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U.S. Citizenship
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Services

47



File: WAC 05 061 52663 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 2007

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

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

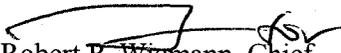
IN BEHALF OF PETITIONER:



EXTRIC COPY

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 of the California Service Center denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a new office engaging in the export and import of building and construction materials, automotive parts and other goods. It seeks to employ the beneficiary as its executive director and filed a petition to classify 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 claims on Form I-129, Petition for a Nonimmigrant Worker, that it is an affiliate of [REDACTED] located in Amman, Jordan.

The director denied the petition after determining that the petitioner has not sufficiently demonstrated that (1) the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year out of the three years preceding the filing of the petition, and (2) there exists a qualifying relationship between a qualifying foreign entity and the petitioner.

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 beneficiary has been employed abroad in a managerial or executive capacity. Counsel also asserts that the foreign entity and the petitioner are owned and controlled by the same individual and therefore a qualifying relationship exists between them. In support of these assertions, the petitioner submits additional evidence.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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.

Moreover, pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(v), if the petitioner 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 involved executive or managerial authority over the new operation;
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section , supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The first issue in this proceeding is whether the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year in the three years prior to the filing of the petition.

On Form I-129, the petitioner claims that the beneficiary is employed by [REDACTED] in Amman, Jordan. In a letter submitted with the initial petition, the petitioner indicates that the beneficiary has been employed since 1976 as executive director of [REDACTED] in Baghdad, Iraq, and since 2004 as executive director of [REDACTED] Jordan. In that letter, the petitioner claims that both of these entities are subsidiaries of the petitioner.

On January 10, 2005, the director issued a request for further evidence. In connection with the beneficiary's employment abroad, the director requested the foreign company's payroll records for the year preceding the filing of the petition, along with the date the beneficiary was hired, the positions that he held, and a statement of the reason why the beneficiary was being hired for the position with the U.S. entity. To establish that the beneficiary was employed abroad in a managerial or executive capacity, the director requested: (1) the total number of employees at the foreign location where the beneficiary is employed; (2) the foreign entity's organizational chart identifying the beneficiary's position, the names of all executives, managers and

supervisors, and all employees under the beneficiary's supervision by name and job title, with a description of job duties, educational level and annual salaries for each such employee; (3) a detailed description of the beneficiary's duties abroad, indicating the percentage of time spent on each duty, and (4) an explanation of why the beneficiary is coming to the United States at this time, why a lower level manager was not selected, and how the foreign company will continue to function in the beneficiary's absence.

In response to the director's request, the petitioner submitted the payroll records for the company in Jordan for the period from June through November 2004, and for the company in Baghdad from September 2003 through May 2004. In the documentation submitted in response to the request for further evidence, the beneficiary is variously referred to as the "director" and the "general manager" of the foreign entities. The petitioner provided the following description of the beneficiary's job duties overseas (without specifying the location where he performs these duties):

- Elaborate company's strategy
- Set annual business plan/targets
- Monitor the performance of all divisions and key individuals
- Recruit/[c]ontract necessary staff
- Review business progress with key staff
- Review improvements/action plans suggested by group divisions
- Contribute to the sales and marketing effort of the company, by providing contacts/business openings
- Maintain healthy relationship with key customers and vendors
- Asses[s] new ventures
- Review periodic reports
- Represent the company

The petitioner also provided the following breakdown of the beneficiary's duties based on percentage of time spent per duty:

Asses[s] new ventures/ developments	20%
Marketing/Presentations/Develop New Contacts	20%
Administration and recruitment	10%
Review of work progress	10%
Review of accounts	10%
Management meetings	5%
Set strategies/ planning	20%
Miscellaneous	5%

The petitioner submitted organizational charts for both of the foreign companies, on which the beneficiary was listed as director at the top of the corporate hierarchy of each company. The organizational chart for the company in Baghdad shows the following employees under the direct supervision of the beneficiary: a senior accountant, a legal advisor, a deputy manager, and two showroom managers who in turn have additional subordinate staff. The chart of the company in Jordan shows the following employees under the direct supervision of the beneficiary: a deputy manager, an accountant, a "logistics" employee, a "procurement" employee, a secretary, a senior engineer who supervises another engineer, and a sales manager who

supervises additional sales staff. The petitioner provided the name, title, brief job description, educational level and annual salary for each of the beneficiary's immediate subordinates listed above, except for the secretary in the Jordanian company.

