

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B7



File: EAC 06 219 50151 Office: VERMONT SERVICE CENTER Date: **MAR 10 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:



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.

Robe
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 petition seeking to employ the beneficiary in the position of president to open 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 Florida, is allegedly a dry cleaning business.¹

The director denied the petition concluding that the petitioner failed to establish that it has secured sufficient physical premises to house the new office.

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 established that it has secured sufficient physical premises to house the new office. Specifically, counsel asserts that the petitioner's lease for a "virtual office" establishes that sufficient physical premises have been secured.

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.

¹According to Florida state corporate records, the petitioner's corporate status in Florida was "administratively dissolved" on September 14, 2007. Therefore, since the corporation may not carry on any business except that necessary to wind up and liquidate its affairs, the company can no longer be considered a legal entity in the United States. *See* § 607.1405, Fla. Stat. (2006). Therefore, if this appeal were not being dismissed for the reasons set forth herein, this would call into question the petitioner's continued 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.

The primary issue in this matter is whether the petitioner has established 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 foreign employer submitted a letter dated July 13, 2006 describing the United States operation as follows:

[The petitioner] intends to purchase an existing and operational dry cleaning retail business or purchase sufficient land to construct a new dry cleaning facility. Additional "drop" stores will be established to increase the volume of business, with all processing to be done at the main location. Once operations commence in the US and the business is operating smoothly, [the petitioner] then intends to lease or purchase a 5000 square foot industrial unit for the

creation of a central processing facility for dry cleaning and laundry services. When this is accomplished, existing plant and machinery from the initial store will be transferred to the factory unit. The cost for equipment and installation is estimated at approximately \$280,000. The company will also expand into linen and laundry services for hotels and fine dining restaurants.

* * *

[The petitioner] presently has a virtual office agreement with [HQ] for initial business premises at [REDACTED] in Orlando, Florida. This location will be used until the first dry cleaning location is determined. The decision to purchase an existing retail outlet or to construct a new outlet will be one of the first tasks of the President in operating the new US office.

The petitioner also submitted a document titled "HQ Agreement" and "Virtual Office, Virtual Office Plus[,] Mailbox Plus & Telephone Answering" (the "Agreement"). The Agreement identifies its start date as July 1, 2006, and lists four product offerings at the top of the first page – Mailbox Plus, Telephone Answering, Virtual Office, and Virtual Office Plus. The only product checked on the Agreement is "Mailbox Plus." The "Mailbox Plus" product is described under the "Terms & Conditions" section of the Agreement as follows:

Mailbox Plus product is a service operated by [HQ] that entitles [the petitioner] to use the address of the HQ center specified in this Agreement as his/her business address ("the Center") subject to exception in certain locations and not as his/her registered office address.

The "Virtual Office" and "Virtual Office Plus" products, both of which were *not* checked on the Agreement, include telephone service, facsimile service, and office usage privileges. The "Mailbox Plus" product, the product apparently acquired by the petitioner, does *not* list these additional services.

On August 4, 2006, the director requested additional evidence. The director requested evidence establishing that the petitioner has secured sufficient physical premises to house the new office, and evidence that the United States operation, within one year of the approval of the petition, will support an executive or managerial position.

In response, counsel reiterated that the petitioner has secured a "virtual office" which will be used as its initial business premises until "the first dry cleaning location is determined." Counsel also submitted the Agreement and an undated letter from the foreign entity indicating that the petitioner will use the "virtual office" for a "temporary period only."

On August 22, 2006, the director denied the petition concluding that the petitioner failed to establish that it has secured sufficient physical premises to house the new office. The director reasoned that the "virtual office" allegedly secured by the petitioner will not be sufficient to permit the petitioner to commence "doing business." The director further states that "[t]he physical premises referred to in the regulations are the premises where the actual business will take place, not the planning of where the business will be located."

On appeal, counsel asserts that the petitioner established that it has secured sufficient physical premises to house the new office. Specifically, counsel asserts that the petitioner's lease for a "virtual office" establishes that sufficient physical premises have been secured. Counsel further argues that the regulations do not prohibit a "new office" from operating from temporary quarters and then moving to a larger or otherwise different facility as the business grows.

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

As the beneficiary is coming to the United States to open a "new office," the petitioner must establish that "[s]ufficient physical premises to house the new office have been secured." 8 C.F.R. § 214.2(l)(3)(v)(A). While the regulations do not define what type of premises should be considered "sufficient" for purposes of the "new office" regulations, the regulations do clearly require the petitioner to secure "physical" premises. The regulations also require all petitioners, including "new offices," to be "qualifying organizations." See 8 C.F.R. § 214.2(l)(3)(i); 8 C.F.R. § 214.2(l)(1)(ii)(G). A "qualifying organization" is defined in part as a corporation which "[i]s or will be doing business. . . for the duration of the alien's stay in the United States as an intracompany transferee." In turn, "doing business" is defined in part as "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."

In view of the above, a "new office" must secure "physical" premises which will be sufficient to permit the enterprise to commence "doing business" and to expand to the point where there would be an actual need for a manager or executive who will primarily perform qualifying duties. While there is no prohibition on a "new office" moving to a different location during its first year of operation, the "new office" petitioner must nevertheless establish that the physical premises secured will sufficiently permit the petitioner to both "do business" and to develop to the point that the beneficiary will be primarily performing qualifying duties at the end of the first year of operations.

In this matter, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office. First, the petitioner has failed to establish that it has secured "physical" premises. As indicated above, the Agreement submitted by the petitioner as evidence that it has rented a "virtual" office does not indicate that the petitioner actually acquired a service that would permit it to occupy any "physical" space. Instead, the Agreement indicates that the petitioner purchased the "Mailbox Plus" product, which does not appear to include a right to utilize physical space within the building at [REDACTED]. The "Mailbox Plus" product only permits the petitioner to use the facility as its mailing address. Therefore, for this reason alone, the petition may not be approved.

