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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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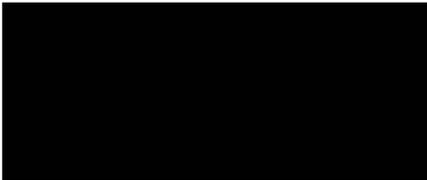
IN RE:

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 seeks to employ the beneficiary temporarily in the United States as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a United Kingdom corporation which claims to be the parent company of the beneficiary's proposed U.S. employer, a Delaware corporation established in June 2008. Both companies are stated to be engaged in selling and implementing IBM software solutions for large and medium-sized enterprises. The petitioner seeks to employ the beneficiary as chief executive officer of the new office in the United States for a period of one year.

The director denied the petition, determining that the petitioner did not establish that the United States and foreign entities have a qualifying relationship. In denying the petition, the director determined that the petitioner failed to provide requested evidence to establish that the foreign entity paid for its ownership interest in the U.S. company.

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 petitioner submitted sufficient evidence to establish that the U.S. entity is a wholly-owned subsidiary of the foreign entity. The petitioner submits additional documentary evidence in support of the appeal.

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)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The sole issue addressed by the director is whether the petitioner established that the U.S. and foreign entities have a qualifying relationship. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) 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;

- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and,
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

* * *

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) *Affiliate* means
 - (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
 - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner stated on Form I-129 that the U.S. entity is wholly owned by the foreign entity, and that the beneficiary has managerial control of both companies. In support of the petition, the petitioner submitted a copy of the foreign entity's certificate of incorporation, indicating that the foreign entity was established in the United Kingdom on January 15, 1999. The petitioner provided a certificate dated April 6, 2005 from the Registrar of Companies for England and Wales indicating that the foreign entity has been in continuous existence since its incorporation with the beneficiary and his spouse serving as the company's directors.

The petitioner also submitted the foreign entity's Director's Report and Financial Statements for the year ended September 30, 2006. The director's report indicates that the beneficiary and his spouse each own one share of the foreign entity's stock and are the only shareholders. The petitioner provided additional documentation to demonstrate that the company is actively doing business in the United Kingdom.

With respect to the U.S. entity, the petitioner submitted evidence that it was incorporated on June 26, 2008 in the State of Delaware. The petitioner submitted a copy of the U.S. company's articles of incorporation, which indicate that the company is authorized to issue 1,000 shares of stock having a par value of \$.01 per share. Finally, the petitioner submitted a copy of the U.S. company's by-laws.

The director issued a request for additional evidence (RFE) on October 7, 2008, in which he instructed the petitioner to submit, *inter alia*, additional evidence to establish that the U.S. and foreign entities have a qualifying relationship. Specifically, the director requested copies of the U.S. company's stock certificates and stock ledger, and evidence to show that the foreign parent company has paid for its interest in the U.S. entity. The director indicated that such evidence should include original wire transfers from the parent company, copies of cancelled checks, deposit receipts, etc., detailing the monetary amounts for the stock purchase.

In a response dated November 6, 2008, the petitioner submitted a copy of the U.S. company's stock certificate number 1, indicating that all 1,000 shares of the company's authorized stock were issued to the beneficiary, as well as a copy of its stock transfer ledger. The date of issuance is not completed on the stock certificate; however, the date of issuance is indicated as "4-11-08" on the stock transfer ledger. As the U.S. company was not incorporated until June 2008, the AAO assumes that the date of stock issuance was November 4, 2008.

In response to the director's request for evidence establishing that the claimed foreign parent company paid for the stock purchase, the petitioner submitted a copy of the invoice issued by the U.S. company's incorporating agent, Delaware Corporations, LLC, to the foreign entity, in care of the foreign entity's immigration counsel.

The director denied the petition on December 2, 2008, concluding that the petitioner failed to establish that the U.S. and foreign entities have a qualifying relationship. In denying the petition, the director stated:

The petitioner has presented a stock certificate to document that the parent company owns 1,000 shares of the U.S. Company. However, the petitioner has provided no evidence that the parent company actually purchased the shares. Regarding the start-up activities of a corporation, such evidence would include documentation to establish that the claimed parent company actually formed the subsidiary and funded the start-up expenditures. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings or other legal documents governing the acquisition of the ownership interest.

On appeal, the petitioner asserts that the evidence submitted establishes that the U.S. entity is a wholly-owned subsidiary of the foreign entity. The petitioner indicates that it is submitted additional evidence to "fully evidence" the relationship. The new evidence submitted on appeal includes the following:

- The foreign entity's Management Board Meeting Minutes dated April 15, 2008, which indicate that the foreign entity had sought advice from an attorney on how to register a subsidiary company in the State of Delaware. The meeting minutes indicate that "the new subsidiary would be 100% owned and controlled by the UK company."

