

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: DEC 21 2012 Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Ron Rosenberg
Acting 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 limited liability company established in July 2011, states it will be engaged in consulting related to international development. It claims to be a wholly-owned subsidiary of Mega, a public organization located in Moldova. The petitioner seeks to employ the beneficiary as the Manager of a "new office" in the United States for a period of one year.

The director denied the petition concluding that the petitioner had failed to establish its claimed qualifying relationship with the beneficiary's foreign employer. More specifically, the director found that the record did not include sufficient evidence to show that the foreign employer owns the petitioner or documentation to corroborate the petitioner's claim of a \$30,000 capital contribution to the new business from the foreign employer.

On appeal, petitioner asserts that the director erred in finding that the petitioner and the foreign employer are not qualifying organizations, claiming that the record clearly establishes that the foreign employer owns 100% of the petitioner. The petitioner contends that the director ignored evidence that the foreign employer controls the petitioner and claims it is the only founding member of the petitioner and holds all voting rights. The petitioner states that the director inappropriately considered the size of the investment in the new venture as determinative of whether a qualifying relationship exists and that sufficient contributions were made to the petitioner to establish it as a limited liability company in Arizona. Further, the petitioner disputes that no documentation of an investment in the petitioner was presented on the record, pointing to payments made to USCIS to file the petition and a \$1,625 bank transfer from the beneficiary to the petitioner's bank account.

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(1)(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 (1)(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 (1)(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. Qualifying relationship between the U.S and foreign employer

As noted, the director denied the petition based on the petitioner's failure to establish a qualifying relationship between the petitioner and the foreign employer. The director found that the petitioner had not provided sufficient documentation to show an initial capital investment in the U.S. limited liability company. The petitioner states that this original investment was provided in the form of a \$1,625 investment on the part of the foreign employer and submits bank statements from the beneficiary and foreign employer showing the transfer of \$1,500 purportedly for this purpose.

Upon review of the record, and for the reasons discussed herein, the petitioner has not established that a qualifying relationship exists between the U.S. and foreign employers as required by 8 C.F.R. § 214.2(l)(3)(i).

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). Limited Liability companies (LLCs) are generally obligated by the jurisdiction where formed to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). 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 identification of a member of an LLC into the means by which this membership interest 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 the membership interest. Additional supporting evidence would include an operating agreement, minutes of relevant membership or management meetings, or other legal documents governing the acquisition of the ownership interest. In the present matter, the director specifically requested additional information in the Request for Evidence dated September 9, 2011 related to the establishment of, and ownership in, the

petitioner; including proof of a capital contribution from the foreign employer to establish the petitioner and the articles of organization for the petitioner. In response, the petitioner provided the articles of organization of the petitioner filed in the State of Arizona, but failed to provide any information regarding a capital contribution to establish the petitioning company as requested by the director. As such, the director's focus on the claimed \$30,000 investment in the new office, offered on the record previous to the RFE, was reasonable considering that the petitioner did not provide evidence of any other capital investment on the record to establish the petitioner as a limited liability company. 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). While the petitioner correctly states that there is no minimum amount of capital investment required to establish a qualifying relationship, the petitioner is required to submit evidence of the size of the U.S. investment as initial evidence, pursuant to 8 C.F.R. § 214.2(l)(3)(v)(C)(2). As the petitioner expressly stated that the required investment would be \$30,000, it was well within the director's discretion to request documentary evidence to support the petitioner's statements.

On appeal, the petitioner states that a \$1,625 initial contribution was made by the foreign employer via the beneficiary to establish the petitioner and provides bank account records from August 2011 showing the transfer of \$1,500 from the beneficiary (on behalf of the foreign employer) to the petitioner. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Indeed, even if considered, the submitted documentation shows a contribution of \$1,500 into the petitioner's bank account and not the \$1,625 asserted as the initial capital contribution by the petitioner. 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 such, the petitioner has not provided sufficient evidence of the foreign employer's ownership interest in the petitioner.

Further, the record is further lacking in primary evidence of the foreign entity's claimed ownership of the petitioning company. The petitioner has provided only the following to establish the foreign employer's ownership interest in the petitioner: (1) the articles of organization of the petitioner dated July 20, 2011 that list the foreign employer as a member of the petitioner; and (2) the aforementioned bank account statements of the petitioner and the beneficiary from August 2011 showing the transfer of \$1,500 from the beneficiary to the petitioner. Petitioner claims on appeal that the foreign entity and petitioner have a qualifying relationship since the foreign employer is the only founding member of the petitioner and holds all voting rights. However, the petitioner has not provided any documentation to show: (1) that the foreign employer (or its members) agreed to make an original contribution to the petitioner as claimed, (2) the claimed voting rights in the petitioner, (3) an operating agreement or membership certificate(s), (4) minutes of relevant membership or management meetings, or (5) any other legal documents related 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)).