Second, the petitioner has failed to establish that the premises secured will be sufficient to permit the enterprise to commence "doing business" and to expand to the point where there would be an actual need for a manager or executive who will primarily perform qualifying duties. As indicated above, the petitioner plans to operate a dry cleaning business. As the premises in question, i.e., the right to receive mail at [REDACTED] would not be sufficient to accommodate a dry cleaning business which will be "doing business" and would not permit the business to expand during its first year in operations, the petitioner has failed to

establish that the premises are "sufficient." In fact, given the petitioner's admission that the arrangement will be "temporary," it appears that even the petitioner acknowledges that this arrangement is insufficient.

Accordingly, the petitioner has failed to establish that it has secured sufficient physical premises to house the new office, and the petition may not be approved for this reason. 8 C.F.R. § 214.2(l)(3)(v)(A).

Beyond the decision of the director, the petitioner failed to establish that it has a qualifying relationship with the foreign 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 United States employer are 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 petitioner must also establish that it and the foreign employer "[i]s or will be doing business . . . for the duration of the alien's stay in the United States as an intracompany transferee." 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). Once again, "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 has failed to establish that it is a qualifying organization because it has failed to establish that it is or will be doing business for the duration of the alien's stay in the United States. The petitioner admits that it is not ready to commence "doing business" in the United States. In fact, the petitioner is seeking to classify the beneficiary as an intracompany transferee to come to the United States to decide whether "to purchase an existing retail outlet or to construct a new outlet." As "due diligence" or "business planning" does not constitute the regular, systematic, and continuous provision of goods and/or services, the petitioner is not eligible for the benefit sought.

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

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 50% owned by the foreign employer and 25% owned by the beneficiary. The petitioner claims that the foreign employer is 50% owned and controlled by the beneficiary. As a purported owner of the petitioner, the petitioner is 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 (Reg. Comm. 1972)).

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 petitioner has not established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

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 three 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 (1) to establish that a sufficient investment has been made in the United States operation, (2) to establish that the foreign entity has the financial ability to commence doing business in the United States, or

(3) to sufficiently describe the nature, scope, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C).

First, 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 a sufficient investment has been made in the enterprise. 8 C.F.R. § 214.2(l)(3)(v)(C)(2). In support of its petition, the petitioner submitted evidence that it opened a bank account and that a \$2,000.00 deposit was made on June 28, 2006. The petitioner also submitted a document titled "business plan" and a letter dated July 13, 2006 in which the petitioner projects start-up costs of approximately \$120,000.00. Accordingly, as the investment made at the time of the filing of the instant petition would not be adequate to fund the start-up and growth of the business, the petitioner has failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. 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).

Second, the petitioner failed to establish that the foreign employer has the financial ability to commence doing business in the United States. As indicated above, the petitioner projects start-up costs of approximately \$120,000.00. However, the foreign employer's balance sheet only shows £55,813.00 in assets. As this would not be sufficient to fund the start-up of the business and continue doing business abroad, the petitioner has failed to establish that the foreign employer has the financial ability to commence doing business in the United States. 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 describe the nature, scope, organizational structure, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(1). The petitioner's "business plan" vaguely describes the United States operation as a proposed dry cleaning business. However, the plan fails to specifically describe the nature of the business. Instead, the plan vaguely outlines two "options" for the business -- purchase an existing business or purchase vacant premises and build a facility. The plan fails to identify competitors, pricing, or locations and fails to corroborate its projections regarding revenue, income, expenses, or financial goals. The record does not contain any independent analysis. Absent a detailed, credible description of the petitioner's proposed United States business operation addressing the petitioner's proposed product, marketing plan, customers, staffing, and income/expense projections, it is impossible to determine whether the proposed 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.

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 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).

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 foreign employer, a laundry business, described the beneficiary's duties abroad in a letter dated July 13, 2006 as follows:

- Held responsibility for overall performance and ultimate management of company.
- Established company and all divisions within.

- Directed the general management of the company.
- Developed company into a thriving and profitable business.
- Established company goals and policies.
- Supervised operations.
- Hired, fired and supervised staff.

The petitioner also submitted a list of six employees purportedly under the beneficiary's supervision abroad.

Upon review, the petitioner has failed to establish that the beneficiary was employed abroad in an executive or managerial capacity.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary acted in a "managerial" or "executive" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner asserts that the beneficiary "established company goals and policies." However, the petitioner does not define these goals and policies. Overly broad statements such as "held responsibility for the overall performance and ultimate management of the company" are not probative of the beneficiary performing managerial or executive duties. The mere fact that the petitioner gave the beneficiary a managerial title and may have been the sole managerial employee does not establish that the beneficiary was actually performing "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.

The petitioner has also failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As explained in the record, the beneficiary appears to have supervised a staff of six employees. However, the petitioner has not established that any of these employees was primarily engaged in performing supervisory or managerial duties. To the contrary, it appears that these employees, as well as the beneficiary, were performing the tasks necessary to produce a product or to provide a service in the operation of the laundry business.

In view of the above, the beneficiary would appear to have been primarily a first-line supervisor of non-professional employees, 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. Section 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, the petitioner has not established that the

beneficiary managed professional employees. Therefore, the petitioner has not established that the beneficiary was employed primarily in a managerial capacity.

Similarly, the petitioner has failed to establish that the beneficiary acted 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 acted primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary did on a day-to-day basis. Moreover, as explained above, the beneficiary appears to have been primarily employed as a first-line supervisor and was performing the tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary was employed primarily in an executive capacity

Finally, 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 1313, 1316 (9th Cir. 2006) (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).

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.

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. 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.