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U.S. Citizenship and Immigration Services

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[redacted]

File: EAC 08 108 51604 Office: VERMONT SERVICE CENTER Date: MAR 04 2009

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 New Jersey and is allegedly in the "trading" business. The beneficiary was granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

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

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel to the petitioner asserts that the director erred and that the beneficiary will perform primarily qualifying duties in the United States. In support, counsel submits a brief.

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 managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

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.

It is not clear whether the petitioner is claiming that 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. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary will be employed in either a managerial *or* an executive capacity and will consider both classifications.

The petitioner describes the beneficiary's proposed job duties in the United States in a letter dated February 12, 2008 as follows:

> [The beneficiary] has managerial duties to perform. He is responsible for increasing the business, taking major decisions about the business, and meeting with business houses for getting clients, meeting with Bankers, planning, budgeting etc. He takes report directly from the supervisor about the daily operations.

The petitioner also claims to have "4 employees working under the supervision of [the beneficiary]."

On March 12, 2008, the director requested additional evidence. The director requested, *inter alia*, more detailed descriptions of the duties of the beneficiary's claimed subordinate workers.

In response, the petitioner submitted an organizational chart showing the beneficiary at the top of the organization supervising a "supervisor" who, in turn, is shown supervising a "manager," who, in turn, is shown supervising an administrative worker.

Counsel also described the duties of the subordinate workers in a letter dated March 29, 2008 as follows:

1. [redacted] of [the petitioner] has been a long term advisor to [the beneficiary]. She herself has been formally educated in Foundation Art, Commercial Arts, Textile Designing, Website and Digital Designing. [The beneficiary] believes that since [the supervisor] has been a long time advisor to [the beneficiary] and aided him in his work, along with her extensive background in Art and Design, she would be the best person to supervise his company. As supervisor, [the supervisor] holds a key role in quality control of their US samples, shipments and products. She manages the staff, distributes work, and handles much of the company's finances.

She helps [the beneficiary] develop the company budget and then oversees the management of assigned budgets. She also is in charge of advertising and promotion of the company. Human Resources and the decision to hire and fire are finalized together with [the beneficiary]. She also utilizes her creative side by developing new textile designs for the company. [footnote omitted]

2. of [the petitioner] has proven himself to be a reliable person who can handle himself with the utmost grace under the greatest pressure. Formally trained as a software engineer, [the manager] shifted gears into business finding running businesses to be far more satisfying. [The manager] handles the sales and purchases of textiles and fashion jewelry under [the supervisor's] supervision. He also keeps constant contact with the vendors in India that inspect the samples of textiles and the distributors that are in charge of shipment coming in and shipping out, in order to make sure transactions run as intended by [the beneficiary]. He then personally inspects the order procession and payment. [The manager] also lends his services in the inspection of textile machinery when necessary. He has been very effective in advising [the supervisor] on competitive pricing and seeking out special event opportunities in the market that are consistent with the objectives of [the petitioner].

3. [redacted] works closely under the supervision of [the manager] and [the supervisor]. [redacted] handles day to day responsibilities in the up keeping of the new company. Her past experience consists of designing traditional Indian dresses for men and women, custom jewelry which are consistent with South Asian culture and their particular designs. Her experience also consists of market research for such specialty items. [redacted] is the sole admin to [the manager] and [the supervisor] at the moment. Under [the manager's] supervision,. [sic] She also completes monthly market performance reports and calendars in a timely fashion as well as complete monthly expense reports. She and [the manager] will be in charge of training and management over others upon hiring of more staff.

On April 17, 2008, 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. 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.

Title 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in U.S. Citizenship and Immigration Services (USCIS) regulations that allows for an extension of this one-year period. If the beneficiary is not performing qualifying duties within one year of petition approval, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not established that the United States operation has reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

As a threshold issue, it is noted that business expansion strategies and future hiring plans 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. 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). Accordingly, only those subordinate workers, and those duties ascribed to the beneficiary and his subordinates at the time the instant petition was filed, may be considered in determining whether the record establishes that the beneficiary will more likely than not primarily perform qualifying managerial or executive duties in the United States.

