

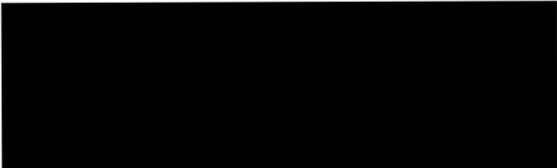


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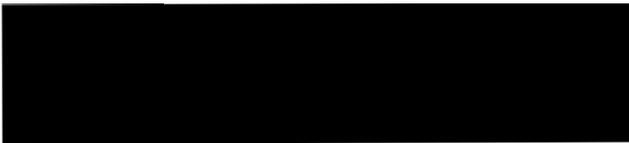


File: EAC 08 181 51596 Office: VERMONT SERVICE CENTER Date: **OCT 16 2009**

IN RE: Petitioner: [Redacted]  
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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Georgia corporation, intends to engage in the import and wholesale of hair products. It claims to be a subsidiary of Xuchang Haoyuan Hair Products Co. Ltd. located in China. The petitioner seeks to employ the beneficiary as the vice president of its new office in the United States for a period of one year.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity. The director based the decision, in part, on a conclusion that the beneficiary will be the sole employee of the company.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner submitted sufficient evidence to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year of approval. Counsel emphasizes that the U.S. entity is a new office and, as such, is not required to establish that it has already hired subordinate personnel to perform the non-managerial functions of the company.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior

education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves 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.

As a preliminary matter, the AAO notes that the director erred by basing the decision, in part, on the petitioner's current staffing levels. 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. The petitioner must also establish that the beneficiary will have managerial or executive authority over the new operation. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

Although the director acknowledged that the petitioner qualifies as a "new office" as defined at 8 C.F.R. 214.2(l)(1)(ii)(F), the director considered the petitioner's staffing levels at the time of filing, rather than

considering the proposed organizational structure of the new entity. Accordingly, the director's analysis of the beneficiary's proposed position was flawed as it did not taken into account evidence submitted to establish that the U.S. company would support a managerial or executive position within one year. Although the director's analysis with respect to the petitioner's current staffing levels will be withdrawn, the AAO concurs with the director's ultimate conclusion that the petitioner failed to establish that the beneficiary will not be employed in a primarily managerial or executive capacity.

As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility. *See 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991).

The sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed in the United States 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 petitioner filed the nonimmigrant petition on June 17, 2008. In a letter dated May 29, 2008, the petitioner described the beneficiary's proposed duties as vice president as the following:

**Participating in the Formulation of U.S. subsidiary's Goals and Policies (20%):** Participates in developing the U.S. subsidiary's policies and strategies and implements them through subordinate personnel; assists in establishing major economic objectives for the parent company and its various divisions; participates in formulating its global expansion plans and strategies and directing its implementation; participates in setting the U.S. subsidiary's goals and providing financial support for the newly acquired U.S. subsidiary; directs financial planning, procurement, and deployment of funds from the parent company's investment; formulates rules and procedures regarding the daily operation of the functional departments under his supervision; establishes and modifies the operation and control procedures of the U.S. subsidiary and coordinates and monitors their implementation; formulates rules and procedures for sales and marketing, accounting and administrative, and warehouse; set standards and specifications for products customization; and sets uniform standards and procedures for responding and handling customer demands or complaints.

**Directing the Management of the Functional Departments and Office (35%)** Directs and coordinates, under the President, activities of the U.S. subsidiary's Sales and Marketing and Accounting and Administrative Departments; directs and oversees the company's hair products sales and distribution activities; sets up programs to help manufacturers upgrade and update their products so as to improve their marketability and profitability; supervises auditing of contracts, orders, and vouchers; orders and monitors periodical evaluation of the performance of the functional departments; devises new approaches to improve efficiency of workflow; and inspects departmental office layouts and directs their cost reduction programs.

**Supervising and Controlling the Work of other Supervisory and Managerial Employees (25%)** Supervises and controls the work of the managers of the Sales and Marketing and Accounting and Administrative Departments; directs the management of sales and marketing, accounting, inventory control, warehousing, and administrative activities of the U.S. subsidiary through the departmental managers; and confers with the managers to review its personnel's performance and solicits their contributions toward optimizing the operation of the U.S. subsidiary.

**Hiring and Firing and Recommending Personnel Actions (5%)** Directs and supervises recruitment, interviewing and selection of employees to fill vacant positions; decides pay

schedules and prepares budget of personnel operations; and contracts with outside suppliers to provide employee services.

