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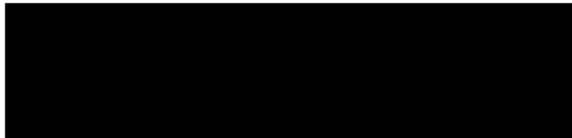
File: EAC 04 250 53435 Office: VERMONT SERVICE CENTER Date: SFP 0 5 2006

IN RE: Petitioner:  
Beneficiary:



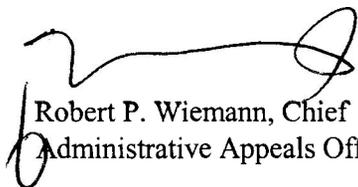
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Vermont Service Center, denied the petition for a nonimmigrant visa and affirmed his decision on a subsequently filed motion to reconsider. 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 New York limited liability company engaged in the distribution and sale of hand bags and fashion accessories manufactured by its parent company. The petitioner claims to be a subsidiary of [REDACTED], a Hong Kong corporation with branch offices in London and Shanghai. The petitioner seeks to employ the beneficiary as Vice President, Marketing and Sales in its new United States office for a one-year period.

The director denied the petition concluding that the petitioner did not establish that, within one year, the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director subsequently granted a motion to reconsider and affirmed his decision to deny the petition.

This timely appeal followed. 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 director's decision was not based on a logical analysis of the evidence presented, and argues that the director incorrectly concluded that the U.S. company would not be sufficiently staffed to support the beneficiary in an executive position within one year. 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 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 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 involves executive or managerial authority over the new operation; and
- (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.

At issue in the present matter is whether the petitioner established that the beneficiary will be employed by the United States entity in a managerial or executive capacity within one year.

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 September 3, 2004. In a July 17, 2004 letter appended to the petition, the petitioner described the beneficiary's proposed duties as follows:

The Vice President, Marketing and Sales is responsible for the executive management, coordination, and implementation of the company's short term and long term international marketing strategies and operations to establish and develop the company's position in the North American market. Duties of this executive position include: (1) executive-level review of current marketing strategies and operations; (2) management of market research and analysis associated with new and continuing business and market expansion opportunities; (3) supervision of professionals engaged in the compilation of data on competitors in the fashion industry to help in the development of business and financial strategies; (4) managerial coordination of product registration and development, technical development, licensing, and marketing; and (5) service as a liaison officer to other executive and managerial level personnel in [the petitioner's group]. The Vice President, Marketing and Sales has direct and indirect managerial responsibility over approximately 20 managerial, professional and support personnel, and exercises discretionary authority over operating budgets of approximately USD750,000.00 per year.

The petitioner stated on Form I-129 that it had four employees as of the date of filing the petition and submitted a lease for its New York office. The petitioner indicated that the beneficiary would work in the New York office and the "Los Angeles, California area." The petitioner's July 17, 2004 letter referenced the company's "imminent plans to expand to Los Angeles."

The director issued a request for additional evidence on September 14, 2004, in part instructing the petitioner to submit: (1) a copy of the U.S. company's business plan, giving specific dates for each proposed action for the next two years, starting with the date of filing the petition, and including the anticipated volume of business, gross income projections and staffing issues; and (2) evidence to show that within one year, the beneficiary would be relieved from performing the non-managerial, day-to-day operations involved in producing a product or providing a service, and that the company will grow to be of sufficient size to support a managerial or executive position.

In a response dated October 5, 2004, the petitioner included a copy of its business plan for the 2004 to 2006 years, which states that the U.S. company currently employs four sales and design staff at its New York office and has managed to retain and supply major U.S. retailers with its products, while also focusing on obtaining brand licenses for more established retail groups. The business plan references the company's intention to establish a West Coast based office and showroom, noting that the office will rely on the resources in New York and Hong Kong, who can provide leads on potential customers. The business plan indicates that the petitioner expects the West Coast operation to account for 10-20% of U.S. business.

