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**U.S. Citizenship
and Immigration
Services**

D7



File: EAC 07 106 52334 Office: VERMONT SERVICE CENTER Date: JUL 24 2008

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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
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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 petition seeking to employ the beneficiary in the position of vice president to be employed at a new office in the United States 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 corporation organized under the laws of the State of Louisiana, is allegedly in the construction and building materials business.¹

The director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

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 asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval.

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.

¹It is noted that both the organizational materials submitted by the petitioner and the public records on file with the Louisiana Department of State indicate that the petitioner's correct corporate name is "Apollo Enterprise Development Limited." It is further noted that, according to the Louisiana Department of State, the petitioner's corporate status is "not in good standing." Therefore, it appears that the corporation may no longer be doing business in the United States. Accordingly, if this appeal were not being dismissed for the reasons explained herein, this would call into question the petitioner's eligibility for the benefit sought.

- (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.

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

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 primary issue in this matter is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

In support of the petition, the petitioner submitted a letter dated February 22, 2007 in which it indicates that the United States operation was formed to fulfill orders for building supplies and equipment related to demolition and construction projects in New Orleans, Louisiana. The petitioner explained that the foreign entity will invest \$300,000.00 and that the beneficiary will perform the following duties:

We send [the beneficiary] to the United States in the capacities of Vice President of [the petitioner] in order to directly operate and develop all business happened [sic] between our Company and US customers. He is also in charge of assisting the president in planning, developing and implementing company policies, business strategies, operational guidelines, administrative procedures, business goals and markets, sales volumes, marketing surveys, market reports, managerial reports, shipping manifests, economic forecasts and financial statements in order to make efficient and effective decisions.

In a separate document titled "Position and Duty," the petitioner claims that the beneficiary will devote 85% of his time to "managing and directing all development activities" and 15% of his time to "conducting information seminars and marketing research."

The petitioner also submitted a document outlining the "American Project" dated October 25, 2006. This document indicates that the petitioner will establish three retail stores within three years which will sell hardware, locks, steel pipes, building materials, and other products. The petitioner also indicates that it will open "wholesale centers" in New York and New Jersey and that it will employ its president, the beneficiary, a secretary, an office manager, a sales manager, a cashier, a driver, a "worker," and four commission-based salespersons. Finally, the "American Project" outline projects that the United States operation will have \$5,351,500.00 in expenses in 2007, which will include \$250,000.00 in wages.

The petitioner submitted an organizational chart for the United States operation. The chart indicates that the president, the beneficiary, the office manager, the treasurer, and the secretary will be supervised directly by an "executive director." The beneficiary is not portrayed as having supervisory responsibility over any subordinate employees.

Finally, the petitioner submitted a document titled "Corporate Profile." This document reiterates that the business of the United States operation includes "supply building materials, varies [sic] Steel Pipes, Decoration panel and other construction equipments, etc."

On April 2, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties in the United States, a list of all employees in the United States which includes complete position descriptions for each worker, payroll records, wage reports, photographs of the United States operation, evidence that the foreign entity transferred funds to the United States operation, evidence that the petitioner has commenced doing business, and evidence that the owner of the petitioner's claimed premises in Brooklyn, New York, has consented to the petitioner's sublease of the property for its enterprise.

In response, the petitioner submitted a letter dated May 22, 2007 in which it claims that it has "signed a contract" with Eastern Energy Limited pertaining to supplying materials related to Hurricane Katrina reconstruction efforts. The petitioner also claims to be "working together with Sciortino Home Inc. in the real [e]state developing [sic] project 'Crystal Lake' in Mississippi, 55 miles from New Orleans." However, the petitioner did not submit any documents substantiating these claims. The only business documents submitted by the petitioner appear to be three invoices relating to the sale of garments. The petitioner also submitted a table indicating that the petitioner currently employs the president, the beneficiary, and two office workers described as performing clerical tasks.

On August 27, 2007, the director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval.

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

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id.

