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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



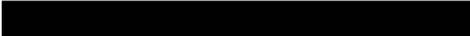
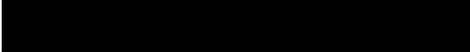
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File: EAC 08 129 50283 Office: VERMONT SERVICE CENTER Date: **FEB 05 2010**

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, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary 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 Texas corporation established in March 2008, intends to engage in the retail sale of wireless products and services. The petitioner claims that it is an affiliate of [REDACTED] located in Vapi, India. The petitioner seeks to employ the beneficiary as the president and chief executive officer of its new office in the United States for a one-year period.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity within one year.

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 for the petitioner asserts that the director placed undue emphasis on the size of the petitioning company in determining whether the beneficiary would be employed in a managerial or executive capacity within one year. Counsel submits a brief 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) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office 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 involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year.

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;
- (ii) 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 one-year "new office" provision is an accommodation for newly established enterprises, provided for by U.S. Citizenship and Immigration Services (USCIS) regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. 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. *See generally*, 8 C.F.R. § 214.2(1)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on April 1, 2008. In a letter dated March 28, 2008, the petitioner described the beneficiary's proposed duties as president and CEO as follows:

[The beneficiary] will have overall executive responsibility for developing, organizing, and establishing the purchase, sale and marketing of merchandise for sale in the U.S. market. His other duties will include: (i) identifying, recruiting, and building a management team and staff with background and experience in the U.S. retail market; (ii) negotiating and supervising the drafting of purchase agreements; (iii) marketing products to consumers according to [the foreign entity's] guidelines; (iv) overseeing the legal and financial due diligence process and resolving any related issues; (v) developing trade and consumer market strategies based on guidelines formulated by [the foreign entity]; (vi) developing and implementing plans to ensure [the petitioner's] profitable operation; and (vii) negotiating prices and sales terms, developing pricing policies and advertising techniques.

The petitioner further indicated that the beneficiary's time would be allocated as follows:

Management Decisions	40%
Company Representation	15%
Financial Decisions	10%
Supervision of day-to-day company functions	10%
Business Negotiations	15%
Organizational Development of Company	10%

The petitioner stated on Form I-129 that it intends to hire six to eight employees. The petitioner provided a proposed organizational chart indicating that the beneficiary would supervise a vice president and general manager, who in turn would supervise a sales and marketing manager, a retail manager, and an accountant. The next tier of employees depicted on the chart includes a purchase agent, an assistant manager, and a bookkeeper. Finally, according to the organizational chart, the assistant retail manager would supervise cashiers. The petitioner provided brief position descriptions for each of the proposed positions. The AAO notes that the "retail manager" position description indicates that this employee will "oversee operation of food store and gas sales," while the cashier would also be responsible to "stock and reorder food." However, the petitioner did not indicate that it intends to operate a food store or gas station. 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).

The petitioner submitted a lease agreement indicating that the petitioner signed a month-to-month lease for 100 square feet of space within a dollar store, to be used for the sale of cellular phone accessories. The petitioner also provided a two-page business plan, which indicates that the company intends to develop a chain of retail locations in Texas. The petitioner indicates that the business will employ six U.S. workers, and will pay \$7,500 in salaries per month.

The petitioner did not submit evidence of the size of the investment in the U.S. company, evidence of the organizational structure of the foreign entity, or any recent financial documentation for the foreign entity. *See generally* 8 C.F.R. § 214.2(1)(3)(v).

The director issued a request for evidence (RFE) on May 5, 2008, in which he advised the petitioner that additional evidence would be necessary to establish how the new company will grow to be of sufficient size to support a managerial or executive position within one year. The director requested a description of the proposed staff of the new office anticipated to be hired within one year, including the number of employees, their job titles and duties, and proposed salaries. The director also requested evidence to establish the size of the U.S. investment and the financial ability of the foreign organization to commence doing business in the United States, as well as evidence of the petitioner's current bank balance and evidence of any funds transferred to the U.S. company to fund the start-up operations.

Counsel for the petitioner submitted a letter dated July 30, 2008 in response to the director's RFE. Counsel emphasized that eligibility for the L-1 visa classification is not limited to large U.S. companies or to beneficiaries with extensive supervisory responsibilities. Counsel referenced the regulations governing new office petitions and stated that the petitioner need only establish that it has secured sufficient physical premises for the office, that the beneficiary was employed in a qualifying capacity with a qualifying entity overseas for at least one year, and that the start-up company will support an executive or managerial capacity within one year of the petition's approval. Counsel stated that "if a petitioner was recently formed, and specialized in an industry where it is common to have small infrastructures. . . it is unrealistic for the petitioner to attempt to use the beneficiary as a 'veritable' manager as defined in INA §101(a)(44)(C)." Counsel stated:

[The beneficiary] serves as the President and CEO of our U.S. subsidiary . . . and continues to establish our U.S. operations. He is responsible for all our planning, expansion, banking, budgeting and marketing. In addition, he hires and trains other managers and employees and is in chare of increasing the sales of the company. He is employed at the highest executive level and has complete authority to establish goals and policies and exercises discretionary decision-making authority based upon policies and procedures developed by shareholders. [The beneficiary] assumes sole responsibility of all discretionary actions taken by the U.S. entity to ensure its profitable operation.

