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File: EAC 07 139 52641 Office: VERMONT SERVICE CENTER Date: JUL 22 2008

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

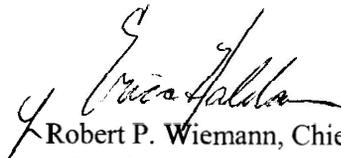
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. 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 president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of Texas and is allegedly in the jewelry business.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

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 to the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of a manager.

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 primary 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 will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act, although counsel on appeal appears to restrict the beneficiary to the managerial classification. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary will be employed in either a managerial *or* an executive capacity and will consider both classifications.

The petitioner describes the beneficiary's proposed duties in a letter dated April 9, 2007 as follows:

[The beneficiary] will continue to manage the operations of the company. As president he would still be responsible for the recruitment, and hiring of the employees, including

managers, and lower level staff as well as their training and termination in the course of our business. Additionally, [the beneficiary] would continue to provide direction to the organization with respect to long term goals, and policies. He would also be responsible for making decisions regarding the partnerships [the petitioner] engages in; and in the contracts that it procures, the negotiations that it enters into as well as acting as mentor, and liaison with other managers and executives on production, marketing and sales issues.

The petitioner also submitted copies of its quarterly wage reports. These reports indicate that the petitioner employed four workers in the fourth quarter of 2006. The instant petition was filed on April 17, 2007.

On June 1, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's job duties and position descriptions for each of the petitioner's claimed subordinate employees.

In response, the petitioner submitted a letter dated August 20, 2007 in which the beneficiary's duties are further described as follows:

Responsibilities include defining the objectives of the company and directing the overall operations of the U.S. company. Responsible for initiating and implementing expansion plans for the company as well as establishing and maintaining budgets, meeting profitability levels, and ensuring the overall growth of the company. Responsible for overseeing the management of the company; Recruiting and terminating managerial and subordinate employees where the need arises; Liaising with Vice President and Store Manager to oversee daily activities of the company and establishment of procedures and policies; Reviews activity and operations of management division progress toward stated goals and objectives. (100% time spent weekly) He directly oversees the Vice President and Store Manager.

[The beneficiary] is responsible for managing our organization by directing and coordinating the activities of subordinate managerial personnel involved in operating our retail stores in assigned areas[.] In addition, he has discretionary authority to hire and terminate store managers whose performance does not meet company standards. He acts in a managerial capacity by directing, through subordinate managerial personnel, compliance of workers with established company policies, procedures, and standards, such as safekeeping of company funds and property, personnel and grievance practices, and adherence to policies governing acceptance and processing of customer credit card charges.

Furthermore, the petitioner described the duties of the beneficiary's two direct subordinates, the vice president and the store manager, as follows:

**Vice President/Financial Manager Hasmmat Subzali**

He is in charge of reviewing financials and budgets; reviewing profit/loss statements; meeting with accountant to file tax returns. (30% time spent weekly) Participates in formulating and administering company policies and developing long range goals and objectives; (35% time spent weekly) Reviews activity and operations of store management division progress toward

stated goals and objectives; (35% time spent weekly) Reports directly to President.

**Store Manager, Ali Zahid**

Supervises assistant manager and store employees; (40% time weekly) Plans and prepares work schedules and assigns employees to specific duties; (10% time weekly) Formulates pricing policies on merchandise according to requirements for store profitability; (10% time weekly) Supervises employees engaged in sales work, taking of inventories, reconciling cash with sales receipts, keeping operating records; (20% time spent weekly) Ensures compliance of employees with established security, sales and record keeping procedures; (10% time spent weekly) Trains new employees; (10% time spent weekly) Reports directly to President and V.P.

The petitioner also submitted an organizational chart for the United States operation. The chart shows the beneficiary at the top of the organization directly supervising the vice president who, in turn, is shown supervising the store manager who, in turn, is shown supervising three sales clerks.

Finally, the petitioner submitted a quarterly wage report which indicates that the petitioner employed five workers in the first quarter of 2007.

On October 17, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.<sup>1</sup>

On appeal, counsel asserts that the beneficiary's duties are primarily those of a manager.

Upon review, counsel's assertions are not persuasive.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will define objectives, direct overall operations, implement expansion plans, ensuring overall growth, work towards stated goals and objectives,

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<sup>1</sup>It is noted that, in denying the petition, the director indicated that the beneficiary's proposed \$30,000.00 annual salary was "incongruous with that of an employee who is actually managing other bona fide managers or professionals in a major metropolitan business market." The AAO will withdraw this comment. The director's comment is not supported by the Act, or by any pertinent regulations, as these do not contain any salary provisions or requirements. However, that being said, and for the reasons set forth below, the petitioner has nevertheless failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive position, and the petition will be denied.

and direct, through subordinate workers, compliance with "established company policies, procedures, and standards." However, the petitioner does not specifically define any of these objectives, goals, plans, policies, procedures, or standards or explain what, exactly, the beneficiary will do to ensure the "overall growth" of the petitioner's jewelry business. Furthermore, general managerial-sounding duties such as directing "overall operations" and "overseeing the management of the company" are not probative of the beneficiary performing qualifying duties. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive 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. Section 101(a)(44)(A)(ii) of the Act. As asserted in the record, the beneficiary will directly supervise a vice president who, in turn, will supervise a store manager who, in turn, will supervise three sales clerks. However, it has not been established that either the vice president or the store manager is truly a managerial or supervisory employee. First, neither the vice president nor the store manager is clearly described as performing supervisory or managerial duties. The job description for the vice president fails to ascribe to him any supervisory or managerial authority over subordinates. Furthermore, while the job description for the store manager includes some supervisory responsibilities related to the sales clerks, e.g., he allegedly devotes 10% of his time to creating schedules and assigning tasks to the clerks, the job description fails to specifically describe the store manager's remaining "supervisory" duties. Vaguely claiming that the store manager "supervises" the three clerks and ensures their compliance with certain procedures will not establish that this worker is truly a supervisory employee. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. In this matter, it has not been credibly established that the store manager is a supervisory employee. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