As such, based on the insufficiency of the evidence presented, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer. For this reason, the appeal must be dismissed.

B. Period of Qualifying Employment Abroad

Beyond the decision of the director, a remaining issue is whether the beneficiary has been employed in an executive or managerial capacity for one continuous year in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(B); *see also* 8 C.F.R. § 214.2(l)(3)(iii).

To review the required one year of continuous employment abroad, USCIS must count back three years from the date that the L-1A petition is filed. The regulation at 8 C.F.R. § 214.2(l)(3)(iii) clearly requires that an individual petition filed on Form I-129 be accompanied by evidence that the beneficiary "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." The definition of "intracompany transferee" also indicates that, if the beneficiary has been employed abroad continuously for one year by a qualifying organization within three years preceding the time of the beneficiary's "application for admission into the United States," the beneficiary may be eligible for L-1 classification. 8 C.F.R. § 214.2(l)(1)(ii)(A).

However, when the definition of "intracompany transferee" is construed together with the regulation at 8 C.F.R. § 214.2(l)(3) and section 101(a)(15)(L) of the Act, the phrase "preceding the time of his or her application for admission into the United States" refers to a beneficiary whose admission or admissions pertained to the rendering of services "for a branch of the same employer or a parent, affiliate, or subsidiary thereof" or for "brief trips to the United States for business or pleasure." Statutes and regulations must be read as a whole, and interpretations should be consistent with the plain purpose of the Act to avoid absurd results. *See generally* *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

Therefore, according to the plain purpose of the Act and regulations, USCIS may not reach over *any* admission and subsequent stay, including in this case an admission and stay in F-1 status, unless that admission was "for a branch of the same employer or a parent, affiliate, or subsidiary thereof [or] brief trips to the United States for business or pleasure." 8 C.F.R. § 214.2(l)(1)(ii)(A). Unless the authorized period of stay in the United States is either brief or "on behalf" of the employer, the period of stay will be interruptive of the required one year. *See* 52 Fed. Reg. 5738, 5742 (Feb. 26, 1987) ("Time Spent in the United States Cannot Count Towards Eligibility for L Classification"); *see also* *Matter of Continental Grain Company*, 14 I&N Dec. 140 (D.D. 1972) (finding that an intervening period of stay is not interruptive when the beneficiary was in the United States as an H-3 trainee on behalf of the employer).

In the I-129 Petition for a Nonimmigrant Worker and elsewhere on the record, the petitioner states that the

beneficiary worked full-time for the foreign employer from May 2001 through August 2008. Thereafter, the record reflects that the left the foreign employer to complete a Master's in Business Administration (MBA) program in the United States. During this period, and up until the filing of the petition on August 5, 2011, the petitioner claims that the beneficiary only worked in a part-time advisory role with the foreign employer and only "nominally" retained the position of President for the foreign employer. As such, the beneficiary has not been working full-time with the petitioner for one of the previous three years preceding the filing of the petition as required by the Act, since it is clearly claimed on the record that he has only been working, at most, in a part-time, nominal role with the foreign employer for the entire three year period preceding the filing of the petition.

Additionally, the petitioner does not claim, nor present evidence in response to the request for evidence or on appeal, that beneficiary's admission in F-1 status could be considered a "[period] spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof" and, thus, this period of stay must be considered interruptive of the beneficiary's claimed one year of continuous employment abroad. As noted, the beneficiary was admitted to the United States as an F-1 student in August 2008 and remained in F-1 status as of August 5, 2011 when the petition was filed. As such, the extended period the beneficiary spent in the United States cannot be deemed to have been on behalf of a qualifying organization. In addition, it cannot be deemed to be the type of brief trip for business or pleasure described at 8 C.F.R. § 214.2(l)(1)(ii)(A).

In the present matter, the beneficiary's stay in the United States was not for the purpose of being employed by the same employer or a subsidiary or an affiliate thereof. Therefore, the provisions specified in 8 C.F.R. § 214.2(l)(3)(iii) and 8 C.F.R. § 214.2(l)(3)(v)(B) must be applied. In other words, the petitioner must establish that the beneficiary was employed abroad by a qualifying organization for at least one out of the three years prior to the date the petition was filed. As the beneficiary was residing in the United States for the entire three year period prior to the date the instant petition was filed, it would be factually impossible for the beneficiary to have been employed full-time abroad for one year during the requisite three-year time period. 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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

C. Employment in the United States in a managerial or executive capacity

Beyond the decision of the director, and for the reasons discussed herein, the petitioner has not established that the petitioner will support the beneficiary in a managerial or executive capacity within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

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 "new office" provision was meant as an accommodation for newly established enterprises and provided for by U.S. Citizenship and Immigration Services (USCIS) regulation to allow 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.

