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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

D7

DATE: OCT 03 2011

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 classification 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 the sole proprietor of [REDACTED] Services, a business located in Karachi, Pakistan. He indicates that he intends to establish a U.S. branch of the company in the State of Illinois. The petitioner states that he will be employed as chief executive officer of the new office in the United States for a period of two years.¹

The director denied the petition based on three independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the United States and foreign entities are qualifying organizations; (2) that the petitioner has secured sufficient physical premises to house the new office; and (3) that the beneficiary's services in the United States are to be used for a temporary period, pursuant to 8 C.F.R. § 214.2(l)(3)(vii).

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 asserts that United States Citizenship and Immigration Services (USCIS) did not give any weight to the documents provided in support of the petition. The petitioner submits additional documentary evidence in support of the appeal.

I. The Law

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.

¹ Pursuant to 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

- (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.

II. Discussion

The director denied the instant petition based on three independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the United States and foreign entities are qualifying organizations; (2) that the petitioner has secured sufficient physical premises to house the new office; and (3) that the beneficiary's services in the United States are to be used for a temporary period, pursuant to 8 C.F.R. § 214.2(l)(3)(vii).

A. Qualifying Organizations

The first issue to be addressed is whether the petitioner has established that the United States and foreign entities are qualifying organizations. 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(I).

The pertinent regulations at 8 C.F.R. § 214.2(I)(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 (I)(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[.]

* * *

(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 filed the Form I-129, Petition for a Nonimmigrant Worker, on April 15, 2009. The Form I-129 identifies the beneficiary as the employer filing the petition. On page 4 of the Form I-129, the beneficiary described the type of petitioner as "other" and described the type of business as "self." The beneficiary's foreign employer is identified as [REDACTED] located in Karachi, Pakistan.

Where asked to describe the U.S. company's relation to the foreign entity, the petitioner indicated that the U.S. entity will be a "branch," and stated, "when the company will be formed it will be 100% owned by the Petitioner."

In a letter dated April 13, 2009, the beneficiary stated: "I tries [sic] to open a company in Illinois, but I will not be able to get Federal tax ID until I have SSN so I could not establish a company." The beneficiary indicated that he will form the United States company "once the L-1 is approved." The beneficiary further stated that he is the sole owner and highest authority of his company in Pakistan.

The petitioner's supporting evidence included a National Tax Number Certificate issued to the beneficiary in September 2001 by the Government of Pakistan for the foreign business. The document identifies the beneficiary's status as "business individual." The petitioner also submitted the foreign entity's "Certificate of Registration Under Sales Tax Act. 1990" issued in August 2002. Finally, the petitioner submitted the foreign entity's Chamber of Commerce & Industry membership certificate which expired in June 2003.

The director issued a request for additional evidence ("RFE") on May 31, 2009. The director instructed the petitioner to submit, *inter alia*, the following documentation: (1) the U.S. company's articles of incorporation, stock certificates, stock ledger, proof of stock purchase, and other documentary evidence of ownership and control; (2) evidence of the foreign entity's ownership, including its articles of incorporation or sole proprietorship registration documents; and (3) evidence that the foreign entity is involved in the regular, systematic and continuous provision of goods and services, including evidence to substantiate the staffing of the company, photographs depicting the operation of the business, copies of business licenses, tax documents, bank statements, financial statements, a list of major clients, telephone directory listing, and copies of sales invoices.

In response, the petitioner submitted a receipt from the website *Legalzoom.com* indicating that this company filed an application for incorporation with the Secretary of State of Illinois on behalf of the beneficiary on August 21, 2009, and that the status of the application was "in process."

With respect to the foreign entity, the petitioner submitted copies of Pakistan Form IT-2, Return of Total Income/Statement of Final Taxation for the beneficiary's business, [REDACTED], [REDACTED], for the years ending June 30, 2008 and June 30, 2007. The documents indicate that the beneficiary has 100 percent ownership of the business. For 2008, the foreign business reported no sales or other revenues, no expenses of any type, and no taxes owed. For 2007, the foreign entity reported gross sales of 140,000 rupees.

The director denied the petition on September 12, 2009, concluding that the petitioner failed to establish that the U.S. and foreign entities are qualifying organizations. The director determined that, while the petitioner identified the U.S. office as a branch office of the foreign entity, it failed to provide any probative evidence to

support that claim, or any other evidence that would establish a qualifying relationship between the U.S. and foreign entities.

On appeal, counsel states: "Since petitioner company is just formed, its incorporation documents were provided and also documents from company in Pakistan show that [the beneficiary] is the sole owner and has opened a branch here in USA."²

In support of the appeal, the petitioner submits a Certificate of Incorporation issued by the Securities and Exchange Commission of Pakistan indicating that [REDACTED] was incorporated on October 27, 2009. According to the Articles of Association, also submitted on appeal, the newly formed company is owned in equal shares by the beneficiary and three other individuals.

Upon review, and for the reasons stated herein, the petitioner has not established that the U.S. and foreign entities are qualifying organizations.

