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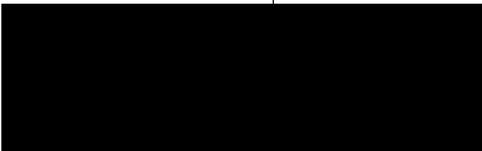


File: WAC 04 005 52931 Office: CALIFORNIA SERVICE CENTER Date: NOV 27 2006

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

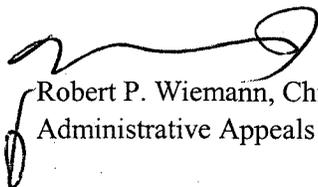
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON 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, 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 extend the employment of 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 was incorporated in April 1998 under the laws of the State of California and states that it is engaged in the provision of marketing and advertising services. The petitioner claims to be a subsidiary of [REDACTED] located in Mumbai, India. The beneficiary was previously granted L-1A status from March 8, 1999 until March 8, 2000, from March 8, 2000 until September 10, 2000, and from October 25, 2000 until October 14, 2003. The petitioner now seeks to extend the beneficiary's L-1A status for two additional years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director observed that the U.S. company "is not generating enough business to support an executive or managerial position."

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 asserts that the U.S. company was dormant for the period from December 2000 until December 2002, but has now grown to a size that can support the beneficiary in a managerial capacity. Counsel requests that the petitioner be granted a one-year period of approval under the new office provisions of 8 C.F.R. § 214.2(l) in the event that the full three-years requested cannot be granted. Counsel submits a brief and additional evidence in support of the appeal.

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 issue in the present matter is 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.

The nonimmigrant petition was filed on October 6, 2003. On the L classification supplement to Form I-129, the petitioner indicated that the beneficiary's duties will include the following:

Responsible for setting up & developing the recruitment & placement business, & managing the marketing of our advertising services. Will spend 30% of his time developing recruitment business, & 70% of his time managing marketing of our advertising services. Responsible for directing all new business development.

In an appended letter, the petitioner provided the following description for the beneficiary's duties as marketing manager:

[The beneficiary] is responsible for overseeing and directing all new business development activity from the proposal phase to the final determination of whether [the petitioner] can provide the partnership fit appropriate for the prospective client's requirements. He is also directing the [petitioner's] staff responsible for marketing research and the development of the marketing strategy that is the blueprint behind each client's advertising, collateral and on-line programs. He serves as the final arbiter of the creative concept that drives both the verbal content and visual design of all [the petitioner's] projects. [The beneficiary] will directly supervise one employee: Manager-Accounts. He will indirectly supervise two employees:



The petitioner provided an organizational chart which depicts a staff of ten people, including a president, who supervises a consultant for new business development, the beneficiary, and a vice president. The organizational chart identifies six employees subordinate to the beneficiary, including a consultant-accounts, photographer, web design consultant, copywriting consultant, freelance graphic designer, and a proposed manager-accounts position. The petitioner also submitted its California Form DE-6, Quarterly Wage and Withholding Report, for the second quarter of 2003, which identified the beneficiary as the company's sole employee.

In addition, the petitioner submitted a business plan for the U.S. company, dated October 2, 2003, in which it stated that the beneficiary obtained his L-1 visa approval in October 2000 but "decided to postpone his arrival" to the United States. According to the business plan, "the active operations" of the U.S. company began in early 2003. The petitioner noted on Form I-129 that the beneficiary had been in the United States in L-1 status from September 1999 through November 1999, and from December 1999 until July 2000, before returning to the United States in December 2002 to resume his employment with the petitioner.

The director issued a request for evidence on October 12, 2003, in which she instructed the petitioner to submit the following: (1) an organizational chart for the U.S. company which clearly identifies the beneficiary's position and the name and job title of all employees under his supervision; (2) a brief

description of the job duties, educational level and annual salaries for all employees under the beneficiary's supervision; (3) copies of California Form DE-6, Quarterly Wage and Withholding Report, for the last three quarters; (4) copies of IRS Form 941, Employer's Quarterly Federal Tax Return, for the last three quarters; (5) copies of the U.S. company's payroll summary and Forms W-2 and W-3, evidencing wages paid to employees; and (6) signed and certified copies of the petitioner's IRS Form 1120, U.S. Corporation Income Tax Return, with all required schedules, for the last tax year.

