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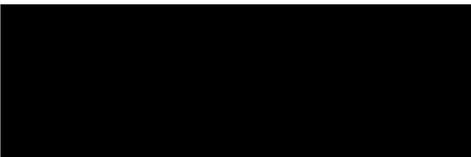
U.S. Department of Homeland Security
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Washington, DC 20529



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

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File: WAC 03 155 51851 Office: CALIFORNIA SERVICE CENTER Date: **OCT 11 2005**

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

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Nevada that intends to operate a residential home care facility for the elderly. The petitioner claims that it is the subsidiary of [REDACTED] a sole proprietorship located in Makati City, Philippines. The petitioner seeks to employ the beneficiary as General Manager of its new office for a three-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary had been employed in a qualifying managerial or executive capacity with the foreign entity or that the beneficiary would be employed in the United States in a managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner disputes the director's findings and asserts that the beneficiary, in both her foreign position and in her proposed U.S. position, is required to supervise a staff of subordinate professional, managerial or supervisory personnel who relieve her from performing qualified duties. In support of this assertion, the petitioner submits additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation;
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The first issue in the present matter is whether the beneficiary had been employed by the foreign entity in a qualifying managerial or executive capacity for one continuous year during the three years preceding the filing of the petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised,

functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In the initial petition submitted on April 22, 2003, the petitioner indicated that the beneficiary had been employed with the foreign entity for more than one year, but did not provide her job title or the name of the foreign company. The petitioner described the beneficiary's job duties as follows:

Over-all & general management of the company; directly supervises the administrative financial & technical staff of company; executes & implements corporate policies & business strategies; organizes staff; hires and fires employees

Although the petitioner indicated in its cover letter that it had enclosed an attestation letter describing the beneficiary's foreign employment, the foreign company's organizational chart, and various other documents regarding the foreign corporation, these documents do not appear to have been submitted with the initial petition.

On June 10, 2003, the director requested additional evidence to establish that the beneficiary had been employed by the foreign entity in a managerial or executive capacity. Specifically, the director requested (1) payroll records pertaining to the beneficiary for the year preceding the filing of the petition, including the date the beneficiary was hired, the positions she has held, and the reason why she was selected for the position with the U.S. entity; (2) the total number of employees at the foreign location where the beneficiary is employed; (3) a detailed explanation of the beneficiary's duties abroad, including the percentage of time the beneficiary devotes to each job duty; and (4) a list of job titles and job descriptions of all employees supervised by the beneficiary.

In response, the petitioner submitted a letter from the foreign company stating that the beneficiary had been employed as its general manager since February 1999, performing the following job duties:

In this position, she has the full responsibility of planning, controlling, leading, organizing and coordinating the different departments of the company to assure attainment of company objectives and profitability. She exercises complete day-to-day discretion authority over the work of production department, accounting department, administrative department and purchasing department for the parent company.

The foreign company also submitted a certification of employment letter dated May 5, 2003, which states that the beneficiary has been employed as its general manager since December 2000. It described her duties as follows:

1. Sets the goals and objectives of the company.
2. Reviews and approves the company's yearly operational and capital budgets.
3. Hires and fires employees within the managerial level.
4. Represents the company and any and all contracts entered into by the company with outside parties.
5. Trains employees within the managerial level.

The petitioner explained that the purpose for the beneficiary's transfer is to "expand its market reach, generate new patients and generate sufficient and frequent marketing awareness. In order to assure correct positioning in the U.S. market, proper promotion and market development of our Philippine products through the participation to bring to the new office in the U.S. tradeshow and exhibits is imperative. It is important to bring to the new office in the U.S. a person who can organize and start the business and who has the required product knowledge acquired from years of experience within our company."

In addition, the petitioner submitted an organizational chart for the foreign company depicting twenty employees, including the beneficiary as general manager, an assistant manager, a marketing manager, an operations manager and a sales and purchasing manager. Finally, the petitioner submitted its bi-weekly payroll records for the years 2000 and 2001.

On December 11, 2003, the director denied the petition. The director determined the record was insufficient to establish that the beneficiary was employed primarily in a managerial or executive capacity with the foreign company. The director noted that a preponderance of the beneficiary's duties appear to have been directly providing the services of the business; and also remarked on the petitioner's failure to provide a comprehensive description of the beneficiary's duties. The director concluded that the beneficiary was no more than a first-line supervisor of low-level employees and therefore could not be deemed a manager as defined by section 101(a)(44)(A) of the Act.

