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**U.S. Citizenship
and Immigration
Services**

B4



FILE: [Redacted] **Office:** VERMONT SERVICE CENTER **Date:** SEP 11 2007
EAC 06 009 50940

IN RE: **Petitioner:** [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be dismissed.

The petitioner is a New York corporation seeking to employ the beneficiary as its manager of operations and planning. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director determined that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity.

On appeal, counsel disputes the director's findings and submits a brief in support of his arguments.

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The primary issue in this proceeding is whether the beneficiary would be employed in the United States in a managerial or executive capacity.

¹ The record shows that the director issued two identical decisions denying the petitioner's Form I-140. The first decision was issued on July 25, 2005 and the second decision was issued on October 18, 2005. The petitioner filed a timely appeal in response to each denial. It appears that the second denial was issued in error. Therefore, while both of the petitioner's appellate briefs will be considered, the AAO will issue one comprehensive decision addressing both appeals.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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), provides:

The term "executive capacity" means 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.

In support of the Form I-140, the petitioner submitted a letter dated August 26, 2005, which included the following description of the beneficiary's proposed employment in the United States:

[The beneficiary's] duties include setting financial strategy as it relates to marketing, assessing the feasibility of introducing new business, evaluating costs of establishing information systems for communicating information from India to the office in [the] U[.]S. He will have the authority to make independent decisions and exercise discretionary authority over daily operations and establish personnel procedures of expanding services to [the]

growing needs of the organization. He is responsible for the organization of reports to ensure [that] efficiency and productivity of employees corresponds with growth expectation.

In addition, his responsibilities include the financial control, asset and personnel management of the U.S. operations and to liaise with banks regarding our entire [sic] activities in the U.S.A. He has wide discretionary authority to take full responsibility of the planning and marketing transactions with the goal of building a network of clients and representing the organization as a whole, as well as managing the economic affairs of the U[.]S[.] operations including setting of [sic] joint ventures.

In the proposed position . . . , [the beneficiary] would identify, analyze and penetrate targeted markets; introducing sophisticated marketing ideas to selected segment and sub-segments of the marketplace for attaining the desired goals of the company. His emphasis in our U[.]S[.] office will be diversification and expansion of our business, rather than replicating our core business. He will be in charge of financial planning and analysis of the business decisions involved in our planned diversification and expansion.

[The beneficiary]'s responsibilities will also include to direct [sic] the organization including the physical lay out [sic] of our offices, contracting with suppliers, retailers, wholesalers' contractors, etc. [He] will devote virtually all of his time to the commencement and management of the U.S. business by obtaining appropriate additional physical premises, hiring of employees and to enter[ing] into contracts with customers in the U.S. He will establish corporate policies and report directly to our Mumbai office. [He] will thus establish the performance of the U[.]S[.] unit in accordance with established policies and objectives of the organization and contributions in attaining targeted objectives.

On March 8, 2006, the director issued a request for additional evidence (RFE). With regard to the beneficiary's proposed employment in the United States the petitioner was instructed to provide the following: 1) a detailed description of the beneficiary's proposed day-to-day duties with a breakdown of time assigned to each duty; 2) additional evidence of the petitioner's management and personnel structures identifying the beneficiary's subordinates and their job titles and job responsibilities; 3) the petitioner's 2005 payroll roster as well as the W-2 statements issued by the petitioner in 2005; and 4) the petitioner's quarterly wage statements for the third quarter of 2005. The petitioner was specifically instructed to document any use of outside contractors.

In response, the petitioner provided a letter from counsel dated June 1, 2006 in which counsel stated that the beneficiary would "develop marketing tools to penetrate the targeted market" and focused on the beneficiary's business knowledge, which he would need in order to make decisions to achieve the company goals. Counsel cited an unpublished decision previously issued by the AAO in support of his argument that staff size should not be the basis for denial. However, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all Citizenship and Immigration Services (CIS) employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel also cited *Mars Jewelers Inc. v. I.N.S.*, 702 F. Supp. 1570 (N.D. GA 1988). However, the holding in the cited case relied on the obsolete 1983 regulations, which are irrelevant to determining whether the present Form I-140, which was filed in 2005, warrants approval.

