



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **DEC 13 2013** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner is a Tennessee corporation that seeks to employ the beneficiary as its operations manager. 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 denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. On appeal, counsel asserts that the director's decision contained legal and factual errors. Counsel contends that the evidence establishes that the beneficiary will be employed in a qualifying executive capacity or as a function manager.

I. The Law

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.

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.

Additionally, the regulations at 8 C.F.R. § 204.5(j)(3)(i) state that the petitioner must provide the following evidence in support of the petition in order to establish eligibility:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

II. Procedural History

The record shows that the petitioner filed the Form I-140 on April 2, 2013 and submitted a number of supporting documents in an effort to establish eligibility for the above stated immigration benefit. The petitioner stated on the Form I-140 that it is engaged in the business of investing in and operating retail and other businesses and claimed six employees at the time of filing. The petitioner provided business invoices as well as tax and corporate documents in support of the petition.

The petitioner also provided a supporting statement dated March 6, 2013, which contained a description of the beneficiary's proposed duties. The petitioner stated that the beneficiary will oversee its business operations by managing all essential functions, including the retail business's personnel, purchasing, and sales and marketing. The beneficiary would also seek for ways to expand the business, have discretion over hiring and firing employees, determine demand for goods, negotiate with distributors, oversee key service providers such as accountants and brokers, and review business data. The petitioner explained that the beneficiary "occasionally performs non-managerial duties" and may "man a store" when necessary in order to maintain continued operation of the business. The petitioner asked the director to consider its limited staff in light of its business needs and stage of development in a tough economic climate. The petitioner did not identify the beneficiary as a personnel or a function manager, but rather asked the director to consider the beneficiary in the role of function manager as an alternate consideration.

On May 7, 2013, the director issued a request for evidence (RFE), indicating that the record did not contain sufficient evidence of eligibility to warrant approval of the petition. The director instructed the petitioner to provide a supplementary job description for the beneficiary's proposed employment, listing the beneficiary's specific daily job duties and the percentage of time the beneficiary would allocate to each item on the list. Additionally, the director asked for the submission of the petitioner's organizational chart illustrating the hierarchical structure and the beneficiary's direct subordinates. The petitioner was asked to provide brief job descriptions of the beneficiary's subordinates as well as their respective educational credentials and full- or part-time employment status. Lastly, the director asked for the submission of IRS Form W-2 wage and tax statements for the relevant time period for each employee along with evidence of any paid contract labor. The petitioner's response to the RFE included a statement dated July 12, 2013, an organizational chart, wage and tax statements from 2009-2012, and evidence showing that the petitioner paid for the services of a certified public accountant. The petitioner's organizational chart depicts the beneficiary at the top of an organization that consists of two retail stores - one with a staff of one supervisor and two store clerks and the other with a staff of one store clerk and one supervisor/clerk.

The director reviewed the petitioner's submissions and determined that the record lacked sufficient evidence to establish that it would employ the beneficiary in the United States in a qualifying managerial or executive capacity. The director questioned whether the petitioner's organizational complexity is sufficient to warrant a position that is primarily within a qualifying capacity and found that the petitioner's description of the beneficiary's duties did not provide sufficient information regarding what the beneficiary would be doing on a day-to-day basis. Accordingly, the director issued a decision dated August 30, 2013 denying the petition.

On September 30, 2013, the petitioner filed an appeal with a supporting appellate brief in which counsel claims that the beneficiary will be employed as a "function manager." Counsel contends that the director failed to give proper consideration to the beneficiary's job description and points out that the director erroneously referred to position titles and educational credentials that do not apply to any of the petitioner's employees. Counsel asserts that the beneficiary's key focus in his proposed position is on business development, which includes researching to find business opportunities, overseeing finances, regulatory obligations, personnel, purchasing, and sales and marketing. Next, counsel states that whether or not the store employees are professional is irrelevant given that the beneficiary is a function manager and therefore does not focus primarily on the management of a support staff. Counsel claims that the petitioner has sufficient support personnel to relieve the beneficiary from having to perform non-qualifying tasks.

III. Analysis

Upon review, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity.

In general, when examining the executive or managerial capacity of a given position, USCIS reviews the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). As the director stressed in the RFE and later in his denial of the petition, a detailed job

description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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).

Additionally, the evidence of record must show that the petitioner is capable of relieving the beneficiary from having to primarily perform non-qualifying tasks. This determination often calls for an examination of the petitioner's staffing structure, as merely claiming that the petitioner is capable of employing the beneficiary in a qualifying capacity is not sufficient without actual evidence establishing who within the petitioner's organizational hierarchy is available to perform the daily operational and other non-managerial tasks. 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)). 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 at 42; *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, 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).