The petitioner submitted an organizational chart depicting the beneficiary as president over a secretary, a sales manager and a merchandiser. The organizational chart shows that the sales manager supervises two sales people and a warehouse operator. The petitioner submitted its California Form DE-6, Quarterly Wage and Withholding Report, for the fourth quarter of 2004. All seven employees identified on the organizational chart are listed; however, the chart indicates that the company employed six people in October 2004, and only five people in November and December 2004.

In a response dated October 20, 2003, the petitioner stated that the beneficiary supervises seven employees including: a copywriting consultant, a graphic designer, a web designer, a consultant-accounts, and a photographer who are all paid on a "project basis"; a manager-accounts who would be paid an annual salary of \$36,000; and a business and marketing analyst who would be paid an annual salary of \$48,000. The petitioner provided a brief job description for each position. The petitioner also provided a copy of an offer letter addressed to the individual identified as business and marketing analyst, which indicated that he would commence employment with the company on November 1, 2003. The petitioner did not provide evidence of employment of the manager-accounts or the claimed consultants.¹ The company's Form DE-6, Quarterly Wage and Withholding Report, for the third quarter of 2003 identifies the beneficiary as the sole employee of the company as of September 30, 2003.

The petitioner emphasized that the U.S. company "is a start-up that has only recently become active" and noted its intention to hire a creative director and an art director "in the next couple of months." Finally, the petitioner submitted its 2002 IRS Form 1120, U.S. Corporation Income Tax Return, which shows no receipts or sales, no purchases, no cost of labor or other costs, and salaries and wages of \$389 for the year ended on March 31, 2003.

The director denied the petition on November 6, 2003, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director noted the U.S. company had not generated any income during the 2002 tax year and had paid only \$389 in wages to employees. The director concluded that the petitioner had not submitted evidence that the beneficiary has been and will be managing a subordinate staff of professional, managerial or supervisory personnel who would relieve him from performing non-qualifying duties. The director further

¹ It is noted that the employee identified as "manager-accounts" was the beneficiary of an approved L-1A petition filed by the instant petitioner, and valid from June 15, 2000 until June 15, 2003. A review of U.S. Citizenship and Immigration Services (USCIS) records reveals no subsequent petitions filed on behalf of this individual.

observed that "the record shows that the company is not generating enough business to support an executive or managerial position."

On appeal, counsel for the petitioner asserts that the beneficiary's position will be managerial in nature, and that the company, although dormant from December 2000 until December 2002, is currently generating sufficient business to support such a position. In a letter dated December 3, 2003, the petitioner notes that the U.S. company generated \$100,000 in revenues during the first three quarters of fiscal year 2003. The petitioner further states:

[The beneficiary] is an important member of [the petitioner's] management team and the key person for its growth. He is responsible for recruiting, training, and managing staff for market research and creative functions; overall execution and implementation of marketing strategy; product positioning; and developing corporate image. [The beneficiary] is responsible for overseeing the work of ... full-time employees and has the authority to hire and fire the persons he supervises.

* * *

We would also like to emphasize that [the beneficiary] continues his managerial duties for 15 staff members in the Indian head office. He maintains day to day operational responsibility for the execution and implementation of projects undertaken in India as well as in the US , and provides strategic and creative direction to both US and India based staff.

The petitioner submits payroll records indicating that a graphic designer and business and marketing analyst were hired by the petitioning company on November 1, 2003. The petitioner also provides a new organizational chart for the U.S. entity which depicts the beneficiary supervising the newly-hired graphic designer and marketing analyst, four consultants, and fifteen employees of the foreign entity.

