

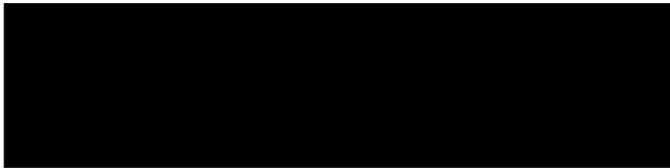


U.S. Citizenship
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Services

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File: EAC 07 120 51763 Office: VERMONT SERVICE CENTER Date: OCT 02 2008

IN RE: Petitioner:
Beneficiary:

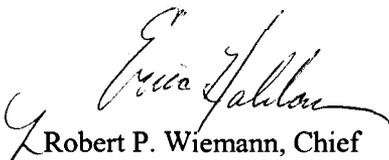


Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER: 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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment as its chief executive officer as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a corporation organized in the State of New Jersey, claims to provide language and intercultural communications training and information services. The petitioner claims that it is the affiliate of ANO Tver InterContact Group USA, Inc., located in Tver, Russia. The beneficiary was granted one year in L-1A classification in order to open a new office and the petitioner seeks to extend the beneficiary's stay for three additional years.

On March 31, 2008, the director denied the petition, concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Specifically, the director noted that based on the description of the beneficiary's duties and the organizational structure of the petitioning entity, it appeared that the beneficiary would be engaged in the day-to-day activities of the petitioner. Consequently, the director concluded that the beneficiary was not acting primarily as a manager or executive as required by the regulations.

On appeal to the AAO, the petitioner¹ submits a statement from the beneficiary in his capacity as chief executive officer, which contends that the director's decisions in this matter was erroneous.

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.

¹ The Form I-290B, Notice of Appeal or Motion, was filed by the beneficiary in his capacity as chief executive officer of the petitioning company. On this form, he indicated that an appeal brief would be submitted within 30 days. The Form G-28, Entry of Appearance as Attorney or Representative, that was subsequently submitted with the appeal brief appoints a new attorney and was signed by the beneficiary in his personal capacity and not by the petitioner or an authorized representative thereof, and specifically limits counsel's appearance to the beneficiary. Moreover, counsel indicates in his brief dated May 30, 2008 that he represents the beneficiary. Citizenship and Immigration Services (CIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). Consequently, the appeal brief submitted by counsel for the beneficiary will not be considered by the AAO.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

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

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The request for extension, filed on Form I-129 on March 28, 2007, indicated that the petitioner currently employed 3 persons. In a letter of support dated March 19, 2007, the petitioner stated that the beneficiary's duties were as follows:

[The beneficiary] will continue to be functioning at an executive level and will continue to be responsible for managing the development of the U.S. office. [The beneficiary] will be responsible for all aspects of managing the office, including financial matters, hiring employees, marketing, retail, distribution, making client contacts, identifying new markets, product development, quality control, and insuring its growth and profitability. He will

direct, lead and evaluate the progress of the U.S. operations and will interface with the parent company in the proposal for the development of services, based on local industry demands and evolutions. He will serve as a local link to TICG-Russia and provide local support to the U.S. clientele. **[The beneficiary] will be responsible for coordinating and extending organizational support to the U.S. centers of the study of Russian language and culture.** He will provide consulting support to professionals and educational institutions in the U.S. with the focus on Russian studies in the field of academic programs and curriculum development, and improving student enrollment and establishing partnerships with Russian academic and research centers. He will organize and conduct workshops on Russian as a Foreign Language teaching methods and organize seminars for undergraduate and postgraduate students with Russian and East European majors. **[The beneficiary] will be responsible for project management and outsourcing support for publishing, training and educational software development need and initiatives of the U.S educational institutions, and governmental agencies.** **[The beneficiary] will promote study abroad programs and academic travel services (Russia bound) to U.S. universities and colleges, and organize pre-trip orientation sessions.**

On May 30, 2007, the director requested additional evidence. Specifically, the director requested additional evidence to establish that the beneficiary will be employed in a managerial or executive capacity, including but not limited to a more detailed description of the beneficiary's duties and copies of the petitioner's Forms 941, Employer's Quarterly Federal Tax Return, for the last two quarters of 2006 and the first quarter of 2007.

