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File: EAC 08 012 53542 Office: VERMONT SERVICE CENTER Date: SEP 30 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

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 extend the beneficiary's employment as its vice-president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a corporation organized in the State of New Jersey, operates a hotel and claims to be engaged in commercial and real estate dealings. The petitioner claims that it is the subsidiary of Ramanlal & Bros., located in Dabhoi, India. The beneficiary was granted one year in L-1A classification in order to open a new office and the petitioner seeks to extend the beneficiary's stay for three additional years.

On April 10, 2008, 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. Specifically, the director noted that as a result of the petitioner's failure to submit several types of material evidence, the director was unable to determine the exact nature of the beneficiary's duties and the relationship between the beneficiary and his claimed subordinates. Consequently, the director concluded that the beneficiary was performing many day-to-day tasks of the business, and was thus not acting primarily as a manager or executive as required by the regulations.

On appeal to the AAO, the petitioner contends that the director's decisions in this matter was an abuse of discretion and submits a written statement in support of this contention.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The 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 request for extension, filed on Form I-129 on October 4, 2007, indicated that the petitioner currently employed 26 persons. In a letter of support dated August 18, 2007, the petitioner claimed that the beneficiary has taken charge of the entire operation of the U.S. entity as its vice president. It claimed that the beneficiary controls corporate planning, purchases, sales, marketing and business development. The petitioner stated that the beneficiary's duties were as follows:

Corporate Planning:

[The beneficiary] will analyze company's performance. He will prepare comparative analysis of the operating programs. With this exercise he will evaluate the strengths & weaknesses of the company and forecast the plan for business activity of the company, laying down the path of progress for the company's forthcoming year/s. His responsibilities include making recommendations to management with regard to economic objectives and policies for the company.

General Administration:

[The beneficiary] directs the overall business operations of the organization. He will analyze the operating procedures and devise most efficient methods to accomplish the task/work. He is responsible to manage the affairs of the company in a manner to conduct the same in an

orderly manner ensuring due compliance with statutory requirements and to achieve smooth and efficient functions overall.

Finance:

[The beneficiary] will oversee, matters related to Finance. He will be assisted by The Manager / Accountant team and the support staff for due performance of his job functions in this area of operation.

Marketing – Sales:

[The beneficiary] directs the marketing policy of the company. He will review the market trends and analyze the same to determine the clients' needs and evaluate the market potential in terms of volume. He will assess the competition and develop the overall marketing strategy to attract the potential clients as also to retain the regular clientele. This will account for 100% incoming revenue of the company.

Business Development:

[The beneficiary] is responsible for business development, including market research, promotion of business and sales[.] He will look for new business opportunities, new products, new markets. The aim and purpose of this exercise is to secure progressive development of business and thereby increase in the revenues of the company. In order to achieve this goal, he may resort to publicity and promotional activities so as to promote growth of the company even in the face of competition. This activity is undertaken as may be required and justified by business prudence.

Purchases / contracts:

[The beneficiary] is responsible for purchase. He is required to ensure regular and continued flow of materials, supplies and services for the operations of the company. [The beneficiary] will review competitive offers from alternative sources. He will negotiate contract terms and finalize the same. His responsibilities also include contract administration.

Personnel:

[The beneficiary], with the control of General administration, will also have the charge of personnel department. He will have the authority to hire and fire staff. He will review the performance of the staff. He will review the employee's attitude towards job function/s. He will evaluate their motivation and overall efficiency to perform vis-à-vis their job related skills, inter-personnel attitude, intellectual capabilities to deal with situations on the spot. He will review other factors such as punctuality, sincerity, honesty, speed &c. [sic], for ongoing remuneration and rewards. He will establish and follow procedures and policy to continually boost the morale of the staff.

The petitioner also submitted a seventeen-page document entitled "Discussion," and devotes nine of the pages to a more detailed discussion of the beneficiary's duties. Specifically, the petitioner expands on each of the headings listed above, and provides additional details regarding the types of services he

supervises or performs in each of these areas. For example, the petitioner claims that with regard to business development, marketing and contract administration, the beneficiary will manage these essential functions, which account for 100% of the petitioner's annual revenue. Generally, the petitioner restates the above-listed areas in which the beneficiary has responsibility, and attempts to compare each position description to legal and regulatory definitions of such professions and their duties.

