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File: LIN 05 014 50147 Office: NEBRASKA SERVICE CENTER Date: NOV 03 2006

IN RE: Petitioner:
Beneficiary:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 visa petition seeking to employ the beneficiary as its president 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 incorporated under the laws of the State of Minnesota and allegedly engaged in the business of international trade. The petitioner claims a qualifying relationship with ZAO Kolmat of the Russian Federation as an affiliate.

After determining that the petitioner was not a "new office" in the United States, the director denied the petition based on the following independent grounds of ineligibility: (1) the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; (2) the petitioner did not establish that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity; and (3) the petitioner did not establish that it is a qualifying organization because it is not presently "doing business."

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, the petitioner asserts, *inter alia*, that it is a "new office" and that the beneficiary's duties overseas are primarily those of an executive or manager. In support of this assertion, the petitioner submits a brief.

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.

While the regulation at 8 C.F.R. § 214.2(l)(3)(v) provides additional criteria to be met should the petition indicate that the beneficiary is coming to the United States to open a new office, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(F) defines a "new office" as:

[A]n organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

Moreover, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

A threshold issue in this matter is whether the petitioner is a "new office" as defined by the regulations.¹

In a letter dated September 6, 2004 appended to the initial petition, the foreign entity indicated that the petitioner was incorporated in Minnesota in 1992 by the deceased husband of the beneficiary. The petitioner further alleges that, since the 1998 death of the beneficiary's husband, the United States operation has been "more or less dormant." The record further reveals that articles of incorporation, in addition to the 1992 filing, were filed for the petitioner in 1998 and in 2004. However, the petitioner indicates in its shareholder meeting minutes dated October 12, 2004 that, notwithstanding the numerous corporate filings, the petitioner has been continuously in existence since its original incorporation in 1992.

In addition to the articles of incorporation and a collection of corporate records, the petitioner provided copies of its 2001, 2002, and 2003 United States tax returns and a June 30, 2004 bank statement showing a balance of \$43,987.20. The foreign entity also indicates in its letter dated January 24, 2005, provided in response to the request for evidence, that the petitioner currently employs a vice president of marketing. Finally, counsel to the petitioner concedes that the petitioner has been doing business in the United States in his letter dated February 1, 2005: "Although the company's activity has been limited so far, ironically, based on the requirement of [the beneficiary's] presence, there has been nonetheless activity sufficient to satisfy 8 C.F.R. § 214.2(l)(1)(ii)(H)."

On April 4, 2005, the director denied the petition. The director determined that the petitioner was not a "new office" as defined by the regulations and adjudicated the petition using those standards and criteria applicable to an established petitioner seeking to classify an intracompany transferee pursuant to section 101(a)(15)(L) of the Act.

¹As a preliminary matter, the issue of whether the petitioner is a new office or not must be addressed first to determine whether the first basis of the director's denial was properly considered, i.e., whether the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner appealed the director's decision. On appeal, the counsel to the petitioner asserts that the petitioner is a "new office" and that the evidence submitted establishes eligibility under the pertinent regulations for new offices. Specifically, counsel argues that, since the petitioner filed new articles of incorporation in 2004, it is "technically" a new office in the United States. Counsel takes this position even though the rest of the record, including the October 12, 2004 shareholder meeting minutes and his own letter dated October 14, 2004, demonstrate that the petitioner does not consider itself to be an entity separate and apart from the entity formed in 1992. Counsel also asserts that the record establishes that, notwithstanding its continuous corporate existence since 1992, the petitioner has been dormant since 1998 and that the beneficiary's desire to revive the United States operation should constitute the opening of a "new office." Counsel does not attempt to reconcile his argument on appeal with the assertion made in his letter dated February 1, 2005 that the petitioner has been "doing business" in the United States.

Upon review, the petitioner's assertions are not persuasive.

