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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

87

DATE: **AUG 10 2012** Office: CALIFORNIA SERVICE CENTER

IN RE:

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 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, an Arizona corporation established in July 2009, states that it intends to engage in the sale of telemarketing services. It claims to be a subsidiary of Wilfred Benitez Urquidez, located in Sonora, Mexico. The petitioner seeks to employ the beneficiary as the Director of Operations of its new office in the United States for a period of one year.

The director denied the petition on the following two grounds: (1) the record is insufficient to establish that the petitioner had secured sufficient physical premises to house the new operation when it filed the petition; and (2) the record is insufficient to establish that the U.S. entity would support a managerial or executive position within one year of commencing operations in the United States.

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 erred in its interpretation of physical premises requirements and that the director overlooked materials supporting a conclusion that the United States entity would support a managerial or executive position within one year of commencing operations in the United States. Counsel submits a brief 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) 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. The Issues on Appeal

A. Managerial or Executive Capacity

The first 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;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

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(l)(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 August 9, 2011. In a letter dated August 10, 2009, the petitioner described the beneficiary's proposed duties as Director of Operations as follows:

Oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. Implement marketing strategies and long-term goals, including hiring personnel, establishing a rapport with the customers to attract business, and assist them with developing telemarketing programs to increase customer's revenues. Focus toward increasing sales by specifically targeting client's former customer lists as well as targeting new customers.

The petitioner stated on Form I-129 that it has a projected staffing level of three employees. The petitioner did not provide an organization chart or position descriptions for the employees to be hired.

The director issued a request for evidence ("RFE") on August 20, 2009, in which she instructed the petitioner to submit *inter alia*: (1) an original letter from the foreign company explaining the need for the new office and which addresses the proposed number of employees, the types of positions they will hold, and the amount of the U.S. investment (2) the feasibility study, (3) the current and original business plan and evidence to establish the presence of the U.S. company's business premises, (4) the duties to be performed by the beneficiary; and (5) how long the beneficiary's services are required.

Counsel for the petitioner submitted a letter dated November 11, 2009 in response to the director's RFE. With respect to the beneficiary's duties, counsel stated:

[The beneficiary] will be responsible for directing the further development of the company's goals, objectives, and overall profitability. He will direct investment activities and implement marketing strategies and long-term goals, including hiring account managers for the U.S. office. The essence of [the beneficiary's] job duties are related to the operational and/or policy management. With his business acumen, expertise and commitment to his services, [the beneficiary] has three contracts already signed by customers requiring his services. The copies of these contracts are also enclosed as Exhibit 20 and will take affect [*sic*] as soon as this L-1A petition is approved and [the beneficiary] can proceed to hire the account managers.

The petitioner submitted an organization chart showing a General Manager for the United States entity, three account managers reporting to the general manager, and two telemarketers reporting to each of the account managers. In the notes to the flow cart, the petitioner stated that the "position of General Manager y [*sic*] administrator are occupied by the owner," and that "the account managers are also telemarketers when their time allows them."

In the Feasibility Study, the petitioner stated that "the account managers will be in charge of getting new accounts, and also be in charge of their telemarketers team in Mexico, checking their goals, salaries, and any other issue related to their team." Furthermore, the petitioner described that the beneficiary "will be in charge

of the management of both offices, Mexico and USA, but [the General Manager USA] will have a power of attorney to be in charge and pay salaries, etc. Same situation applies to [the General Manager Mexico] for Mexico's office."

The petitioner further described the staffing of the business structure as follows:

In USA the company will have the account managers, and assistant to make this project profitable. With this distribution of people we look to optimize costs. The function of making the phone call (most of the employees), most of the salaries, will be in Mexico, creating an immediate saving in salaries to my company. The office in USA will be in charge to get new customers and to keep constant briefs and communication with our customers.

The director denied the petition on November 24, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year of the approval of the petition. In the denial, the director stated that "it is not clear that the beneficiary is establishing a new office in the United States rather than simply moving to the United States and seeking contracts for the foreign business (in violation of his B-2 status, which expired on June 3, 2009)."