In the present matter, the record shows that at the time of filing the petitioner was comprised of two retail locations, which, according to the petitioner's organizational chart, employed a combined total of five employees, not including the beneficiary. The AAO notes that despite the director's instruction asking the petitioner to provide evidence of wages paid during "the relevant years for each employee," the petitioner failed to provide evidence of wages paid at the time the petition was filed, which is the most relevant period of time, given that the petitioner must establish eligibility commencing with the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). While the AAO acknowledges that Form W-2s were not available for 2013 at the time the petitioner was constructing a response to the RFE, the record could have been supplemented with other evidence of wages paid at the time of filing, including the petitioner's payroll documents and/or employer's quarterly wage reports, either of which could have provided relevant information about the specific employees the petitioner had when the petition was filed. In other words, USCIS does not expect the petitioner to provide documents that are clearly unavailable. However, the petitioner must nevertheless meet an evidentiary burden, which includes providing corroborating evidence to support the claims made in the petitioner's organizational chart and throughout its various supporting statements. The petitioner did provide payroll records for the month of January 2013; however, it indicated that two of its employees were hired after that date and failed to provide additional evidence of any wages paid to employees in 2013. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Notwithstanding the lack of evidence of the petitioner's support staff at the time of filing, the record does not establish that the five employees the petitioner claims it employed at the time of filing to man the two retail operations were sufficient to relieve the beneficiary from having to allocate his time primarily to the performance of non-qualifying tasks. In making this determination, the AAO notes that the petitioner's stated business purpose is not limited to the operation of the two retail stores that were part of its organization at the time of filing, but rather to seek other avenues to expand its business, such as investing in other business operations, including the dry cleaning store the petitioner sought part ownership of when the petition was filed. Thus, contrary to the petitioner's assertions, the non-qualifying operational tasks needed to meet the petitioner's business goals would include not only those tasks associated with operating two existing retail stores, but would also require the performance of the underlying tasks associated with achieving the petitioner's desired investment goals resulting in an expansion of the petitioner's current two-store operation.

A review of the beneficiary's job description for the proposed employment indicates that a number of the non-qualifying tasks, which are essential to meeting the petitioner's expansion goals, would be carried out by the beneficiary himself. As discussed above, the petitioner's descriptions of the proposed position indicate that the beneficiary would conduct the market research required to find the right investment opportunities and he would also carry out the underlying tasks of negotiating with creditors to optimize loan terms, look for potential new business locations, and negotiate favorable lease terms for the petitioner's existing and future businesses. Additionally, the beneficiary's proposed employment would include certain non-qualifying job duties that are associated with the operation of the petitioner's two current retail outfits. Namely, the petitioner indicated that the beneficiary would survey customers to determine their respective levels of satisfaction, negotiate terms with distributors, oversee certain non-professional employees, and even fill in for store employees as needed.

While the petitioner claims that the beneficiary's involvement in overseeing non-professional employees and working in the store locations is not a major part of the beneficiary's job, the petitioner did not allocate time constraints to individual tasks, but rather grouped tasks together when providing time allocations, which is contrary to the director's express instructions and does not provide a detailed account explaining how the beneficiary would spend his time. This information is critical as the petitioner indicates that its two stores are both open for 60 hours weekly and one store is staffed by only two employees, including one who works part-time. And while the petitioner consistently indicates that it has a sufficient staff to relieve the beneficiary from having to allocate his time primarily to the daily operational tasks associated with the operation of its two retail stores, the record does not establish that the beneficiary is similarly relieved of having to perform the non-qualifying tasks associated with expanding the petitioning enterprise through the purchase of and investment in other businesses. To the contrary, the petitioner has not established that it employed anyone to assist the beneficiary with meeting its business expansion goals at the time the petition was filed.

Furthermore, the record lacks evidence to corroborate the petitioner's claim that the beneficiary would assume the role of a function manager. 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). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e., 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. 8 C.F.R. § 204.5(j)(5). 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. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be 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).

In the matter at hand, the petitioner has not provided sufficient evidence to establish that the beneficiary's role with regard to an essential function - business expansion - would be limited to management. Rather, it is likely that the beneficiary would be required to perform many of the underlying duties of that function given the petitioner's lack of a support staff at the time of filing. Even if the petitioner had provided sufficient evidence of an adequate support staff at its two existing retail locations to establish its ability to relieve the beneficiary from having to spend his time primarily either managing non-professional employees or selling merchandise to customers, there are numerous non-qualifying tasks that are associated with the business expansion aspect of the business. The petitioner has not provided sufficient evidence to establish that it has the ability to relieve the beneficiary from having to carry out those underlying tasks.