In a letter dated August 22, 2007, former counsel for the petitioner submitted the following updated overview of the beneficiary's duties:

[As chief executive officer, the beneficiary is] responsible for managing the development of the U.S. office using the highest degree of discretionary authority in day-to-day operations in his execution of his executive/senior-level management duties. Responsible for all aspects of managing the office, including financial matters, hiring employees, marketing, retail, distribution, making client contacts, identifying new markets, product development, quality control, and insuring its growth and profitability. He directs, leads and evaluates the progress of the U.S. operations and interfaces with the parent company in the proposal for the development of services, based on local industry demands and evolutions. He will serve as a local link to TICG-Russia and provide local support to the U.S. clientele. **[The beneficiary] is responsible for coordinating and extending organizational support to the U.S. centers of the study of Russian language and culture.** He provides consulting support to professionals and educational institutions in the U.S. with the focus on Russian studies in the field of academic programs and curriculum development, and improving student enrollment and establishing partnerships with Russian academic and research centers. He organizes and conducts workshops on Russian as a Foreign Language teaching methods and organize seminars for undergraduate and postgraduate students with Russian and East European majors. **[The beneficiary] is responsible for project management and outsourcing support for publishing,**

training and educational software development need and initiatives of the U.S educational institutions, and governmental agencies. [The beneficiary] promotes study abroad programs and academic travel services (Russia bound) to U.S. universities and colleges, and organize[s] pre-trip orientation sessions.

The AAO notes that this newly-submitted description of duties is virtually identical to that submitted in the initial letter of support. The only new duty not previously identified was that “[the beneficiary] will serve as a liaison for the organizational committee of the 10th Annual Meeting of the Central association of Russian Teachers of America, which will be hosted by TIG-USA in March of 2008.”

In addition, the petitioner submitted copies of its Forms 941, Employer’s Quarterly Federal Tax Return, and California Forms DE-6, Quarterly Wage and Withholding Report, for the first two quarters of 2007. Form DE-6 for the first quarter of 2007, which covered the period from January 1, 2007 to March 31, 2007, indicated that in addition to the beneficiary, the petitioner employed J. [REDACTED] Assistant Editor, and [REDACTED], Chief Information Officer. Counsel for the petitioner provided position descriptions for these employees in the August 22, 2007 letter, and also claimed that the petitioner employed a Curriculum Development Specialist and an Online Training Solutions Engineer. The petitioner, however, failed to submit evidence that these additional employees were on the payroll at the time the request for extension was filed. The petitioner also claimed that it would hire at least four additional employees by the end of 2007.

Finally, the petitioner also provided an organizational chart, which indicated that the beneficiary reported to the board of directors, and oversaw [REDACTED] who in turn oversaw [REDACTED]. Again, while the other positions discussed above were listed on the chart, along with potential positions to be filled in late 2007, no evidence that these positions were occupied at the time of filing was presented. It appears that the petitioner hired a curriculum development specialist in May 2007.

On March 31, 2008 the director denied the petition. The director noted that despite the petitioner’s contentions that the beneficiary functioned in a qualifying position, the information submitted with regard to the beneficiary’s position, coupled with the less-than-descript response to the request for additional evidence regarding the beneficiary’s subordinates, suggested that the beneficiary performed most of the day-to-day duties required to operate the company, and thus could he not be considered primarily a manager or executive.

On appeal, the petitioner submits a brief statement but submits no new evidence. The petitioner submits a self-serving statement by the beneficiary discussing his role in the company, which alleges that by the end of 2007, he was coordinating a team of five employees and three consultants. Based on his long-term involvement in the petitioner, and the expansion which the petitioner has undergone since the filing of the extension request, the petitioner contends that it has met its evidentiary burden.