On appeal, counsel contends that due to the fact that the beneficiary owns the business "it is reasonable to presume that [the beneficiary] is an executive as he has overall responsibility for the companies." Counsel cites to an unpublished AAO decision in which counsel states supports the finding that "the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level." With regard to the beneficiary's job duties, counsel asserts that "[s]ince the U.S. company cannot fully develop until the petition is approved, there are no day-to-day functions that are performed by [the beneficiary]."

Counsel further stated that the denial "is defective as it does not take into account the petitioner's business plan and other evidence submitted to establish that the U.S. company would support a managerial or executive position within one year." The petitioner did not submit any additional evidence in support of the appeal.

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).

Counsel and the petitioner have repeatedly described the beneficiary's proposed position in very broad terms, including such duties as "[o]versee the preparation of financial reports, direct investment activities, and implement cash management strategies." 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.

In response to the RFE, counsel stated that the beneficiary is responsible for further developing the company's goals and profitability. The beneficiary "will direct investment activities and implement marketing strategies and long-term goals, including hiring account managers for the U.S. office. The essence of [the beneficiary's] job duties are related to the operational and/or policy management." The petitioner's response to the RFE did not provide any further insight into what the beneficiary would be doing on a day-to-day basis at the end of the first year in operation. 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 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 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.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The petitioner indicates that it will operate a telemarketing business and that the beneficiary will supervise subordinate employees including account managers, telemarketers, and general managers.

While the petitioner submitted an organization chart depicting subordinate general managers, account managers, and telemarketers, the petitioner failed to provide evidence that the positions are professional or managerial level positions as required by section 101(a)(44)(A)(ii) of the Act. Although requested by the director, the petitioner did not provide a position description or any other evidence demonstrating that the positions to be supervised are professional-level positions nor has it indicated the educational requirements for the proposed positions.¹

Nor has the petitioner provided evidence, other than a proposed organizational chart, that any of the employees supervised by the beneficiary could be classified as managers or supervisors. The petitioner listed on the organization chart a "General Manager USA." The petitioner stated, however, in notes to the organization chart that the position "of General Manager and administrator are occupied by the owner," (the beneficiary), despite the presence of an individual listed in the General Manager USA position. The petitioner did not provide any further evidence or timeline as to when the position of General Manager would no longer be filled by the beneficiary himself on a regular basis. Therefore, the record does not support a finding that the beneficiary will supervise employees who in turn supervise subordinate staff members, as the petitioner himself appears to be the first line supervisor for the United States petitioner.

Furthermore, the hiring plans for the petitioner's first year of business do not support a finding that the beneficiary will supervise employees that in turn supervise subordinate supervisors or managers within the first year of operations. The petitioner's plans for hiring relate to the hiring of account administrators as shown by the business plan. Specifically, counsel for the petitioner stated that the "approval of this petition will allow the foreign company to add personnel and the U.S. company to hire account managers." The petitioner did not provide any evidence that the account administrators will be responsible for supervising subordinate staff. The telemarketer positions will be left in Mexico, "creating an immediate savings in salaries to my company," as stated in the business plan. The petitioner failed to explain how the account managers will supervise subordinate staff members or manage a clearly defined department or function of the petitioner in the United States. Thus, the petitioner has not shown that the beneficiary's proposed subordinate

¹ In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above.

employees would be supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

In this matter, a review of the totality of the evidence submitted provides very little information regarding the number of employees to be hired, the timeline for hiring employees, the financial position of the U.S. company, 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. Although some of these deficiencies will be discussed in more detail below, the AAO notes that the petitioner's submission of a vague job description for the beneficiary, the proposed organizational chart, and the business plan, 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. 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. at 165 (citing *Matter of Treasure Craft of California*, 14I&N Dec. 190 (Reg. Comm'r. 1972)).

The AAO does not doubt that the beneficiary will have the appropriate level of authority over the petitioner's business as its president. However, the definitions of executive and managerial capacity each have two 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).

Overall, the vague job description provided for the beneficiary, considered in light of the petitioner's business and hiring plans for the first year of operations, prohibits a determination as to whether the petitioner could realistically support a managerial or executive position within one year. Accordingly, the appeal will be dismissed.