Although a petitioner may request that it be treated as a new office, the determination of whether a petitioner qualifies under this diminished evidentiary standard remains with Citizenship and Immigration Services (CIS).² Thus, regardless of whether such a request is made or not, a petitioner will be, or will not be, treated as a "new office" for purposes of 8 C.F.R. § 214.2(l)(3)(v) depending on whether the petitioner meets, or does not meet, the definition of a "new office" contained in the regulations at 8 C.F.R. § 214.2(l)(1)(ii)(F).

In this matter, the petitioner was incorporated in 1992. While the petitioner may have ceased doing business in the United States for a period of time after the death of the beneficiary's husband, the record clearly establishes that the petitioner *has been* regularly, systematically, and continuously doing business in the United States for more than a year before the current petition was filed on October 18, 2004. Not only has counsel conceded this point as indicated above,³ the tax returns submitted by the petitioner confirm continuous, and increasing, business activity in 2001, 2002, and 2003. Also, the petitioner admits that it employs a vice president of marketing in the United States and maintains a bank account. Therefore, the director properly determined that the petitioner is not a "new office" for purposes of adjudicating the petition.⁴

²It is noted for the record that the petitioner did not initially request on the L Supplement to the Petition for a Nonimmigrant Worker (Form I-129) that it be treated as a new office. This request was not made until after the petition was filed.

³While counsel properly points out in his appellate brief that the assertions of counsel to not constitute evidence (*see Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988)), CIS may properly rely on counsel's legal assertions and concessions in adjudicating an appeal provided the record corroborates these assertions and/or concessions. In this case, since the record corroborates counsel's assertion that the petitioner has been doing business as defined by 8 C.F.R. § 214.2(l)(1)(ii)(H), CIS may rely on that assertion.

⁴Counsel's assertion that the petitioner is "technically" a new office in the United States because it filed articles of incorporation in 2004 is without merit. First, as explained above, the record establishes that the petitioner does not consider itself to be an entity separate and apart from the entity formed in 1992. This was made clear in both the October 12, 2004 shareholder meeting minutes and counsel's letter dated October 14, 2004. Second, assuming the truth of the petitioner's assertions, as the record establishes that the foreign entity

Accordingly, as the petitioner has not established that the petitioner should be classified as a "new office," the director properly considered the first main issue in this appeal, namely whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

has been doing business through a parent, branch, affiliate, or subsidiary for at least one year prior to the filing of the petition, i.e., through the claimed previously incorporated but separate entities, the formation of a new business organization is immaterial to this petition. 8 C.F.R. § 214.2(l)(1)(ii)(F). Otherwise, a foreign entity with an established United States business operation could continually qualify under the diminished new office criteria simply by forming a "new" corporation every year.

The petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. While counsel to the petitioner states in his letter dated February 1, 2005 that it may be "clearer" that the beneficiary is an executive of both the petitioner and the foreign entity, he also states that the beneficiary could be qualified under either category. Regardless, a beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. Given the ambiguity, the AAO will adjudicate the appeal as if the petitioner is asserting that the beneficiary is either an executive *or* a manager.

In the letter dated September 6, 2004 appended to the initial I-129 petition, and as expanded and restated in the letter dated January 24, 2005 provided in response to the request for evidence, the foreign entity described the beneficiary's job duties as follows:

1. Overall and general administration of [the petitioner];
2. Developing and seeing to the execution of a marketing plan in the Upper Midwest and facilitating the introduction and distribution of skin and fur products in the United States, including the identification of strategic partners;
3. Directing the identification and realization of potential retail space;
4. Directing a coherent plan to export goods to St. Petersburg and northern Russia[;]
5. Direct current [vice president of marketing] in carrying out the company's marketing plan, which shall include hiring a sales/marketing representative to develop distribution contacts and bring in sales orders;
6. Locate and hire a Vice President of Operations to carry out the day-to-day operational activities of the company;
7. Meet with banks and investors to generate working capital for the company through loans/credit lines and investments;
8. Further develop the long-term plan of the company to export goods to St. Petersburg.