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 be "responsible for increasing the business, taking major decisions about the business, and meeting with business houses for getting clients, meeting with [b]ankers, planning, budgeting[,] etc[.]" However, the petitioner does not specifically describe what, exactly, the beneficiary will do in performing these duties. The record is devoid of evidence establishing what the beneficiary will do on a day-to-day basis to "increase business," make "major decisions," plan, or budget. Importantly, the petitioner has not established that any of the beneficiary's duties pertaining to the first-line supervision of the subordinate workers, or to meeting with "business houses" and bankers, are qualifying duties. The fact that a petitioner has given a beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that a 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 claims that the beneficiary will meet with "business houses for getting clients," which appears to be a marketing or sales tasks However, the record does not establish that the beneficiary will be relieved of the need to perform this non-qualifying

task by his subordinate workers. Based on the job descriptions provided for the record, it appears that only the beneficiary will perform this task necessary to the provision of a service or the production of a product. As the record does not establish how much time the beneficiary will devote to performing these non-qualifying sales tasks, even assuming the other ascribed duties have been established to be managerial or executive in nature, which they have not (*see supra*), it cannot be concluded that the beneficiary will "primarily" perform qualifying duties. 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).

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 or indirectly supervise three subordinate workers. However, it has not been established that any of these workers is a bona fide supervisory, managerial, or professional worker. The petitioner claims that its four-workers are vertically organized, i.e., the beneficiary supervises a "supervisor," who supervises a "manager," who supervises an administrative worker. However, arbitrarily arranging workers in an artificial, multi-tiered organizational chart, or simply alleging that one worker "supervises" another, will not establish that a worker is a bona fide managerial or supervisory employee. Rather, it must be established that the worker has control over the employment of one or more subordinates and that the business needs of the enterprise could reasonably require and support such an organizational structure. In this matter, the petitioner has not described the subordinate employees as being managerial or supervisory employees. To the contrary, both the "supervisor" and the "manager" are described as primarily performing essential tasks, *e.g.*, quality control, handling financing, developing budgets, advertising, promoting the company, developing textile designs, inspecting goods, processing payment, and inspecting machinery. Given these job descriptions and the nature and size of the business in general, it is not credible either of these workers is engaged in the supervision or management of subordinate employees. 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. Furthermore, as the petitioner failed to establish the education required to perform the duties of the subordinate positions, even though this evidence was requested by the director, the petitioner has not established that the beneficiary will manage professional employees.[1] Failure to submit requested evidence

[1]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).

that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Accordingly, as it appears that the beneficiary will be, at most, a first-line supervisor of three subordinate non-professional workers, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.[2]

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.

Counsel cites *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472 (5th Cir. 1989), to stand for the proposition that the small size of a petitioner should not, by itself, undermine a finding that a beneficiary will

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[2]Counsel also argues on appeal that the beneficiary will manage an essential function of the organization. However, the record does not support this argument. 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 will manage 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 will manage the function rather than perform 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, it appears more likely than not that the beneficiary will primarily be a first-line supervisor of non-professional employees and will perform non-qualifying administrative or operational tasks related to sales and marketing. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

act in a primarily managerial or executive capacity. The AAO notes that counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *National Hand Tool Corp.*, where the Fifth Circuit Court of Appeals decided in favor of the legacy Immigration and Naturalization Service (INS). Furthermore, in *National Hand Tool Corp.*, the courts emphasized that the former INS should not place undue emphasis on the size of a petitioner's business operations in its review of an alien's claimed managerial or executive capacity. The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium-size businesses. However, consistent with both the statute and the holding of *National Hand Tool Corp.*, the AAO has required the petitioner to establish that the beneficiary's position consists of primarily managerial or executive duties and that the petitioner will have sufficient personnel to relieve the beneficiary from having to primarily perform operational and/or administrative tasks. Like the court in *National Hand Tool Corp.*, we emphasize that our holding is based on the conclusion that the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties; our decision does not rest on the size of the petitioning entity. 889 F.2d at 1472, n.5.