The petitioner's response also included a letter from the petitioner dated May 14, 2006. A portion of the letter repeated information provided in the support letter dated August 26, 2005. That portion of the letter will not be restated. The petitioner added that it has six employees and indicated that it also uses outside contractors. The six employees' position titles were listed as associate manager, sales person, "administrative in-charge," head of food operations, inventory assistant, and administrative assistant. Although the petitioner provided brief job descriptions for each of the six staff positions, employee names were not provided within the same document. As such, it is unclear which employee within the provided payroll for 2005 occupied which position. In light of the clear indication that most of the petitioner's staff members were not employed on a full-time basis, it is relevant and necessary for the petitioner to disclose which of the six positions were filled by part-time and which were filled by full-time employees. Additionally, despite the petitioner's indication that outside contractors were used, the petitioner did not specify any of the services purportedly provided by contractors.

With regard to the beneficiary's job assignments, the petitioner stated that the beneficiary supervises staff, evaluates their performances, deals with clients, has the discretionary authority to embark on new business ventures, and engages in contract negotiations with senior executives and top management of corporations. The following additional list of responsibilities was also provided:

- Locate and identify new business opportunities for investment and managing [the] business.
- Create a sales strategy for the organization after doing the market analysis.
- Benchmarking targets for employees on the basis of their past performance.
- Establishing criteria for rewarding employees by way of special incentives and those who have build [sic] excellent customer relationship[s].
- Establishing policies of management guidelines for customer loyalty program[s] and incentives.
- Monitoring debtors and working capital management.
- Overall supervision of the [a]dministration that includes signing checks, evaluation of HR requirement[s], recruitment and strategic decision of reviewing the employee evaluations for promotions and salary raises, etc.
- Managing and monitoring the execution of orders and dealings including coordinating through [sic] with staff and suppliers to co-relate requirements and business concerns. Locating markets for new products to be added to the product line.

The petitioner also provided copies of its payroll records for 2005. During September of 2005, when the Form I-140 was filed, the payroll records show that the petitioner had a total of five employees, including the beneficiary. It is further noted, that out of those five employees, two were paid wages that were not commensurate with those of full-time employees. As the petitioner did not combine position titles with employee names, it is unclear which positions were filled by part-time employees.

On July 25, 2006, the director denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. The director noted the petitioner's oversight in failing to indicate the names of the employees when describing the responsibilities of the respective position titles. The director also properly observed that the petitioner failed to provide the requested list of job duties accompanied by an hourly breakdown of time allotted to each duty. It is noted however, that the director's statement suggests that similar hourly breakdowns were requested for all of the petitioner's employees. Upon reviewing the RFE, it appears that an hourly breakdown was only requested for the beneficiary's job duties, not for the job duties of his subordinates. As such, the director's erroneous comment is hereby withdrawn.

The AAO further notes that the director's sole reliance on the issued W-2 statements to determine the number of full-time employees was also erroneous, as such an assessment fails to take into account the possibility that certain employees may not have worked for the petitioner for the entire 2005 tax year. A determination of an employee's full- or part-time status is more accurate if also based on payroll documents, such as those provided in response to the RFE. While the relevant payroll period supports the conclusion that the petitioner's entire staff was not comprised of full-time employees, it does not support the director's observation that the beneficiary was the petitioner's only full-time employee. Furthermore, the director stated that the petitioner had seven employees. While this may be true when reviewing the entire 2005 tax year, the petitioner's payroll documents specifically for September of 2005 suggest that the petitioner had only five employees during the relevant time period. As such, the director's inaccurate observation is hereby withdrawn.

