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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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File: EAC 09 006 50197 Office: VERMONT SERVICE CENTER Date: **OCT 22 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 and 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 employment of 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 Georgia corporation, operates a gas station and convenience store. It claims to be a subsidiary of Unity Agency, located in India. The beneficiary was previously granted L-1A classification for a period of one year in order to open a new office in the United States and the petitioner now seeks to extend his status for three additional years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

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 beneficiary is employed in a managerial capacity. Counsel states that the petitioning company has opened a second store known as "B-Market" and the beneficiary is engaged in the management of a staff of supervisory, professional and managerial personnel who relieve him from performing any non-managerial functions associated with the operation of both retail locations. Counsel submits a brief and additional evidence in support of these assertions.

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)(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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

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 visa petition on October 6, 2008. In a letter dated August 25, 2008, the petitioner described the beneficiary's U.S. position as follows:

[The beneficiary] was employed as International Marketing Manager of [the petitioner] during the period of his U.S. assignment. In this position, [the beneficiary] implemented and established policies and objectives of [the foreign entity] in the United States, and he is researching potential businesses to invest in, setting up a marketing plan for the Parent Company's services to attract US clients, and conducting all activities necessary for the successful startup of the businesses. As he is promoted to a CEO, he directs and coordinates business contracts in the entire operation of the company's market, and develops other relevant policies and procedures implementing the overall objective of [the foreign entity].

The petitioner submitted supporting documentation indicating that the petitioner is operating a convenience store and gas station known as "B-Mart" in Corinth, Mississippi. The petitioner submitted copies of its Mississippi Forms UI-3, Quarterly Wage Report, for the first two quarters of 2008, which reflected payments of salaries or wages to four employees.

The director issued a request for additional evidence (RFE) on October 20, 2008. The director instructed the petitioner to submit, *inter alia*, the following documentation: (1) evidence to establish the duties performed by the beneficiary during the last year and the duties he will perform if the petition is extended; (2) an organizational chart for the U.S. entity; (3) complete position descriptions for the beneficiary's subordinates, including a breakdown of the number of hours devoted to each of the subordinates' job duties on a weekly basis; and (4) copies of the petitioner's IRS Forms W-2, Wage and Tax Statement for 2007. The director also requested that the petitioner clarify the nature of the business operated by the beneficiary, noting that the

evidence submitted does not support the petitioner's statement on Form I-129 that it operates a pharmaceutical company.

In a letter dated November 24, 2008, counsel for the petitioner clarified that the petitioner originally intended to open a pharmaceutical business in the United States, but determined that the venture "would not be advantageous." Counsel stated that the petitioner decided to open a gas station/convenience store and commenced business operations in April 2008.

The petitioner submitted an organizational chart depicting the beneficiary as "manager," with three subordinates, including a head cashier, a clerk and a cook. The petitioner provided the following description for the beneficiary's position as "marketing manager":

Duties:

Current (and anticipated for the next 12 months)

(25% of time)

Investigate investment opportunities

- Communicate findings to [the foreign entity]

(60% of time)

Set up new business venture under aegis of "foreign" company

- Manage new business
- Hire and fire personnel
- Set and revise budgets
- Negotiate contracts
- Accounts Payable
- Maintain financial records for accountant and parent company

(15% of time)

- Prepare work schedules
- Search for and train qualified subordinates to supervise/manage new business venture on a day-to-day basis.

The petitioner also provided brief position descriptions for the beneficiary's subordinates as follows:

Head cashier

(99% of time)

Greet customers and ascertain their needs

Answer phones

Handle sales transactions

Monitor and maintain levels of products on display in store

Receive orders (when manager is not in office)

(1% of time)

General cleaning and stocking

Clerk

(98% of time)

Stock shelves

Monitor ice machine

Ensure all beverage machines are operable. . .

Maintain cleanliness of store floors

Maintain cleanliness of gas pump area

Empty trash receptacles

(2% of time)

Handle sales transactions

Cook

(100% of time)

Food Preparation

Food Service

Maintain cleanliness of kitchen area.

The director denied the petition on December 12, 2008, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition. In denying the petition, the director determined that the petitioner failed to establish that the beneficiary would manage an essential function of the organization or that he would supervise and control a subordinate staff of supervisory, managerial or professional staff who would relieve him from performing the non-managerial functions of the business.

On appeal, counsel for the petitioner asserts that the beneficiary has "total authority over the company and all of its activities and employees," "has discretionary supervision of the company's day-to-day activities," and "controls and supervises the work of other employees, including managerial employees." Counsel notes that, at the time the petitioner responded to the director's request for evidence, the beneficiary was focused on the business known as "B-Mart." Counsel asserts that the petitioner also operates "B-Market" and that the beneficiary is now responsible for managing additional employees and undertaking additional managerial duties.

Counsel claims that the petitioner's employees work at both stores as needed and asserts that the petitioner employs an assistant manager in addition to the employees previous mentioned. Counsel contends that the subordinate employees perform the tasks necessary to operate the stores and the beneficiary is "free to pursue other business matters and opportunities that greatly add to the organization."

In support of the appeal, the petitioner submits documentation related to the business known as "B-Market," including: (1) a license issued to the beneficiary by the City of Corinth on June 26, 2008, to operate B-

Market, located at 105 S. Harper Road in Corinth, Mississippi; (2) a lease agreement between the petitioner and Shriganesh, LLC for a "B-Mart" store located at 1058 Proper Street in Corinth, Mississippi, with a five-year term commencing on June 10, 2008; (3) copies of invoices and bills issued to B-Market, dated between August and December 2008; and (4) copies of pay stubs for the petitioner's employees for the months of October, November and December 2008. The individual who is claimed to be employed as "assistant manager" appears to have been hired at the end of November 2008, as the evidence shows that she received her first weekly paycheck on December 5, 2008.