Finally, the petitioner submitted a document entitled "Business Plan," in which it claims that the petitioner will engage in commercial and real estate dealings, and that it has to date acquired its required premises and has an encouraging start with its first acquisition.

On December 11, 2007, the director requested additional evidence. Specifically, the director requested additional evidence to establish that the beneficiary will be employed in a managerial or executive capacity, including but not limited to a comprehensive overview of the beneficiary's duties, position descriptions and job titles for all of beneficiary's subordinates, and the amount of time the beneficiary allocated to managerial/executive functions in comparison to the time allocated to non-qualifying functions.

In a response received on January 18, 2008, the petitioner submitted an updated overview of the beneficiary's duties, in addition to Forms 941, Employer's Quarterly Federal Tax Return, evidencing wages paid to employees during the last quarter of 2007. The petitioner provided the following updated description of duties for the beneficiary:

[The beneficiary], for his operations, is supported by professional/managerial staff as Accountant, Marketing manager and their team. The non-managerial functions [are] carried out by the secretarial staff. This arrangement relieves the beneficiary [from] any and all non-qualifying duties and thereby [he devotes] 100% of his time 40 hours/week to his managerial job functions.

[The beneficiary] arrived herein the U.S.A. pursuant to the approval of NIV L-1 classification in his favor. He then assumed the charge as Vice-President of the Company and commenced commercial operations. [The beneficiary] acquired the business of a Franchise Motel under management contract in favor of the petitioner company. He controls the business with overall charge of operations. He operates with an authority to hire & fire staff[.] He operates with 100% discretionary authority to deal with and decide day-to-day operations of the business.

(1) [The beneficiary] conducts the business enjoying the highly visible position at level II of the Management hierarchy. He coordinates with the President for Corporate planning and reports directly to the Board of Directors. [He] is supported by Professional and Managerial staff for his operations. [The beneficiary] has the overall control of Administration. Donna Young operating as manager (General administration supports [the beneficiary] in this area of operation with her team including the supervisory staff Lraida Rivera and other staff – 10 employees[]).

- (2) [The beneficiary] oversees [sic] operations of Finance with the support of [REDACTED] manager. [REDACTED] functions as an accountant assisting [REDACTED] with his team of four other employees. [REDACTED] handles accounts, Taxation, Management reports and other. [The beneficiary] with this team also ensures Budget control and inventory control and other related matters.
- (3) [The beneficiary] controls marketing and business development. [The beneficiary] as such establishes market strategy/policy deals with corporate clients, focus[es] his attention and aims to increase the clientage and thereby attain the targeted sales results. [REDACTED] the Marketing Manager supports him in this area of operations[] with his team of [REDACTED] operating as Guest Service Manager and two employees.
- (4) The Department of Maintenance and other services is covered by the Supervisor Mr. [REDACTED] reports to [the beneficiary] and is assisted by two other staff employees.
- (5) [The beneficiary] is in charge of personnel. He operates with the authority to hire and fire staff. He evaluates the functions and contribution of each employee and decide[s] about their remuneration and rewards. [REDACTED] operating as Manager (Administration) supports [the beneficiary], with the help of secretarial staff.

All the employees operate full time attending to their job functions for 40 hours/week. [The beneficiary] also attends to his managerial functions full time i.e. 40 hours/week. [The beneficiary], as herein above is supported by managerial and supervisory staff with secretarial other staff dealing with non-managerial and routine matters. This arrangement enables [the beneficiary] to devote 100% of his time to managerial job functions. It is noteworthy to record that [the beneficiary], with his business acumen, operating arrangements as herein and efficient management, achieved the annual turnover target of \$1.79 million + with positive cash flow after meeting all costs and expenses.

The petitioner also provided an organizational chart, which indicated that the beneficiary reported to the president and oversaw four departments: (1) general administration, which employed a manager, an executive housekeeper with a subordinate staff of 10 persons, and an accountant with a subordinate staff of four persons; (2) sales and business development, which employed a marketing manager, a guest service manager, and a subordinate staff of two persons; (3) a maintenance department, which employed a supervisor and a subordinate staff of two persons; and (4) a personnel department, which employed a secretary.

The petitioner's Form 941, Federal Employer's Quarterly Tax Return, for the last quarter of 2007 indicated that the petitioner paid \$71,333.84 in wages to 19 employees during that period. However, no additional pages, such as the verification page and the pages listing the names of the employees, were submitted. It is noted that although 19 employees received wages during this period, the petitioner's

organizational chart lists 25 positions, not including the beneficiary or the president. The evidence in the record also indicates that no employees were paid wages during the first and second quarters of 2007.

