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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

D7

File: EAC 07 187 51384 Office: VERMONT SERVICE CENTER Date: OCT 03 2008

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)

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.

for

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 employ the beneficiary in the position of "president" 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 limited liability company organized under the laws of the State of Texas, will allegedly operate a retail establishment.

The director denied the petition concluding that the petitioner failed to establish (1) that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years immediately preceding the filing of the petition; or (2) that the United States operation will support an executive or managerial position within one year.

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 the definition of "intracompany transferee" only requires the petitioner to establish that the beneficiary had at least one year of continuous employment by a qualifying organization within three years preceding the time of her application for admission into the United States. The petitioner asserts that, since the beneficiary first applied for, and was granted, admission into the United States on August 2, 1999 in H-4 dependent visa status, it only needs to demonstrate that the beneficiary had been employed abroad for one continuous year within three years preceding August 2, 1999. As the beneficiary was allegedly employed in a managerial or executive capacity for a qualifying organization from June 1, 1998 until July 20, 1999, counsel claims that the petitioner meets this criterion. Counsel also asserts that the petitioner has established that the beneficiary will primarily perform qualifying duties within one year.

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.

Furthermore, "intracompany transferee" is defined in 8 C.F.R. § 214.2(l)(1)(ii)(A) as follows:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a

> branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted towards fulfillment of that requirement.

The first issue in this proceeding is whether the petitioner has established that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years immediately preceding the filing of the petition.

The instant petition was filed on June 13, 2007. As indicated above, the petitioner asserts that the beneficiary was employed in a managerial or executive capacity for a qualifying organization from June 1, 1998 until July 20, 1999. The petitioner also asserts that, since the beneficiary first applied for admission into the United States on August 2, 1999 as an H-4 nonimmigrant, she only needs to establish that she had at least one continuous year of full-time employment abroad with a qualifying organization within the three years immediately preceding this date and not the date of the filing of the instant petition.

On October 5, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years immediately preceding the filing of the petition.

On appeal, the petitioner reiterates its argument that the definition of "intracompany transferee" only requires the petitioner to establish that the beneficiary had at least one year of continuous employment by a qualifying relationship within three years preceding August 2, 1999, the day on which she applied for admission into the United States.

Upon review, the petitioner's assertions are not persuasive, and the appeal will be dismissed.

As indicated above, the regulation at 8 C.F.R. § 214.2(l)(3)(iii) clearly requires that an individual petition filed on Form I-129 be accompanied by evidence that the beneficiary "has at least one continuous year of full time employment abroad with a qualifying organization *within the three years preceding the filing of the petition.*" (emphasis added). This requirement is repeated in the "new office" regulations at 8 C.F.R. § 214.2(l)(3)(v)(B). While counsel correctly quotes the definition of "intracompany transferee" in the regulations, her interpretation of this definition is inconsistent with the clear and unambiguous requirements set forth in 8 C.F.R. § 214.2(l)(3). When construed together with the 8 C.F.R. § 214.2(l)(3), the phrase "preceding the time of his or her application for admission into the United States" refers to a beneficiary's admission "for a branch of the same employer or a parent, affiliate, or subsidiary thereof" or for "brief trips to the United States for business or pleasure." Accordingly, while it is possible for Citizenship and Immigration Services (CIS) to "reach over" a period of presence in the United States in another status in order to confirm that a beneficiary has been employed abroad for the requisite one-year period, this exception does not apply here because the beneficiary was in the United States in H-4 dependent status. The beneficiary was not in the

United States on behalf of the same employer or on a brief trip for business or pleasure. Had the beneficiary been employed in the United States in H-1B visa status, for example, and working for an employer who has qualifying relationship with the foreign employer, it may have been possible to "reach over" this employment in the United States to find the requisite period of employment abroad. Accordingly, CIS may not in this case "reach over" her stay in the United States and consider employment abroad which concluded more than three years prior to the filing of the instant petition.

Accordingly, as the petitioner has failed to establish that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years immediately preceding the filing of the petition, the petition may not be approved.

The second issue in the present matter is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

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 asserts in the Form I-129 that the beneficiary will be employed as the "president" of the United States operation, a retail establishment. The petitioner also asserts that the United States operation is a "new office" as defined by the regulations. In support of the petition, the petitioner submitted a document titled "business plan" in which the petitioner claims that the United States retail enterprise will sell groceries and consumer items such as leather goods, handbags, and accessories. The petitioner projects "profitability" within six months and describes its initial financial requirements as follows:

> [The petitioner] will start with operating capital of $15,000. The initial start up cost for Town Square Mart will be $9,300.00 and the initial start up for R & I Infusion will be [$]7,011.00[.] The [petitioner] will have total capital in the amount of $31,000.

The petitioner also claims that the enterprise will operate two retail locations. However, it appears that the petitioner had only secured a single location at the time the petition was filed.