On March 17, 2005, the director denied the petition, concluding that the petitioner has failed to show that the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year in the three years prior to the filing of the petition. Specifically, the director noted that the petitioner described the beneficiary's duties only in broad and general terms with insufficient details to demonstrate that the beneficiary actually is employed in a managerial or executive capacity. Moreover, the director noted that the petitioner did not submit an organizational chart and failed to identify the beneficiary's subordinates at the foreign employer, as requested. The director observed that a preponderance of the beneficiary's duties appears to have been directly providing the services of the foreign organization and supervising non-professional employees. The director found the petitioner has not demonstrated that the beneficiary has been primarily supervising a subordinate staff of professional, managerial or supervisory personnel who would relieve the beneficiary from the performance of non-qualifying duties, or otherwise has been primarily managing the organization, or a department, subdivision, function, or component of the organization. Moreover, the director found, the petitioner has not demonstrated that the foreign entity has a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis.

On appeal, counsel for the petitioner asserts that the beneficiary manages an essential function overseas in that he travels to different countries to negotiate and enter into contracts on behalf of the company. Counsel also asserts that the beneficiary has managerial control and authority over all of the functions of the operations of the company in Jordan and Iraq. Counsel also contends that the AAO has recognized that overseeing a corporation and its employees is a functional managerial position even when employees are not professionals and there are no mid-level supervisors. Counsel further claims that beyond supervising warehouse workers, the beneficiary has other duties that qualify him as a manager.

Upon review, the AAO finds that the record is insufficient to establish that the beneficiary was employed overseas in a primarily executive or managerial capacity. 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.* First, as the director observed, the petitioner's description of the beneficiary's job duties is insufficient in detail. Phrases such as "elaborate company's strategy," "set annual business plan/targets," "contribute to the sales and marketing effort of the company," or "represent the company" are vague and nonspecific and fail to demonstrate what the beneficiary does on a day-to-day basis. Reciting the beneficiary's vague job responsibilities or 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 does 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).

Furthermore, while the petitioner did provide a breakdown of the beneficiary's duties by percentage of time spent per duty, that breakdown applies to a different set of duties from those listed in the document identified as the beneficiary's "job description." The petitioner did not reconcile the difference between these two lists of job duties. 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). Moreover, based on the information provided, the AAO cannot determine what the beneficiary's exact duties are, nor can it determine the amount of time he actually spends on each duty; consequently, it cannot be determined whether the beneficiary *primarily* performs managerial or executive duties, as the regulations require. See *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The AAO also finds that, although the petitioner did provide some of the requested information regarding the foreign entities' personnel, the information provided is either inconsistent or incomplete, such that it is not possible to determine accurately the size and makeup of the staff of either foreign entity.¹ For example, in response to the request for further evidence, the petitioner stated that the foreign entity's staff consists of 45 employees, including 4 in administration, 2 in accounts, 10 in sales, 4 in operations, 4 in engineering, 2 office staff, 2 store keepers, 2 drivers, and 15 laborers. However, the petitioner did not specify whether these numbers represent the staff in Jordan, in Iraq, or both. Furthermore, this information does not match either of the organizational charts of the foreign entities that the petitioner provided, nor does it conform to the payroll records for either of the foreign entities.² As previously noted, the petitioner must resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Furthermore, the evidence is insufficient to demonstrate that the beneficiary was employed abroad with a qualifying organization for one continuous year in the three years prior to the filing of the petition. First, the exact identity of the beneficiary's foreign employer is unclear. As noted earlier, the petitioner stated on the Form I-129 that the beneficiary works for [REDACTED], Jordan. However, in a letter accompanying the petition, the petitioner indicated that the beneficiary has been working as executive director of [REDACTED] - [REDACTED] Baghdad, Iraq since 1976, and as executive director of [REDACTED] in Amman, Jordan since 2004. Again, the petitioner must resolve any inconsistencies in the record by independent objective evidence, and the petitioner did not explain or reconcile this inconsistency. See *Matter of Ho*, 19 I&N Dec. at 591-92.