Finally, the petitioner submitted photographs of a Quality Inn Hotel in Lebanon, Pennsylvania in support of the contention that the petitioner was doing business. The petitioner submits a copy of a lease agreement, evidencing that hotel was leased by the petitioner on January 1, 2007 from Radha Holdings LLC for a period of ten years.

On April 10, 2008 the director denied the petition. The director noted that despite the petitioner's contentions that the beneficiary functioned in a qualifying position, the information submitted with regard to the beneficiary's position, coupled with the less-than-descript response to the request for additional evidence regarding the beneficiary's subordinates, suggested that the beneficiary performed most of the day-to-day duties required to operate the company, and thus he could not be considered primarily a manager or executive.

On appeal, the petitioner submits a brief statement but submits no new evidence. It is noted that the appeal does not address specifically the bases for the director's denial, such as the failure of the petitioner to submit evidence of the subordinate employees' educational backgrounds or the request for a breakdown of the percentages of time the beneficiary devoted to managerial and non-managerial tasks. The appeal merely claims that the director abused his discretion and that the director misconstrued photographs of the petitioner's business in analyzing the personnel of the company.

Upon review, the AAO concurs with the director's findings.

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 definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In this matter, the petitioner provided numerous descriptions of duties for the beneficiary, both with the petition and in response to the request for evidence. However, the descriptions of duties, though lengthy, fail to specifically state the exact nature of the beneficiary's duties. More importantly, the petitioner fails to articulate the exact nature of the petitioner's actual business. For example, on Form I-129, it claims that it is engaged in commercial and real estate dealings. In supporting documentation, however, it claims that it is engaged in the hospitality industry, and references its acquisition of the Quality Inn in Lebanon, Pennsylvania. However, documentation submitted in the form of a W-2 Transmittal for 2007 indicates that the petitioner had no employees from January 2007 through June 2007, although it claimed to acquire the Quality Inn in January 2007.

As a result, it is uncertain as to the exact nature of the beneficiary's duties during this period. Although the petitioner claims that the beneficiary oversaw the management of the hotel and supervised a large staff, it is unclear how the hotel operated if there were no employees from January to June 2007. Moreover, even if the petitioner did not begin operation of the hotel until July 2007, the petitioner's list of the beneficiary's specific duties are confusing, since the petitioner claimed that the beneficiary delegated responsibility to his subordinates and performed only managerial functions.

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). In this matter, it is unclear what role the beneficiary played from January to June 2007, since tax documentation shows no employees for the petitioner despite its claim to employ 26 persons on its Form I-129. Moreover, the recitation of the beneficiary's duties includes hiring and firing staff and managing the overall operations of the company, which are generic representations of the regulatory definitions of managerial and executive capacity. Despite the petitioner's acknowledgement that it operates a hotel, with or without a subordinate staff, the petitioner failed to connect the actual responsibilities of the beneficiary with the running of a hotel in the hospitality industry. As a result, the AAO cannot determine the exact nature of the beneficiary's duties in the context of the petitioner's stated business. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Assuming that the nature of the petitioner's business involved both the hospitality business and the commercial/real estate business, it is impossible to determine that the beneficiary functions solely as manager or executive of the company. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). 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)). Merely claiming that the beneficiary is operating in a qualifying capacity is insufficient for purposes of this analysis.

Moreover, as stated by the director, the petitioner failed to submit certain pieces of evidence specifically requested in the request for evidence, such as the petitioner's 2006 Federal Income Tax Returns, a breakdown of the percentage of time the beneficiary spent performing each of his stated duties or areas of focus, and background information on the educational backgrounds and position requirements of the beneficiary's alleged subordinates. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). 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).

The petitioner's failure to submit critical evidence as noted by the director renders it impossible to adjudicate the petition favorably for the petitioner. For example, the petitioner's failure to submit a breakdown of the time spent on his claimed duties is crucial for purposes of this analysis. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as identifying marketing trends and identifying new business do not fall directly under traditional managerial duties as defined in the statute. Despite the petitioner's claim to the contrary, the AAO cannot determine whether the beneficiary is primarily performing 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).

