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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

D7

[REDACTED]

DATE: **FEB 07 2012** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner filed this petition seeking to employ the beneficiary as a 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, an Illinois corporation, provides training and business consulting services for aspiring entrepreneurs in Central and Eastern Europe. It claims to be an affiliate of the beneficiary's foreign employer located in Bulgaria. The petitioner seeks to employ the beneficiary in the position of Vice President, International Small & Medium Enterprises (SME) Development, for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel contends that the petitioner established by a preponderance of the evidence that the beneficiary will be performing primarily managerial or executive duties. Counsel asserts that the director placed undue emphasis on the size of the U.S. entity and failed to consider the petitioner's reasonable needs as a small, non-profit organization.

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.

II. Proposed Employment in a Managerial or Executive Capacity

The sole issue addressed by the director is whether the petitioner established that the U.S. company will employ the beneficiary 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 Form I-129, Petition for a Nonimmigrant Worker on December 21, 2009. The petitioner indicated on the petition that it had three employees as of the date of filing.

In a letter dated December 10, 2009, the petitioner stated that it has offered the beneficiary the position of Vice President of International SME Development in the United States. The petitioner explained that its SME program "works with larger Christian Entrepreneurs businesses, employing from 5 to 250 individuals," who generally make investments in the \$10,000 to \$500,000 range.

With respect to the beneficiary's duties, the petitioner stated that he will be responsible for leading, managing and growing the SME program for the Central and Eastern Europe and Balkan region, by working directly with business owners, partner agencies, and U.S. mentors, trainers, investors, potential investors and donors. The petitioner indicated that the beneficiary will also develop business plans for new projects for presentation to the organization's U.S.-based business committee.

The petitioner described the beneficiary's duties as the following:

- A. 20% - Leadership – Provide leadership, strategic planning and reporting. Build relationships with partner agencies and monitor implementation of Memorandums of Understanding.
- B. 40% - Recruit, cultivate relationships and coordinate efforts of US investors, mentors and trainers.
- C. 40% - Coordinate and through own efforts and US volunteers provide SME clients and partner agencies' SME staff overseas training, mentoring, business development and evaluation. (Implemented via email, Skype calls and on-site visits.)

The petitioner also provided a list of tasks associated with these responsibilities, and added the percentage of time spent on each task in response to the director's request for evidence issued on December 30, 2009.

Specifically, in the request for evidence, the director instructed the petitioner to submit, *inter alia*, the following: (1) a more detailed description of the beneficiary's duties including the percentage of time he will allocate to specific duties; (2) a detailed organizational chart for the U.S. entity that clearly identifies the beneficiary's position, the names and the names and job titles of his subordinates; (3) detailed descriptions of job duties, educational level, salaries/wages and source of remuneration for all U.S. employees who will be under the beneficiary's supervision; and (4) a copy of the U.S. company's state quarterly wage report for the third quarter of 2009.

The petitioner's response included a revised breakdown of the beneficiary's proposed duties, as follows:

- 70% Service focused on [the U.S. organization's] needs:
- 15% - Lead the strategic planning process for the SME program, as well as the successful implementation of the plan.
 - 10% - Seek and evaluate business opportunities in the region.

- 10% - Provide consulting to the business plan development, vetting and approval process.
 - 5% - Regularly report on the status of potential business opportunities, current businesses investing in and/or providing consulting/mentoring to. Reporting should also include periodic updates on economic and business trends both locally and regionally.
 - 5% - Monitor the responsibilities described in the related Memorandums of Understanding to ensure healthy, effective and successful partnerships.
 - 20% - Coordinate fundraising activities and recruiting investors for the SME program as agreed upon with the President.
 - 5% - Coordinate trips overseas by mentors, trainers, investors and potential investors.
- 30% - Service focused on overseas partner agencies' needs:
- 5% - Serve partner agencies by helping them implement the key areas of the applicable Memorandum of Understanding with respect to their SME program.
 - 5% - Participate in seeking and developing new contacts in the private sector.
 - 5% - Provide mentoring and training to partner agency SME staff members.
 - 5% - Provide technical assistance in business consulting, marketing, planning, etc. to SME clients both during the business plan development process and ongoing for approved clients.
 - 5% - Participate in the evaluation of business opportunities, business plan development, vetting the plan and approving investment.
 - 5% - Facilitate clear communication between [the petitioner] and partners in the region.