**Exercising Wide Latitude in Discretionary Decision Making (15%)**

Reports to the President of the U.S. subsidiary and to the Board of Directors of the parent company but receives only general supervision or direction from higher level executives; and exercises wide discretionary power in regard to operational and financial planning, budgeting, personnel recruitment, and other matters of the subordinate departments; and makes discretionary decisions regarding the hiring and firing of the managers and staff of the Sales and Marketing and Accounting and Administrative Departments; and exercises discretionary power regarding the hiring and firing of subordinate managers and workers.

The petitioner stated that the U.S. company will operate with a three-tier organizational structure, which will include: the beneficiary (vice president) and company president as the senior staff; a tier of managerial employees (sales department manager and manager of the accounting and administrative department); and a third tier to include marketing specialists, sales representatives, an accountant, and warehouse workers. The petitioner provided detailed proposed position descriptions for the subordinate managers, and brief job descriptions for the lower-tier employees. Notably, the petitioner stated that the marketing specialists and sales representatives will perform the following duties:

Contacts new and existing clients to discuss sales and purchase of pneumatic components and equipment shipped from the parent company in China, including solenoid valve, steam valves, fluid control valves, angle valves, ISO standard cylinders, butterfly valve, and air supply treatment components; answers customers' questions about pneumatic components and equipment.

All other evidence in the record indicates that the petitioner and its Chinese parent company have been and will be involved in the sale of hair weaves and related products, not pneumatic and industrial equipment. 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).

The petitioner submitted a proposed organizational chart for the U.S. office which indicates that the beneficiary will report to a company president (to be hired), and will supervise a sales and marketing department manager, and an accounting and administrative department manager. The lower-level positions depicted on the chart are marketing specialists/sales representatives and an accountant. The chart does not identify any proposed warehouse positions.

The petitioner indicated that the parent company has invested \$100,000 for the establishment of the U.S. subsidiary, which is stated to be engaged in "importing, wholesaling and retailing hair products from China." In this regard, the petitioner submitted a wire transfer notice dated May 6, 2008, which shows an incoming wire in the amount of \$99,982 posted to the petitioner's bank account. The originating party of the wire transfer was

██████████," who has a Hong Kong address listed. The petitioner did not provide evidence of this individual's connection to the petitioner's claimed Chinese parent company.

The petitioner also provided a copy of its lease agreement and photographs which purportedly depict the premises secured for the business in Atlanta, Georgia. The photographs depict an office with several workstations, a warehouse stocked with boxes, and a showroom with hair products on display. Although no employees are pictured, the office and warehouse suggest a company that is already doing business in some capacity.

On July 17, 2008, the director issued a request for additional evidence (RFE), instructing the petitioner to provide, *inter alia*, a comprehensive description of the beneficiary's proposed duties; complete position descriptions for all proposed U.S. employees; a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis; and educational requirements for all proposed positions.

In a letter dated August 7, 2008, counsel for the petitioner referred the director to its letter dated May 29, 2008 for detailed position descriptions for the beneficiary and his subordinates. The petitioner supplemented the previous information by providing the percentage of time that the beneficiary's subordinates would devote to specific job duties. The petitioner also indicated that, of the proposed employees, the manager of the accounting and administrative department and the accountant would be required to have a college degree.

The director denied the petition on October 8, 2008, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. As discussed, inasmuch as the director's decision was partially based on a finding that the majority of the positions in the company were unstaffed at the time of filing, the director's analysis will be withdrawn. However, the director also found that the petitioner's description of the beneficiary's duties provided insufficient detail regarding the actual duties to be performed and the percentage of time he would devote to specific tasks.

On appeal, counsel emphasizes that the petitioner, as a new office, "has a one-year grace period for fulfilling the obligation of recruiting a staff and creating a three-tier corporate structure to support the beneficiary's managerial/executive capacity." Counsel requests that the petition be approved so that the petitioner may proceed with recruiting staff and doing business in the United States. In support of the appeal, the petitioner submits additional photographs of the U.S. company, which appears to be operational, with an "Open" sign and hours posted on its storefront.