With respect to the staffing of the West Coast operation, the business plan indicates that the office would be run on "basic support staff" with further recruitment occurring gradually over the first 12 months of operation, until a team of "suitably qualified management and sales executives" is in place. The business plan calls for the beneficiary to serve as "Head of Marketing USA" in charge of the West Coast and describes her proposed duties as:

- Initially responsible for set-up of office and organization of staff in West Coast operation.
- Creating introductory marketing plans for attainment of new customers.
- Set up of accounts initially.
- Staffing the new operation with suitably experienced account executives and defining their job descriptions.
- Over seeing [sic] other account executives at management level and setting targets for them to attain.
- Eventually, once West Coast branch is fully functional, traveling frequently between both USA offices and overseeing all US based account executives.

The business plan indicates that office support staff and a junior sales executive would be hired in October 2004, an additional full-time sales executive would be hired in February 2005 to relieve the beneficiary from day-to-day account management, and a sales team of three full-time sales executives, one junior sales person and one full-time secretary would be in place by September 2005. The business plan included requirements and brief job descriptions for the proposed positions, noting that the account executives would require three years of fashion retailing experience and would be responsible for managing West Coast accounts, reaching

specific sales targets, conducting regular sales presentations, and attending accessory and fashion exhibitions. The business plan indicates that junior sales executives will be required to have two years of experience in the industry, and would assist account executives with administration, order processing, record keeping and controlling samples. The petitioner submitted payroll records confirming employment of four employees in its New York office as of September 2004, but did not further describe that office's current or projected staffing levels.

The director denied the petition on October 19, 2004, concluding that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity within one year. The director noted that most of the proposed staff would not be hired until September 2005, and determined that the beneficiary would not be relieved from performing non-qualifying duties within the required one-year timeframe. The director further determined that "the petitioner's business plan also fails to convince the Service that the petitioner has a viable plan through which to plot a reasonable course of action in the present U.S. economy."

The petitioner subsequently filed a motion to reconsider on December 4, 2004. Counsel for the petitioner asserted that the petitioner's business plan was sufficiently detailed, and contended that the evidence clearly demonstrated the U.S. company's intention to hire additional executive, managerial and sales staff within the one-year period. Counsel further asserted that as of November 2004 the petitioner had sufficient staffing levels to allow the beneficiary to perform solely executive-level duties. The petitioner stated that it had recently hired a sales executive who would report to the beneficiary and had already assumed "much responsibility" over day-to-day account operations.

Counsel also objected to the director's reference to the petitioner's business plan, noting that the director failed to mention what factors and/or conditions exist in the economy that were material to the conclusion that the petitioner's business plan is not viable.

The petitioner submitted a November 2004 letter from the foreign entity, noting that the U.S. company's New York office now operates with a staff of five employees, including an executive and a sales team of four people. The foreign entity indicated that the petitioner has "revised staffing issues" for the West Coast office and now anticipates hiring four sales executives, two junior sales executives, and an administrative assistant by April 2005.

The director granted the petitioner's motion and affirmed his decision to deny the petition on February 15, 2005. The director concluded "the Service still feels that support staff will not be added within a time frame that will relieve the beneficiary from performing duties that are not of a caliber associated with the classification sought." The director noted that the sales and secretarial staff would not be added until September 2005.

The petitioner appealed the director's decision on March 11, 2005. In an appellate brief dated March 10, 2005, counsel reiterates the arguments made on motion, and further objects to the director's determination that "the Service does not feel that support staff will be added" within the required time frame. Counsel argues that Citizenship and Immigration Services (CIS) "should not base its decision on mere 'feeling,' but

rather on a logical analysis of the evidence before it.” Counsel also asserts that the director’s determination was “not a logical conclusion” based on evidence that the beneficiary will be performing executive duties, and evidence that the petitioner “already has personnel in sales and secretarial positions who will perform [day-to-day] functions.”

Counsel emphasizes that the petition was filed in September 2004, and questions the director’s denial on the basis that the petitioner would not hire additional staff until September 2005. Counsel emphasizes that the business plan indicates that the proposed hiring would occur within one year of the date the petition was filed and would begin as early as October 2004 with the hiring of “additional office staff” and a junior sales executive. Counsel again argues that the director provided insufficient explanation for his conclusion that the company would not grow to a sufficient size to support the beneficiary in an executive position.

