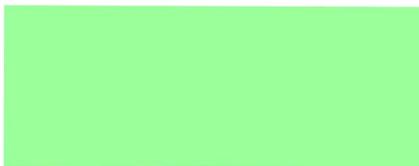


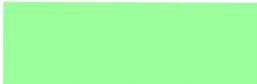


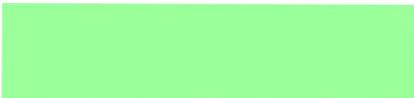
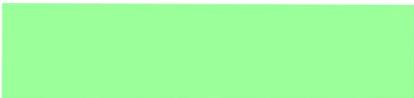
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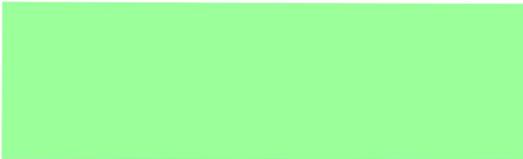


DATE: **DEC 11 2014** OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

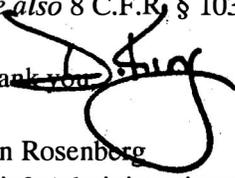
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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

cc: 

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. The appeal will be dismissed.

The petitioner is a North Carolina corporation. At Part 5, No. 2 of the Form I-140 the petitioner indicated that it is doing business as a gas station and convenience store. It seeks to employ the beneficiary in the United States as its "executive 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 the beneficiary would be employed in the United States or that she has been employed abroad in a qualifying managerial or executive capacity.

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.

II. Factual Background and Procedural History

The record shows that the petition was filed on June 7, 2012. The petition was accompanied by a supporting statement from counsel, dated June 4, 2012, as well as other documents, including articles of incorporation, business invoices, tax returns, and bank documents pertaining to the U.S. entity.

On August 22, 2012, the director issued a request for evidence (RFE), informing the petitioner that the record lacked sufficient evidence to establish that the beneficiary's former and proposed positions with the foreign and petitioning entities, respectively, fit the criteria for employment within a qualifying managerial or executive capacity. Accordingly, the petitioner was instructed to provide a definitive statement pertaining to the beneficiary's former and proposed positions listing the beneficiary's respective job duties with each entity and the percentage of time allocated to each of the beneficiary's assigned tasks. The petitioner was also asked to provide the names, job titles, brief job descriptions, and educational credentials of the beneficiary's foreign

and U.S. subordinates or, alternatively, to specify what essential function the beneficiary managed or would manage if she did not and would not oversee the work of a subordinate staff.

The petitioner's response included unsigned statements on the U.S. and foreign entities' letterhead briefly discussing the beneficiary's positions and those of her subordinates with each entity. The beneficiary's proposed employment was stated to focus primarily on project development and marketing of products. The statement indicated that the beneficiary supervises business research and marketing, develops marketing strategies, and manages the business by hiring and firing employees, directing the management of the organization, and developing and implementing policies on a daily basis, while receiving only general supervision for the petitioner's parent company. The statement further indicated that the beneficiary's seven subordinates include the following: an administrator, who is responsible for ledger entries, bookkeeping, accounts payable and receivable, and customer care; a sales/purchase executive who, is responsible for quality control of the purchases, managing the sales and purchase of raw materials, "vegetables and other stuff"; a cashier, who accepts payments and prepares daily reports, deposits, and bank reconciliations; two cooks, who prepare breakfast and lunch food; and two unnamed "helpers," who are tasked with cleaning and serving food.

The beneficiary's former position with the foreign entity was said to include managing sales, "handling [s]ales and [m]arketing" of two regions, hiring and firing junior staff, participating in conference calls with buyers and sellers, and overseeing product quality control and support staff. The petitioner's subordinate staff included an accountant, an assistant marketing manager, a marketing graduate who handled sales and purchasing and kept track of inventory and deliveries, an office clerk who handled administrative and data entry work, and a receptionist who answered phones and handled customer relations.