Finally, counsel requests that in the event that the petitioner cannot be approved for a full three years, the beneficiary be granted a one-year period under the "new office provisions of 8 CFR Section 214.2(l)."

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(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.*

Further, the definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The petitioner has provided a vague and general description of the beneficiary's duties that fails to convey what tasks he will actually perform on a day-to-day basis. For example the petitioner indicated on Form I-129 that the beneficiary will devote 30 percent of his time to developing the U.S. company's recruitment and placement business. The petitioner did not describe the actual duties the beneficiary would perform to "develop" this area of business, nor did it indicate that any of the claimed subordinate employees would perform any duties related to this market segment. Furthermore, the petitioner's business plan makes no reference to the U.S. company's plans to develop a recruitment 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without additional explanation, it cannot be concluded that the beneficiary would perform primarily managerial or executive duties related to the development of a recruitment and placement business. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990).

The petitioner indicated that the beneficiary would allocate the remaining 70 percent of his time to managing marketing of the company's advertising services and "directing all new business development." The petitioner noted that the beneficiary would supervise employees "responsible for marketing research and the development of the marketing strategy" and would serve as the "final arbiter of the creative concept" for each client's project. However, as discussed further below, the record does not contain evidence that the petitioner employed any staff other than the beneficiary as of the date the petition was filed. Furthermore, the petitioner did not claim to have any lower-level employees who would be responsible for marketing and selling the petitioner's services, as opposed to providing marketing services to clients. It is reasonable to assume, and has not been shown otherwise, that the beneficiary himself, as the petitioner's sole full-time employee, was directly responsible for marketing and selling the petitioner's services to clients, and was directly involved in providing services to the petitioner's clients. 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Collectively, the lack of specifics in the beneficiary's job description and the absence of subordinates to perform many of the duties that the beneficiary will purportedly "direct" or "manage" brings into question how much of the beneficiary's time can actually be devoted to managerial or executive duties. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Furthermore, the petitioner bears the burden of documenting what portion of the beneficiary's duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Given the lack of a credible breakdown of the beneficiary's actual duties and the proportion of time he will allocate to each duty, the petitioner's job description does not demonstrate that the beneficiary will function primarily as a manager or executive.

Without a comprehensive job description of the beneficiary's duties on which to base his determination, the director looked to the petitioner's staffing levels in order to determine whether the beneficiary could be deemed to be serving in a primarily managerial or executive capacity. It should be noted that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

At the time of filing, the petitioner was a five-year-old company that claimed to be engaged in the provision of marketing, advertising and related services. Accordingly, the petitioner reasonably requires employees to meet with clients and potential clients to determine their marketing and advertising needs, to prepare and submit proposals and presentations to clients, to respond to customer inquiries, to perform market research, copy writing, graphic design, web site design and other services for client projects, to market and sell the petitioner's services, and to perform the day-to-day administrative, financial and clerical tasks associated with operating any business. The petitioner has provided various accounts regarding its staffing structure. Specifically, the petitioner indicated on Form I-129 that it had two full-time employees and four to five consultants; indicated on its organizational chart that it had a total of ten consultants and employees, seven of which are managed by the beneficiary; indicated in a letter submitted in support of the petition that the beneficiary would supervise one direct and two indirect subordinates; and indicates on appeal that the beneficiary will manage a total of 22 people, including a large staff located in India. 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).

Regardless, as noted by the director, the record does not contain evidence that the petitioner employed anyone other than the beneficiary as of October 6, 2003 when the petition was filed. The petitioner claimed to employ up to six employees on a "project" or contract basis, but has provided no documentary evidence in support of this claim. The director specifically requested evidence of wages paid to employees. Although the petitioner did not pay "wages" to these employees per se, it is reasonable to expect the petitioner to submit evidence of payments to contract employees, particularly when such employees constitute the bulk of the petitioner's claimed staff. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In the absence of evidence such as contracts or canceled checks documenting the employment of the contracted employees, the petitioner has not established that the petitioner employs a subordinate staff that would relieve the beneficiary from performing non-qualifying duties associated with providing the petitioner's services.