Prior to addressing the issues, the AAO must emphasize that the critical facts to be examined are those that were in existence at the actual time of filing the petition. It is a long-established rule in visa petition proceedings that a petitioner must establish eligibility as of the time of filing. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

At the time the petition was filed, the foreign entity was registered as a sole proprietorship owned by the beneficiary. The beneficiary stated on the Form I-129 that he was self-petitioning and explained in an accompanying statement that he would establish a U.S. company as a branch of the foreign entity upon approval of the petition.

As a matter of law, the beneficiary is ineligible for the classification sought. It is fundamental to this nonimmigrant classification that there be a United States entity to employ the beneficiary. In order to meet the definition of "qualifying organization," there must be a United States employer. *See* 8 C.F.R. 214.2(l)(1)(ii)(G)(2). The beneficiary filed the petition as an individual who operates a foreign sole proprietorship. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual proprietor. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). As in the present matter, if the petitioner is actually the individual beneficiary doing business as a sole proprietorship, with no authorized branch office of the foreign employer or separate legal entity in the United States, there is no U.S. entity to employ the beneficiary and therefore no qualifying organization.

² The AAO notes that, on September 14, 2009, subsequent to the denial of the petition, the petitioner submitted evidence that [REDACTED] was incorporated in the State of Illinois on August 20, 2009, and that the company issued 100 shares of stock to the beneficiary as its sole owner.

The AAO acknowledges that the beneficiary established a corporation approximately four months subsequent to the filing of the petition. If the petitioner or beneficiary becomes eligible under a new set of facts, the proper course of action is to file a new petition. Despite the previous denial, there is no bar to the filing of a new petition supported by new evidence of eligibility.

The AAO notes for the record that there does not appear to be a qualifying relationship between the newly formed U.S. corporation and the foreign entity. Based on the evidence submitted on appeal, it appears that the foreign business was reorganized from a sole proprietorship to a corporation owned by the beneficiary and three other individuals. While the beneficiary appears to own 100 percent of the U.S. company, the evidence submitted on appeal indicates that he owns only a 25 percent share of the foreign corporation.

To establish eligibility in this case, the petitioner would need to demonstrate that the newly formed foreign entity and the newly formed U.S. company share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982).

In this case the U.S. entity is owned by one individual, and the foreign entity is owned by four individuals, each with a 25 percent interest in the company. Absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the petitioner could not establish that the same legal entity or individuals control both entities.

Furthermore, the record as presently constituted fails to establish that the foreign entity is doing business as defined in the regulations. As noted above, the foreign sole proprietorship reported no income or expenses for the tax year ended on June 30, 2008, and the petitioner provided no evidence of recent sales transactions or other documentation that would corroborate its claims that the foreign business is an ongoing concern.

Consequently, it cannot be concluded that the petitioner in this matter, the beneficiary, is a qualifying organization doing business in the United States and at least one foreign country, or that the petitioner has a qualifying relationship with a foreign entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G). The appeal will be dismissed.

B. Physical Premises to House the New Office

The second issue to be addressed is whether the petitioner established that it has secured sufficient physical premises to house the new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

The petitioner stated on the Form I-129 that the U.S. employer's address is [REDACTED] Peoria, Illinois. The petitioner further identified this location as the beneficiary's current residential U.S. address. In his letter dated April 13, 2009, the beneficiary stated that he is "working on renting a place for the office" in reference to the proposed U.S. company.

In the RFE issued on May 31, 2009, the director requested detailed information and evidence pertaining to the location and premises of the new office, including, among other items, a copy of the lease agreement, a letter from the lessor confirming that the U.S. company is occupying the premises, photographs of the premises, and information regarding the type of business operated and the type of building the petitioner is occupying.

In response, the petitioner submitted three photographs depicting two computer desks in the corner of a room. The wall of the room holds a sign with the name [REDACTED] [REDACTED]

The director denied the petition, concluding that the petitioner failed to establish that the new U.S. entity has secured sufficient physical premises to house the business. The director noted that the evidence submitted suggests that the petitioner is located at a residential address. The director further found that the petitioner's failure to submit a complete response to the RFE provided sufficient grounds for denial, pursuant to 8 C.F.R. § 103.2(b)(14).

The AAO notes that the petitioner's late, partial response to the RFE received on September 14, 2009 included a copy of the beneficiary's residential lease agreement for apartment [REDACTED] Peoria, Illinois. The lease was signed in September 2008 and had an ending date of March 31, 2009. According to the terms of the lease, "the Apartment is to be used exclusively as a private residence" by the beneficiary, who agreed "not to operate any business from the Apartment." The lease was accompanied by a letter dated August 7, 2009 from the [REDACTED] who stated that the beneficiary has continued to reside at the apartment on a month-to-month basis.

On appeal, counsel states that the petitioner "is in process of renting an office and warehouse where he will be able to establish his new office." Counsel indicates that the beneficiary is using his home office for initial set-up. The petitioner also submits a letter from the [REDACTED] who states that the beneficiary "has permission for [the beneficiary] to locate his business office of [REDACTED] [REDACTED] in a second apartment, in the Timberbrook Complex."