Moreover, such duties do not seem to tie into the operation of a single hotel, which the petitioner alleges is the main focus of its business but, as discussed above, is not certain to be the case. Additionally, the general duties of marketing, finance, corporate planning, and purchasing do not seem to coincide with the duties required of a supervisor or manager of a single hotel. For example, the petitioner submits an organizational chart showing that the beneficiary oversees 25 employees; however, his stated duties do not seem to coincide with the housekeeping or maintenance staff. In addition, there is no background information, such as the duties of the alleged subordinate managers of the company or their educational backgrounds, such that the AAO can determine that the beneficiary qualifies as a manager by virtue of supervising managerial or professional employees. 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).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the prior petition, the petitioner indicated that it was a new office, and the petition was adjudicated under the relevant regulations for new offices. *See* 8 C.F.R. § 214.2(l)(3)(v). In the present matter, the petitioner is no longer a new office, and the regulation at 8 C.F.R. 214.2(l)(3)(v) does not apply. As the petitioner is requesting a first extension after the opening of a new office, the petitioner must now satisfy its burden under the regulation at 8 C.F.R. 214.2(l)(14)(ii) in order to establish eligibility. Accordingly, the fact that the petitioner is no longer a new office, and is now requesting a first extension after opening a new office, represents a changed circumstance. In fact, the director had a duty to carefully examine the present petition and render a full adjudication, as the petitioner has new regulatory requirements in the present proceeding that

did not apply to the prior petition. *See* 8 C.F.R. § 214.2(l)(14)(ii). The director's close analysis and detailed request for evidence were appropriate in light of the petitioner's evidentiary burden.

In the instant matter, therefore, the lack of evidence in the record makes it impossible to determine that the petitioner has reached the point that it can employ the beneficiary in a predominantly managerial or executive position. Although the petitioner claims that the basis for the initial approval should be sufficient to approve the instant request for extension, the petitioner has failed to meet the evidentiary threshold in this matter by demonstrating that the beneficiary is in fact employed in a predominantly managerial or executive position one year after the initial new office approval. For this reason, the petition may not be approved.

Beyond the decision of the director, the AAO notes that it does not appear that the petitioner had been doing business for the previous year as required by the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B). The beneficiary's previous petition was approved for a one-year period commencing on September 8, 2006. Therefore, according to the regulations, the petitioner must demonstrate it had been doing business since that date. As previously noted, the petitioner's Form 941, Federal Employer's Quarterly Tax Return, for the last quarter of 2007 indicated that the petitioner paid \$71,333.84 in wages to 19 employees during that period. However, the last quarter of 2007 encompasses only fifteen days of the period relative to this analysis. The petitioner's W-2 Transmittal for 2007 indicates that no wages were paid to employees from January to June of 2007, and from July to September 2007, \$80,955 was paid, but there is no indication with regard to who received these wages or the total number of employees. Since the lease agreement contained in the record indicates that the petitioner acquired the Quality Inn hotel on January 1, 2007, it is unclear how the petitioner could operate a hotel with no staff for six months. Therefore, it cannot be concluded that the petitioner was doing business for the entire year prior to the petition's filing. For this additional reason, the petition may not be approved.

Moreover, there are a number of unexplained inconsistencies in the record with regard to the wages paid to the employees and the exact nature of the petitioner's business. The AAO notes that on the petitioner's Form 941 for the fourth quarter of 2007 and the W-2 Transmittal for 2007, it lists its Employer Identification Number as 26-0414629. On Form I-129, however, it lists its Employer Identification Number as 84-1675116. The petitioner has neither acknowledged nor attempted to explain this inconsistency. 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).

Additionally, the record contains a document entitled "Management Operation Agreement, which seems to create a Pennsylvania corporation under the same name as the petitioner, which is incorporated in New Jersey. Again, the petitioner does not explain this discrepancy, and as a result, it is unclear who is actually paying wages to the employees. As discussed above, the two different Employer Identification Numbers listed on the tax documents and the I-129 raise questions with regard to the possible existence of a new entity not included in the petition. Moreover, despite the petitioner's claim that the beneficiary will work in Morganville, New Jersey, it appears that his primary job is to run the Quality Inn hotel in

Lebanon, Pennsylvania, which is located approximately 100 miles away. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Based on the foregoing, the petitioner has not established that it has been doing business for the previous year. For this additional reason, the petition may not be approved.

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

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.