[The beneficiary] will supervise other professional and managerial employees, establishes goals and policies for the U.S. investment, and exercises wide latitude in discretionary decision-making under the direction of directors and shareholders of the Parent Company. Beneficiary's duties are clearly "Executive or Managerial" in nature. . . .

Counsel emphasized that pursuant to section 101(a)(44)(C), the petitioner's reasonable needs must be considered in conjunction with the company's purpose and stage of development. Counsel further stated that the petitioner "is engaged in marketing, and retail distribution of gas, automotive, and household products under the business name [REDACTED] and discount retail store under business name [REDACTED]" Counsel indicated that the petitioner has two employees and anticipates hiring six additional staff within the first year of operations. The petitioner re-submitted the position descriptions previously provided for the beneficiary and other proposed employees, as well as the same proposed organizational chart. Counsel clarified that the employees listed on the chart would be hired within one year.

The petitioner re-submitted its lease for 100 square feet of space in a retail store known as "[REDACTED]". The petitioner also provided a second lease for "500 square feet inside SDS food mart," [REDACTED] station/convenience store. According to the terms of the new lease, the petitioner "shall use and occupy the premises for cell phone accessories." The petitioner provided photographs of the storefront of "[REDACTED]" and a convenience store storefront. The petitioner also provided a photograph of cellular phone accessories.

Finally, the petitioner provided evidence that the petitioner opened a bank account in June 2008 and had a balance of approximately \$30,000 at the end of July 2008.

The director denied the petition on January 6, 2009. In denying the petition, the director observed that the petitioner's business operations would involve selling wireless products at two small retail spaces. The director found insufficient evidence to establish that the petitioner would require the beneficiary to perform primarily managerial or executive duties within one year of commencing business.

On appeal, counsel reiterates the beneficiary's previously provided position description and arguments made in response to the director's request for evidence. Counsel states that the petitioner "is established for the express purpose of marketing, retail and distribution of automotive, gas, and wireless products through retail locations," and emphasizes that the beneficiary "will supervise other professionals who run day-to-day operations of the retail business." Counsel states that the petitioner anticipates that it will employ eight full time workers and achieve revenues of \$1.5 million during the first year in operation.

Counsel concludes that, based on the evidence submitted, it is "very clear" that the beneficiary will supervise other professional and managerial employees, establish goals and policies for the U.S. investment, and exercise wide latitude in discretionary decision-making.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed by the United States entity in a managerial or executive capacity within one year.

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.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner's 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

In the instant matter, counsel and the petitioner have repeatedly described the beneficiary's proposed position in very broad terms, noting his "complete authority to establish goals and policies," his "discretionary decision-making authority," and his "overall responsibility of planning and developing the U.S. investment." These duties merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Similarly, although the petitioner provided a breakdown of how the beneficiary's time would be allocated among his various responsibilities, this description was even more vague, indicating that the beneficiary would devote his time to "management decision," "company representation," "financial decisions," "business negotiations," "organizational development," and "supervision of day-to-day operations." The AAO cannot accept an ambiguous position description and speculate as to the related managerial or executive duties to be performed. 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. at 1108.

The petitioner also addresses the beneficiary's responsibility for "developing, organizing, and establishing the purchase, sale, and marketing of merchandise" and notes that the beneficiary will be involved in negotiating and supervising the drafting of purchase agreements, "marketing products to consumers," "developing trade and market strategies," negotiating prices and sales terms, overseeing financial issues, and "developing pricing policies and advertising techniques." The petitioner's description does not clearly identify the managerial or executive duties to be performed with respect to the purchase, marketing, sales, finance, and advertising functions of the proposed retail operations. 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 provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Thus, while several of the duties generally described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on such factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period.