Upon review, the petitioner has not established that the petitioner secured physical premises to house the new office as of the date of filing the petition. The beneficiary unequivocally stated that he was still "working on renting a place for the office" when the petition was filed on April 15, 2009. While the beneficiary has rented an apartment, the terms of his lease expressly prohibit the operation of a business on the premises. 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).

The AAO will not accept the letter from Timberbrook Apartments submitted on appeal, which indicates that the beneficiary is operating the business from an unidentified "second apartment." The petitioner has neither claimed nor presented evidence that this "second apartment" was secured prior to the filing of the petition. Furthermore, without a copy of the lease agreement specifying the terms and authorized use of the premises, the letter from the resident manager is insufficient to satisfy the petitioner's burden of proof. Finally, given the petitioner's claim that it requires both an office and a warehouse for the new office, the AAO could not conclude that a residential apartment would constitute sufficient physical premises.

For the foregoing reasons, the appeal will be dismissed.

C. Temporary Employment

The third and final issue addressed by the director is whether the beneficiary's proposed employment in the United States would be temporary. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary

is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States.

As noted above, the evidence submitted at the time of filing indicated that the beneficiary is the sole proprietor of the foreign entity. The petitioner indicated that the beneficiary would also be the sole owner of the U.S. company once it is established.

In denying the petition, the director determined that the petitioner failed to furnish any evidence that the beneficiary's services are for a temporary period. The director noted that the petitioner did not provide a business plan or any other evidence indicating the duration of the beneficiary's intended stay.

On appeal, counsel asserts that the "petitioner had provided a feasibility report indicating his plans of establishing and expanding his business in USA and how his products are in demand and will be able to find customers."

Upon review, counsel's assertions are not persuasive and do not directly address the grounds for denial. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of his services in the United States.

As noted above, the most recent tax return for the beneficiary's foreign sole proprietorship, for the tax year ended June 30, 2008, indicated that the business reported no sales or expenses during the year immediately preceding the beneficiary's admission to the United States in B2 status. Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *Matter of United Investment Group*, 19 I&N Dec. 248 (Comm. 1984). A sole proprietorship is a business in which one person owns all of the assets and operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Edition). The lack of current evidence leads the AAO to conclude that the foreign sole proprietorship is no longer doing business. While the petitioner has submitted evidence that the foreign entity was reorganized as a Pakistan corporation in October 2009, the petitioner has not established eligibility at the time of filing the petition, nor has the petitioner established that the newly formed corporation is a qualifying organization. Accordingly, the appeal will be dismissed for this additional reason.

D. Employment in a Managerial or Executive Capacity

Beyond the decision of the director, the record contains no documentation to persuade the AAO that the beneficiary has been or would be employed in a managerial or executive capacity as defined at section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), or that the petitioner would support such a position within one year of approval of the petition. Specifically, the petitioner failed to submit a detailed description of the beneficiary's proposed duties, evidence pertaining to the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals, or evidence of 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

At the time of filing the petition, the petitioner indicated that he will "promote, set-up, contact potential customers, approach potential customers, organize, supervise and take all crucial decisions regarding the hiring and firing of employees, products and expansion of the company." The record contains no further description of his proposed duties in the United States.

In the request for evidence, the director specifically requested that the petitioner submit a letter from the foreign company identifying the need for the new office, the proposed number of employees and the types of positions they will hold, the amount of the U.S. investment, and the financial ability of the foreign company to pay the beneficiary and commence doing business in the United States. The director further requested evidence to establish how the new office will support a managerial or executive position within one year, along with copies of its business plan including specific details as to the business to be conducted and projections for business expenses, sales, gross income and profits and losses.

The petitioner submitted a feasibility study in response, but it contained none of the information requested by the director. 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). 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)).

In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plan 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. See 8 C.F.R. § 214.2(l)(3)(v)(C). 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. Here, given the lack of required evidence, and considered in light of the fact that the petitioner had not incorporated a U.S. entity or secured physical premises to house the office as of the date of filing, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity within one year. For this additional reason, the petition cannot be approved.

Another issue not addressed by the director is whether the petitioner established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity, as required by the regulation at 8 C.F.R. § 214.2(l)(3)(v)(B). The beneficiary indicates that as the owner of the foreign company, he has sole authority to make all decisions, hire and fire employees, and manage all important functions. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

While the beneficiary indicated that he supervises five employees in his role as owner of the foreign business, the petitioner failed to respond to the director's request for evidence substantiating the number of employees, an organizational chart for the foreign entity, and detailed job descriptions for the beneficiary and all employees of the foreign entity. Again, any 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). As noted above, the foreign

business's most recent tax return reflected that the company had no sales and paid no salaries, wages or other business expenses during the year ended on June 30, 2008. The petitioner has not submitted sufficient evidence to support its claim that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. The petition cannot be approved for this additional reason.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis). 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.

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. 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.