Counsel’s assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity within one year.

Although the appeal will be dismissed, the AAO concurs with counsel that the director based his decision, in part, on an improper standard. The director should not hold a petitioner to his undefined and unsupported view of what constitutes a “reasonable course of action in the present United States economy” or base his decision on a “feeling” that the company will not be sufficiently staffed within one year to warrant approval of the petition. The director should instead focus on applying the statute and regulations to the facts presented by the record of proceeding. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). In this case, the director failed to articulate his basis for finding a petitioner’s business plan or proposed staffing levels to be unreasonable. As the AAO’s review is conducted on a *de novo* basis the AAO will herein address the petitioner’s evidence and eligibility. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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 consistently referred to the beneficiary as a “marketing executive” and the AAO notes that the director appears to have only considered whether the beneficiary would be employed in an executive capacity as defined at section 101(a)(44)(B) of the Act. The AAO will nevertheless consider whether the petitioner demonstrated that the beneficiary’s responsibilities will meet the requirements of one or the other capacity.

In this case, the petitioner’s description of the beneficiary’s proposed duties is vague and non-specific, and fails to convey an understanding of what managerial or executive tasks the beneficiary will perform on a day-to-day basis. For example, the petitioner states that the beneficiary will be responsible for management of market research and analysis, supervision of professionals engaged in the compilation of data on competitors, and “managerial co-ordination of product registration and development, technical development, licensing and

marketing.” Although the beneficiary is described as managing some of these activities through subordinate employees, the AAO notes that none of the beneficiary’s proposed subordinates are described as performing market research or analysis, compiling data on competitors, or performing non-managerial tasks associated with product registration, technical development, or licensing. Rather it appears that the proposed subordinates will primarily be engaged in handling specific assigned customer accounts, rather than specifically supporting the beneficiary in market research, data compilation and technical matters associated with the company’s overall sales and marketing function. Absent an explanation regarding the specific duties associated with the beneficiary’s responsibility for “managerial co-ordination” of product registration, development and licensing activities, and evidence of who would perform the lower-level market research and data compilation tasks to be “managed” or “supervised,” the AAO cannot conclude that the beneficiary would perform primarily executive or managerial tasks with respect to these activities. 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 remainder of the beneficiary’s job description includes responsibility for “management, co-ordination and implementation” of the company’s international marketing strategies and developing the company’s position in the North American market, and “executive-level review of current marketing strategies and operations.” The petitioner does not, however, define what specific efforts the beneficiary will undertake to achieve these broad objectives. Reciting the beneficiary’s vague job responsibilities and broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary’s daily job duties. The petitioner has failed to answer a critical question in this case: What will the beneficiary primarily do on a daily basis? 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 business plan submitted in response to the director’s request for evidence also included a brief description of the duties to be performed by the beneficiary in establishing the petitioner’s West Coast operations, including responsibility for setting up an office, creating introductory marketing plans, setting up accounts, staffing the operation, and overseeing and setting targets for account executives. While this description suggests that the beneficiary will have the appropriate level of authority over the establishment and operation of the new branch office, it does not assist in establishing that the beneficiary’s actual duties would be primarily managerial or executive within one year. The petitioner submitted no evidence that the petitioner has begun to search for a location for its West Coast office, although the business plan indicates that it intends to establish “a well designed showroom and display facility,” nor is there any evidence to establish that the company has sought authorization to transact business in California. The fact that the petitioner does not appear to be prepared to commence business operations on the West Coast raises serious questions regarding the company’s ability to carry out its proposed hiring plan for the office to be managed by the beneficiary.

Whether the beneficiary will be employed in a managerial or executive capacity turns on whether the petitioner has sustained its burden of showing that her duties will be “primarily” managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Counsel’s assertion on motion that the beneficiary would be able to perform solely executive level duties as of November 2004 is not sufficient. The petitioner characterizes the beneficiary’s duties as solely executive in nature, but fails to provide evidence as to how her time will be

allocated among her various responsibilities. This failure of documentation is important because as noted above, the record does not establish that the beneficiary would have subordinates to relieve her from performing non-qualifying tasks associated with market research, data compilation, licensing, product registration and “technical development” activities. If the beneficiary herself will perform these non-qualifying tasks, this brings into question how much of the beneficiary's time could 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). Absent a clear and credible breakdown of how the beneficiary will allocate her time, the record does not demonstrate that the beneficiary will function primarily as a manager or executive.