Additionally, with regard to the petitioner's reliance on prior approvals of its nonimmigrant L-1 petitions, which were filed on behalf of the same beneficiary, it is noted that 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. USCIS 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. The prior nonimmigrant approvals do not preclude USCIS from denying an extension petition. See e.g. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that USCIS will approve an immigrant petition filed on behalf of the same beneficiary. USCIS 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). Moreover, 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 USCIS 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).

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on

behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). In fact, 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 and could potentially be revoked if it were determined that the petitioner was ineligible for the immigration benefit at the time of filing. *See* 8 C.F.R. § 214.2(l)(9). As discussed above, the petitioner has not provided sufficient evidence to establish that the beneficiary would primarily perform tasks within a qualifying managerial or executive capacity given the nature of the petitioner's business, the petitioner's personnel structure at the time of filing, or the description of the beneficiary's proposed position with the U.S. entity. Therefore, in light of these significant evidentiary deficiencies, the instant petition does not warrant approval and must be denied.

IV. Beyond the Director's Decision

Additionally, while not previously addressed in the director's decision, the evidence of record does not establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer.

The regulation at 8 C.F.R. § 204.5(j)(3)(i)(C) requires the petitioner to establish that it has a qualifying relationship with the beneficiary's employer abroad. 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. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

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;

* * *

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.

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 the United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Assoc. Comm. 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 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. Control may be "de jure" by reason of ownership of 51 percent of the outstanding stocks of an entity or it may be "de facto" by reason of control of the voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289.

The petitioner indicates that it is a subsidiary of [REDACTED] the beneficiary's former employer in India. The petitioner stated that the foreign entity owns 500 of its 1,000 authorized shares, while the beneficiary owns the remaining 500 shares. In support of this claim, the petitioner submitted a copy of its stock certificate no. 1 issuing 500 shares to the foreign employer and certificate no. 2 issuing 500 shares to the petitioner. Both stock certificates were issued in July 2009.

However, the petitioner also submitted a copy of its 2011 IRS Form 1120, U.S. Corporation Income Tax Return, in which it indicated at Schedule K that it has one shareholder and is not owned by a foreign person or legal entity. According to the accompanying IRS Form 1125-E, Compensation of Officers, the beneficiary owns 100% of the stock of the petitioner stock. This information undermines the petitioner's claim that it is a subsidiary of the foreign entity. Moreover, as the petitioner expressly stated that the beneficiary has no ownership interest in the foreign entity, the information provided on the tax return suggests that the two companies have no common ownership, and therefore, no qualifying relationship. 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).

Further even if the petitioner had not introduced this inconsistency into the record, the petitioner, the petitioner states that the foreign entity owns only a 50% interest in the U.S. company. Based on the petitioner's failure to establish that the foreign entity has either de jure or de facto control over the petitioner, the petitioner did not adequately support its claim that it is a qualifying subsidiary of the foreign entity. Additionally, the petitioner and the foreign entity do not share a sufficient degree of common ownership and thus do not meet the criteria discussed in the regulatory definition of the term "affiliate."

The definition of the term "subsidiary" expressly states that an entity meets the regulatory criteria under a specific set of circumstances. In the absence of majority ownership, which would give the claimed parent entity de jure control over the subsidiary, the petitioner must establish that the foreign entity, i.e., the claimed parent, has de facto control over the petitioner or that the petitioner is the result of a 50-50 joint venture

between the foreign entity and one other entity such that the two entities that are part of the joint venture have equal control and veto power over the subsidiary.¹ The facts in the matter at hand do not show that the petitioner meets any of these listed criteria. The record contains no evidence that the foreign entity has either de jure or de facto control over the petitioner. Additionally, while the petitioner indicates that the foreign entity and the beneficiary have a 50-50 ownership interest in the petitioner, simply establishing such shared ownership does not amount to a joint venture, as the record lacks any evidence to indicate the existence of a joint venture agreement between the co-owners. As indicated above, 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 AAO acknowledges the absence of a discussion regarding the qualifying relationship in the director's decision dated August 30, 2013, it is noted that 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). Therefore, based on the additional ground of ineligibility discussed above, this petition cannot be approved.

IV. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹ See 52 Fed. Reg. 5738-01, 5742 (February 26, 1987).