The petitioner indicated that the position is responsible for the leadership, management and growth of the organizations' SME program, as well as working directly with business owners/operators and partner agencies, American mentors, trainers, investors, potential investors and donors.

In response to the director's inquiries regarding the staffing of the U.S. company, the petitioner stated that it has 14 staff members including five employees, two contracted service providers, three volunteer professional trainers and two college interns. The petitioner indicated that the beneficiary will supervise four staff, including a part-time SME Trainer/Consultant, [REDACTED], who is responsible for: developing curriculum and training materials for SME training workshops and consulting sessions; providing business training to SME clients through group events; providing one-on-one consulting to SME clients; and geographically focused training and consulting on Bulgarian SME clients via phone, Skype and email.

The petitioner indicated that two additional SME Trainer/Consultants, [REDACTED] and [REDACTED], perform similar duties on a volunteer basis. Finally, the petitioner indicated that one of its unpaid interns serves as SME Program Assistant responsible for providing administrative support services with respect to coordination of trips abroad by U.S. investors and donors, and producing written materials to be used with investors and major donors.

The director denied the petition on February 3, 2010, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. In

denying the petition, the director observed that several of the beneficiary's duties are indicative of an employee who is performing tasks necessary to provide a service, rather than tasks that can be classified as managerial or executive in nature, while other responsibilities were poorly defined and also not clearly classifiable as qualifying duties. In addition, the director noted that the petitioner had documented its employment of only one part-time employee who would report to the beneficiary. The director found that the petitioner failed to establish its need for an L-1A manager or executive to oversee the work of one part-time trainer, and determined that the beneficiary would not be primarily supervising and controlling a subordinate staff of supervisory, professional or managerial employees, or otherwise performing primarily managerial or executive duties in relation to the organization's SME programs.

On appeal, counsel for the petitioner asserts that the petitioner established by a preponderance of the evidence that the beneficiary's duties would be primarily executive or managerial in nature. Counsel contends that the director's decision "violated the statutory definitions and guidelines regarding executives and managers," unfairly favors large businesses, and "fails to take into account the very nature of small, nonprofit organizations and the many hats all of its employees – including its executives and managers – must wear in accomplishing their mission."

Counsel acknowledges that "both Petitioner and Beneficiary recognize that despite the senior executive level and importance of this position, Beneficiary is also expected to perform a variety of duties associated with managing the SME Program." In this regard, counsel states:

Like Petitioner's President, Beneficiary will not only implement, expand and oversee the program, but will also perform many of the day to day duties associated thereto. And although Petitioner does have a small paid and volunteer staff to perform many of the day to day duties required for any organization, it is an inevitable fact of life for all small businesses that even the highest level executive must from time to time perform even the most mundane of tasks to ensure that organization's success.

Counsel emphasizes that the statutory definitions of both managerial and executive capacity recognize that some managers or executives may manage or direct a particular function or component of an organization rather than supervising subordinate personnel. Counsel further asserts:

The detailed position descriptions and supplementary evidence in both submissions clearly describe and detail the nature of the function (the SME Program) and how the duties of the proffered position are primarily aimed at managing the same.

As clearly detailed in the job description and supporting documentation, Petitioner seeks to hire the Beneficiary to manage, direct and oversee its SME Program worldwide. Due to his success in developing the same program in Bulgaria, Beneficiary knows this particular function (or component) of the organization better than anyone Due to the small size of Petitioner, however, Beneficiary will be required to perform many different responsibilities to carry out his ultimate mission of replicating the SME program he established to all other

countries in which Petitioner has affiliates. Rather than negate his role as a manager or executive, however, it only serves to further emphasize the important role the beneficiary will have with petitioner.