- Minutes from the foreign entity's Monthly Management Meeting held on November 10, 2008. The minutes indicate that the foreign entity was advised that stock certificate number 1 for the U.S. company was issued incorrectly and has been destroyed, and a new stock certificate was issued in the name of the foreign entity in its place.
- A copy of the U.S. company's stock certificate #2, issuing all 1,000 authorized shares to the foreign entity;
- An updated copy of the U.S. company's stock transfer ledger, indicating the destruction of stock certificate #1 and the transfer of shares from the beneficiary to the foreign entity as of November 10, 2008;
- A different version of the petitioner's stock certificate #1, on company letterhead, indicating that the foreign entity acquired all 1,000 shares of the U.S. company's stock on July 22, 2008.
- A stock transfer agreement dated July 22, 2008, indicating that "for value received," the U.S. company sold, transferred and assigned 1,000 shares of stock to the U.K. company.
- The U.S. company's "Consent of Directors" dated July 22, 2008, in which the director's resolved to "accept the subscription of \$10.00 to purchase one thousand (1,000) shares of the common stock" of the company, and acknowledged receipt of \$10.00 from the U.K. company in full payment.

Upon review, the petitioner has not submitted evidence appeal to overcome the director's determination.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership

was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership.

Furthermore, as noted by the director, in the case of a new U.S. office established as a subsidiary of a foreign entity, additional evidence would also include documentation to establish that the claimed parent company actually formed the subsidiary and funded the start-up expenditures. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(2) requires the petitioner to provide evidence of the size of the U.S. investment in the new office.

Although requested by the director, the petitioner did not provide any evidence of funds transferred to the United States entity for purchase of its stock or for its start-up expenses. Notwithstanding the fact that this was the primary reason for denial of the petition, the petitioner has not supplemented the record on appeal with evidence that the foreign entity has funded the U.S. company. Although the petitioner claims that the foreign entity paid only a nominal fee of \$10 for the purchase of 1,000 shares of stock, it is reasonable to believe that the U.S. entity would require some funding or investment beyond this amount in order to commence business activities in the United States. 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).

In addition, although not addressed by the director, the evidence submitted prior to the adjudication of the petition indicated that the beneficiary, and not the foreign entity, is the sole owner of the U.S. company.¹ The stock certificate was not issued until several weeks after the request for evidence, and more than four months after the U.S. company was established. No explanation has been provided for this considerable delay.

On appeal, the petitioner submits a different version of stock certificate number 1 for the U.S. company, dated July 22, 2008, issuing 1,000 shares of stock to the U.K. company. The petitioner does not explain why this stock transaction was not recorded on a standard form stock certificate or entered into the company's stock transfer ledger. Nor has the petitioner explained why a second certificate #1 was issued to the beneficiary several months thereafter. Notwithstanding the petitioner's claim that the latter stock certificate #1 was issued in error to the beneficiary, the AAO notes that the certificates were signed by the beneficiary himself, and it is reasonable to believe that he is fully aware of the ownership of the U.S. 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).

In light of the omissions and discrepancies catalogued above, the petitioner has not established the claimed parent-subsidiary relationship between the foreign and U.S. entities, nor has it submitted sufficient evidence to establish that it otherwise meets "exactly one of the qualifying relationships specified in the definitions," as required by 8 C.F.R. § 214.2(l)(1)(ii)(G)(1). Accordingly, the appeal will be dismissed.

¹ The director erroneously stated in the Notice of Decision that the petitioner presented a stock certificate to document that the parent company owns 1,000 shares of the U.S. company. The only stock certificate reviewed by the director was the stock certificate number one issued to the beneficiary on November 4, 2008.

Beyond the decision of the director, the record as presently constituted does not establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity as those terms are defined at section 101(a)(44)(A) and (B) of the Act. The petitioner indicated in its letter dated April 23, 2007 the beneficiary serves as "Company Director and executive responsible for Sales," including "day-to-day management and directing of the companies' sales activities." The petitioner indicated on Form I-129 that the U.K. company has eight employees and stated in its supporting letter that "many other activities are outsourced" or provided by the IBM global partner network.

In a separate job description submitted at the time of filing, the petitioner indicated that the beneficiary currently supervises an office manager, five software sales employees, six technical sales staff, and "various contractors," thus suggesting a subordinate staff of 12 employees.

The petitioner also submitted a document titled "Funding Business Case" prepared by the beneficiary for the foreign entity, and dated July 9, 2007. The business case, at page six, contains the following explanation of the company's operating structure:

The business is owned by two shareholders [the beneficiary] and [the beneficiary's spouse] (non active). [The beneficiary] is the sole employee and all other resources are contracted as required. All costs are variable. [The foreign entity] is a Business Partner of IBM and has a web, "store front" presence . . . costing £75/quarter. [The foreign entity] creates the impression of being a larger organization through the use of virtual office facilities provided by Regus costing approximately £200/month.

* * *

The current business model of a consultative, very experienced and highly motivated sole trader, creating the impression of being a larger organization provides a framework which is highly flexible and dynamic, allowing costs to be kept low.