The petitioner further elaborated on the beneficiary's proposed job duties in the attachment to the organizational chart provided in response to the request for evidence. This description is consistent with the above list of duties and further adds that the beneficiary "will identify and hire managers to run the daily tasks associated with the management" of new accounts. In the same attachment, the petitioner provided a job description for the beneficiary's one subordinate employee, the vice president of marketing:

[The vice president of marketing] is currently responsible for [the petitioner's] activities in the U.S., and will play a key role in the initial establishment of the company in Minnesota. To date he has secured office space, overseen required legal filings, communicated with service providers, begun establishing marketing networks in the Upper Midwest. Under the [beneficiary's] direction, he will ensure the smooth import of foreign goods for sale in the U.S. and the export of U.S. goods, ensuring that all proper regulatory processes are followed. He currently is in almost daily contact with the

[beneficiary].

On April 4, 2005, the director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity and relies on the foreign entity's support letters, the business plan, and the organizational chart.

Upon review, the petitioner'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(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner has failed to prove that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided a description of the beneficiary's duties which appear to be related primarily to the expansion of the petitioner's United States operation. Many of these duties will undoubtedly involve non-qualifying operational and administrative tasks, such as those related to "the general administration" of the petitioner. Since the petitioner only employs one other person, it is more likely than not that, at the outset, the beneficiary will need to perform non-qualifying tasks as there are no employees available to relieve her of performing these tasks. In fact, the beneficiary's job description admits that the day-to-day operational activities are not being performed by a subordinate employee since one of the beneficiary's duties is to hire a vice president of operations to relieve her of this burden.

Also, the beneficiary's job description is so vague and nonspecific it is impossible to determine how much time she will spend performing managerial duties versus non-qualifying administrative or operational tasks. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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).

Also, the job descriptions and organizational chart provided in response to the request for evidence do not establish that the beneficiary will supervise and control the work of supervisory, managerial, or professional employees. While the vice president of marketing has been assigned a lofty title, the job description does not list any qualifying duties for him, and all the positions beneath him on the organizational chart are listed as "vacant." In view of the above, the beneficiary would appear to be a first-line supervisor, the provider of actual services, or a combination of both. A managerial or executive employee must have authority over day-

to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Also, since the record fails to reveal the educational or skill levels necessary for entry into the position held by the subordinate employee, it cannot be determined if he rises to the level of a professional employee.⁵ Therefore, the record does not prove that the beneficiary is acting in a managerial capacity.⁶

Similarly, the petitioner has failed to prove that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must

⁵In evaluating whether the beneficiary manages professional employees, the AAO 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. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree, or even a master's degree, by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above.

⁶While the petitioner has not specifically argued that the beneficiary manages an essential function of the organization, the record nevertheless would not support this position. 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. The term "essential function" is not defined by statute or regulation. 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 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. § 214.2(l)(3)(ii). 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. In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. This failure of documentation is important because several of the beneficiary's duties, as explained above, likely include operational and administrative tasks. Absent a clear and credible breakdown of the time to be spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her duties would be managerial, nor can it deduce whether the beneficiary will be primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* As indicated above, the petitioner has failed to prove that the beneficiary, who will manage one employee and who will be engaged in performing the duties related to a function, will be acting primarily in an executive capacity.

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity as required by 8 C.F.R. § 214.2(I)(3)(ii).

The second issue in this appeal is whether the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

In response to the request for evidence, the petitioner provided an organizational chart for the foreign entity along with job descriptions for the beneficiary's overseas position and her two subordinates, an import specialist (flex-time, as needed contract employee) and an import manager (full-time employee). The job description for the beneficiary's overseas position is as follows:

[The beneficiary] has been Deputy General Director for [the foreign entity] for approximately 6 years, and, along with the General Director, takes responsibility for the entire operation and success of [the foreign entity]. Her specific area of responsibility in the company is international and domestic sourcing as well as business development in domestic and international markets.