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). The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In this matter, the petitioner provided a generic description of the beneficiary's duties with the initial petition. In the request for evidence, the director asked the petitioner to submit more detailed evidence outlining the duties performed by the beneficiary in the past year, as well as the duties to be performed by the beneficiary in the future. In counsel's response dated August 22, 2007, the petitioner submitted a description of duties that was virtually identical to the one submitted in the initial letter of support, which the director had previously deemed insufficient.

Therefore, the petitioner failed to submit a specific overview of the beneficiary's duties as requested by the director. Consequently, the description of duties on record, though lengthy, fails to specifically state the exact nature of the beneficiary's duties. More importantly, the petitioner fails to articulate the exact nature of the beneficiary's position. For example, on Form I-129, the petitioner claims that the beneficiary is its chief executive officer (CEO) *and* its academic support services director. However, the description of duties does not distinguish between these two positions, and provides a laundry list of tasks attributed to the beneficiary, such as "financial matters, hiring employees, marketing, retail, distribution, making client contacts, identifying new markets, product development, quality control, and insuring its growth and profitability."

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). In this matter, the recitation of the beneficiary's duties includes an abundance of tasks with no specific outline to clarify to what extent the beneficiary is engaged in each task. As a result, the AAO cannot determine the exact nature of the beneficiary's duties in the context of the petitioner's stated business or determine whether his duties are primarily managerial or executive in nature. 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).

Because a number of the tasks listed in the recitation of duties include tasks traditionally not considered to be primarily managerial or executive, it is impossible to determine that the beneficiary functions solely as manager or executive of the company. For example, duties such as "retail" and "marketing" suggest that the beneficiary is engaged in the non-qualifying tasks; however, the petitioner provides no detail regard the extent of his involvement in these tasks. Instead, the petitioner merely concludes that the beneficiary

is “responsible for all aspects of managing the office” and therefore is primarily a manager or executive. This claim, however, will not suffice. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). 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)). Merely claiming that the beneficiary is operating in a qualifying capacity is insufficient for purposes of this analysis.

Absent further detail regarding the beneficiary's actual role in the company, the evidence of record suggests that he will be engaged primarily in day-to-day tasks essential to the continued operations of the business. This conclusion is further warranted based on the organizational hierarchy of the petitioner at the time of filing. Upon review of the record, the petitioner has established that as March 28, 2007, the filing date of the extension, it employed the beneficiary, [REDACTED] as Assistant Editor, and [REDACTED] as Chief Information Officer. It is noted that two other positions were claimed to be filled; however, the petitioner failed to submit documentation that it employed any additional persons at that time. The petitioner's Form 941 and Form DE-6, Quarterly Wage and Withholding Report for the State of California, for the first quarter of 2007, confirmed that at the time of filing, only the above two employees worked with the petitioner.

Therefore, it is unclear how the beneficiary would be relieved from performing non-qualifying duties by an editor and a chief information officer, whose duties, upon review of counsel's statements in the August 22, 2007 letter, appear to be completely unrelated to the stated duties of the beneficiary. For example, [REDACTED] duties focus mainly on editing and proofreading translated articles and research papers, whereas [REDACTED] s duties include managing and developing technology solutions and marketing. While the AAO notes that the marketing duties of [REDACTED] would appear to relieve the beneficiary from performing these non-qualifying duties, the fact remains that there are no dedicated employees to perform administrative and secretarial tasks, nor are there any dedicated employees to relieve the beneficiary from engaging in “retail,” “distribution,” “making client contacts,” “consulting,” and “product development.” Therefore, while [REDACTED] may relieve the beneficiary from personally engaging in marketing tasks, the record does not reflect an adequate staff to perform these additional non-qualifying duties on behalf of the beneficiary. Moreover, the petitioner's own admission that the beneficiary manages all aspects of the company strengthens the AAO's conclusion that the beneficiary is not employed in a primarily managerial or executive capacity.