The business case goes on to state that "the sole trader, entrepreneurial approach being followed by the owner, prioritizing on sales activities is at the expense of a proper growth strategy," and indicates that the foreign entity "is effectively a sole trader trading as a Limited Company," with the beneficiary acting as "owner and sales resource." The business case indicates that the foreign entity was seeking funding, partnership and financial management to enable growth, and set out cash flow analyses for several different hiring plans. The petitioner also submitted a "Proposal for IBM Co-Funded Sales Head" dated October 30, 2007, thus it does not appear that the foreign entity had hired any permanent staff as of that date.

The most recent detailed financial statements provided for the foreign entity were for the year ended on September 20, 2006. During that year, the petitioner paid £29,677 to contractors and no salaries or wages.

In the RFE, the petitioner was requested to indicate the total number of employees working for the foreign entity, and to provide a detailed organizational chart depicting the structure of the foreign company. The director also requested brief descriptions of job duties, educational level and annual salaries for all employees working under the beneficiary's supervision.

In response to the director's request, the petitioner submitted an organizational chart for the foreign entity depicting the beneficiary as CEO of an organization with 15 employees, including an operations manager, a sales director, a technical director, three sales employees, two telesales employees, six technical presales employees, and a lead architect. The petitioner did not provide the requested job duties, educational qualifications or salaries for the claimed foreign employees. 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).

Based on the evidence submitted, the foreign entity claims to employ anywhere between one and sixteen employees. The beneficiary unequivocally stated that he was operating the foreign entity essentially as a sole trader, with no other permanent employees, as of July 2007, and the most recent financial information submitted did not document that the foreign entity pays substantial amounts to contracted or commissioned employees. The evidence also indicates that the foreign entity was seeking external funding in order to hire one additional employee as of October 2007. In light of this evidence, it is reasonable to question whether the foreign entity, as of the date the petition was filed, actually employed the 15 workers identified on the organizational chart submitted in response to the RFE. As stated above, 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. at 591-92.

If the beneficiary is in fact the foreign entity's sole permanent, full-time technical and sales resource, then it is more likely than not that he would be primarily engaged in providing the sales and services of the organization, rather than performing primarily managerial or executive duties. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. 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 a 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). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Based on the unexplained discrepancies in the record regarding the staffing and structure of the foreign entity, the AAO is not persuaded that the beneficiary, in his current role, is relieved from performing the day-to-day sales and consulting services of the U.K. company. 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 Int'l*, 19 I&N Dec. 593, 604 (Comm. 1988). For this additional reason, the petition cannot be approved.

Finally, the AAO notes that the petitioner has not established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position, as the petitioner has not provided sufficient information regarding: (1) the proposed nature of the office, describing the scope of the entity, its organizational structure, and its financial goals; or (2) the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States, as required by 8 C.F.R. § 214.2(l)(3)(v)(C). In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

At the time of filing, the petitioner submitted a position description for the beneficiary indicating that staff to be recruited for the U.S. office will include an office manager, a software sales employee, two technical sales employees, and contractors. The petitioner stated that the subordinate staff would perform the day-to-day hands-on duties in the areas of sales, technical sales support, marketing, finance and compliance relations, leaving the beneficiary to primarily manage sales strategies, establish the goals and policies of the organization, and manage high-level relationships with partners, suppliers and clients. The petitioner submitted a similar job description in response to the RFE, accompanied by a proposed organizational chart identifying 15 proposed subordinate positions, instead of the four proposed staff indicated at the time of filing. The proposed staff includes an operations manager, sales manager, technical director, lead architect, five sales employees, and six technical presales employees.

Finally, the petitioner submitted a business plan for the U.S. office which contains cash flow analyses for two possible staffing scenarios, one which involves hiring a single sales resource immediately and maintaining that staffing level for the first three years, and one which involves hiring three sales resources during the first year of operations, and one additional resource in both year two and year three. There is nothing in the business plan to suggest which hiring scenario would be implemented. Overall, the petitioner appears to have presented four different potential hiring plans, suggesting that the company would be recruiting between one and fifteen employees. The AAO is not in a position to determine which hiring plan the petitioner intends to implement. The petitioner has not clearly described the scope of the U.S. entity, its structure or its financial goals for the first year of operations, and it cannot be determined, based on the limited and conflicting evidence in the record, that the beneficiary would be relieved from performing the sales, marketing, technical and administrative functions of the U.S. office within one year.

Furthermore, as discussed above, the petitioner has not provided evidence regarding the size of the U.S. investment, disclosed its anticipated start-up costs or operating expenses, or provided any evidence that the company has received any funding from its claimed parent. 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)). As such, it cannot be concluded that the U.S. entity would rapidly grow and expand to the point where it would require the beneficiary to perform primarily managerial or executive duties within one year. For this additional reason, the petition cannot 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). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. v. United States*, 229 F. Supp. 2d at 1043.

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

ORDER: The appeal is dismissed.