Upon review, and for the reasons stated herein, the AAO concurs with the director's determination that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

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.* Beyond the required description of the beneficiary's job duties, USCIS reviews the totality of the record, including the number and types of subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business.

In this matter, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary devotes 25 percent of his time to "investigate business opportunities," but it has offered no further information regarding the specific tasks involved within this broad responsibility, such that they could be classified as managerial or executive in nature. The petitioner further states that the beneficiary spends a substantial portion of his time to "manage new business." 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 provide any detail or explanation of the beneficiary's proposed activities in the course of her 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 beneficiary's "control," management or direction over a company cannot be assumed or considered "inherent" to his position merely on the basis of the beneficiary's job title, placement on a general organizational chart or broadly-cast business responsibilities.

Furthermore, the AAO notes that the beneficiary's responsibility to "negotiate contracts" is not defined, and the beneficiary's responsibilities for accounts payable and maintaining financial records appear to be bookkeeping tasks, rather than qualifying managerial tasks. The definitions of executive and managerial capacity each 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 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). While it appears that the beneficiary exercises the requisite authority over the U.S. company as its chief

executive officer and shareholder, the vague position description provided falls significantly short of establishing that the beneficiary's primary duties are managerial or executive in nature.

Furthermore, contrary to counsel's assertion on appeal that the beneficiary supervises a subordinate staff comprised of managers, professionals and supervisors, a review of the totality of the record does not support this claim. The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(D) requires the petitioner to submit 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. The petitioner has established that it employed three individuals in addition to the beneficiary at the time the petition was filed: a "head" cashier, a clerk and a cook. While counsel claims on appeal that the beneficiary supervises subordinate managers, the AAO notes that the sole claimed "assistant manager" was hired subsequent to the filing of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Based on the position descriptions submitted for the beneficiary's three subordinates and their placement on the petitioner's organizational chart, it is evident that none of them are serving in supervisory, managerial or professional positions.¹ The beneficiary serves as a first-line manager to all three employees and does not qualify as a "personnel" manager based on his supervision of three non-professional staff.

¹ In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a detailed position description that explains duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function.

Other than ambiguously referring to the beneficiary's authority to "investigate business opportunities" and "manage new business," the petitioner has not claimed that the beneficiary manages an essential function of the company. Furthermore, as discussed, *infra*, the petitioner has not provided a detailed description of the beneficiary's actual job duties, nor has it provided a credible claim regarding the amount of time the beneficiary devotes to managerial versus non-managerial duties. The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). The petitioner has neither articulated nor substantiated a claim that the beneficiary qualifies as a function manager.

Finally, the AAO observes that the petitioner's staffing levels, considered in light of the nature of the business, further undermine the petitioner's claim that the beneficiary is employed in a primarily managerial or executive capacity. A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)).

It is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.* Furthermore, in the present matter, the regulations provide strict

defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the duties of a convenience store clerk, cashier or cook, who are the beneficiary's only subordinates.

evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the **organizational structure and staffing levels of the petitioner**. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

Prior to the director's decision, the petitioner indicated that it is operating a gas station and convenience store known as "B-Mart." On appeal, counsel asserts that the petitioner now operates a second store known as B-Market. As noted above, the AAO would normally not consider the beneficiary's duties associated with a store that opened subsequent to the filing of the petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. However, the evidence submitted on appeal demonstrates that "B-Market" was already doing business at the time the petition was filed. For example, the invoices show weekly and monthly invoices for purchase of gasoline, cigarettes and groceries beginning in August 2008. Neither counsel nor the petitioner has explained why the petitioner claimed to operate a single store, "B-Mart," at the time the petition was filed. 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).

It is not evident how one cashier, one clerk and one cook are able to relieve the beneficiary from participating in the day-to-day non-managerial duties inherent to operating two convenience stores. Given the nature of the businesses, it is likely that both stores are open for ten hours daily, including weekends. Although the petitioner claims that the employees work at both stores and split their time between the stores as needed, the petitioner has not explained, for example, how one cashier can work in two stores seven days per week during all of both stores' operating hours. Since the employees cannot be in two places at one time, it is reasonable to question whether the beneficiary is required to perform duties normally performed by his subordinates in order to ensure that both stores are able to remain open for business. The petitioner has also not indicated that any of the subordinate employees are responsible for purchasing inventory for the stores. Collectively, this brings into question how much of the beneficiary's time can actually be devoted to managerial or executive duties. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

In addition, the petitioner has submitted on appeal a lease for a second "B-Mart" store located in Corinth, Mississippi. The lease agreement was signed in June 2008, and the petitioner has offered no explanation or other documentation related to this third store. 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)). If the petitioner is operating this store in addition to the other two stores, then the beneficiary's

subordinate staff of three would be even less equipped to relieve him from performing the non-managerial duties associated with the business.

The petitioner indicates on appeal that the petitioner has hired an additional employee and intends to open additional retail locations in the future. However, 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).

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the record does not contain sufficient evidence that the petitioner has been engaged in the regular, systematic, and continuous provision of goods and/or services in the United States for the entire year prior to filing the petition to extend the beneficiary's status. The petitioner claims that it has been doing business since April 2008. The petitioner signed a lease for its "B-Mart" store which had a commencement date of May 1, 2008. However, the beneficiary's previous petition was approved in October 2007 of that year. Thus, pursuant to the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B), the petitioner is expected to submit evidence that it has been doing business since the date of the approval of the initial petition. In this case, the beneficiary had to obtain a visa abroad and he was admitted to the United States in November 2007. There is no evidence that the petitioner was doing business between November 2007 and April or May of 2008. 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). 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 AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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.