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APR 0 8 2007

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, 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 visa petition seeking to extend the employment of its general manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of California and allegedly operates a hotel. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the petitioner has a qualifying relationship with the foreign employer.

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 that the beneficiary's duties are primarily those of an executive or manager and that the petitioner has a qualifying relationship with the foreign entity. In support of this assertion, the petitioner submits a brief and additional evidence.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the

same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

As a threshold matter, it is noted that the initial "new office" petition was approved from July 1, 2004 until July 1, 2005. The instant extension petition was filed on July 12, 2005. In that petition, the petitioner clearly indicates that its basis for the classification sought is the "continuation of previously approved employment without change with the same employer." The petition also seeks to "extend the stay of [the beneficiary] since [she] now hold[s] this status." Title 8 C.F.R. § 214.2(l)(14) clearly states that an extension petition may only be filed if the validity of the original petition has not expired. In this case, since the validity of the original petition expired on July 1, 2005, the instant extension petition filed on July 12, 2005 must be denied as untimely. Therefore, beyond the decision of the director, the AAO will dismiss the appeal for this additional reason.

Nevertheless, the first substantive 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 petitioner does not clarify in the initial petition 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. 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.

The instant petition was filed on July 12, 2005. The petitioner described its business as operating a motel in Needles, California. In support of this assertion, the petitioner provided tax returns, utility bills, a deed for the motel and HUD-1 Settlement Statement confirming its acquisition on August 24, 2004, transaction reports for the motel, and a fictitious name statement indicating that the petitioner is doing business under the assumed name of Best Chalet Inn located in Needles, California.

In a letter dated June 27, 2005 appended to the petition, the petitioner described the beneficiary's job duties in operating the business as described in the petition, i.e., operating the motel in California, as follows:

[The beneficiary] is responsible for direct[ing] and coordinat[ing] purchase and marketing. Plan and develop policies and goals for the company. Coordinate activities of marketing/sales. Hire and [f]ire all managerial staff including assistant managers. Prepare

budget for USA Branch. Report to President.

The petitioner also provided an IRS Form 941 for the first quarter of 2005 indicating that the petitioner had no employees during that time period. The petitioner also provided an IRS 2004 Form 1120 indicating that the petitioner paid no wages or salaries in 2004. The petitioner did not provide an organizational chart.

On July 21, 2005, the director requested additional evidence. The director requested, *inter alia*, information regarding the number of people employed by the petitioner, an organizational chart, wage reports for employees, and a more detailed description of the beneficiary's duties in the United States.

In response, the petitioner provided evidence that it acquired a motel in Vandalia, Ohio in July 2005, after the filing of the instant extension petition and after the expiration of the validity of the original "new office" petition.¹ The petitioner provided an organizational chart and employee roster relating to the Ohio motel. The petitioner provided no information regarding the hotel it allegedly owned and operated in California during its first year in operation other than an IRS Form 941 for the second quarter of 2005 (April 1, 2005 through June 30, 2005) indicating that the petitioner employed one person, the beneficiary, during that entire time frame. Again, it should be noted that the validity of the original "new office" petition expired on July 1, 2005.

The petitioner also provided two more versions of a job description. One version, identified as Exhibit "I" in the response to the Request for Evidence, lists duties specifically relating to the management of the staff of the Ohio motel. As this job description is irrelevant (*see infra*), it will not be reproduced here. The other version of the beneficiary's job description appears in a letter dated October 7, 2005, and states as follows:

1. Formulating the company's long and short term business goals. (8 hours)
2. Researching the International market in order to develop marketing and sale strategies on a long and short term basis. (12 hours)
3. Negotiating contracts and conducting follow ups with clients through the marketing/sales representatives who serve as liaison between CEO and client. (5 hours)
4. Determine customers, requirements as per feedback from marketing/sales representatives (5 hours)
5. Interfacing with marketing/sales representatives regarding inventory issues. (3 hours)
6. Communicating with suppliers/distributors to negotiate contracts, arrangements, and communicating with bank regarding necessary transfer of money. (2 hours)

¹The petitioner signed the Land Installment Agreement relating to the acquisition of the Ohio motel on July 18, 2005. The seller of the Ohio motel signed the Land Installment Agreement on July 20, 2005. A Memorandum of Land Installment Agreement dated August 12, 2005 identifies the date of the Land Installment Agreement as July 20, 2005. A HUD-1 Settlement Statement related to the acquisition of the Ohio motel is dated August 12, 2005. Therefore, as the instant petition was filed on July 12, 2005 and the beneficiary's L-1 status expired on July 1, 2005, all of the relevant dates in the record relating to the acquisition of the Ohio motel are subsequent to the filing of the petition and the expiration of the original "new office" petition.