After reviewing the petitioner's submissions, the director determined that the petitioner failed to establish eligibility and therefore issued a decision, dated April 17, 2014, denying the petition. The director noted that the petitioner failed to provide the requested percentage breakdowns establishing the amount of time the beneficiary allocated and would allocate to her assigned tasks in her respective positions with the U.S. and foreign entities. The director also observed that the petitioner did not provide evidence to show that the beneficiary's subordinates in her proposed position with the U.S. entity are managerial, supervisory, or professional employees.

On appeal, the petitioner submits a brief, asserting that its statement "clearly and convincingly" establishes that the beneficiary manages the petitioning organization in her position as executive manager. Counsel asks this office to review supplemental documents, including a statement from the foreign entity regarding the beneficiary's former position therein, the beneficiary's foreign income and tax statement for the 1999/2000 tax year, and a separate statement from the petitioner briefly describing the beneficiary's responsibilities and listing the beneficiary's subordinates along with their names, position titles and job duties, and their respective prior work experience.

Upon review, and for the reasons stated below, we find that the petitioner has failed to establish that the beneficiary will be employed in the United States or that she was previously employed in her position with the foreign entity in a primarily managerial or an executive capacity.

III. Issues on Appeal

As indicated above, the two primary issues to be addressed in this proceeding are whether the petitioner provided sufficient evidence to establish that the beneficiary was employed abroad and would be employed by the petitioning entity in a qualifying managerial or executive capacity.

A. Qualifying Employment in the United States

First, we will address the beneficiary's proposed position with the petitioning entity. In general, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary's proposed job duties with the petitioning entity. See 8 C.F.R. § 204.5(j)(5). Published case law has determined that the duties themselves will reveal the true nature of the beneficiary's 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). We then consider the beneficiary's job description in the context of the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that may contribute to a comprehensive understanding of a beneficiary's actual duties and role within the petitioning entity.

Turning first to the beneficiary's job description, we note that the petitioner failed to comply with the director's express request for a list of the beneficiary's specific daily tasks and the percentage of time the beneficiary would allocate to each item. Instead, the petitioner provided a series of vague statements, which were summed up with a paraphrased version of the statutory definition of executive capacity. For instance, the petitioner broadly stated that the beneficiary's primary concern is project development and marketing of products. However, the petitioner did not clarify what types of projects the beneficiary allegedly develops or what products she markets; nor did the petitioner establish that product marketing falls within the scope of an executive capacity position. The petitioner also failed to explain what tasks are involved in maintaining and managing business relationships or why this job duty would be deemed as one performed within an executive or managerial capacity.

Furthermore, when considered within the context of the petitioner's business, which, according to the Form I-140, consists of a gas station/convenience store operation, the beneficiary's poorly defined job duties are even more questionable in terms of their qualifying nature. In other words, it is unclear what types of projects the beneficiary develops or precisely what products she markets within the scope of a gas station/convenience store such that these job duties can be deemed as being within a qualifying capacity. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. At 1108, *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). In addition, the petitioner failed to define the beneficiary's role with respect to the organization's employees in terms of whom the beneficiary would oversee or how the beneficiary would direct the management of an organization that consists of employees who have not be established as being managerial, supervisory, or professional. In fact, the record also fails to explain why, within the scope of a gas station/convenience store, the petitioner has two cooks and two employees who serve and clean tables.

On appeal, counsel implies that the beneficiary may be deemed a function manager, which is a term that 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). However, in order to successfully establish that the beneficiary would be employed in the capacity of a function manager, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, 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. See 8 C.F.R. § 204.5(j)(5). As discussed above, the petitioner in the present matter has provided a deficient description of the beneficiary's proposed employment, failing to specify the beneficiary's actual daily tasks or establish what portion of the beneficiary's time would be allocated to purely managerial- or executive-level tasks. 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 "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 *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

The petitioner failed to establish that the beneficiary would assume the role of a function manager. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, the petitioner provided a vague percentage breakdown accompanied by broad job responsibilities. However, as previously noted, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient when the regulations expressly require the petitioner to provide a detailed description of the beneficiary's daily job duties. Claiming that the beneficiary would allocate 40% of her time to "manpower planning/supervision" or 30% to business development, sales, and administration fails to establish what actual underlying tasks the beneficiary performs. In other words, it is unclear that the beneficiary's supervisory role involves overseeing managerial, supervisory, or professional employees or that the beneficiary's role with regard to sales and administration does not involve actually selling products at the convenience store or assisting with the operation's bookkeeping.