¹ In his decision, the director stated that the petitioner has failed to submit an organizational chart and to identify the beneficiary's subordinates at the foreign employer as requested. However, the AAO acknowledges that the petitioner did in fact submit organizational charts for the entities in Iraq and Jordan and *some* information regarding some of the beneficiary's subordinated employees.

² It is noted that the payroll records the petitioner provided have not been translated, nor has the petitioner specified the currency in which the salaries were paid to employees. Additionally, only some of the employees were identified by name in English on the payroll records.

Second, as will be discussed more fully below, the petitioner has not shown that either of the foreign entities is a "qualifying organization" as defined under the regulations at 8 C.F.R. § 214.2(l)(1)(ii). Given these deficiencies in the record, the AAO does not find the evidence to be sufficient to support the conclusion that the beneficiary was employed abroad with a qualifying organization for one continuous year in the three years prior to the filing of the petition, as required under 8 C.F.R. § 214.2(l)(3)(iii).

In light of the foregoing, the AAO concurs with the director's conclusion that the petitioner has failed to establish that the beneficiary was employed abroad in a managerial or executive capacity for one continuous year in the three years prior to the filing of the petition, as required under 8 C.F.R. § 214.2(l)(3).

The second issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the beneficiary's foreign employer and the U.S. entity.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and,
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

* * *

- (I) Parent means a firm, corporation, or other legal entity which has subsidiaries.
- (J) Branch means an operating division or office of the same organization housed in a different location.
- (K) Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) Affiliate means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

On the L Supplement to Form I-129, the petitioner indicated that the U.S. entity and the foreign entity are affiliates and described the stock ownership and managerial control of each company as follows:

██████████ (Jordan & Iraq) (100% ownership)

██████████ g (USA) (50% ownership)

In a letter accompanying the petition, the petitioner stated, ██████████ ██████████ Baghdad, Iraq and ██████████ Jordan are all subsidiaries of ██████████ Inc." The petitioner submitted a copy of a certification from the recorder of free regions corporations in Jordan confirming that ██████████ was registered as a limited responsibility company on July 10, 2004, and that 50% of its shares are held by the beneficiary and 50% by an individual named T ██████████. The petitioner also submitted several real property registrations filed with the ministry of justice in Iraq, but it is unclear how and if these registration documents relate to the company in Iraq. With respect to the U.S. entity, the petitioner submitted, among other things, the articles of incorporation, filed on September 30, 2004, identifying the company as a corporation formed in the State at Arizona. At the same time, the petitioner provided a limited partnership agreement, dated November 12, 2004, identifying the entity as a limited partnership under the laws of the State of Arizona. The limited partnership agreement indicates that the two partners, ██████████, each made an initial capital contribution of US\$550,000 to the entity. The petitioner did not submit any other documentation relating to the ownership and managerial control of the U.S. entity.

In his request for further evidence, the director requested the following documentary evidence of the qualifying relationship between the U.S. and foreign entities: (1) evidence that the foreign company has in fact paid for its shares of the U.S. entity, including copies of the original wire transfer from the parent company and, for funds not originating with the foreign entity, an explanation of the source and reason for the transfer of such funds, (2) copies of all stock certificates of the U.S. entity issued to the present date, and (3) copies of the U.S. entity's stock ledger showing all stock certificates issued to the present date.

In response, the petitioner submitted a copy of the U.S. entity's share certificates number 102 and 103, dated October 1, 2004, showing that the beneficiary and an individual named ██████████ each owns 50 shares of the company. The petitioner also submitted a copy of a wire transfer dated July 12, 2004, in the amount of US\$49,975.00, from the beneficiary's bank account to what appears to be the personal account of ██████████. The petitioner did not provide a copy of the U.S. entity's stock ledger as requested.