Finally, it is important to note that, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "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)). Furthermore, it is appropriate for USCIS 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.[3]

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary was employed abroad in a position that was primarily managerial or executive in nature. 8 C.F.R. §§ 214.2(l)(3)(iv).

The petitioner described the beneficiary's job duties abroad in a letter dated February 22, 2008 as follows:

> [G]eneral management; taking and making policy decisions for the company, hiring and firing of senior Presidential employees; negotiations with customers and vendors and other entities including governmental authorities. As a President he is responsible to supervise all business affairs.

[3]Counsel cited the Foreign Affairs Manual (FAM) as authority. It must be noted that the FAM is not binding upon USCIS. *See Avena v. INS*, 989 F. Supp. 1 (D.D.C. 1997); *Matter of Bosuego*, 17 I&N 125 (BIA 1979). The FAM provides guidance to employees of the Department of State in carrying out their official duties, such as the adjudication of visa applications abroad. The FAM is not relevant to this proceeding.

In response to the director's Request for Evidence, counsel further described the beneficiary's duties abroad in a letter dated March 29, 2008 as follows:

> In 2004, with the knowledge and experience of the textile machinery industry, [the beneficiary] established [the foreign employer] which customizes textile machines. He simultaneously wore both the hat of a Production Manager and that of a Supervisor. [The beneficiary] prevailed in keenly honing in on his customers' needs, tailoring textile machines accordingly.
>
> Leading a team of 20 employees, his first and foremost duty was to establish priorities in order to expedite the work flow and production while maintaining the highest quality of standards. Second, it was to oversee the purchasing of all equipment, unfinished goods and supplies, and oversee the budget and finances. [The beneficiary] personally oversaw the management to establish production and quality control standards and the development of new machinery. He planned, developed and helped implement operating procedures to improve the quality of his products.

Upon review, the record is not persuasive in establishing that the beneficiary was employed abroad in a primarily managerial or executive capacity. The beneficiary's vague job description fails to describe the beneficiary as primarily performing managerial or executive duties abroad. Similar to the United States position, it appears that the beneficiary primarily performed non-qualifying tasks in his "management" of the foreign employer. First-line supervisory tasks associated with the start up and operation of the foreign business have not been proven to be qualifying managerial or executive duties. Furthermore, the record is devoid of evidence pertaining to the duties of the "team of 20 employees" which the beneficiary allegedly supervised. Absent job descriptions for the subordinate workers, it cannot be determined whether the beneficiary supervised other managerial, supervisory, or professional workers or whether he was relieved of the need to perform non-qualifying tasks by a subordinate staff. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Accordingly, the petitioner has not established that the beneficiary was employed abroad in a primarily managerial or executive capacity, and the petition may not be approved for this additional 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." Likewise, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) requires petitioners seeking to extend "new office" petitions to submit "[e]vidence that the United States and foreign entities are still qualifying organizations." Title 8 C.F.R. § 214.2(l)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." A "subsidiary" is defined in 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). An "affiliate" is defined in part as "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual." 8 C.F.R. § 214.2(l)(1)(L)(*1*).

In this matter, the petitioner claims that both it and the foreign employer are owned and controlled by the beneficiary. However, the record is devoid of evidence establishing that the beneficiary owns either entity. The record is also devoid of evidence establishing that the foreign employer is "doing business" as defined in the regulations. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. If all required initial evidence is not submitted with the petition, USCIS in its discretion may deny the petition for lack of evidence. 8 C.F.R. § 103.2(b)(8)(ii). Accordingly, the petition shall be denied for this additional reason.

The previous approval of an L-1A petition does not preclude USCIS from denying an extension based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

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

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

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

ORDER: The appeal is dismissed.