Upon review, 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 sufficiently describe the beneficiary's proposed duties after the petitioner's first year in operation and has failed to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office; and has failed to establish that a sufficient investment has been made in the United States operation, as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

First, the petitioner has failed to 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.*

As noted by the director, the petitioner's description of the beneficiary's proposed duties, while lengthy, is excessively vague and provides little insight into what types of duties the beneficiary would primarily perform as vice president of the company at the end of one year. The petitioner's general breakdown of the beneficiary's duties merely paraphrased the statutory definitions of managerial and executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act. For example, the petitioner stated that the beneficiary's role will entail "participating in the formulation of U.S. subsidiaries goals and policies"; "directing the management of functional departments"; "supervising and controlling work of other supervisory and managerial employees"; hiring and firing and recommending personnel actions"; and "exercising wide latitude in discretionary decision making." 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

Although the petitioner technically listed duties to be performed by the beneficiary within each area of responsibility, such duties were equally vague and nonspecific. 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 proposed daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The director provided the petitioner with notice that the initial evidence was insufficient to establish that the beneficiary would be performing primarily managerial or executive duties when he instructed the petitioner to provide a comprehensive job description, and information regarding the number of hours the beneficiary would devote to specific duties on a weekly basis. The petitioner opted to refer the director to the previously submitted job description that was already reviewed and found to be deficient. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Finally, although the director specifically cited the lack of a detailed, specific job description as a basis for the adverse decision, the petitioner has not addressed the beneficiary's proposed job duties on appeal.

Likewise, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to perform the non-qualifying tasks inherent to his duties and to the operation of the business in general. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(1) requires the petitioner to provide evidence regarding the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals. While the petitioner provided a proposed organizational chart for the U.S. company and job descriptions for proposed positions, the petitioner must also establish that there is a realistic expectation that sufficient staff will be hired within one year to relieve the beneficiary from performing the non-qualifying duties associated with operating an import and wholesale distribution business.

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

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

*Id.*

While the regulations for new office L-1A petitions do not specifically require the submission of a formal business plan, the petitioner must provide some evidence related to the structure and objectives of the new entity beyond a proposed organizational chart. The petitioner has not submitted a business plan or other documentation addressing the company's proposed hiring plan or intended staffing, and the record contains no evidence of the petitioner's financial projections or goals for the first year of operation. 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)). Given that the petitioner's primary claim regarding the beneficiary's proposed employment capacity is that the beneficiary will manage two tiers of subordinate employees, this evidence is critical to a determination as to whether the beneficiary will be employed in a qualifying capacity within one year.

Overall, the lack of evidence regarding the petitioner's ability to support the proposed organizational structure undermines the petitioner's claim that the petitioner will hire sufficient staff within the first year of operations to relieve the beneficiary from performing primarily non-managerial and non-executive duties.

Finally, 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). The petitioner claims that the foreign entity has provided the petitioner with \$100,000 as an initial investment. However, the petitioner has not established that the wire transfer in the amount of \$100,000, from an individual in Hong Kong, actually originated with the foreign entity or that it was intended as an investment. Counsel explained that "the stringent foreign exchange control imposed by the Chinese authorities made it necessary for the funds to make a detour via Hong Kong

before they reached the destination." However, no supporting evidence was submitted to establish the path of the funds from the foreign entity to the United States entity. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, even if the petitioner had submitted evidence of a \$100,000 investment from the foreign entity, the record is devoid of a business plan or other evidence identifying the petitioner's anticipated start-up costs and initial operating expenses associated with the new office, such that it could be determined whether the investment was sufficient to carry out the petitioner's plans for the first year of operation. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Based on the foregoing discussion, 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 AAO finds insufficient evidence to establish that the beneficiary has been employed by the foreign entity for one continuous year in the three-year period preceding the filing of the petition in an executive or managerial capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner indicates that the beneficiary's one year of qualifying employment occurred between May 10, 2007 and June 2, 2008. The regulation at 8 C.F.R. § 214.2(l)(ii)(A) states, in pertinent part:

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 toward fulfillment of that requirement.

The petitioner indicated on Form I-129 that the beneficiary was not in the United States. The petition was signed by the petitioner on June 3, 2008 and filed with USCIS on June 17, 2008. In support of the petition, the petitioner submitted partial copies of two passports issued to the beneficiary. The evidence shows that the beneficiary was admitted to the United States in B-1 status on March 10, 2008, and was authorized to remain in the country until June 8, 2008. The beneficiary's exact date of departure is not known; however, the petitioner did submit various receipts for purchases made by the U.S. entity. This evidence indicates that the beneficiary used his credit card to purchase a computer printer at a retail store in Atlanta on May 10, 2008. The beneficiary's presence in the United States would also explain why the petitioner's premises appeared to be occupied and open for business as of the date of filing, despite the claim that no employees have been hired. At a minimum, the evidence indicates that the beneficiary was in the United States for at least two months during the previous year, and therefore it cannot be concluded that he has completed the requisite year of continuous employment abroad. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683

(9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. v. United States*, 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.

**ORDER:** The appeal is dismissed.