The petitioner also described the proposed staffing of the enterprise in the "business plan." The petitioner claims that the beneficiary will hire a general manager "to oversee the management of both retail operations" as well as store managers and additional employees to staff the individual stores. The petitioner projects a "full staff of seven to eight employees" by the end of the first year in operation. This proposed personnel structure is also described in an organizational chart.

Finally, the petitioner submitted a lease and bank account information. The lease, titled "license agreement," indicates that the petitioner leased space in a shopping mall for $1,106.00 per month plus a $1,000.00 security deposit. The petitioner did not submit documents establishing the rent of the proposed second location. The bank statement indicates that the petitioner has $10,700.00 in a checking account. The record does not address the source of these funds.

On June 26, 2007, the director requested additional evidence. The director requested, *inter alia*, photographs of the proposed retail location, a more specific business plan giving projected dates for proposed actions, a description of the beneficiary's proposed job duties, and information regarding the size of the United States investment by the foreign entity.

In response, the petitioner submitted a revised "business plan" which indicates that the enterprise will hire employees for the first location in August 2007 and for the second location in November 2007. The petitioner also submitted a proposed "job description" for the beneficiary as follows:

> It will be [the beneficiary's] responsibility to oversee all investments of [the petitioner]. As part of her duties she will locate appropriate premises for retail locations. She will negotiate

> all leases and contracts on behalf of the company and it will be her sole responsibility to make sure the company commences the operation of retail and convenience store outlets.
> It is [the beneficiary's] responsibility to formulate policies and direct the operations of all the businesses of [the petitioner]. She will be responsible for meeting frequently with subordinate managers to ensure that operations are conducted in accordance with these policies. [The beneficiary] retains overall accountability; however, as President she will delegate several responsibilities to her operation manager and store managers, including the authority to oversee subordinate employees who will be responsible for providing services to the public on a day-to-day basis. She will be responsible for hiring and training a managerial staff that who [sic] in turn will oversee subordinate employees.
>
> In addition, she will direct the organization's financial goals, objectives, and budgets. She will oversee the investment of funds and manage associated risks, supervise cash management activities, execute capital-raising strategies to support the company's expansion plans.

Finally, the petitioner submitted a July 2007 bank statement indicating that an additional $10,000.00 was deposited into the petitioner's bank account on July 30, 2007.

On October 5, 2007, the director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval.

Upon review, counsel's assertions are not persuasive.

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 therefor. Most importantly, the business plan must be credible.

Id.

For several reasons, the petitioner in this matter has failed to establish that the United States operation 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. The petitioner has failed to establish that the beneficiary will primarily perform qualifying duties after the petitioner's first year in operation; has failed to establish that the beneficiary will be relieved of the need to perform the non-qualifying tasks inherent to the operation of the business by a subordinate staff within the petitioner's first year in operation; has failed to establish that a sufficient investment has been made in the United States operation; and has failed to sufficiently and credibly describe the nature, scope, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C).

First, the job description for the beneficiary fails to credibly establish that the beneficiary will be performing primarily "managerial" or "executive" duties after the petitioner's first year in operation. When examining the proposed executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the proposed job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.*

In this matter, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis after the petitioner's first year in operation. For example, the petitioner states that the beneficiary will "formulate policies and direct the operations" as well as direct the organization's "financial goals, objectives, and budgets." However, the petitioner fails to specifically define these policies, goals, and objectives other than in the context of administering a retail establishment. Overall, the petitioner has provided so few details regarding its proposed retail business that it cannot be discerned what the beneficiary will do on a day-to-day basis in performing any of the ascribed duties pertaining to the "management" of the business. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated duties does not establish that the beneficiary will primarily perform managerial duties after the first year in operation. Specifics are clearly an important indication of whether a beneficiary's duties will be

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).

Likewise, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to "primarily" perform the non-qualifying tasks inherent to her duties and to the operation of the business in general. While the petitioner claims that it will hire seven or eight additional employees during its first year in business, the petitioner has failed to establish that it will truly be able to hire these workers and, even if it could, that these workers will relieve the beneficiary of the need to primarily perform non-qualifying tasks. The petitioner's "business plan" vaguely describes the proposed United States operation as a two-location retail operation which will sell groceries and consumer goods. However, the plan and associated financial projections are entirely unsupported by evidence. The record does not specifically describe the operation's marketing strategy and fails to identify any business relationships or potential customers. The petitioner did not submit any evidence addressing the location of, or cost of acquiring, the second retail location. The petitioner failed to establish the proposed cost of hiring the additional workers or explain in detail what, exactly, they will do on a day-to-day basis. Finally, the record does not contain any purchase orders or contracts, and the only evidence addressing its assets is a bank statement indicating that the petitioner has $10,700.00 in a checking account.[1]