Counsel disagrees with the director's assessment that the beneficiary's job duties are described in vague terms, asserting that "the duties described are exactly those of a high level manager or executive responsible for implementing the broad business goals of the organization." Counsel further asserts that the proffered position is also executive in nature, as the beneficiary is being transferred from the senior position with the organization's Bulgarian affiliate. Counsel notes that the petitioner was unable to identify specific goals and policies established by the beneficiary because he has not yet filled the position, but that it will be his responsibility to employ additional staff and develop such policies as the SME program grows. Further, counsel states that the beneficiary will "essentially serve as the face of the organization both in the U.S. with potential donors and investors and overseas with its partner affiliates."

Finally, counsel contends that the evidence establishes that a majority of the beneficiary's duties are related to operational or policy management, and that the petition should not be denied simply because the petitioner does not employ a large staff to perform all of the day-to-day tasks associated with the program the beneficiary will manage. Counsel contends that the beneficiary's duties must be viewed in the context of the nature of the petitioner's organization and structure.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

While the petitioner has consistently indicated that the beneficiary's position will be in a managerial or capacity, counsel also readily concedes that the beneficiary "will also perform many of the day to day duties associated" with the petitioner's SME programs, given the petitioner's use of one part-time staff member and volunteers to implement those programs. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not support a favorable decision for a beneficiary who spends the majority of his or her time on non-qualifying duties.

The petitioner's initial breakdown of the beneficiary's responsibilities indicated that the beneficiary will spend 20 percent of his time to leadership and monitoring duties that could be considered qualifying tasks, but that the remaining 80 percent of his time would be allocated to: seeking and evaluating business opportunities; providing consulting to the business plan development, vetting and approval process; coordinating fundraising activities for the SME program; coordinating overseas trips by mentors, trainers and investors;

seeking and developing new contacts in the private sector; providing technical assistance in business consulting, marketing, planning to SME clients, and participation in the evaluation of business opportunities and business plan development. Based on the initial description, it is reasonable to conclude that the majority of the beneficiary's time is performing duties that are directly related to the business consulting services provided by the petitioner's organization and other operational and administrative tasks. Several of the beneficiary's proposed duties overlap with those attributed to the part-time and volunteer SME Trainer/Consultants.

The petitioner provided a more detailed position description in response to the RFE, but it included the same predominantly non-managerial duties. The petitioner changed the percentages associated with the beneficiary's three main areas of responsibility. For example, whereas the petitioner initially indicated that the beneficiary would allocate 20% of his time to duties classified as "leadership," the response to the RFE indicated that these same duties would require 35 percent of his time. Nevertheless, the petitioner has not submitted a description of the beneficiary's duties in which more than 50 percent of his time would be allocated to qualifying duties. For example, in the more detailed breakdown of the beneficiary's duties, the petitioner indicated that a total of 55% of his time would be allocated to coordinating fundraising activities, coordinating trips overseas by trainers and investors, providing consulting in the business plan development process, providing technical assistance in business consulting, marketing, planning to SME clients, and evaluating business opportunities.

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

Here, the AAO does not doubt that the beneficiary will exercise discretion over and provide leadership for SME development programs, nor does the AAO question that the beneficiary's importance to the organization or the critical skills and experience he would bring to the position. The record does not establish that management of SME programs will require the majority of the beneficiary's time, such that it could be concluded that he is primarily engaged in managerial or executive duties. As discussed above, the fact that the petitioner is a non-profit organization that lacks a permanent full-time staff does not exempt the petitioner from establishing that the beneficiary devotes more than 50 percent of his time to qualifying duties. Further, while performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is a function manager or executive turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial.

The fact that the beneficiary is being transferred from a senior position with the petitioner's claimed Bulgarian affiliate is insufficient to establish that he will be employed in a managerial or executive position in the United States. An individual will not be deemed an executive under the statute simply because they have an

executive title or because they "direct" the enterprise or component of the enterprise. Again, the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Counsel indicates that it will be the beneficiary's responsibility to employ additional staff and develop policies as the SME program grows. 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'r 1978).

