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U.S. Citizenship  
and Immigration  
Services

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File: EAC 07 159 52154 Office: VERMONT SERVICE CENTER Date: OCT 01 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of Florida and is allegedly an "electronics store."<sup>1</sup>

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, the petitioner asserts that the director erred and that the beneficiary will perform primarily qualifying duties.

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

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<sup>1</sup>According 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, and the petitioner has not taken steps under Florida law to seek reinstatement, the company can no longer be considered a legal entity in the United States. *See Fla. Stat. 607.1421 (2006)*. Therefore, if the 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.

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, and indicates in the response to the Request for Evidence that the beneficiary will perform both managerial and executive duties. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

The petitioner describes the beneficiary's duties as "president" of the alleged two-location electronics business in a letter dated April 20, 2007 as follows:

- (25%) Plan, organize, manage, direct, control, and coordinate the daily operation of the organization. He is responsible for constantly reviewing the operation making changes if necessary and implementing new procedures.
- (20%) He ensures the effectiveness of financial programs; oversees financial and administrative management issues, identification of problems, and direct implementation of solutions. He directs the establishment of internal financial controls and ensures the financial/audit operation and reporting requirements are in compliance with applicable federal and state laws, policies, standards, regulations, and generally accepted accounting principles and practices[.]
- (15%) Negotiation of contracts with vendors.
- (15%) Directing and coordinating the day-to-day activities of the subordinate managers and supervisors; [r]ecruiting and hiring of staff, promotion of firing when necessary.
- (10%) Maintain regular communication with the foreign parent company.
- (15%) Research and investigation of other prospective markets for expansion and develop market strategy accordingly.

The petitioner indicates in the Form I-129 that it currently employs four workers. Consistent with this averment, the petitioner submitted an organizational chart for the United States operation. The chart shows the beneficiary at the top of the organization directly supervising two "store managers." One of the store managers is, in turn, portrayed as supervising a single "sales associate." The remaining positions listed on the organizational chart appear to be vacant.

Finally, the petitioner described the duties of its three additional workers as follows:

**Store Manager/Sanford Store.** Mrs. [REDACTED] Responsibilities include general management of the Sanford location, being primary [sic] in charge of planning, organizing, and managing the assigned administrative, operational, and customer service activities designated by executive personnel. Mrs. [REDACTED] monitors and evaluates performance to ensure compliance with goals and policies. Also, assists with all the accounting operations and

maintenance of appropriate documentation and recordkeeping.

**Store Manager/University Blvd[.] Store.** [REDACTED]. Responsibilities include general management of the Deltona location being primary [sic] in charge of planning, organizing, and managing the assigned administrative, operational, and customer service activities designated by executive personnel. Mrs. [REDACTED] monitors and evaluates performance to ensure compliance with goals and policies. Also, assists with all the accounting operations and maintenance of appropriate documentation and recordkeeping.

**Sales Associates,** [REDACTED]. Responsible for customer service at the Deltona location. Her responsibilities include retail sales, service contracts, general information and advice and general store duties including any errands needed, help stocking, main cashier, answer any phone calls, etc.

On June 25, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties; complete position descriptions for each of the beneficiary's subordinates, including breakdowns of the number of hours devoted to each of the subordinate workers' ascribed duties on a weekly basis and copies of pertinent educational credentials; and quarterly wage reports.

In response, the petitioner submitted a letter dated September 17, 2007 in which it further described the beneficiary's duties as follows:

- Ensure compliance with all applicable laws: licenses, permits, regulations, employment, etc.
- Oversee expansions, moves and major projects, working with Store Managers.
- Approve Store Managers' purchase, lease and service contracts.
- Ensure development of company maintenance and security programs.
- Ensure adequate insurance for all company operations.
- Work with area managers to ensure proper activities and programs are being carried out.
- Ensure regular financial reports and analysis.
- Approve capital expenditures for expenditures over \$200.
- Develop proposals and negotiate contracts as needed.
- Monitor deviations from budget, take corrective action.
- Review store and department financial performance reports with Store Managers, and plan corrective action as needed.
- Ensure margin control and take correction actions if needed to stay within budget.
- Develop annual business plan with capital, operating and cash budgets.
- Investigate new business opportunities[.]
- Set objectives for Store Managers for store and department sales, margin, turns and labor costs.
- Coordinate Operational Management Team meetings.
- Diagnose, develop and evaluate the performance of all business employees, including

other store managers[.]

The petitioner also further described the staffing of the United States operation, the duties of the beneficiary's subordinate staff, and the size of the enterprise. The petitioner describes six subordinate staff members in the September 17, 2007 letter, excluding the beneficiary, working at three locations, even though the petitioner claims in the initial petition to employ only three subordinate workers at two locations. While not clarified by the petitioner, it appears that these three additional workers were hired after the filing of the initial petition. Regardless, the job descriptions for one of the store managers and the sales associate are materially identical to those descriptions submitted with the initial petition. The job description for the other store manager, [REDACTED] differs significantly from the earlier description. Although Mrs. [REDACTED] was originally described as a "store manager," she is described in the September 17, 2007 letter as an "administrative assistant" and is ascribed basic administrative and clerical duties.