Upon review, the supporting evidence does not provide a clear explanation of the nature of the petitioner's business or its proposed hiring plan. At the time of filing, the petitioner indicated that it would be engaged in the retail sale of wireless devices and accessories. According to the lease signed at that time, the petitioner had secured 100 square feet of retail space for this purpose. The petitioner initially indicated on Form I-129 that it intended to hire six to eight workers. However, the organizational chart submitted suggests a total of nine or more employees will be hired, including a total of five managers (the beneficiary, the vice president and general manager, the sales and marketing manager, the retail manager, and an assistant manager.) In a smaller company, there is a significant difference between a staff of six employees and a staff of nine employees in terms of the impact it has on the beneficiary's ability to remove himself from involvement in the day-to-day operations of the business. 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).

Given the discrepancy, the AAO will not accept the organizational chart alone as evidence of the petitioner's likely staffing levels at the end of one year of operations. Furthermore, the petitioner's stated need for five or more managers and as few as three or four lower-level employees is not entirely plausible given the nature of the petitioner's business. Finally, the AAO notes that the minimal information provided in the petitioner's business plan indicates that the company anticipates paying \$7,500 in salaries per month. The beneficiary's proposed monthly salary is \$3,000. The petitioner did not indicate how \$4,500 would be sufficient to pay the eight additional full-time employees depicted on the petitioner's proposed organizational chart. Although the director requested information regarding the salaries and wages to be paid to each employee hired during the first year, the petitioner declined to provide this information. 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 response to the request for evidence, the petitioner further obfuscated the true nature of the proposed business by claiming that the petitioner would operate both a dollar store and a gas station and convenience store. Notwithstanding this significant change in proposed business activities, the petitioner re-submitted the exact same proposed organizational chart and business plan provided at the time of filing. Furthermore, a review of the lease agreements submitted indicates that the petitioner will not in fact operate a dollar store or a gas station/convenience store, but rather, will allegedly sell wireless products from designated spaces within stores operated by other individuals or companies. Doubt cast on any aspect of the petitioner's proof may undermine 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). The photographs submitted do not clearly show the interiors of the stores or the retail space that has been allocated to the petitioning company, or otherwise show how the petitioner's wireless accessories business is being incorporated into the existing dollar store or convenience store.

The AAO's analysis of this issue is severely restricted by the petitioner's failure to submit an adequate business plan. While a business plan is not explicitly required in the regulations, counsel has specifically acknowledged that a detailed business plan is typically provided to establish that a new office will support a managerial or executive position within one year. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its

objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

Id.

In this matter, the totality of the evidence submitted provides very little evidence regarding the number of employees to be hired, the timeline for hiring employees, the financial position of the U.S. company and the foreign entity, the petitioner's anticipated start-up costs and financial objectives for the first year of operations, and the physical premises secured by the U.S. company. The AAO notes that the petitioner's submission of a vague job description for the beneficiary, a proposed organizational chart, a vague two-page business plan, a lease for 100 square feet of retail space, and evidence that the company has approximately \$30,000 in the bank falls significantly short of establishing that the company will be able to support a primarily managerial or executive position within a twelve-month period. The regulations require the petitioner to present a credible picture of where the company will stand in exactly one year, and to provide sufficient supporting evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position within one year. 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)).

The AAO does not doubt that the beneficiary will have the appropriate level of authority over the petitioner's business as its president and sole shareholder. However, the definitions of executive and managerial capacity each have two separate parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Here, the vague job description provided for the beneficiary, considered in light of the petitioner's undefined business and hiring plans for the first year of operations, prohibits an affirmative determination that the petitioner could realistically support a managerial or executive position within one year. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the record does not establish that the petitioner had secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A), as of the date the petition was filed. The petitioner has not described its anticipated space requirements for its chain of wireless accessories retail stores. While the petitioner has submitted two lease agreements for a total of 600 square feet of space within a dollar store and a convenience store, the petitioner did not provide the requested photographs of the secured space and it cannot be determined that the two landlords have allocated portions of their business to accommodate the petitioner. Furthermore, the petitioner claims that it will employ a president (the beneficiary), a vice president, a sales and marketing manager, a purchase agent, an accountant, and a bookkeeper, employees who would not be directly involved in the retail sales aspects of the petitioner's business. The petitioner has not provided evidence that it has secured any office space to accommodate these employees. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner had secured sufficient space to house the new office as of the date the petition was filed. For this additional reason, the petition may not be approved.

Another deficiency not discussed by the director is the lack of evidence of the size of the United States investment, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The petitioner has submitted evidence that the company had approximately \$30,000 in its bank account as of July 2008. However, the petitioner has not identified the capitalization requirements of its proposed business. The petitioner indicates that it intends to operate a chain of retail stores, but has not identified the amount of funds needed to commence doing business in the United States, including funds to purchase or lease real property, purchase office equipment and inventory, obtain licenses and insurance, pay salaries and wages, and pay other start up costs associated with the intended U.S. operations. Again, 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. 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'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.