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

III. Qualifying Relationship

Beyond the decision of the director, a remaining issue in this matter is whether the petitioner established that the U.S. and foreign entities have a qualifying relationship. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) 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;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) *Affiliate* means
- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
 - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner indicated on the Form I-129 that the petitioner and the beneficiary's foreign employer, [REDACTED], are affiliates. Where asked to specify the company stock ownership and managerial control of each entity, the petitioner stated: "Affiliated via association charter."

The petitioner indicates that it was incorporated in 1995 as "International Service Centers, Inc." and officially adopted its current name on September 15, 2000. The petitioner indicates that it is a recognized bona fide nonprofit organization in the U.S. and is exempt from taxation under 26 USC § 501(c)(3) as it relates to charitable and educational organizations. The petitioner indicates that shortly thereafter, it "formed partner agencies in Romania, Russia, Bulgaria and Serbia." The petitioner further states:

Currently, [REDACTED] governs the relationship between [the petitioner] and its partner affiliates throughout the world. . . . Additionally [the petitioner] provides funding for its affiliates' financial expenses, including the Bulgarian affiliate where [the beneficiary] is currently employed. . . . Its overseas affiliates also rely on [the U.S. petitioner] for technical expertise in areas such as human resources, accounting systems and marketing.

In support of the petition, the petitioner submitted:

- Articles of [REDACTED], filed with the State of Illinois June 30, 1995;
- Articles of Amendment to the Articles of Incorporation filed with the State of Illinois on September 15, 2000, changing the company's name to its current form;
- The U.S. company's by-laws;

- Brochure for Association Integra BDS, "a non-profit organization in Bulgaria, part of the larger Integra network"; and
- The three-page Integra Association Charter, dated May 13, 2009.

The association charter describes the [REDACTED] as "an informal association of agencies as voting members and/or individuals as non-voting associate members that covenant together to work toward a common vision and mission." The charter goes on to state:

Purpose of this Charter

The parties to this agreement (hereafter referred to as the Members) form an informal association committed to and trusting each other for the purpose of fulfilling their commonly held vision, mission and strategy as stated below (including the appendices attached to this agreement). This Charter serves as the written description of this commitment, providing the framework of the Association.

* * *

2.1 Governance

The Association will be self-regulating and voluntary.

Decisions of the Association will be by a simple majority vote (unless otherwise noted in this Charter) of Members the annual general meetings. A quorum exists when at least two-thirds of the total voting membership is present.

Decisions of the Association are related to:

- Approving new members
- Common programs and policies

The charter indicates that members are responsible for: (1) paying their own expenses incurred by involvement in the association; (2) making available regular reports as agreed upon by the Members; (3) committing to transparent reporting of all activities and finances, including a responsibility to give due consideration to preferences expressed by donors; (4) coordinating with other Members with respect to marketing and resource development activities; and (5) committing to assist and ensure that all Members can fully resource their operations and investment funds and secure training needed for staff development. The charter provides that new members, either individuals or legally registered organizations, can be admitted to the association upon agreement of at least two-thirds of existing members. The charter provides that members may voluntarily leave the association with written notice, and that membership may be involuntarily terminated for any reason with the two-thirds vote of all members. Upon termination of membership, former members may no longer use "any names, marks, designs, logos, etc. commonly used by the Association or its Members."

The submitted "[REDACTED]" is insufficient to establish that the foreign and U.S. entities have a qualifying relationship.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

Here, there is no evidence of common ownership or control between the U.S. and foreign entities. Rather, it appears that the petitioner and the foreign entity belong to the same "informal association" of complementary agencies and non-profit organizations that use the Integra name and logos. Based on the evidence submitted, it appears that the Bulgarian entity is registered as a separate entity in that country. The petitioner has provided none of its organizational documents. In addition, the petitioner did not submit the appendices to the association charter, which are referenced in the document. 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'r 1998) (*citing Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Based on the limited evidence submitted, it appears that members of the [REDACTED] vote only on the approval of new members, and on common policies and programs. The type of relationship described is not a parent-subsiary, parent-branch or affiliate relationship as defined in the regulations. Therefore, the petitioner has not corroborated its claim that the U.S. and foreign entities have a qualifying relationship. 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis). When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if 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.

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. 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.