Lastly, the director noted that the petitioner's staff members appear to be performing the mundane duties of the petitioner rather than duties that are managerial or executive. While the petitioner's observation may be correct, it is irrelevant to the question of the petitioner's eligibility, as there is no statutory or regulatory provision that requires anyone other than the beneficiary to be employed in a managerial or executive capacity. In fact, staff members within the petitioning entity are expected to perform the daily mundane tasks so that the beneficiary would be relieved from having to do so. While CIS may explore the question of whether the beneficiary's subordinates are supervisory, professional, or managerial employees, the director did not perform such an analysis. Therefore, this irrelevant comment by the director is also hereby withdrawn.

Notwithstanding the errors in the director's analysis, a review of the evidence of record supports the director's overall conclusion regarding the petitioner's eligibility, specifically with regard to the beneficiary's proposed employment.

In counsel's statements on appeal, counsel asserts that the director failed to give proper consideration to the evidence submitted. More specifically, counsel asserts that the petitioner's initial submissions that accompanied the Form I-140 were sufficient to warrant approval. He argues that the RFE was unnecessary and failed to sufficiently convey any deficiencies in the prior submissions. Counsel's argument however, is without merit, as it is primarily based on his own opinion of what he considers to be sufficient documentation for the purpose of establishing eligibility for the immigration benefit sought in the present matter. Contrary to counsel's assertions, the petitioner's initial statements regarding the beneficiary's proposed employment were devoid of specific tasks that would comprise the beneficiary's daily work schedule. Accordingly, the RFE was warranted and properly instructed the petitioner to provide a detailed account of the beneficiary's specific

tasks accompanied by an hourly breakdown of time assigned to each specific task. The petitioner chose to disregard the RFE's request for the specific information and instead provided more of the same generalities and vague job responsibilities that were initially provided. However, 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. *See* 8 C.F.R. § 204.5(j)(5). Precedent case law confirms that the actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The petitioner's description, despite counsel's opinion, fails to convey the requested information and to meet the required burden of proof in this matter.

Throughout the adjudication of the instant Form I-140, the petitioner has generally discussed the beneficiary's discretionary authority in controlling the company's finances and personnel as well as seeking out new business ventures. However, none of the stated responsibilities convey a clear understanding of the tasks the beneficiary would perform on a daily basis and the amount of time that would be attributed to each task. Moreover, the petitioner's discussions do not include an adequate explanation of the nature of its business activity. As properly noted in the denial, the photographs submitted in response to the RFE suggest that the petitioner is operating as a grocery store or similar type of retailer. While the petitioner claims to be an importing and distribution business and maintains as much in counsel's second appellate brief, the petitioner has not identified any activities that are specific to importing and distribution. In fact, while counsel describes the course of events that take place throughout the course of the import and distribution process, no where does he clarify what specific role the petitioner assumes in the overall process. Only the foreign entity's role is adequately discussed. Despite numerous references to the beneficiary's vital role in the process, counsel does not specify how exactly the petitioner facilitates the process or what specific duties the beneficiary carries out. Rather, counsel asserts that the beneficiary is responsible for contracting with suppliers, retailers, and wholesalers, which suggests that the petitioner is the middleman and that the beneficiary actually carries out the essential tasks of that middleman. However, 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Moreover, the petitioner attributes another set of broad job responsibilities to the beneficiary suggesting that he also plays a vital role in diversifying and expanding the petitioner's business into other industries. While the petitioner has provided documentation to show that various retail operations have been purchased, the beneficiary's job description suggests that the beneficiary performs the non-qualifying tasks of seeking out these businesses and negotiating the purchase contracts. In light of the petitioner's failure to specify how much of the beneficiary's time is allotted to these non-qualifying tasks, the AAO is unable to conclude that the primary portion of his time is spent performing duties of a qualifying nature.