On appeal, counsel for the petitioner states that the director did not take into account the foreign company's organizational chart, which shows that the beneficiary supervises an assistant manager, who in turn supervises an operations manager, assistant operations manager, a marketing manager, and a sales and purchase manager. Counsel states that the positions of the beneficiary's subordinates are all managerial and

professional and that the beneficiary therefore meets the statutory requirements for classification as a manager for immigration purposes.

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary had been employed in a qualifying managerial or executive capacity for at least one year in the three years preceding the filing of the petition for classification as a nonimmigrant intracompany transferee. While the director's decision focuses on whether the beneficiary's claimed job duties could be considered managerial or executive under sections 101(a)(44)(A) or (B) of the Act, the AAO notes that there is no probative evidence in the record to establish that the beneficiary was ever employed with the foreign company.

As noted above, the company submitted its bi-weekly payroll records, dated January 1, 2000 to December 31, 2001, all of which show the beneficiary as the first employee on the payroll record and indicate her title as general manager. However, most of the payroll records have clearly been altered. Specifically, the name listed first on the payroll record for each period, along with this individual's signature, has been covered with correction fluid, and the beneficiary's name and signature have been written in. Most of the documents were photocopied after the alteration was made; however, at least two of the registers, for January 15 and December 15, 2000, were submitted with original alterations. The name that was covered [REDACTED] can easily be read from the reverse side on both documents. This is the name of the foreign entity's owner/proprietor, who presumably also acts as its general manager, rather than the beneficiary. A similar alteration seems to have been made for the tenth employee listed on each payroll register; a name and signature were covered on the documents and the name [REDACTED] has been added to each document as a "Sales & Purchase Person." Doubt cast on any aspect of the petitioner's proof, may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA).

Based on the petitioner's submission of altered documents to establish a key element of eligibility, the AAO will give no weight to the petitioner's unsupported representations regarding the beneficiary's foreign employment. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. *See e.g., Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Furthermore, willful misrepresentation in these proceedings may render the beneficiary inadmissible to the United States. Section 212(a)(6)(C) of the Act.

Based on the foregoing, the petitioner has not established that the beneficiary has the requisite one continuous year of employment abroad with the foreign entity as required by 8 C.F.R. § 214.2(l)(3)(iii) and the petition cannot be approved. The AAO will not consider whether the beneficiary's alleged duties abroad were managerial or executive, absent evidence that she was actually employed with the foreign entity.

The next issue in this matter is whether the beneficiary would be employed in a primarily managerial or executive capacity in the United States within one year of the approval of the petition for the new office.

On the I-129 petition, the petitioner described the beneficiary's proposed duties as "to establish a residential home care facility, to hire, fire, train employees, and manage the home care facility." The petitioner further described the beneficiary's proposed duties as follows on the I-129 L Supplement:

To set up company in U.S.: Over-all management of company; in-charge of development market; develop; train & hire staff; institute marketing & management strategies compatible with parent company promote or otherwise secure products for and on behalf of parent company; new products/equipment in U.S. with potential market of parent company in the Philippines.

The petitioner indicated that the beneficiary has a bachelor of science degree in commerce and a three-year associate's degree in nursing. Although the petitioner stated that copies of her diploma and transcripts were included, these documents do not appear to have been submitted.

In his request for evidence, the director` the petitioner to submit the U.S. entity's organizational chart; a detailed description of the beneficiary's proposed duties, including the percentage of time to be spent on each duty; and a list of employees to be supervised by the beneficiary, including their names, job titles, job duties and education level. The director also requested the petitioner's detailed business and hiring plans, evidence of a genuine investment in the United States and evidence of purchases made to enable the company to commence operations, among other documents.