In addition, the appeal has been supplemented with a statement from the foreign entity, dated May 20, 2014, as well as an undated statement from the petitioner, discussing the beneficiary's proposed employment and the job duties and educational credentials of the beneficiary's subordinates. However, neither statement establishes that the beneficiary's proposed employment would be primarily within a qualifying capacity. As with the petitioner's prior submissions, the current submissions on appeal lack sufficient detail to establish what actual tasks the beneficiary would perform on a daily basis in her proposed position. The foreign entity's statement indicated that the beneficiary prepared project reports "to commence the business," hired professionals, and engaged in lease negotiations to obtain a space for the petitioner to conduct its business. These job duties address the beneficiary's functions when the petitioner originally commenced its operations and do not address the prospective position or the underlying job duties to be performed in the present time, now that the petitioner has commenced operations and moved beyond the initial stage of its development.

Furthermore, the claim that the beneficiary hired professional employees is not supported by the evidence of record, which does not establish that the petitioner's employees have achieved the requisite levels of education or that their respective positions require a certain level of education. In evaluating whether the beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate

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

In addition, while the foreign entity's statement indicates that the beneficiary's job duties include bank operations, ordering inventory, and reviewing accounts, it is unclear that these job duties rise to the level of managerial or executive capacity or whether such duties are merely operational and necessary for the petitioner's daily operations. Moreover, the information provided on appeal with regard to the petitioner's support staff is inconsistent with information that the petitioner previously provided in its RFE response. First, with regard to [REDACTED] whom petitioner previously identified as the individual in charge of administration, the petitioner's prior submission indicated that Mr. [REDACTED] is responsible for daily administration, ledger entries, bookkeeping, and accounts payable and receivable. However, both appeal statements indicate that this individual would assist the beneficiary with marketing, follow up with buyers, and coordinate activities among "[s]upervisors and sales persons and [a m]arketing team." The petitioner has not identified any supervisors, sales people, or a marketing team, thus indicating that the new statements submitted on appeal are not accurate in terms of their respective portrayals of the petitioner's organizational hierarchy. Also, while the petitioner's RFE response identified [REDACTED] as a sales/purchase executive responsible for the quality of purchases, managing sales, and purchasing "raw material," the statements submitted in support of the appeal identified Ms. [REDACTED] as a supervisor, who oversees the work of "junior staff and daily wages [sic] workers and assist them for [sic] daily needs."

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). Furthermore, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Thus, in addition to the overall lack of clarity in counsel's assertions and the deficient job description the petitioner provided in response to the RFE, the petitioner has now offered statements that are inconsistent with evidence that was previously submitted.

Accordingly, given the lack of sufficient probative and reliable evidence adequately describing the beneficiary's job duties and accurately identifying employees who would carry out the petitioner's operational tasks, we find that the petitioner has failed to establish that it has attained an organizational complexity that is capable of supporting the beneficiary in a qualifying managerial or executive capacity. We find that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity and on the basis of this initial adverse conclusion the instant petition cannot be approved.

B. Qualifying Employment Abroad

Next, turning to the beneficiary's former employment with the foreign entity, we conduct a similar comprehensive analysis of the record, starting with review of the job duties the beneficiary performed during her employment abroad.

