

identifying data deleted to
prevent clear, unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

87

PUBLIC COPY



File: SRC 05 190 51342 Office: TEXAS SERVICE CENTER Date: JAN 08 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)

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, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary in the position of president and chief executive officer 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, a Georgia corporation, states that it is engaged in the acquisition and management of retail businesses. It operates a Quiznos franchise. The petitioner claims to be an affiliate of ██████████ & Co., located in Pakistan. 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 for three additional years in order to continue to fill the position of president and chief executive officer.

The director denied the petition, concluding that the petitioner did not establish the following requirements: (1) that a qualifying relationship exists between the foreign company and the United States entity; and (2) that the beneficiary will be employed in a primarily managerial or executive capacity in the United States. The director noted that the United States company is doing business through a franchise agreement and the record does not demonstrate the requisite control of the U.S. entity by the foreign company.

On appeal, counsel for the petitioner asserts that “neither the regulations, nor applicable case law, specifically state that ownership of a franchise renders a Petitioner ineligible to seek an L1A classification.” Counsel further asserts that the United States company owns and operates a franchise but the U.S. entity’s business activities are not limited to the franchise. Counsel states the following:

With regard to the issue of “ownership and control,” the service clearly disregarded evidence demonstrating that the thrust of [the beneficiary’s] day is spent on specifically managing the affairs of the corporation itself. As stated above, [the beneficiary] only spends one quarter of his day focused on the operations of the Quizno’s franchise, while delegating the bulk of the management responsibilities of the restaurant to his subordinate managerial personnel. Counsel concedes that the Quizno’s franchise agreement strictly regulates what the franchise may or may not do, and that as a result [the beneficiary] does not exercise a high degree of control over the operations of the Quizno’s franchise. However, the evidence shows that [the U.S. company] as a stand alone corporation, is focused primarily on pursuing business acquisitions that are distinctly separate from the Quiznos [sic] franchise.

Counsel for the petitioner submits a brief in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further 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.

The first issue in this proceeding is whether a qualifying relationship exists between the foreign company and the United States entity. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer is the

same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

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.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

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

The petitioner claims to be a wholly owned subsidiary of the beneficiary's foreign employer, ██████████ & Co. The petitioner stated on the Form I-129 that the foreign entity is owned in equal parts by the beneficiary and ██████████. All of the supporting documentation for the foreign entity, including a national tax number certificate, tax records, and financial documents, show that the foreign entity is a sole proprietorship owned by "██████████". The petitioner did not submit evidence of the ownership and control of the U.S. company. In a letter of support dated June 22, 2005, the petitioner stated that the U.S. company purchased a Quizno's restaurant located in Georgia.

On July 13, 2005, the director requested that the petitioner submit additional evidence. In part, the director requested a copy of the franchise agreement between the United States company and the Quizno's franchise. In addition, the director requested an explanation of how the petitioner has "control" over the United States company if it is a franchise.

In a response dated September 30, 2005, the petitioner submitted the franchise agreement for a Quizno's franchise signed by the United States company on February 22, 2005. The franchise agreement, on page 40 includes a statement of ownership of the company, where the petitioner described its ownership as follows: 19.50% ██████████ the beneficiary]; 80.50% ██████████

In addition, the petitioner asserted that "while the franchise agreement is detailed as to the obligations and responsibilities of those who enter into the agreement, in no way does it preclude a franchisee's ability to make independent business decisions." The petitioner further states that the petitioner is free to establish the marketing direction of the business through "promotions and the issuance of coupons." Furthermore, the petitioner asserted that the franchise acquired by the U.S. company is only one component of the petitioner's business activities. Specifically, the petitioner stated the following:

...[T]he company is focused on acquiring other businesses in the retail, hospitality or fast food industry at the earliest possible date. Acquisitions of additional businesses will create more U.S. jobs and provide income other than that received from the Quiznos restaurant. This strategic planning demonstrates business intent, and actions, that are wholly separate from the operation of a business franchise, and further supports the Petitioner's contention that he will, in fact, exercise overall executive and managerial control over the "corporation." The Service should not limit their focus to the corporation's Quizno's franchise because this ignores the Corporation's overall business plans.

The director denied the petition on November 25, 2005 concluding that the petitioner did not establish that a qualifying relationship exists between the foreign company and the United States entity. The director

noted that the United States company is doing business through a franchise and the record does not demonstrate the ownership and control of the franchise, and in turn, the ownership of the United States company.

On appeal, counsel for the petitioner reiterates that the franchise agreement is only one aspect of the United States company. In addition, counsel asserts that the petitioner owns' controls and owns the franchise.

Upon review, the petitioner has not established that the U.S. company and the foreign entity maintain a qualifying relationship. Both the director and counsel incorrectly focused on the petitioner's operation of a franchise rather than on the necessary qualifying relationship between the beneficiary's foreign employer and the U.S. petitioner. *See* 8 C.F.R. § 214.2(l)(3)(i) (requiring that the petitioner and the organization which employed the beneficiary are qualifying organizations). Evidence of the petitioner's stock ownership is critical to determining whether a qualifying relationship exists. In this case, the director focused solely on the effect of the petitioner's franchise agreement on control of the United States entity. However, the decision does not indicate that she considered the claimed parent-subsidary relationship between the foreign entity and the petitioner. The director's comments with respect to the petitioner's franchise agreement will be withdrawn.