[The beneficiary] negotiates new business, follows up and retains sales. She develops and supervises the preparation, issuance, and delivery of sales materials. With the General Director she participates in the development of operating goals and objectives of the company, and recommends, implements, and administers methods and procedures to enhance operations.

[The beneficiary o]versees development of policies, procedures and objectives for marketing and selling the organization's products and services. With the general director, she periodically reviews the quality of products on the market for the purpose of price and distribution assessments. [She o]versees product/service development, pricing, marketing budgets, and sales objectives. She directly oversees personnel acting in the area of import. She meets with the import manager and other relevant personnel on a periodic basis to ensure achievement of goals. She also ensures that import personnel carry out their responsibilities in the best manner. She periodically meets with customers and strategic partners for the purpose of ensuring long-term relationships and to negotiate pricing and other terms. She directs market and pricing research. She meets with

government officials to verify and maintain smooth processing of shipments.

The job descriptions for the two subordinate employees demonstrate that they are primarily engaged in performing the tasks necessary to an import/export business.

On April 4, 2005, the director denied the petition concluding that the petitioner did not establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary has been employed overseas in a primarily managerial or executive capacity.

Upon review, the petitioner's assertions are not persuasive.

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

In this matter, the job descriptions and organizational chart provided in response to the request for evidence do not establish that the beneficiary will supervise and control the work of supervisory, managerial, or professional employees. The job descriptions for the beneficiary's two subordinate employees, the import manager and the import specialist, demonstrate that these employees are primarily engaged in performing the tasks necessary to an import/export business. In view of the above, the beneficiary would appear to be a first-line supervisor. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Also, since the record fails to reveal the educational or skill levels necessary for entry into the positions held by the subordinate employees, it cannot be determined if they rise to the level of a professional employees. Therefore, the record does not prove that the beneficiary is acting in a managerial capacity.

Similarly, the petitioner has failed to prove that the beneficiary will act in an "executive" capacity. In her letter dated January 24, 2005, the director general of the foreign entity made it clear that "[the beneficiary] makes no decisions substantially affecting the company without my knowledge." Therefore, it is apparent that the beneficiary does not exercise the wide latitude in discretionary decision-making necessary to qualify as an executive. Moreover, as explained above, inherent to the definition of "executive," the organization must have a subordinate level of employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. In this matter, the beneficiary's role as a first-line supervisor is not sufficient to establish that she is employed in an executive capacity.

Accordingly, the petitioner has not established that the beneficiary has been employed in a primarily managerial or executive capacity as required by 8 C.F.R. § 214.2(l)(3)(iv).

The third issue in this appeal is whether the petitioner has established that it is a qualifying organization as

one "doing business" in the United States. As explained above, the AAO has determined that the record establishes that the petitioner has been doing business in the United States for more than one year prior to the filing of the petition. As such, the director's analysis and comments with regard to this issue will be withdrawn. Nevertheless, as explained below, the petitioner has failed to establish that it is a qualifying organization because it has not established that it has a qualifying relationship with the foreign employer, ZAO Kolmat, as required by 8 C.F.R. § 214.2(l)(1)(ii)(G).

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). An affiliate is, in part, "one of two legal entities owned and controlled by the same group of individuals." *See* 8 C.F.R. § 214.2(l)(1)(ii)(L). In this case, the petitioner asserts that it is 100% owned by the beneficiary and the foreign entity is 55% owned by the beneficiary, thus establishing, if true, that the two entities are affiliates.

In this matter, the record is devoid of any evidence establishing the ownership structure of the foreign entity. While counsel to the petitioner asserts in his letter dated October 14, 2004 that "at some point" the beneficiary became the owner of 55% of the shares of the foreign entity, no evidence other than a statement to this effect in a letter from the foreign entity dated September 6, 2004 was provided. The record contains no stock certificates, stock ledgers, or other document which could establish the beneficiary's ownership and control of the foreign entity. Therefore, the petitioner has failed to establish that the two entities are affiliates, and for this additional reason the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also 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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.