In the present matter, a review of the job description provided in response to the RFE indicates that an undefined portion of the beneficiary's time was allocated to sales and marketing tasks, which were not readily established as qualifying within a managerial or executive capacity. Similarly, claims that the beneficiary participated in conference calls with buyers and sellers and "[ook] care of sales and marketing" further indicates the beneficiary's engagement in non-qualifying tasks. We note that the foreign entity's statement failed to disclose what percentage of time the beneficiary allocated to her non-qualifying tasks. Further, while the statement from the foreign entity indicated that the beneficiary had hiring and firing authority over "junior staff," the job description did not establish that the beneficiary supervised the "junior staff" over whom she had hiring and firing authority over, that the beneficiary had subordinates who were supervisory, professional, or managerial employees, or that she exercised discretion over the foreign entity's day-to-day operations. See sections 101(a)(44)(A)(ii) and (iv) of the Act. Thus, the petitioner did not establish that the beneficiary was employed in a qualifying managerial capacity. The foreign entity's job description also failed to establish that the beneficiary was employed in an executive capacity, as there is no indication that the beneficiary's position entailed directing the management of the foreign entity, establishing its goals and policies, and receiving only minimal supervision from higher level executives. See sections 101(a)(44)(B)(i), (ii) and (iv) of the Act.

On appeal, the petitioner offered a supplemental statement from the foreign entity, which addressed the beneficiary's former employment overseas but continued to broadly state the beneficiary's job responsibilities without delineating the specific tasks performed or the percentage of time the beneficiary spent performing them. Merely stating that the beneficiary was responsible for "business development, marketing, and general administration" of a subordinate staff is not sufficient to establish what actual tasks the beneficiary performed on a day-to-day basis. As noted earlier, the duties themselves will reveal the true nature of the beneficiary's employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The entirety of the record shows that the petitioner failed to comply with the director's express RFE instructions, which asked the petitioner to provide evidence addressing elements that are highly relevant in establishing whether or not the beneficiary was employed in a qualifying managerial or executive capacity. Further, the record contains little information as to the nature of the foreign entity's business operation, thus precluding us from being able to assess the beneficiary's job responsibilities within the context of the specific type of business activity in which the foreign entity was engaged at the time of the beneficiary's employment abroad. In light of the significant deficiencies highlighted in this decision, we find that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity and on the basis of this second adverse finding, this petition cannot be approved.

IV. Beyond the Director's Decision

In addition, the record contains deficiencies that were not previously addressed in the director's decision and which further indicate that the petitioner is ineligible for the immigration benefit sought herein. Namely, the record contains inconsistent information pertaining to the petitioner's business activity and the name under

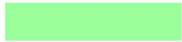
which the petitioner may have conducted such business activity in the United States. Specifically, while the petitioner provided bank statements, business invoices, and payroll documents indicating that the petitioner may have conducted business in the United States under a name other than the one used by the petitioner when filing the instant Form I-140, the petitioner failed to provide any documentation showing that it was authorized to conduct business under an assumed name. As stated earlier in this decision, 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. Further, neither the Form I-140 nor the petitioner's corporate tax returns on record identify the petitioner by more than one name. This anomaly gives rise to doubt whether business documents addressed to [REDACTED] or [REDACTED] actually pertain to the petitioning entity, as the petitioner has provided no evidence to show that it was legally authorized to conduct business under either name. The petitioner has failed to provide sufficient evidence resolving the inconsistencies noted herein.

Lastly, service records show the petitioner's previously approved L-1 employment of the beneficiary. We note, however, that each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof. As such, 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. Any prior nonimmigrant approvals would 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). Similarly, 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).

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. USCIS 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).

Accordingly, in light of the evidence discussed above, the petitioner has failed to establish its eligibility for the immigration benefit sought and based on the grounds discussed in this decision, this petition cannot be approved.



V. Conclusion

In conclusion, the petitioner is advised that we may deny an application or petition that fails to comply with the technical requirements of the law 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).

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, in light of the findings issued in the director's decision and the additional finding issued by this office, that burden has not been met.

ORDER: The appeal is dismissed.