Counsel contends that the director ignored the standard of proof that applies in the present proceeding, suggesting that the director placed a greater burden on the petitioner than the applicable "preponderance of the evidence" standard. Again, counsel's assertion lacks merit. In examining the executive or managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). In issuing the RFE, Citizenship and Immigration Services (CIS) properly determined that the petitioner did not provide the necessary detailed job description. The ambiguous statements provided in support of the petition do not meet the regulatory provision, which requires a statement that "clearly

describe[s] the duties to be performed by the [beneficiary]." *See id.* Thus, the purpose of the RFE was not to establish the credibility of the claim beyond the preponderance of the evidence, but rather to elicit information that is relevant and necessary to the overall question of the beneficiary's employment capacity within the U.S. organization.

Counsel's suggestion that any doubts as to the beneficiary's proposed job duties were somehow put to rest during the course of CIS's adjudication of a nonimmigrant petition also lacks merit. In fact, a statement at the bottom of the last page of the RFE, which counsel specifically acknowledges, gives notice to the petitioner that approval of a Form I-140 for multinational manager or executive status is not automatic for petitioners with previously approved L-1 nonimmigrant petitions. The RFE stated, "Determinations of eligibility are based on the totality of the evidence available to this service at this time." CIS denies many I-140 immigrant petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Despite counsel's argument that the relevant information regarding prior adjudications is currently available, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. Thus, CIS is not required to assume the burden of searching through previously provided evidence submitted in support of other petitions to determine the approvability of the petition at hand in the present matter.

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Next, counsel raises an additional claim, asserting that the beneficiary can be a function manager, whose primary focus is managing a function rather than managing personnel. However, counsel's claim is contradicted by information previously submitted regarding the beneficiary's job responsibilities, among which is his role as personnel manager. More specifically, the petitioner's response to the RFE dated May 14, 2006 explicitly states that the beneficiary's responsibilities include supervising employees and evaluating their respective performances, which clearly suggests that the beneficiary would be directly involved in personnel management. Furthermore, regardless of whether the beneficiary is charged with the management of personnel or the management of a function, the petitioner must first provide a detailed description of the beneficiary's proposed duties, which explain how the beneficiary will carry out his managerial role. Thus, when claiming that the beneficiary would manage a function rather than personnel, the beneficiary's job description must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 204.5(j)(5). In the present matter, the petitioner has failed to provide the necessary information to establish that the beneficiary would manage a function. In fact, counsel's claim that the beneficiary would be a function manager appears to be a direct response to the director's comments regarding the size of the petitioner's support staff rather than a valid statement conveying the beneficiary's role within the petitioning organization.

Additionally, while counsel is correct in pointing out that CIS must take into account the petitioner's reasonable needs when considering staffing size, those needs do not serve to override the petitioner's legal burden of having to establish that the beneficiary would primarily perform duties of a qualifying managerial or executive nature. The director's discussion of the petitioner's staffing is appropriate and suggests that the director had valid concerns regarding the petitioner's ability to relieve the beneficiary from having to primarily perform non-qualifying tasks. Although CIS attempted to elicit the necessary information regarding the petitioner's staff and the duties performed by each employee by issuing an RFE, the petitioner failed to provide a comprehensive response naming the beneficiary's subordinates, listing their respective job duties, and adequately documenting their employment during the relevant time period. Instead, the petitioner provided position titles accompanied by brief discussions of general job responsibilities and separate payroll documentation, which identified five, rather than the claimed six, employees. The petitioner did not clarify which name on the payroll document corresponds with each position title listed. Additionally, while the petitioner suggested that it also uses the services of contract employees, it has provided no documentation to corroborate this claim. 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)). On appeal, the petitioner has supplemented the record with an organizational chart depicting the beneficiary's position at the top of the organizational hierarchy. However, the petitioner has failed to provide documentation to establish its employment of all of the individuals named in the organizational chart. Moreover, the organizational chart, which depicts the beneficiary as a personnel manager, further contradicts counsel's attempt to establish the beneficiary's role as a function manager.