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 (BIA 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). 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 general evidence of a petitioner's claimed qualifying relationship, articles of incorporation alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The stock certificates, 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., supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control. The evidence of record does not demonstrate any common ownership and control between the United States company and the foreign company. The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue.

In general, a "franchise" is a cooperative business operation based on a contractual agreement in which the franchisee undertakes to conduct a business or to sell a product or service in accordance with methods

and procedures prescribed by the franchiser, and, in return, the franchiser undertakes to assist the franchisee through advertising, promotion, and other advisory services. A franchise agreement, like a license, typically requires that the franchisee comply with the franchiser's restrictions, without actual ownership and control of the franchised operation. *See Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm. 1970) (finding that no qualifying relationship exists where the association between two companies was based on a license and royalty agreement that was subject to termination since the relationship was "purely contractual"). An association between a foreign and U.S. entity based on a contractual franchise agreement is usually insufficient to establish a qualifying relationship. *Id.* *See also*, 9 FAM 41.54 N7.1-5; O.I. 214.2(1)(4)(iii)(D) (noting that associations between companies based on factors such as ownership of a small amount of stock in another company, or licensing or franchising agreements, do not create affiliate relationships between the entities for L-1 purposes).

By itself, the fact that a petition involves a franchise will not automatically disqualify the petitioner under section 101(a)(15)(L) of the Act. When reviewing a petition that involves a franchise, the director must carefully examine the record to determine how the franchise agreement affects the claimed qualifying relationship. As discussed, if a foreign company enters into a franchise, license, or contractual relationship with a U.S. company, that contractual relationship can be terminated and will not establish a qualifying relationship between the two entities. *See Matter of Schick*, 13 I&N Dec. at 649. However, if a foreign company claims to be related to a U.S. company through common ownership and control, and that U.S. company is doing business as a franchisee, the director must examine whether the U.S. and foreign entities possess a qualifying relationship through common ownership and management under section 101(a)(15)(L) of the Act.

In the instant petition, the franchise agreement does not determine the qualifying relationship between the United States entity and the foreign company. The critical relationship is that between the beneficiary's overseas employer and the U.S. petitioner. Although the petitioner does business in the United States through a franchise agreement with Quiznos, the claimed relationship between the foreign entity and the petitioner is based on stock ownership and not the franchise agreement. In order to determine whether a qualifying relationship exists, the AAO must examine the number of shares of stock issued by the petitioner, the ownership of that stock, and the resulting percentage of ownership of the U.S. petitioner.

Although the franchise agreement does not affect the required qualifying relationship, as discussed above, the petitioner failed to provide any documentation to establish that the United States and the foreign company are still qualifying organizations as defined in paragraph 8 C.F.R. § 214.2(1)(1)(ii)(G). The petitioner indicated that the United States company is a subsidiary of ██████████ Co. However, the petitioner did not submit any documentation in support of this claim. 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 minimal evidence submitted shows that the foreign entity is owned by one individual, ██████████ and that the majority owner of the U.S. company is ██████████.

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).

Based on the foregoing discussion, the petitioner has failed to establish a qualifying relationship between the petitioner and the foreign entity. Accordingly, the appeal will be dismissed.

The second issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term “managerial capacity” means 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), provides:

The term “executive capacity” means 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 June 24, 2005. On the Form I-129, the petitioner stated the proposed duties as president and chief executive officer in the United States as the following:

The alien will continue to be in charge of all finance, sales, marketing, purchasing, hiring, training and general day-to-day running of the business and the setting and implementing of corporate policy. Most importantly, the alien will continue to search for opportunities to acquire other businesses.

In a support letter dated June 22, 2005, the petitioner described the beneficiary's duties as the following:

1. Locate and negotiate the acquisition of targeted businesses;
2. Contract and bind the company in any way I [the beneficiary] see fit;
3. Recruit and train managerial and other subordinate employees;
4. Direct the management of the company, including day-to-day operations; and,
5. Establish and implement corporate policies for the U.S. company.

On July 13, 2005, the director requested additional evidence from the petitioner. In part, the director requested: (1) an organizational chart of the United States company, including the employee's names, titles, qualifications, hours worked per week, date hired and their Forms W-2 for the prior year; and, (2) a description of the beneficiary's duties in the United States, including the percentage of time spent on each duty, the number of employees supervised, and how the duties performed by the beneficiary differ from duties performed by current managers or executives within the company.

In a response letter dated September 30, 2005, counsel for the petitioner reiterated the job duties previously submitted and explained the percentage of time the beneficiary will spend on each duty. Specifically, the petitioner stated the following:

With regard to the specifics of the Beneficiary's job duties, he spends approximately 15% of his time in the management of the Quizno's franchise; 10% of his time in administration and training of Quiznos managerial staff; approximately 15% of his time in the planning, budgeting, banking, finance and accounting; approximately 40% of his time is spent searching for, reviewing and analyzing potential new real estate investments, zoning and legal issues and; approximately 20% of his time is spent meeting with potential partners, co-investors, and commercial real estate agents.

