while on the high seas; that the business conducted is regular, systematic, and continuous; and that the necessary facilities and office space has been secured from the cruise ships on which the petitioner operates.[2] Since the claim in this matter is that both entities appear to provide similar services aboard the same vessel, it is unclear how the beneficiary would be rendering services to an affiliate of the foreign entity in the United States if the place of duty is essentially the same.

Despite claims that the cruise ship travels to foreign ports, thereby proving that the beneficiary has been employed abroad as required by the regulations, this claim is insufficient to satisfy the burden of proof in this

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[1] Provided the underlying visa petition was timely filed, an alien crewmember can obtain relief from the adjustment ineligibility if the alien pays the $1000 fee under INA § 245(i), 8 U.S.C. § 1255(i).

[2] While ships on the high seas are treated as parts of the nation to which they belong, and whose flag they fly, a ship in port is subject to the law of that port. *See The Cuzco*, 225 F. 169, 175-176 (W.D. Wash. 1915). Therefore, it is necessary for sufficient details to be provided on the claimed foreign business operation to verify where in fact its business is conducted.

matter. 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)). As noted above, the regulation at 8 C.F.R. 214.2(l)(1)(ii)(G)*(2)* defines "qualifying organization" as a United States or foreign firm, corporation, or other legal entity which "is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee. As the petitioner has not provided sufficient evidence that it does business in the United States and at least one other country other than the United States, it has failed to establish that it has a qualifying relationship exists. For this additional reason, the petition may not be approved.

Moreover, the petitioner indicates that [redacted] is the sole owner of both companies. While the record contains documentation that the foreign entity is owned by [redacted] there is no evidence of the ownership of the petitioner in the record. 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)). Without evidence of the ownership and control of the U.S. entity, AAO cannot determine whether a qualifying relationship exists between the parties.

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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused it discretion with respect to all of the AAO's enumerated grounds. *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).

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.