7. Interviewing, hiring, supervising, and terminating of employees. (2 hours)

On October 26, 2005, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel asserts that the beneficiary will be employed primarily in a managerial or executive capacity in the petitioner's operation of the Ohio motel acquired after the filing of the instant extension petition.

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

Title 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the United States operation has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Moreover, 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). In this case, the petitioner's acquisition and operation of a motel after the filing of the instant petition is irrelevant to the adjudication of the instant petition. Likewise, the beneficiary's duties associated with the operation of the Ohio motel and the alleged staffing levels are irrelevant. The regulations require that the petitioner establish that the business has expanded *during its first year* and that it has moved away from the developmental stage to full operations, where there is an actual need for a manager or executive who will primarily perform qualifying duties. *See* 8 C.F.R. § 214.2(l)(3)(ii) and § 214.2(l)(14)(ii)(C). If this cannot be established in an extension petition filed on or before the expiration of the original "new office" petition, i.e., within one year, then the petition must be denied.

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 must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. As explained above, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner's description of the beneficiary's job duties as of the date of the filing of the petition has failed to establish that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary develops "policies and goals," researches the "international market," and works with "marketing/sales representatives." However, the petitioner fails to define these policies and goals, to explain what the beneficiary is researching or how the operation of a motel in Needles, California, relates to the "international market," or to reveal the identity or function of the "marketing/sales representatives" with whom she will spend over 1/3 of her time working. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes lofty duties does not establish that the beneficiary is actually performing managerial duties. 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). 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).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As explained in the record, the petitioner employed only the beneficiary during its first year in operation, and this period of employment only commenced in the second quarter of 2005. As of the date of the filing of the petition, the record indicates that the petitioner employed only the beneficiary in its operation of a motel in Needles, California. In view of the above, the beneficiary would appear to be primarily engaged in performing the tasks necessary to providing a service as there is no subordinate staff available to relieve the beneficiary from performing the day-to-day functions related to operating a motel. 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).²

²The record also does not establish that the beneficiary manages an essential function of the organization. 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, if any, and what proportion would be non-managerial. Also, as explained above, the record establishes that the beneficiary is primarily a provider of services essential to the operation of a motel.

Similarly, the petitioner has failed to establish 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 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.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will be acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, the beneficiary appears to be performing those tasks essential to the operation of a motel. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

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).

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will be primarily performing managerial or executive duties, and the petition may not be approved for that reason.

The second substantive issue in the present matter is whether the petitioner has established that it still has a qualifying relationship with the foreign employer.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) states that a petition to extend a "new office" petition filed on Form I-129 shall be accompanied by:

Evidence that the United States and the foreign entity are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section[.]

8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate

Absent a clear and credible breakdown of the time 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 is 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).

or subsidiary specified in paragraph (l)(1)(ii) of this section." A "subsidiary" is defined, in part, as a corporation "of which a parent owns, directly or indirectly, half of the entity and controls the entity."

In the initial Form I-129, the petitioner purports that it is 100% owned by the foreign entity. However, as the record contained no evidence corroborating this assertion, the director requested additional evidence regarding the petitioner's alleged qualifying relationship with the foreign entity. The director also requested evidence, such as wire transfers, to show that the foreign entity had paid for the stock issued to it by the petitioner.

In response, the petitioner provided a copy of a stock certificate and stock ledger indicating that all 200 shares of stock authorized by the articles of incorporation were issued to the foreign entity on July 7, 2004. The petitioner also provided evidence that wire transfers were made to it by a variety of individuals in 2004. The foreign entity was not identified as one of the originators of the wire transfers.