For several reasons, the petitioner in this matter has failed to establish that the United States operation 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. The petitioner has failed to sufficiently describe both the beneficiary's and his subordinates' proposed duties after the petitioner's first year in operation; has failed to establish that an investment has been made in the United States operation; has failed to sufficiently describe the nature, scope, and financial goals of the new office; and has failed to sufficiently describe the organizational structure of the foreign entity. 8 C.F.R. § 214.2(l)(3)(v)(C).

First, as correctly noted by the director, the petitioner has failed to establish that the beneficiary will be performing primarily "managerial" or "executive" duties after the petitioner's first year in operation. When

examining the proposed executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the proposed 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 that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.*

In this matter, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will develop and implement company policies, business strategies, operational guidelines, administrative procedures, and business goals and will devote 85% of his time to "managing and directing all development activities." However, the petitioner did not specifically define these policies, strategies, operational guidelines, administrative procedures, and business goals, or explain what, exactly, the beneficiary will do in "managing and directing all development activities." The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes inflated duties does not establish that the beneficiary will actually perform managerial or executive duties after the first year of operations. Specifics are clearly an important indication of whether a beneficiary's duties will be 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). 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).

Likewise, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to perform the non-qualifying tasks inherent to his duties and to the operation of the business in general. Other than two primarily clerical workers, the petitioner failed to specifically describe the duties of the proposed subordinate employees or to explain how, exactly, these prospective employees will relieve the beneficiary from performing non-qualifying tasks even though this evidence was requested by the director. Once again, 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). For example, the petitioner claims that the beneficiary will be assigned duties associated with sales, marketing, shipping, and business planning. However, the petitioner fails to explain who, exactly, will relieve the beneficiary of the need to continue the non-qualifying tasks inherent to these duties after the petitioner's first year in operation. As the petitioner fails to explain what tasks the beneficiary and his subordinate staff will perform after the petitioner's first year in operation or to explain how much time the beneficiary will devote to performing non-qualifying tasks, it cannot be confirmed that he will be "primarily" employed as a manager or executive. 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; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).²

²It is noted that, on appeal, the petitioner attempts to supplement the record with more detailed descriptions of the duties of its proposed workforce. However, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence, and the AAO will not now consider this evidence on

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As noted above, the petitioner has failed to specifically describe the duties of the proposed subordinate employees. Therefore, it cannot be confirmed that the beneficiary will supervise and control other supervisory, managerial, or professional employees.³ Regardless, the organizational chart and job descriptions in the record fail to describe the beneficiary as having supervisory authority over any subordinate workers. It appears that the petitioner's "executive director" will supervise and control the subordinate workers, including the beneficiary. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial or executive capacity after the petitioner's first year in operation.

Second, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because it failed to establish that an investment was made in the enterprise. 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In this matter, the petitioner claims that the foreign entity will invest \$300,000.00 in the United States operation. However, the record is devoid of evidence of any investment having been made in the United States operation prior to the filing of the petition. Once again, 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). While the petitioner submitted evidence on appeal that it maintains a bank account having a balance of approximately \$30,000.00, it is unclear whether this sum was transferred by the foreign entity to the petitioner and whether this transfer occurred prior to the filing of the instant petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Regardless, as the petitioner projects that it will incur \$5 million in expenses in 2007, a \$30,000.00 investment would not be sufficient to support the start up of the United States operation. Accordingly, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year for this additional reason.

Third, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because the petitioner has failed to sufficiently and credibly describe the nature, scope, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(1). As explained above, the petitioner's "business plan" vaguely describes the United States operation as a proposed construction and

appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

³In evaluating whether the beneficiary manages 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).

building supply company. While the petitioner claims to have developed relationships with businesses in Louisiana and Mississippi, the petitioner failed to support this claim with any evidence. The petitioner also failed to specifically describe its retail marketing plan or its primary competitors. Furthermore, the only evidence submitted by the petitioner pertaining to its business activities in the United States appear to relate to the sale of garments. However, neither the business plan nor the supporting correspondence mentions the garment industry as a component of the petitioner's proposed business in the United States. The petitioner failed to explain this fundamental inconsistency in the record concerning its business activities. 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). Finally, the petitioner failed to corroborate its financial projections or business plans with any evidence. The petitioner failed to establish that it has secured locations suitable for its proposed retail and wholesale locations, that it has established business relationship with third parties on the Gulf Coast, or that it has received an investment which would permit the proposed enterprise to 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. 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 failed to establish that the United States operation will support an executive or managerial position within one year for this additional reason.