B. Sufficient Physical Premises to House the New Office

The second issue in this matter is whether the petitioner has secured sufficient physical premises to house the new entity, as required by the regulation at 8 C.F.R. § 214.2(l)(3)(v)(A). In the initial filing, the petitioner provided a copy of a residential lease agreement for the primary residence of the beneficiary and his wife, signed in their personal capacity. In the request for evidence, the director requested evidence that the petitioner obtained sufficient physical premises to house the new operation. In its response dated November 11, 2009, the petitioner submitted a commercial lease dated November 2, 2009 as well as photographs and floor plans for this office. The petitioner also submitted floor plans for his home office. The director denied the petition, finding that the record was insufficient to establish that the petitioner had secured sufficient physical premises to house the new operation when it filed the petition.

On appeal, counsel challenges the director's finding, noting that the minimum needs of the petitioner's business are satisfied by the petitioner's home office in that the company "has established separate phone lines or made other accommodations for the use of the premises by the U.S. company." Counsel cites an unpublished AAO decision in support of this assertion.

The AAO disagrees. As an initial matter, the lease submitted by the petitioner for commercial office space dated November 2, 2009 does not establish eligibility for sufficient physical premises to secure the new office. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). 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 petition was filed on August 11, 2009. Since the commercial lease was not secured until November 2, 2009, this lease will not be considered by the AAO as evidence establishing eligibility at the time of filing.

Evidence of physical premises at the time of filing consisted of the residential lease dated April 24, 2009. The petitioner submitted the lease and floor plan with the Form I-129 to evidence sufficient physical premises. When a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval.

Counsel contends that "sufficient" physical premises may be established by "identifying the nature of its business, the specific amount and type of space required to operate the business, its proposed staffing levels and evidence that the space can accommodate the petitioner's growth during the first year of operations."

The petitioner proposed an increase in staffing by an additional four employees by the end of the year. The floor plan for the petitioner's home office indicated that the space consists of a desk area in the beneficiary's family room. The photos submitted by the petitioner show a single desk by a window. Based on this floor plan and the photos, there do not appear to be any sufficient space to accommodate the addition of even one additional staff member. Furthermore, the record lacks evidence to show that the home office is in any other way sufficient to house the business including lease terms permitting a business space, local zoning permitting a home business, separate phone lines or contact information for clients for the home office, and/or a meeting or conference space for the petitioner to meet with new and potential clients. While the AAO may consider evidence demonstrating accommodations made by the petitioner for the use of the premises are sufficient, the petitioner failed to show in any way that the home office is sufficient to support a managerial position or show that the petitioner will be doing business in a regular and systematic way by the end of the one year period. Accordingly, the petitioner has not demonstrated that beneficiary's home office will accommodate the petitioner's growth during the first year of operations.

Beyond the decision of the director the records lacks evidence of the size of the United States investment, as required by 8 C.F.R. § 214.2(l)(3)(v)(C)(2). On appeal, counsel claims that the petitioner received an initial investment of \$75,000 but the record is completely devoid of evidence of this transaction. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The only evidence as to the actual financial status of the petitioner are two bank statements from Chase bank. The ending balance on the statement as of September 30, 2009 is \$5,616.66. The petitioner provided a bank statement for the foreign parent company showing a balance of \$32,514.61 as of October 14, 2009. The petitioner did not, however, show any evidence regarding a commitment or plan on behalf of the parent company to continue to support the United States operations of the petitioner.

The business plan of the petitioner shows the anticipated “costs to initialize the opening of the office ascend to a total of \$36,164.”

The petitioner failed to provide evidence of the claimed \$75,000 or documentation that it has the startup-up funds outlined in the business plan. Therefore, the record does not support a finding that the petitioner has the financial ability to commence doing business with minimal delay upon approval of the petitioner. For this additional reason, the petition cannot be approved.

Finally, although not addressed by the director, it is further noted that the petitioner has not submitted any evidence to establish that the foreign sole proprietorship continues, and will continue, to do business, as required at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). 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 personally owns all of the assets, personally owes all the liabilities, and operates the business in his or her personal capacity. Black's Law Dictionary 1520 (9th Ed. 2009). As the beneficiary claims to be the owner and sole proprietor of the foreign business, the presence of the beneficiary in the United States raises the question of whether the foreign business will continue to do business abroad.

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.