In denying the petition, the director observed that while the evidence of record does indicate that some common ownership exists between the U.S. and foreign entities, namely that the beneficiary owns 50% of each entity, significant common ownership alone is not sufficient to establish an affiliate relationship between the two entities as defined in the relevant regulations. The director also noted that there is no evidence that a parent-subsidiary relationship exists between the two entities. Therefore, the director concluded, the record is insufficient to show that there is a qualifying relationship between the two entities.

On appeal, counsel simply claims that the U.S. entity and the foreign entity are owned and controlled by one individual, the beneficiary. Counsel did not submit any evidence in support of this claim.

At the outset, the AAO finds counsel's claim regarding the ownership and control of the two entities to be without merit. Counsel's claim that the beneficiary owns and controls both the U.S. and foreign entities is inconsistent with the evidence previously submitted on this issue, and counsel has provided no new evidence to support this claim.

In reviewing the record, the AAO agrees with the director's conclusion that the evidence is insufficient to demonstrate that a qualifying relationship exists between the U.S. and foreign entities as required under 8 C.F.R. § 214.2(l)(3)(i).³ The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between the U.S. and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm. 1988); 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). 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.

The AAO notes that the petitioner has provided inconsistent evidence with regard to the formation and legal status of the U.S. entity. As described above, the petitioner submitted the articles of incorporation of the U.S. company identifying it as a corporation formed under the laws of the State of Arizona. At the same time, the petitioner submitted a limited partnership agreement identifying the company as a limited partnership formed under Arizona law. The petitioner has not explained or reconciled this discrepancy, nor has the petitioner clarified which type of legal entity the U.S. company actually is.⁴ Again, the petitioner must resolve any inconsistencies in the record by independent objective evidence. See *Matter of Ho*, 19 I&N Dec. at 591-92.

³ It is noted for the record that the analysis of the director is incorrect with regard to the insufficiency of 50% ownership and *de facto* control of an entity. As such, the director's erroneous comments with regard to this issue are hereby withdrawn. However, the director's conclusion that the petitioner has failed to establish a qualifying relationship in this matter is correct for the reasons discussed *infra*.

⁴ The AAO notes that a search of the public records filed with the Arizona Corporation Commission (ACC) reveals that the U.S. entity was formed as a corporation in Arizona, but has since been administratively dissolved by the ACC effective September 16, 2005 for failure to file an affidavit of publication for articles filed with the ACC. The petitioner has not provided the Citizenship and Immigration Services (CIS) with any

Moreover, the record is insufficient to establish the ownership and control of the U.S. entity. The petitioner provided copies of stock certificates showing that the beneficiary and another individual each own 50 shares of the U.S. entity. As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). 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. In this matter, the director had requested the company's stock ledger as well as any wire transfers documenting monies, property, or other consideration furnished to the entity in exchange for stock ownership. The petitioner did not provide a copy of the company's stock ledger, as the director requested, or any other documentation relating to the company's stock issuance. While the petitioner did submit a copy of a wire transfer dated July 12, 2004, in the amount of US\$49,975.00, the transfer appears to have been from the beneficiary's personal account to the personal account of the U.S. entity's other shareholder. The petitioner did not explain how this fund transfer relates to the capitalization of the U.S. entity, despite the director's request for evidence of the source and reason for fund transfers that are not directly between the U.S. and foreign entities.⁵ Without full disclosure of all relevant documents, the petitioner's claims regarding the ownership and control of the U.S. entity cannot be verified. Moreover, 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).

As previously noted, the petitioner also submitted a limited partnership agreement, which states that the beneficiary and another individual each contributed \$550,000 as initial capitalization for the U.S. entity. Even assuming that the agreement is a valid document, the record contains no documentation of these capital contributions. Thus, even without taking into consideration the issue of inconsistent evidence regarding the corporate status of the U.S. entity, the record fails to provide corroborating evidence of the ownership interest in, and capitalization of, the U.S. entity as set forth in the limited partnership agreement.

information regarding this action by the ACC or any subsequent action the petitioner may have taken to remedy the situation. Thus, the current legal status of the U.S. entity is unclear.