Although the director specifically referenced the absence of employees to perform the non-managerial functions of the petitioning company, counsel does not discuss the contracted employees on appeal or submit evidence that the petitioner did in fact employ the claimed staff at the time of filing. Counsel instead emphasizes that the petitioner hired two full-time payroll employees on November 1, 2003, approximately one month after the petition was filed, and notes that the company expects to expand rapidly and hire additional employees in the future. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Finally, even if the AAO were to consider the newly-hired marketing analyst and graphic designer, these two employees would only relieve the beneficiary from performing duties related to market research and graphic design work for client projects. Additionally, the petitioner has not explained how the newly-hired employees would obviate the need for the beneficiary to primarily conduct the petitioner's business and perform non-qualifying duties associated with day-to-day marketing, sales, financial and administrative functions.

The petitioner has not provided a comprehensive description of the beneficiary's duties, nor has it established that it employs a staff who would will relieve the beneficiary from primarily performing non-qualifying duties associated with operating the petitioner's business. Regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will function at a senior level within an organizational hierarchy. Even though the enterprise claims to be in a preliminary stage of organizational development five years after its establishment, the petitioner is not relieved from meeting the statutory requirements. Based on the limited documentation furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

It is noted that counsel has requested on appeal that the beneficiary be granted a one-year period of approval under the regulations governing "new offices" at 8 C.F.R. § 214.2(l)(3)(v). The petitioner may not be granted a second "new office" L-1A visa approval more than four years after its initial new office approval. The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business. The regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. By allowing multiple petitions under the more lenient standard, CIS would in effect allow foreign entities to create under-funded, under-staffed or even inactive companies in the United States, with the expectation that they could receive multiple extensions of their L-1 status without primarily engaging in managerial or executive duties. The beneficiary in this matter was initially granted a one-year period of approval to establish a new office, obtained an additional six months to establish the new office after delaying his initial entry to the United States by six months, and then obtained a three-year period of approval to serve as the marketing manager of the U.S. company. The petitioner now claims that the U.S. company never commenced operations until several months prior to the instant request for an extension of the beneficiary's stay. However, the petitioner may no longer be considered a "new office" as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by CIS regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first 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 low level 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 that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position. The petitioner in this matter has been given four years to establish the U.S. business and will not be exempted from the regulatory requirements based on its decision to leave the U.S. operations dormant for a long period of time.

The AAO acknowledges that the beneficiary was previously granted a three-year period in L-1A classification to serve as the petitioner's general manager, subsequent to the expiration of the initial new office period. Each nonimmigrant petition is a separate record of proceeding with a separate burden of proof; each individual petition must stand on its own individual merits. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Due to the lack of required evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approval by denying the present extension petition.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). In this case, the petitioner claims that the U.S. company commenced operations in 2003. Therefore, it appears that, either the petitioner did not comply with this requirement, misrepresented that they had complied, or the director committed gross error in approving the petition filed in 2000 without evidence that the U.S. company was doing business. Regardless, the approval of the most recent prior petition is clearly subject to revocation based on the evidence submitted with this petition. *See* 8 C.F.R. § 214.2(1)(9)(iii).

Furthermore, 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).

Finally, it should be noted that, according to California State corporate records, the petitioner's corporate status in California has been "dissolved." *See* <http://keppler.ss.ca.gov/corpdata>. Therefore, as the petitioner has voluntarily elected to wind-up its operations and has completely dissolved its business as a corporation,

the company no longer exists and can no longer be considered a legal entity in the United States. It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. In order to meet the definition of "qualifying organization," there must be a United States employer. *See* 8 C.F.R. 214.2(l)(1)(ii)(G)(2). The dissolution of the U.S. company would clearly and unequivocally render the beneficiary ineligible for the requested classification. As it is assumed that any dissolution occurred subsequent to the filing of the instant appeal, the AAO notes the deficiency for the record and will not discuss this issue further.

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.