

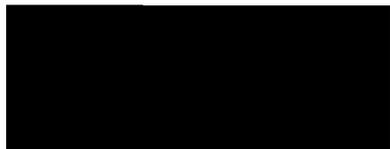
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D7

DATE: **APR 27 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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:

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 to classify 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 corporation established under the laws of the State of Illinois in 2009, states that it intends to engage in the import and export of textiles. It claims to be a subsidiary of [REDACTED], a Chinese company. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States.

The director denied the petition on February 22, 2010, based on two independent and alternative grounds. Specifically, the director determined that the petitioner failed to establish: (1) that the U.S. and foreign entities have a qualifying relationship; and (2) that the foreign entity has employed the beneficiary in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner has submitted "strong evidence" of its qualifying relationship with the foreign entity, as well as evidence to demonstrate that the beneficiary is employed in a qualifying managerial or executive capacity as the foreign entity's general manager. Counsel submits a brief and additional 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.
- (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.

II. Discussion

The director denied the petition based on two grounds, concluding that the petitioner failed to establish: (1) that it has a qualifying relationship with the beneficiary's foreign employer; and (2) that the foreign entity has employed the beneficiary in a primarily managerial or executive capacity. The AAO will address these issues separately below.

A. Qualifying Relationship

The first issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer. 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[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

(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 December 31, 2009. On the L Classification Supplement to Form I-129, the petitioner identified the beneficiary's current employer as [REDACTED]. The petitioner indicated that the foreign entity owns 90 percent of the U.S. company's stock, while the beneficiary owns the remaining 10 percent. The petitioner submitted the following evidence in support of the petition:

- The U.S. company's Articles of Incorporation filed on June 3, 2009. This document indicates that the petitioner proposed to issue 20 of its 200 authorized shares in exchange for consideration of [REDACTED].
- The U.S. company's stock certificate #1 indicated that it issued 180 shares of stock to the foreign entity on June 8, 2009.
- The U.S. company's stock certificates #2 indicating that it issued 20 shares of stock to the beneficiary on June 8, 2009.
- The U.S. company's [REDACTED] statement for October 2009. The statement shows receipt of a [REDACTED] wire transfer originated from the beneficiary on October 20, 2009, and an ending monthly balance of approximately [REDACTED].
- A wire transfer document (in English and Chinese) which shows the beneficiary's transfer of [REDACTED] to the petitioning company's [REDACTED] checking account on September 29, 2009.
- An Application for Outward Remittance dated October 15, 2009, which indicates that the beneficiary applied to transfer [REDACTED] to the petitioner's [REDACTED] checking account.
- A copy of the foreign entity's Articles of Association which identifies the beneficiary as the majority shareholder of the company.
- Resolution of [REDACTED] dated June 8, 2009 which indicates the company's intention to make an initial investment of \$ [REDACTED] in the U.S. company to be used for purchases, infrastructure and working capital.

The director issued a request for additional evidence on January 14, 2010. The director specifically requested a copy of the U.S. company's stock ledger which shows all stock certificates issued to date, and identifies the total number of shares sold, the names of shareholders, and the purchase price. The director also requested the following:

Proof of Stock Purchase: Submit evidence to show that the foreign parent company has, in fact, paid for the U.S. entity. The evidence should include bank-certified copies of the original wire transfers from the parent company. Also, bank-certified copies of cancelled checks, deposit receipts, etc. detailing monetary amounts for the stock purchase should be submitted. Provide the account holder names and affiliation to the foreign entity for all persons making purchases and the bank accounts that were used. The originator(s) of the monies deposited or wired must be clearly shown and verifiable by name with full address

and phone/fax number. For all funds not originating with the foreign company, explain the source and reasons for receiving such funds, and provide the names of all account holders depositing these funds, and their affiliation to the foreign or U.S. company.

In response to the request for evidence, the petitioner submitted a letter from the foreign entity's Chairman of the Board, [REDACTED] who stated:

According to the company's resolution on financial arrangement, [the foreign entity] entrusted [the beneficiary] to remit USD [REDACTED] as investment fund to [the U.S. company] in batches respectively on September 29, 2009 and October 15, 2009. Of that amount, [the foreign entity] remitted USD [REDACTED] based on its investment proportion (90%) and [the beneficiary] remitted USD [REDACTED] based on her investment proportion (10%).

This is to certify that, due to China's foreign exchange management system, remittance by domestic company via company account to overseas company account shall be examined and approved by government for 3-4 months, and the formality is complicated, so [the foreign entity] decided to entrust [the beneficiary] to remit its investment amount of RMB [REDACTED] Yuan ([REDACTED] in the name of [the beneficiary] to [the petitioner's] account. On September 29, 2009, [the beneficiary] remitted USD [REDACTED] . . . and on October 15, 2009, [the beneficiary] remitted USD [REDACTED] . . . After that, [the foreign entity] and [the beneficiary] finished the remittance of the initial investment amount totaled USD [REDACTED] to [the U.S. company].