⁵ A handwritten notation on the copy of the wire transfer states that the funds were "from [redacted] (Zuhair) to [redacted]," and a notation on the following page states "[redacted] on July 6, 2004." However, there is no explanation as to how this transaction relates to the capitalization of the U.S. entity.

The evidence of record indicates that there are two foreign companies, one in Iraq and one in Jordan, that may be related to the U.S. entity in question. The petitioner has failed to make clear whether it is claiming to have a qualifying relationship with one or both of those entities, thus the AAO will consider the relationship of the U.S. entity to both foreign entities. Regarding the company in Iraq, the petitioner has submitted no documentation that would shed light on the company's ownership or control. As noted earlier, the petitioner did submit several real property certifications relating to certain real property in Iraq, but the petitioner did not offer any explanation as to how this documentation pertains to the company in Iraq. Without any evidence demonstrating the ownership and control of the Iraqi entity, the AAO cannot determine whether that company is a "qualifying organization" pursuant to the regulations at 8 C.F.R. § 214.2(l)(1)(ii). Further, since the record is insufficient to establish the ownership and control of the U.S. entity, as discussed above, the AAO is unable to determine whether the Jordanian entity and the U.S. entity share common ownership and control and thus are affiliates, as counsel claims.

Based on the evidence submitted, the AAO finds that the petitioner has not established that a qualifying relationship exists between the U.S. and foreign organizations.

Beyond the director's decision, the petitioner has not established that it has secured sufficient physical premises to house the new office pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(vi)(A). Along with the Form I-129, the petitioner submitted a copy of a lease for premises at 2908 W. Camelback Rd., Phoenix, Arizona. The lease was signed on December 21, 2004, and the lease term is from January 15, 2005 through January 14, 2006. In its response to the director's request for further evidence, the petitioner provided another lease for premises at 8245 Sunland Blvd., Sun Valley, California, with a lease term of March 15, 2005 through March 15, 2007. First, neither of these addresses are the same as that provided as the petitioner's address on the Form I-129 and elsewhere in the record. Second, the lease term on both leases commence after the filing of the petition, and thus the petitioner cannot be said to have secured sufficient physical premises to house the new office at the time the petition was filed. The petitioner must establish eligibility at the time of the filing of 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). The petitioner also has not described the anticipated space requirements for its business, nor do the leases in the record specify the amount or type of space secured. Moreover, although the petitioner claims that these premises are being used to house its new office, the petitioner is listed as lessor rather than lessee on both leases. The petitioner has not explained or addressed these inconsistencies and irregularities anywhere in the record. As previously noted, 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. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* In light of these deficiencies in the record, the AAO cannot determine whether the petitioner has secured sufficient space to house the new office. For this additional reason, the petition may not be approved.

In addition, the petitioner has not provided adequate documentation to establish that the U.S. entity will support the beneficiary in a managerial or executive position within one year of approval of the petition. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require

the petitioner to disclose the business plans, organizational structure, and 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. Other than two letters dated September and October 2004 from the beneficiary to the other shareholder of the U.S. entity stating very briefly the foreign entity's intention to expand into the U.S. market, the record does not contain any detailed business plan in which the company's policies, strategies, organizational structure and financial goals are clearly defined. The petitioner did submit what appears to be a proposed organizational chart for the U.S. entity and job applications from several individuals, but there are no projections for the hiring of any employees in addition to the beneficiary. It is therefore unclear whether any of the proposed staff would be in place to relieve the beneficiary from performing non-qualifying job duties to permit him to function in a primarily managerial capacity within one year of the filing of the petition. Moreover, given that no information has been provided regarding start up costs or other financial projections for the U.S. entity, the AAO cannot determine whether the foreign entity has the financial ability to remunerate the beneficiary and to commence doing business in the United States, as required by the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(2). For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.