On appeal, the beneficiary, as CEO, seeks to clarify his role in the company and the alleged importance it has on the petitioner's continued development. In addition, the petitioner urges the AAO to consider that the company now has extensive staff under the beneficiary's supervision that was not present at the time of filing. These assertions, however, are not persuasive. First, the petitioner was put on notice of required evidence, namely, a more specific description of the beneficiary's duties, and was given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and instead re-submitted the same description of duties that had

previously been deemed insufficient by the director. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). 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).

Second, although it is the petitioner's contention that it has since hired extensive staff to assist the beneficiary, 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). Moreover, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation only one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the record reflects that the petitioner did not file the petition for an extension within the required time frame. The regulation at 8 C.F.R. § 214.2(l)(14)(i) provides, in pertinent part, that a petition extension may be filed only if the validity of the original petition has not expired. In the present case, the beneficiary's authorized period of stay expired on March 21, 2007. However, the petition for an extension of the beneficiary's L-1A status was filed on March 28, 2007, one week following the expiration of the beneficiary's status. Pursuant to 8 C.F.R. § 214.1(c)(4), an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed. As the extension petition was not timely filed, it is noted for the record that the beneficiary is ineligible for an extension of stay in the United States.

In addition, the record reflects that some discrepancies with regard to the commercial lease for the U.S. entity as of the date of the approval of the original new office petition. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(A) requires a petitioner that seeks to open a new office to submit evidence that it has acquired sufficient physical premises to commence doing business. In response to the director's request for the original lease in this matter, the petitioner submitted a copy of a lease agreement for the premises located at [REDACTED] located in San Francisco, California. The lease agreement indicates that it commenced on February 1, 2005 and was valid through January 31, 2007. However, an extensive review of the record indicates that all documentation submitted by the petitioner which displayed an address during this period never used the address in the lease for the business. Rather, the petitioner used the following address: [REDACTED], San Francisco, California, 94104. There is no explanation in the record regarding this discrepancy. Therefore, it appears that either the petitioner did not comply with this requirement, misrepresented that they had complied, or the director

committed gross error in approving the petition without definitive evidence of the petitioner's physical premises. Regardless, the approval of the initial petition may be subject to revocation based on the evidence submitted with this petition. *See* 8 C.F.R. § 214.2(l)(9)(iii).

Finally, there is insufficient evidence in the file to demonstrate that a qualifying relationship exists between the petitioner and the foreign entity. *See* 8 C.F.R. § 214.2(l)(14)(ii)(A). The petitioner claims it is the affiliate of Tver InterContact Group, and claims on the supplement to Form I-129 that the companies are controlled by the same group of individuals, since the foreign entity authorized the formation of the U.S. petitioner. However, the petitioner has failed to submit definitive evidence of the petitioner's actual ownership.

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 (BIA 1988); *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.

Acceptable evidence to establish ownership and control include stock certificates, the corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In this matter, the petitioner's Form 1120, U.S Corporation Income Tax Return for 2005 and Form 1120-A, U.S Corporation Short-Form Income Tax Return for 2006 list conflicting information regarding ownership of the petitioner. For example, a supplemental entry to Schedule K on Form 1120 indicates that the beneficiary is the petitioner's owner. However, the AAO is unable to review this further, since the petitioner failed to submit a copy of Schedule K for the record. Moreover, the supplement to Part II, Question 2 of Form 1120-A indicates that the petitioner has two owners each with a fifty percent interest: the beneficiary and [REDACTED].

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 petitioner has failed to submit concrete evidence of the ownership of the petitioner, which is a New Jersey corporation. In addition, it has not demonstrated the ownership interests of the foreign such that the AAO could

determine that the companies are each owned by the same individual or group of individuals, with each owning the same or a similar amount of shares in each entity. 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).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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.