The petitioner submitted a full translation of the "Application for Funds Transfers (Overseas)" for the \$ [REDACTED] wire transfer to the U.S. company dated September 29, 2009, and processed through the [REDACTED]. According to the transaction remarks, the transfer was made for payment of a "Market Research Fee." The petitioner also resubmitted the Application for Outward Remittance for \$ [REDACTED] dated October 15, 2009. This document identifies the beneficiary as the remitter, but does not identify the originating account or include any remarks regarding the purpose of the transfer.

The petitioner provided the requested copy of the U.S. company's stock transfer ledger, which indicates that stock certificate #1, 180 shares, was issued to the foreign entity on June 8, 2009 in exchange for [REDACTED] and stock certificate #2, 20 shares, was issued to the beneficiary on June 8, 2009 in exchange for \$ [REDACTED]

The director denied the petition on February 22, 2010, concluding that the petitioner failed to demonstrate that it has a qualifying relationship with the foreign entity. The director acknowledged that the petitioner submitted evidence of its receipt of a wire transfer of approximately [REDACTED] but found that it did not provide evidence that the foreign entity actually contributed those funds. The director further noted that while the beneficiary may have assisted with the funds transfer in her capacity as the foreign company's general

manager, the petitioner failed to submit sufficient evidence to demonstrate that the foreign entity initiated the wire transfer or paid for the ownership of the U.S. company.

The director also observed an unresolved inconsistency in the record. Specifically, the director observed that, according to the U.S. company's articles of incorporation filed on June 3, 2009, the company initially issued 20 of its authorized shares in exchange for \$ [REDACTED]. The director observed that the petitioner's stock certificates and stock transfer ledger show that all 200 of the company's authorized shares were issued on June 8, 2009 in exchange for a total of \$ [REDACTED].

On appeal, the petitioner asserts that it "has submitted and is submitting strong evidence" to demonstrate that the foreign entity paid for its interest in the U.S. company and has a qualifying parent-subsidary relationship.

With respect to the information provided in the petitioner's articles of incorporation regarding the issuance of only 20 shares, the petitioner indicates that those shares were issued to the beneficiary, but that she initially contributed only [REDACTED]. The petitioner states that at the time the petitioner issued its stock certificates, the beneficiary "finally input altogether \$ [REDACTED] for her 20 shares of the company," while the foreign entity invested \$ [REDACTED] for the issuance of its 180 shares.

With respect to the wire transfers, the petitioner states that it is clear that the beneficiary transferred a total of \$ [REDACTED] from her account to the U.S. company. The petitioner contends that it submitted supporting documents and a letter demonstrating "our companies [*sic*] resolution on financial arrangement to let [the beneficiary] remit \$ [REDACTED] as the invested fund to the petitioner." The petitioner states that the foreign company's portion of the investment was \$ [REDACTED].

The petitioner explains that the foreign entity had the beneficiary transfer the money because the process for transferring money from a Chinese company to an overseas account is lengthy and complicated under China's foreign exchange management system. The petitioner submits a "Circular of the State Administration of Foreign Exchange on Issuing the Regulations on Foreign Administration of the Overseas Direct Investment of Domestic Institutions" and "Regulation of the People's Republic of China on Foreign Exchange Administration" in support of its contentions.

In addition, the petitioner emphasizes that it previously provided a letter explaining that the foreign entity decided to let the beneficiary transfer the money directly from her personal account. The petitioner asserts that "this is the common practice of the enterprises in the industry to make the foreign investment more efficiently." The petitioner notes that the beneficiary is the foreign entity's general manager and legal representative and that "it is reasonable to reach the conclusion that [REDACTED] [the beneficiary] . . . to remit the investment fund to the overseas company via her personal account for the purpose of the quick and smooth operation of [the U.S. company]."

Upon review, the petitioner has failed to establish that the foreign entity paid for its claimed ownership interest in the U.S. company.

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. 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.

The petitioner claims that the foreign entity purchased 180 shares of the U.S. company's stock in exchange for [REDACTED] while the petitioner's stock transfer ledger indicates that the foreign entity paid [REDACTED]. 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).

As noted by the director, the record remains devoid of any evidence of funds transferred from the foreign entity's account for the purpose of investing in the U.S. company. Contrary to the petitioner's contention on appeal, the record does not contain the foreign entity's "resolution on financial arrangement to let [the beneficiary] remit [REDACTED] as the invested fund to the petitioner." 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'r 1998) (*citing Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The only company resolution in the record which mentions an investment in the U.S. entity is dated June 8, 2009. The resolution indicates that the initial investment will be [REDACTED] and that the funds will be transferred to the U.S. company's account in December 2009. The resolution does not address the means of transfer.

The petitioner has provided an explanation as to why the funds were not transferred directly from the foreign entity's account to the U.S. entity's account. The petitioner must, however, still demonstrate that the foreign entity ultimately paid [REDACTED] for its claimed majority interest in the U.S. company. If the beneficiary made a [REDACTED] investment from her own personal account on behalf of the foreign entity, then the petitioner must establish that the foreign entity provided her with those funds, has repaid her, or has entered into a repayment arrangement with her. The petitioner simply states that it authorized the beneficiary to transfer the money from her personal account in her capacity as general manager and legal representative of the company. The petitioner has not claimed that funds originated with the foreign entity, and thus has not established that the foreign entity paid for its claimed ownership interest.