Second, the petitioner has failed to establish that the beneficiary will supervise and control the work of other supervisory or managerial employees because it has not been credibly established that the petitioner's business possesses an organizational complexity which reasonably requires the employment of a subordinate tier of supervisory or managerial workers. As explained in the record, the petitioner claims to operate a six-employee retail jewelry business.<sup>2</sup> While the petitioner claims to operate three locations, it appears that all

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<sup>2</sup>It is noted that the petitioner claims in its petition to employ four workers, but also claims in the organizational chart to employ six workers. The petitioner's wage records indicate that, as of the date the petition was filed, the petitioner employed four workers. The petitioner offers no explanation for this inconsistency in the record. It is incumbent upon the petitioner to resolve any inconsistencies in the record by

three locations are actually kiosks or small retail enterprises located within the same shopping facility. It is simply not credible that three of the petitioner's six employees would be employed in supervisory or managerial positions within a four-tiered hierarchy in which only three employees are left to perform the day-to-day tasks necessary to the operation of the kiosks. To the contrary, it appears more likely than not that the beneficiary and his claimed subordinate employees will all primarily perform the tasks necessary to the operation of the jewelry business. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006).

In view of the above, the beneficiary would appear to be, at most, a first-line supervisor of non-professional workers, the provider of actual services, or a combination of both. 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). A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner failed to establish the skills or education required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.<sup>3</sup> Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>4</sup>

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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).

<sup>3</sup>In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

<sup>4</sup>While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. 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

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 act 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, it appears that the beneficiary will be primarily employed as a first-line supervisor and will perform the tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that Citizenship and Immigration Services (CIS) "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d at 1316 (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, 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). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.* As discussed, the petitioner has not established that its staff of four (or six) employees would relieve the beneficiary from primarily performing non-qualifying duties associated with operating the three retail jewelry kiosks.

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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 will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, the record indicates that the beneficiary will more likely than not be a first-line supervisor of non-professional employees and/or will perform non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial, nor can it deduce whether the beneficiary will primarily perform 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).

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

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(l)(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 or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity." 8 C.F.R. § 214.2(l)(1)(ii)(K). "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

In this matter, the petitioner asserts in the Form I-129 that the foreign entity owns 51% of the petitioner's stock and is thus a subsidiary. In support of this claim, the petitioner submits a stock certificate indicating that 510 shares of stock were issued to the foreign employer. However, the record contains a serious inconsistency which undermines this claim. The petitioner also submitted copies of its 2004 and 2005 Forms 1120S, U.S. Income Tax Return for an S Corporation. To qualify as a subchapter S corporation, a corporation's shareholders must be individuals, estates, certain trusts, or certain tax-exempt organizations, and the corporation may not have any foreign corporate shareholders. *See* section 1361 of the Internal Revenue Code, 26 U.S.C. § 1361. A corporation is not eligible to elect S corporation status if a foreign entity owns it in any part. Accordingly, since the petitioner would not be eligible to elect S-corporation status with a foreign parent, it appears that the United States petitioner is owned by one or more individuals residing within the United States rather than by a foreign entity. In fact, the petitioner claims in the Schedules K attached to the Forms 1120S to be 100% owned by the beneficiary. As this evidence has not been reconciled with the stock certificate and the petitioner's conflicting claims in the Form I-129, the petitioner's ownership and control has not been clearly established. 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).

Furthermore, the record is devoid of evidence of the foreign employer currently doing business. The record does not contain any current evidence addressing the regular, continuous, and systematic provision of goods and/or services by the entity abroad. Once again, 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.

Accordingly, the petitioner has not established that it and the foreign entity are qualifying organizations. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that the beneficiary's services will be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon completion of the temporary assignment in the United States. 8 C.F.R. § 214.2(l)(3)(vii).

In this matter, the petitioner claims to be owned and controlled by the beneficiary. While the record contains inconsistencies which render it impossible to discern the exact ownership and control of the petitioner, the petitioner is nevertheless obligated to establish that the beneficiary's services will be used for a temporary period and that he will be transferred to an assignment abroad upon completion of the assignment. *Id.* However, the record is devoid of any evidence establishing that the beneficiary's services will be used temporarily. 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).

Accordingly, as the petitioner has not established that the beneficiary's services will be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon completion of the temporary assignment in the United States, the petition may not be approved for this additional reason.

Beyond the decision of the director, the record reflects that the petitioner did not file the petition for an extension within the required time frame. The regulation at 8 C.F.R. § 214.2(l)(14)(i) provides, in pertinent part, that a petition extension may be filed only if the validity of the original petition has not expired. In the present case, the beneficiary's authorized period of stay expired on Sunday, April 15, 2007. However, the petition for an extension of the beneficiary's L-1A status was filed on Tuesday, April 17, 2007, two days after the expiration of the beneficiary's status. Pursuant to 8 C.F.R. § 214.1(c)(4), an extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed. As the extension petition was not timely filed, it is noted for the record that the beneficiary would be ineligible for an extension of stay in the United States even if the instant petition were approved.

The previous approval of an L-1A petition does not preclude CIS from denying an extension based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 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.