Despite counsel's numerous claims, there is no evidence on record to suggest that the director somehow abused his discretion or applied a more stringent burden of proof than is required in the present proceeding. Rather, the record strongly suggests that the prior approvals of the petitioner's nonimmigrant petitions were made in error. The petitioner has provided a confusing overview of its business activity, failing to identify the role it plays in the importing and distribution aspect of the business or its basis for compensation. In fact, the evidence provided suggests that the petitioner's business purpose in the United States is to purchase existing businesses, which the beneficiary himself seeks out and negotiates, thereby suggesting that the beneficiary himself performs the essential functions.

Based on the evidence furnished, the AAO cannot conclude that the beneficiary would primarily perform duties in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

Furthermore, the record does not support a finding of eligibility based on additional grounds that were not previously addressed in the director's decision.

First, 8 C.F.R. § 204.5(j)(3)(i)(B) states that the petitioner must establish that the beneficiary was employed abroad in a qualifying managerial or executive position for at least one out of the three years prior to entering the United States as a nonimmigrant. In the instant matter, in the petitioner's initial support letter dated August 26, 2005, the petitioner stated that the beneficiary "developed and coordinated a winning production, sales and marketing strategy" during his employment abroad. The petitioner also stated that the beneficiary supervised the heads of sales, marketing, product development and administration departments and traveled to promote the foreign entity. The director properly assessed the information provided when issuing the RFE and specifically instructed the petitioner to provide a detailed analysis of the beneficiary's daily activities during his employment abroad as well as an hourly breakdown of the duties he performed. However, the

petitioner merely repeated the information previously provided and failed to comply with the specific instructions in the RFE. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In the present matter, the petitioner failed to provide the evidence necessary to determine that the beneficiary's job assignment abroad primarily involved the performance of qualifying managerial or executive tasks.

Second, 8 C.F.R. § 204.5(j)(3)(i)(C) states that the petitioner must establish that it has a qualifying relationship with the beneficiary's foreign employer. In the present matter the petitioner claims to be a wholly owned subsidiary of the beneficiary's foreign employer. The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) 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;

* * *

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

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.

In the present matter, the petitioner provided its articles of incorporation showing that it is authorized to issue 200 shares of stock. This documentation was accompanied by a stock certificate showing that 25 shares were issued to [REDACTED]. Based on this evidence, it cannot be found that the petitioner is a subsidiary of the beneficiary's foreign employer as initially claim in the letter dated August 26, 2005. Nevertheless, if the petitioner were able to establish that both it and the foreign entity are majority-owned by the same individual, the two entities would qualify under the definition of affiliate as defined above. However, as previously stated 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. While the petitioner claims that [REDACTED] the only recipient of the petitioner's stock, it failed to provide its stock ledger showing all of its stock transactions and the value of the stock purchased. Instead, the petitioner provided a certification signed by [REDACTED] claiming to be the owner of 25 shares of the petitioner's stock. However, such information does not exclude the possibility that additional stock was issued to another party. Additionally, Schedule L of the petitioner's 2003 tax return suggests that the petitioner received \$89,338 in exchange for issuance of stock during the second half of the tax year. The same amount appears in Schedule L of the petitioner's 2004 tax return for the first half of the tax year. However, the second half of the 2004 tax year and Schedule L for the entire 2005 tax year shows no amount received in exchange for issuance of stock. This information suggests that some change occurred in 2003 and again in 2004 with regard to the sale of the petitioner's stock. As the

petitioner has failed to provide a stock ledger, the AAO is unable to determine what events occurred and how these possible events may have affected the petitioner's stock distribution. Thus, even though the petitioner has provided sufficient evidence to establish that the beneficiary's foreign employer is owned by [REDACTED] it has failed to provide sufficient evidence showing [REDACTED] to be the majority owner of its own organization.

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). Therefore, based on the additional grounds of ineligibility as discussed above, this petition cannot be approved.

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, *aff'd*, 345 F.3d 683.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.