There are three layers of management in [the United States company]. The beneficiary leaves the vast majority of the day-to-day management of the Quiznos in the hands of his full-time Manager/Corporate Secretary, Mr. [REDACTED] Mr. [REDACTED] in turn, oversees two full-time Assistant Managers, [REDACTED] and [REDACTED]. In all, seven subordinate employees (two of these Assistant Managers) report to Mr. [REDACTED].

The petitioner also submitted an organizational chart of the United States entity. The chart indicates the beneficiary as the president and chief executive officer who supervises the secretary/manager, who in turn

supervises two assistant managers, one full-time cashier, and one full-time sandwich maker, and four part-time sandwich makers.

The director denied the petition on November 25, 2005 determining that the petitioner had not submitted sufficient evidence to establish that the beneficiary will be employed primarily in a managerial or executive capacity. The director stated that "the petitioner has failed to establish a managerial role because of the franchise's lack of managerial control."

On appeal, counsel for the petitioner asserts that the petitioner submitted a detailed job description, and the duties are "clearly executive in nature and consistent with the Service's L-1A requirements." Counsel further asserts that the beneficiary "only spends one quarter of his day focused on the operations of the Quiznos franchise." Counsel asserts that the United States company "as a stand alone corporation, is focused primarily on pursuing business acquisitions that are distinctly separate from the Quiznos franchise."

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity. However, the director's observation regarding the petitioner's operation of a franchise and its affect on the beneficiary's ability to qualify as a managerial or executive employee, is withdrawn. When examining the executive or managerial capacity of the beneficiary, the USCIS 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 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 prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The test is basic to ensure not only that a person has the requisite authority, but that a majority of his or her duties are related to operational policy management, not to the supervision of lower-level employees or the performance of the duties of another type of non-managerial or non-executive position.

The beneficiary's position description is too general and broad to establish that the preponderance of his duties is managerial or executive in nature. The beneficiary's job description includes vague duties such as the beneficiary will "direct the management of the company, including day-to-day operations;" "establish and implement corporate policies for the U.S. company;" and "planning, budgeting, banking, finance and accounting." 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 provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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 job description also includes several non-qualifying duties such as the beneficiary will "locate and negotiate the acquisition of targeted businesses;" "contract and bind the company in any way [the beneficiary] see fit;" "searching for, reviewing and analyzing potential new real estate investments, zoning and legal issues;" and "meeting with potential partners, co-investors, and commercial real estate agents." It appears that the beneficiary will be directly performing a number of research-oriented and operational tasks involved in expanding the petitioner's business operations, rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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).

Furthermore, the petitioner asserted that the beneficiary will only spend 15 percent of his time "in the management of the Quizno's franchise." It appears that the rest of the beneficiary's time will be spent on acquiring new real estate and contracts for the United States company. However, it appears that the only employees hired by the United States company are the individuals employed in the Quizno's restaurant. There is no evidence that the U.S. company has hired employees to assist the beneficiary with routine operational and administrative tasks associated with the company's business expansion projects and investments for the United States company. According to the record, it appears that the beneficiary will perform several non-qualifying duties. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties are managerial in nature, and what proportion are actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

On appeal, counsel for the petitioner asserts that the "thrust of [the beneficiary's] day is spent on specifically managing the affairs of the corporation itself." Therefore, if the beneficiary is spending 85 percent of his time running the United States company rather than managing the franchise restaurant. This raises an additional question as to whether the U.S. petitioning entity is doing business as required by 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). The petitioner only submitted documentation regarding the franchise agreement and did not submit any documentation for the additional business activities the United States company is involved in. The petitioner has not submitted a detailed statement of the duties the beneficiary will perform for the United States company aside from managing the franchise restaurant, thus the AAO can determine whether the beneficiary is employed in a primarily managerial or executive capacity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence and failure to provide such proof may cast doubt on the reliability and sufficiency of

the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO is not persuaded that petitioner is doing business in the United States.

As discussed above, the beneficiary's job description included non-qualifying duties associated with the petitioner's day-to-day functions, and the petitioner has not identified any other employees within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to the business's real estate investment activities, or day-to-day administrative functions. The fact that the beneficiary has been given a managerial job title is insufficient to elevate his position to that of a "function manager" as contemplated by the governing statute and regulations.

The petitioner has not demonstrated that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title. Accordingly, the petitioner has failed to demonstrate that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the record does not contain sufficient evidence that the petitioner has been engaged in the regular, systematic, and continuous provision of goods and/or services in the United States for the entire year prior to filing the petition to extend the beneficiary's status. The petitioner submitted a franchise agreement that was signed by the Quiznos franchise in April 2005, however, the beneficiary was granted L-1 status in July 2004. The petitioner did not submit any documentation evidencing that the U.S. company was engaged in a business prior to the ownership of the franchise. Thus, pursuant to the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B), the petitioner is expected to submit evidence that it has been doing business since the date of the approval of the initial petition. In the instant case, there is no evidence that the petitioner was doing business from July 2004 through April 2005. 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 the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.