The petitioner also provided a copy of its 2004 IRS Form 1120 with the original petition which indicates in Statement 2 to Schedule K, Line 5, that the beneficiary, and not the foreign entity, is the owner of 100% of the petitioner's stock.

On October 26, 2005, the director denied the petition concluding that the record fails to establish that the foreign entity owns and controls the petitioner. The director relied primarily on the fact that there is no evidence that the foreign entity paid for the stock issued to it by the petitioner.

On appeal, counsel asserts that the record does establish that the petitioner is owned and controlled by the foreign entity. In support, counsel first asserts that the petitioner is 51% owned by the foreign entity and 49% owned by the beneficiary. Counsel attempts to corroborate this assertion with a Form 1120X which indicates that, on or about December 6, 2005, the petition amended its 2004 Form 1120 to clarify this ownership structure. Counsel also asserts that those individuals who made wire transfers to the petitioner are shareholders in the foreign entity and that these wire transfers were made on behalf of the foreign entity. Counsel attached an affidavit from a representative of the foreign entity dated December 21, 2005 attesting to this explanation. However, counsel provided no independent evidence indicating that the foreign entity had repaid these advances made by its shareholders on its behalf or why this roundabout means of capitalizing the United States operation was adopted in the first place. Counsel also failed to reconcile the past and present inconsistencies in the ownership structure of the petitioner.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595. As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include

documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership.

In this matter, the petitioner has not established that it has a qualifying relationship with the foreign entity. As properly determined by the director, the petitioner failed to establish that the foreign entity provided any consideration for the issuance of the petitioner's stock. To the contrary, the record establishes that third parties transferred money to the petitioner. Absent evidence that the foreign entity actually paid for the stock, it cannot be determined that it owns and controls the petitioner. Although counsel attempts to explain on appeal that the originators of the wire transfers were shareholders in the foreign entity and that these transfers were made on the foreign entity's behalf, this explanation is insufficient and does not change the fact that third parties made the relevant wire transfers. Counsel offers no objective evidence establishing that the foreign entity became indebted to the individual shareholders for making these transfers or no explanation as to why the foreign entity chose to invest in the United States operation in this manner. 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.

Moreover, the petitioner failed to establish that it has a qualifying relationship with the foreign entity because the record is rife with unexplained inconsistencies regarding the petitioner's ownership structure. As indicated above, the petitioner originally asserted that it is 100% owned by the foreign entity. However, the petitioner provided a copy of its 2004 Form 1120 in which it avers that it is 100% owned by the beneficiary. On appeal, counsel provided a copy of a Form 1120X in which the petitioner avers that, instead, it is 51% owned by the foreign entity and 49% owned by the beneficiary. Counsel fails to explain which of these characterizations of the petitioner's ownership structure is correct or, importantly, to explain how or why these mistakes, if they are mistakes, were made in the first place. 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). As these inconsistencies have not been resolved, the petitioner has not established that it has a qualifying relationship with the foreign entity.

Accordingly, the petitioner has not established that it still has a qualifying relationship with the foreign employer, and for this additional reason the petition may not be approved.

Beyond the decision of the director, an additional issue in this matter is whether the petitioner has established that it has been "doing business" as defined in 8 C.F.R. § 214.2(l)(1)(ii)(H) of this section for the previous year. 8 C.F.R. § 214.2(l)(14)(ii)(B). "Doing business" is defined as the "regular, systematic, and continuous provision of goods and/or services."

In this matter, the original "new office" petition was approved on July 1, 2004. In August 2004, the petitioner apparently acquired a motel in Needles, California. However, the record establishes that the petitioner had no income and no business activity in 2004. The record further establishes that the petitioner had no employees during the first quarter of 2005, although at some point in January 2005 the petitioner apparently began operating the motel and reporting tax to the City of Needles, California. The record does not establish that this tax was reported after March 31, 2005, although there are occupancy records for the motel through April 2005.

In view of the above, it has not been established that the petitioner had been engaged in the "regular, systematic, and continuous provision of goods and/or services" for its first year in operation. The beneficiary had been in L-1 status for over six months before the petitioner reported any regularity to its business operations. Therefore, for this additional reason, the petition may not be approved.

The initial approval of an L-1A new office petition does not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. See section 291 of the Act, 8 U.S.C. § 1361.

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.