Fourth, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year because the petitioner failed to describe the organizational structure of the foreign entity. 8 C.F.R. § 214.2(l)(3)(v)(C)(3). The petitioner failed to specifically describe the personnel structure of the foreign employer even though this evidence was specifically requested by the director. Once again, 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).

Accordingly, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and the petition may not be approved for the above reasons.

Beyond the decision of the director, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office. 8 C.F.R. § 214.2(l)(3)(v)(A).

In support of the petition, the petitioner submitted a copy of a "sublease agreement" between Johnson Chang and the petitioner purportedly representing the petitioner's sublease of "two room[s] on 2 Floor" at 2463 East 22 Street, Brooklyn, New York. The petitioner also submitted photographs of a small office space presumably at the above address. However, it does not appear that this small space will be able to accommodate the petitioner's expanding business as described in the record. Furthermore, despite being requested by the director in the Request for Evidence, the petitioner failed to provide a copy of any acknowledgement from the landlord or owner of the premises establishing that the landlord acquiesces to the sublease arrangement. Once again, 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). Absent this evidence, it cannot be concluded that the petitioner's location in Brooklyn will permit the United States operation to expand to the point that it will support the employment of a primarily managerial or executive employee within one year.

Furthermore, the lease submitted on appeal pertaining to a warehouse in Louisiana is not relevant to the instant matter. The Louisiana lease is dated August 1, 2007, almost five months after the filing of the instant petition. Once again, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. Therefore, this lease may not be used to establish that the petitioner has secured sufficient physical premises to house the new office.

Accordingly, as the petitioner has failed to establish that it has secured sufficient physical premises to house the new office, the petition may not be approved for this additional reason.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary has been employed in a primarily managerial or executive capacity with the foreign entity for one year within the preceding three years. 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner failed to specifically describe the beneficiary's job duties abroad as manager of the import and export department. Specifics are clearly an important indication of whether a beneficiary's duties were 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, *aff'd*, 905 F.2d 41. Furthermore, the petitioner failed to describe the duties of the beneficiary's twelve purported subordinates abroad even though this evidence was specifically requested by the director. Once again, 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). Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for Citizenship and Immigration Services (CIS) to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary has been employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(3)(v)(B), and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner failed to establish that it has a qualifying relationship with the foreign entity.

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." "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services."

In this matter, the petitioner, a Louisiana corporation, asserts that it is 100% owned by the foreign employer, China Third Metallurgy Construction Corporation. In support of this assertion, the petitioner submitted a copy of a stock certificate representing the claimed issuance of 100% of the petitioner's stock to the foreign employer. However, as this stock certificate is invalid under Louisiana law, it is not persuasive evidence that the foreign employer truly owns and controls the petitioner. Louisiana law requires that a stock certificate state, at a minimum, the number of shares the certificate represents. La. Stat. Ann. § 12:57 (2007). The stock certificate in the record fails to state the number of shares issued to the foreign employer, if any. Therefore, the petitioner has failed to establish that it has a qualifying relationship with the foreign employer.

Furthermore, the record is not persuasive in establishing that either the United States operation or foreign employer is or will be "doing business" as defined by the regulations. As noted above, the record contains several fundamental and unresolved inconsistencies pertaining to the petitioner's business activities in the United States. While the petitioner describes its business as being related to construction and building supplies, the only evidence submitted by the petitioner pertaining to its business activities appears to relate to the sale of garments. Moreover, the record is devoid of evidence establishing that the foreign employer is engaged in the regular, systematic, and continuous provision of goods and/or services. While the petitioner submitted undated promotional materials highlighting the foreign employer's business accomplishments and past activities, these materials do not establish that the foreign employer is currently doing business.

Accordingly, the petitioner has failed to establish that it has a qualifying relationship with the foreign entity, and the petition may not be approved for this additional reason.

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

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

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

ORDER: The appeal is dismissed.