Finally, the petitioner submitted sample work schedules for its various locations. These schedules indicate, *inter alia*, that the store manager, [REDACTED], and the sales associate, [REDACTED] are responsible for staffing one of the locations at different times, while the beneficiary and [REDACTED] work simultaneously at a second location.

On November 14, 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.

On appeal, counsel asserts that the beneficiary will primarily perform qualifying duties in the United States.

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.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. Again, a petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

As a threshold issue, it is noted that employees hired, and locations opened, after the filing of the initial petition may not be considered in determining whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity in the United States. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). At the time the instant petition was filed, the petitioner claimed to employ four workers, including the beneficiary, in the operation of two locations. Accordingly, the petitioner's claim in its response to the director's Request for Evidence to have employed three additional workers after the filing of the instant petition, and its attempt to ascribed to its workers new

job titles and duties, will not be considered by the AAO. Likewise, the petitioner's claim to have opened a third location may not be considered. In view of the above, the United States operation in this matter has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

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 devote most of his time to directing the "daily operation of the organization;" overseeing financial and administrative issues; directing internal financial controls, audits, and reporting; negotiating contracts; and researching and developing marketing and expansion strategies. However, the petitioner does not explain what, exactly, the beneficiary will do to direct "daily operations" other than to act as a first-line supervisor of three subordinate workers. Furthermore, the petitioner has not established that his duties pertaining to finance, auditing, reporting, contract negotiating, and market research are qualifying duties given that the petitioner does not appear to employ subordinate staff members dedicated to relieving the beneficiary of performing the non-qualifying tasks inherent to these 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).

Consequently, the record is not persuasive in establishing that the beneficiary will primarily perform qualifying duties in his operation of the business. As noted above, the petitioner asserts that the beneficiary will "manage" the petitioner's business operations through three subordinate workers. However, the record does not establish that the beneficiary will be relieved of the need to perform many of the other non-qualifying tasks inherent to his ascribed duties by a subordinate staff. Accordingly, it appears more likely than not that the beneficiary will primarily perform non-qualifying first-line supervisory, administrative, or operational tasks in his administration of the business. 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.

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 asserted in the record, the beneficiary will directly supervise two "store managers," one of which will supervise a "sales associate." However, it has not been established that either of these store managers is truly a supervisory or managerial worker. One of the store managers does not supervise a subordinate staff. The

other store manager, while claimed to supervise a "sales associate," is not described as having any supervisory or managerial authority over this worker. For example, the work schedule shows the "sales associate" and the "store manager" splitting responsibility for staffing a store location. Accordingly, it appears that both the "sales associate" and the "store manager" are more likely than not performing the same job duties, i.e., the tasks necessary to the provision of a service or the production of a product. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed in a position superior to other employees on an organizational chart, or 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. Furthermore, the petitioner also failed to provide breakdowns of the number of hours devoted to each of the subordinate employees' ascribed job duties, even though this evidence was specifically requested by the director. Therefore, it cannot be concluded that any of these subordinate workers is truly a managerial or supervisory employee. 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). Finally, as the petitioner failed to establish the skills and education required to perform the duties of the subordinate positions, even though this evidence was also requested by the director, the petitioner has not established that the beneficiary will manage professional employees.<sup>2</sup> Accordingly, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>3</sup>

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<sup>2</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>3</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 addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the tasks 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 primarily be a first-line supervisor of non-professional employees or will perform non-qualifying 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

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. As explained above, it appears instead 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 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 (9<sup>th</sup> 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). 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).

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(i)(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

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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).

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 claims to be 100% owned by the foreign employer, a Peruvian company. In support, the petitioner submitted organizational documents, including a stock certificate representing the issuance of 1,000 shares of stock to the foreign employer. However, the record contains serious inconsistencies which undermine the petitioner's claim to be owned and controlled by the foreign employer. For example, the petitioner's 2005 and 2006 Forms 1120, U.S. Corporation Income Tax Returns, indicate in Schedules K that no entity owned, directly or indirectly, 50% or more of the petitioner's stock. The returns also indicate that no foreign companies owned 25% or more of the petitioner's stock. Both of these averments directly contradict the petitioner's claim to be 100% owned by a Peruvian company. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Furthermore, the record contains significant inconsistencies which undermine the petitioner's claim to be doing business in the United States. While the petitioner submitted evidence of the conduct of business activities at the locations listed in the petition, the petitioner also submitted copies of the leases for these locations. Upon review, it appears that the petitioner is not the lessee for any of these locations. To the contrary, the lessees at the locations are the beneficiary (identified as a "sole proprietor"), the beneficiary and [REDACTED], and [REDACTED]. As the petitioner is not the lessee for any of its claimed business locations, the record is not persuasive in establishing that the petitioner is actually doing business at any of these locations. Instead, it appears more likely than not that these business are being conducted by the individuals who are listed as the lessees. Once again, 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. *Id.* at 591-92.

Accordingly, as the petitioner has failed to establish that it and the foreign employer are qualifying organizations, the petition may not be approved for this additional reason.

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).