In response, the petitioner submitted an undated job offer/contract of employment signed by the beneficiary which describes the beneficiary's proposed duties as follows:

As general manager, you will be responsible for the overall operation of the U.S. entity. And you will have the final say hiring and firing of employees. You will be supervising directly the Marketing Manager and Operation Manager including the Cashier of the home care facility. You will gather and analyze data of existing service/contractual agreements with current clients, vendors, and suppliers and conduct surveys of market policies in other outlying areas. You too will be responsible in the preparation and management of the annual operating and capital budgets. You have the primary responsibility to hire, train and fire personnel. You will prepare and submit an annual performance report to the board of directors. Lastly, you will be responsible in maintaining a safe work site to conform to the existing state and federal safety regulations.

The offer letter indicates that the beneficiary would manage a marketing manager, operations manager, cashier, registered nurse, certified nursing assistants and care givers.

The foreign company also described the following duties in its letter submitted in response to the request for evidence:

This position is a key managerial one for the new office, because it will be her responsibility to organize and start the new business. This position requires her to: (1) Hire and train initially three employees . . . It is anticipated that there will be at least three of these persons to be employed within the first year of operation and who will eventually run the business after [the beneficiary] completes her assignment.

She will exercise a wide latitude in decision making in the day to day operations [sic] of the business. She must spend a majority of her time coordinating the various responsibilities and managing her staff. Strong managerial and organizational skills are needed for the important functions performed by the Manager of a new business in the U.S. [The beneficiary] will report directly to [the owner] for approval of major plans.

Finally, the petitioner stated that it planned to hire a registered nurse/administrator, a certified licensed nursing assistant/marketing manager, a night-shift nursing assistant and a day shift nursing assistant, whose wages would range from \$12 to \$39 per hour. The petitioner indicated that the employees, who were identified by name, would be hired upon approval of the beneficiary's L-1 visa and upon approval of the state license of the facility.

In his decision, the director concluded that the record contained insufficient evidence to demonstrate that the beneficiary will be employed primarily in a managerial or executive capacity. Specifically, the director noted that a preponderance of the beneficiary's duties would involve directly providing the services of the business rather than managing a subordinate staff of professional, managerial or supervisory personnel who will relieve her from performing non-qualifying duties. On appeal, counsel asserts that the petitioner's marketing director, home care facility administrator and nursing staff will perform the day-to-day tasks of the organization, while the beneficiary will perform only managerial and executive duties.

Upon review, counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner has provided a vague, nonspecific, and inconsistent description of the beneficiary's duties that fails to demonstrate what the beneficiary would do on a day-to-day basis. Many of the duties described appear to be unrelated to management of the home care facility. For example, the petitioner states that the beneficiary's duties include being "in-charge of development market," "institute marketing & management strategies compatible with parent company," "promote or otherwise secure products for and on behalf of parent company" and "identify new products/equipment in U.S. with potential market of parent company in the Philippines." The petitioner did not, however, describe its development market, define its market and management strategies, or explain why the general manager of the home care facility would be involved in promoting "products" of a foreign parent company that doesn't produce any products. 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)).

The beneficiary is also described as "gathering and analyzing data of existing service/contractual agreements with current clients, vendors and suppliers" and "conducting surveys of market policies in other outlying areas." The petitioner has not described how these job duties qualify as managerial or executive or how they are related to the petitioner's proposed business operations. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the

definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990).

The AAO notes that the director's decision is based entirely on the nature of the beneficiary's job duties. However, when a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(1)(3). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

In this case, while the petitioner has described the beneficiary's job duties as almost exclusively managerial or executive, it has not provided the required supporting evidence which could allow CIS to make a determination as to whether the business would realistically allow her to perform in such a capacity by the end of the first year of operations. With the initial petition, the petitioner submitted only its one-page articles of incorporation and evidence that it had applied for a tax identification number. Although it indicated on the cover letter that a copy of its lease agreement was enclosed, there was no lease submitted. In the request for evidence, the director requested extensive documentation to evidence the size of the U.S. investment and the ability to commence doing business, including a detailed business plan with planned actions, objectives and projections over a five-year period and feasibility study prepared by the foreign company for the U.S. company. The director asked that the petitioner identify the actual cost of creating the business and provide proof of payments for rent, equipment and inventory purchases, as well as copies of licenses, permits, insurance and other documentation required by governmental authorities. Finally the director requested a copy of the beneficiary's signed lease agreement identifying the total square footage of the premises and color photographs of the U.S. company's business premises.