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. The petitioner has not established that the employees to be hired would possess or require a bachelor's degree, such that they could be classified as professionals. Nor has the petitioner shown that any of the proposed employees would supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors.

Counsel's assertion on appeal that the company intends to hire “additional and managerial level staff, as well as sales representatives,” within one year is not supported by evidence in the record, and is in fact contradicted by the petitioner's business plan, which proposed the hiring of only sales executives, junior sales executives and an administrative employee. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Similarly, there is no evidence to support the petitioner's statement in its July 17, 2004 letter that the beneficiary would manage approximately 20 managerial, professional and support staff in her proposed role. While the petitioner indicates that the beneficiary would eventually manage staff in the petitioner's New York office, the record contains no evidence regarding the staffing of that office, other than a statement that it had four employees as of the date of filing, nor is it clear that the beneficiary would manage additional New York-based staff by the end of the first year of operations. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner has not shown that the beneficiary's subordinate employees would be supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Beyond the required description of the job duties, CIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. 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 executive 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 its business plans, proposed staffing structure, 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(l)(3)(v)(C). 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.

As discussed above, the evidence submitted by the petitioner does not demonstrate that the company's West Coast operation is poised to begin operations immediately and expand to the point where it could support the beneficiary in a primarily executive or managerial position within one year. The petitioner indicated that it intended to hire "office support staff" and a junior sales executive in October 2004, a sales executive in February 2005, and three sales executives, one junior sales person and one secretary in September 2005. However, it is reasonable to assume that the hiring of staff for the company's West Coast office is dependent upon actually locating suitable premises for the company's offices and showroom, negotiating a lease, making any necessary modifications to the leased premises, obtaining authorization to transact business in California from state authorities, obtaining business licenses, and performing other tasks related to establishing the office. As there is no evidence that the petitioner has proceeded with any of these preliminary activities to establish its West Coast operations, the petitioner's proposed time frame for staffing the office does not seem plausible.

On appeal, counsel asserts that the petitioner hired a sales executive in October 2004, "who has assumed much responsibility over day-to-day account operations," but there is no evidence to suggest that this employee would be working in the West Coast office. The petitioner also submits on appeal a November 2004 letter from the foreign entity referencing its revised staffing plans for the West Coast operations, which states that all of the proposed staff would be hired by March 2005, with two additional sales executives added in April 2005. However, as of March 2005, there is no evidence that the petitioner has actually established the West Coast office, much less hired the five proposed employees. In addition, although the petitioner has implied that the beneficiary would supervise some staff in the New York office eventually, the record remains devoid of any description or evidence identifying the specific employees she would supervise, or when she would be expected to undertake responsibility for staff at both offices. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Finally, as discussed above, even if the petitioner did fill the proposed sales/account executive positions and secretary position within the first year of operations, the record does not establish that the proposed staff would relieve the beneficiary from performing non-qualifying duties associated with market research and analysis, data compilation and technical matters related to product development, licensing and registration. 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). Here, the evidence does not establish that the beneficiary will be relieved from performing day-to-day functions within one year of approval.

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed primarily in a qualifying managerial or executive capacity within one year. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not submitted evidence to establish that it has a qualifying relationship with the foreign entity, as required by 8 C.F.R. § 214.2(l)(3)(i). The petitioner asserted that it is a wholly-owned subsidiary of [REDACTED] a Hong Kong corporation, which in turn is owned by the beneficiary's foreign employer, [REDACTED]. The petitioner did not submit documentary evidence of the U.S. company's ownership to corroborate the claimed parent-subsidary relationship. 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. Absent evidence that the foreign entity owns and controls the U.S. entity, the AAO cannot conclude that a qualifying relationship exists. For this additional reason, the petition cannot 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. 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.