The petitioner has not submitted evidence on appeal to overcome the director's determination. Accordingly, the appeal will be dismissed.

B. Employment Abroad in a Primarily or Executive Capacity

The second issue 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.

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.

The petitioner indicates that the beneficiary has served as the general manager of the foreign entity since the company's establishment in 2000. At the time of filing, the petitioner submitted a list of 12 job duties the beneficiary performs in this capacity, and stated that she is responsible for overseeing all departments of the company. The petitioner provided an organizational chart which indicates that the beneficiary oversees the business department (11 employees), production department (12 employees), finance department (8 employees), documents department (4 employees) and logistics department (10 employees). The petitioner also provided the foreign entity's recent payroll records, along with the names, job titles and brief descriptions of job duties for 49 employees, which include a deputy general manager, an administrative manager, a finance manager, a sales manager, and a quality control manager. In addition, the petitioner provided a 2006 *Financial Times* article which discusses the foreign entity's manufacturing relationship with [REDACTED] and which includes several quotes from the beneficiary in her capacity as the manager of the foreign operation.

The director requested a more detailed description of the beneficiary's duties, an organizational chart for the foreign entity, and evidence of the number of employees working for the foreign entity. The petitioner complied with this request by providing a more detailed description of the beneficiary's duties, along with position descriptions for all of her direct and indirect subordinates.

The director determined that the petitioner failed to establish that the foreign entity employs the beneficiary in a primarily managerial or executive capacity. The director found that the petitioner failed to submit a detailed description of the beneficiary's duties, and failed to establish that the beneficiary's subordinates are professionals. The director concluded that the beneficiary is employed as a first-line supervisor of non-professional employees.

On appeal, the petitioner objects to the director's determination, contending that the director's conclusion is contrary to the evidence submitted.

Upon review, the AAO will withdraw the director's determination with respect to this issue. The petitioner has established that the foreign entity employs the beneficiary in a primarily managerial capacity.

The petitioner has provided a position description sufficient to establish that the beneficiary primarily manages the foreign entity and exercises discretion over its day-to-day operations. Moreover, the record establishes that the beneficiary supervises subordinate managers and supervisors and that she has the authority to hire and fire these employees. The petitioner provided ample evidence relating to its organizational structure, including payroll records, detailed organizational charts and employee lists. The record shows that the foreign entity has 49 employees organized into several departments, each with its own department manager. The evidence is sufficient to demonstrate that the beneficiary is primarily responsible for overseeing the organization and a staff of subordinate managers, and is not involved in the day-to-day

operations of the various departments of the foreign entity. Accordingly, the AAO will withdraw the director's determination with respect to this issue only.

C. Employment in the United States in a Primarily Managerial or Executive Capacity

Beyond the decision of the director, a remaining issue in this matter is whether the petitioner established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. 8 C.F.R. § 214.2(l)(3)(v)(C).

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, 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.*

Here, the petitioner did not provide evidence that it is prepared to commence doing business, nor has it adequately described the proposed nature of the office, the scope of the entity, its organizational structure, and its financial goals, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(1).

The petitioner submitted a lease for an office that appears to be located in a residential home. In a statement submitted in response to the request for evidence, the foreign entity acknowledged that this office will not serve as the company's U.S. business address, but rather serves as the company's temporary address for registration and mailing purposes. The foreign entity indicated that the beneficiary "will definitely rent a new and proper commercial place for our corporation operation" upon the beneficiary's arrival in the United States." The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). In this matter, the petitioner has not described its anticipated space requirements for its textile sales business, but concedes that it does not intend to conduct business from the address listed on the petition. Accordingly, the petitioner has

not established that it secured sufficient physical premises to house the new office pursuant to 8 C.F.R. § 214.2(I)(3)(v)(A).

In addition, the petitioner has not adequately described its business and hiring plans for the first year of operations. The petitioner's initial letter dated December 15, 2009 devotes less than two pages to a discussion of the purpose for opening the United States office, its intended functions and its proposed staffing levels. Specifically, the petitioner indicates that the company seeks to expand the foreign entity's business volume in the U.S. market and improve before-sale communications and after-sale service for its U.S. customers. The petitioner indicates that it will employ "3 to 5 staffs" during the first year of operations and achieve sales of [REDACTED]. The petitioner submitted a proposed organizational chart depicting a business department with a manager and two business representatives, and a personnel department with a manager and two administrative employees. The petitioner did not provide position descriptions for the proposed employees or provide a hiring plan. Nor has the petitioner provided any financial information outlining its start-up costs or projected income and expenses for the first year of operations to corroborate its claim that it will support the projected number of employees 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. 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Overall, while the position description submitted for the beneficiary indicates that she would have the appropriate level of authority over the U.S. operations as its general manager, the minimal supporting evidence did not demonstrate that the company was prepared to commence doing business immediately upon approval, nor did it demonstrate how the company would grow to support a manager or executive within the one-year timeframe. 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 conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

III. Conclusion

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, *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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.