In response, the petitioner provided a one and a half page business plan that identified some of the services to be provided by the home care facility. The business plan states that the cost to start the business is approximately \$30,000, but offers no explanation as to how it derived this figure or how this money would be used. The petitioner provided evidence of various wire transfers deposited to its bank account in July and August 2003. There is no evidence of any investment in the U.S. entity from any source prior to the filing of the petition. The petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The originator for all of the wire transfers was Josefino Malana, who appears to be the beneficiary's father. There is no evidence that the foreign entity was the source of the money transferred to the U.S. company, nor is there any evidence that the foreign entity has sufficient funds to remunerate the beneficiary or support the U.S. entity during the first year of operations. The business plan merely states that the owner of the foreign company has \$24,000 in a savings account and that the foreign entity expects net income of \$18,138.28 "to remunerate the cost to start up the business." 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; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In a letter submitted in response to the request for evidence, the foreign company states that it will be able to sustain the beneficiary within one year. Specifically, the letter states "We have a projected gross income of \$500,000.00 for the first year of operations through the aggressive marketing and sales of our catering and services from the Philippines and the sale of U.S. products to the Philippines." This statement is not credible, since it is unsupported by documents or even by the petitioner's own statements that it will be operating a home care facility business. The AAO notes that some of the beneficiary's proposed job duties also involve marketing and identifying products to export to the Philippines. 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 evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Based on these inconsistencies and the lack of a business plan, the AAO cannot conclude that petitioner even intends to operate a home care facility, much less that it has sufficient funds to enable the new business to succeed to the point where it could support a managerial or executive employee within one year. The petitioner also failed to provide evidence that it had applied for any licenses or permits to operate the home care facility, other than mentioning that a state license was required. Further, although the petitioner stated that it was submitting receipts for purchases of medical supplies and rental payments, no such documents were provided. Finally, the petitioner did not secure a lease for the U.S. entity until August 2003, several months after the petition was filed. The lease agreement does not include any information regarding square footage, and the photographs provided do not convey the size of the property, which appears to be a typical single family home. In addition, the petitioner has submitted no evidence that it has invested money to adapt the property to accommodate the physical needs of its future patients. The non-existence or other unavailability of required evidence creates a presumption of ineligibility 8 C.F.R. § 103.2(b)(2)(i). 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 view of the lack of investment in the United States entity, the absence of an actual business plan describing the U.S. company's proposed actions and goals, and the lack of evidence that the petitioner is even preparing to commence doing business, the petitioner's representations that it will hire a full staff to support the beneficiary and expects to achieve a gross income of \$500,000 during the first year of operations is not credible. Accordingly, the petitioner has not established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as required by 8 C.F.R. § 214.2(l)(3)(v)(c). For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that it has a qualifying relationship with the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). The record shows that the foreign entity is a sole proprietorship owned by [REDACTED], a national of the Philippines. On the I-129 Petition, the petitioner indicated that it is a subsidiary of the foreign company, and the owner of the foreign company claims that he is the sole owner of both companies. With the initial petition, the petitioner submitted its one-page articles of incorporation showing that it is authorized to issue 125 shares of stock without par value. This document was submitted to the Secretary of State of Nevada in March 2003. In response to the director's request for proof of a qualifying relationship, the petitioner submitted its stock ledger and stock certificates. The following stock certificates were submitted:

<u>Number</u>	<u>Name</u>	<u>Shares</u>	<u>Amount Paid</u>	<u>Date</u>
101		35,000	\$5,200	7/30/03
102		25,000	\$1,720	7/28/03
103		75,000	\$2,825	7/18/03
104		25,000	\$3,400	7/23/03
105		25,000	\$2,500	8/05/03
106		35,000	\$2,500	8/05/03

All of the stock certificates indicate that the company is authorized to issue a total of \$75,000 shares of stock at no par value. The stock ledger does not indicate any transfers of stock, which suggests that 220,000 original shares have been issued. The stock certificates were all issued three to four months after the petition was filed, so it is not clear who owned the U.S. company at the time of filing. Again, 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 point to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Regardless of the questions raised by the U.S. entity's stock certificates, the two entities are clearly not owned by the same individual or group of individuals, such that they could be considered affiliates, nor do they appear to have any other qualifying relationship. For this additional reason, the petition will be denied.

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).

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.