Accordingly, the petitioner's claim that its newly formed operation, which has $10,700.00 in the bank, will hire seven or more workers who will relieve the beneficiary of the need to primarily perform non-qualifying tasks within the requisite one-year period is not credible and is not supported by any evidence. Once again, 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. Simply alleging that the petitioner will hire seven employees who will perform all the non-qualifying tasks inherent to the business does not establish that the United States operation will truly grow and mature into an active business organization which will reasonably require the services of a beneficiary who will primarily perform managerial or executive duties. Rather, the petitioner must clearly define the scope and nature of a United States operation and establish that it has, and will continue to have, the financial ability to support the establishment and growth of the business. However, as the record in this matter is devoid of any such evidence, the petitioner has failed to establish that the beneficiary will more likely than not perform "primarily" qualifying duties after the petitioner's first year in operation. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily"

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[1]It is noted that, in response to the director's Request for Evidence, the petitioner submitted evidence that it deposited an additional $10,000.00 into its bank account on July 30, 2007. However, as the petition was filed on June 13, 2007, this additional deposit may 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).

employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Furthermore, even assuming that the petitioner will have the ability to hire the workforce proposed in the petition, the record is not persuasive in establishing that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees. As asserted in the record, after the first year in operation, the beneficiary will directly supervise a general manager who, in turn, will directly or indirectly supervise subordinate workers in two locations. However, the petitioner has failed to establish that any of these workers will truly be a supervisory or managerial employee. To the contrary, it appears that any workers hired by the petitioner will perform the tasks necessary to the operation of the retail establishment. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Given the size and nature of the vaguely described retail business, it is more likely than not that the beneficiary and his proposed subordinate employees will all primarily perform the tasks necessary to the operation of the business. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006). It is not credible that a business, such as the petitioner's proposed United States operation, will develop an organizational complexity within one year which will require the employment of a subordinate tier of managers or supervisors who will ultimately be supervised and controlled by a primarily executive or managerial employee. Therefore, it appears that the beneficiary will be, at most, a first-line supervisor of non-professional employees. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. *See Matter of Church Scientology International*, 19 I&N Dec. at 604; *see also* § 101(a)(44) of the Act.

Accordingly, the petitioner has failed to establish that the beneficiary will be primarily employed in a managerial or executive capacity within one year, and the petition may not be approved for that reason.

Second, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because it failed to establish that a sufficient investment was made in the enterprise. 8 C.F.R. § 214.2(l)(3)(v)(C)(*2*). In this matter, the petitioner claims to have received a $10,700.00 investment. In support of this assertion, the petitioner submits a bank statement. However, the record is not persuasive in establishing that the petitioner has received a sufficient investment to support the start-up of the new office. It is not credible that $10,700.00 will be sufficient to establish the two-location retail enterprise vaguely described in the petition. As noted above, the petitioner claims in its "business plan" that it requires "total capital in the amount of $31,000" and start-up operating capital of $15,000.00. Therefore, according to its own uncorroborated "business plan," the petitioner has not received a sufficient investment. Furthermore, the petitioner failed to corroborate with independent evidence many of its financial projections. For example, the petitioner claims that the proposed start-up of the second retail location will require $7,011.00 in capital. However, the record is devoid of evidence corroborating this claim. The petitioner did not submit evidence of the cost of inventory or a copy of a proposed lease for this location. Therefore, it cannot be concluded that the $10,700.00 "investment" would be sufficient under the circumstances. Once again, 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.

Accordingly, as the petitioner has failed to establish that it has received a sufficient investment, the petition may not be approved for this additional reason.

Third, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because the petitioner has failed to sufficiently describe the nature, scope, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(*1*). As explained above, the petitioner vaguely describes the United States operation as a two-location retail enterprise which will sell groceries and consumer goods. However, the plan and associated financial projections are entirely unsupported by evidence. The record does not specifically describe the operation's marketing strategy, and the petitioner fails to submit evidence of having established any business relationships or identified any potential customers. It is unclear what, exactly, the petitioner will sell and in what quantities, where the products will be stored, how the products will be transported, and to whom the petitioner will market the products in the United States. The record does not contain any independent analysis, contracts, list of business contacts, or copy of a proposed lease for the second location. Absent a detailed, credible description of the petitioner's proposed United States business operation specifically addressing the petitioner's proposed products, marketing plan, and customers, it is impossible to conclude that the proposed 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.

Accordingly, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and the petition may not be approved for the above reasons.

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

In this matter, the petitioner has not established that the foreign employer is "doing business" as defined in the regulations. The record is devoid of evidence that the foreign employer was engaged in the regular, systematic, and continuous provision of goods and/or services in 2007. For example, the petitioner submitted three purchase orders from 2006 but no business records from 2007. The instant petition was filed on June 13, 2007.

Accordingly, as the record is not persuasive in establishing that the foreign employer is doing business, the petitioner has failed to establish that it is a qualifying organization, and the petition will not be approved for this additional reason.

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 of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.