However, 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.*

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).

On the record, the petitioner describes the beneficiary's U.S. job duties as follows:

{The beneficiary's} proposed duties in the US will be to set up the office and start operations of [the petitioner], a fully owned subsidiary of public organization of 'MEGA'. This will include writing tender proposals and securing contracts from private donors. More specifically, [the beneficiary's] duties will include: monitoring activities of development projects and organizations, monitoring tender announcements on web sites and in the media, writing tender applications, negotiating contracts, financial and operating reporting of project implementation, building and reinforcing positive relations with stake holders (donors, recipients).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would

be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important as several of the beneficiary's listed duties do not fall directly under traditional managerial duties as defined in the statute, such as writing tender proposals and applications; monitoring announcements on web sites and in the media; and financial and operating reporting of project implementation. In total, it appears the majority of the beneficiary's duties would be directly related to the day-to-day operations of the business. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988). Therefore, due to the predominance of non-qualifying duties and the petitioner's failure to document which duties are managerial or executive, the AAO cannot determine whether the beneficiary will be primarily performing the duties of a manager or an executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Thus, while some of the duties described by the petitioner may generally fall under the definitions of managerial or executive capacity, the predominance of non-managerial and non-executive duties in the description raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position descriptions alone are 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. employer 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.

In analyzing the totality of the record, the evidence presented does not support a finding that beneficiary will be performing primarily executive or managerial duties within one year as the petitioner has not provided sufficient evidence to document its business and hiring plans during the first year. The petitioner states that it has firm plans to hire only two other employees beyond the beneficiary, an assistant and a business developer to write tender proposals. Further, the petitioner offers that it may hire one or two project managers, "depending on the success of tender proposals." The petitioner also provides revenue and income projections during the first year, but fails to provide information to support these projections such as a full business plan; or information on estimated costs, target clients, potential competitors, or other specific information on the petitioner's plans during the first year. Further, following a review of the record, it is unclear how the petitioner will derive revenue during the first year of operations. The petitioner's minimal and unsupported plans cast doubt on whether it will be able to hire sufficient employees during the first year to relieve the beneficiary of primarily performing non-qualifying duties. Taken together, the information

provided by the petitioner is not sufficient to show that the company will be able to commence business immediately and develop rapidly as necessary to support the beneficiary in an executive or managerial role within the first year.

Finally, as observed by the director, the petitioner has not shown the size of its United States investment in the "new office," and an ability to remunerate the beneficiary, as required by 8 C.F.R § 214.2(3)(v)(C)(2). The petitioner states on appeal that the foreign employer has invested \$1,625 in capital in the petitioner as evidenced by amounts deposited in the petitioner's bank account by the beneficiary. Further, the petitioner contends that amounts paid to USCIS should be accepted as capital invested in the petitioner. The petitioner further estimates that \$30,000 will be required to cover the first three months of operation of the petitioner, and states this money will be provided from the foreign employer's four partners in form of \$2,500 per month (\$10,000 per month total). The petitioner claims that one of the partners, a [REDACTED] has agreed to provide a \$25,000 emergency line of credit and holds around \$50,000 in a U.S. bank account both purportedly to support the new business.

The petitioner has not shown the amount and location of the U.S. investment in the "new office" as required by the regulations. *See generally*, 8 C.F.R § 214.2(3)(v)(C)(2). The petitioner has produced bank account statements showing the transfer of funds from the beneficiary (the claimed registered agent of the petitioner) to the petitioner. However, no other documentation is provided to establish that this money was contributed by the foreign employer, such as an operating agreement, or that the beneficiary is indeed the registered agent of the foreign employer. Further, the AAO cannot accept that payments to USCIS are investments in a new office as contemplated by the Act. The regulations read that the investment is relevant to establish the petitioner's ability to "remunerate the beneficiary and to commence doing business." *See*, 8 C.F.R § 214.2(3)(v)(C)(2). Therefore, amounts paid to USCIS are wholly irrelevant to directly starting up a business or remunerating the beneficiary upon his entry into the United States. Lastly, although the petitioner claims that the partners of foreign employer have committed to provide \$30,000 to operate the petitioner through the first three months, no documentary evidence is provided to support this assertion, nor sufficient evidence that the aforementioned [REDACTED] has definitively committed funds to the venture. In fact, the petitioner provided little more than a bank account statement of [REDACTED] to support these assertions. 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)). Therefore, due to the inconsistencies in, and insufficiency of, the evidence presented, the petitioner has not established the size of the investment in the petitioner as required by the regulations.

In conclusion, when analyzing the totality of the record, the AAO cannot conclude that the record supports a finding that the beneficiary would be primarily employed in a managerial or executive capacity within one year. This conclusion is based the predominance of non-qualifying duties included in the beneficiary's duty description; a lack of specificity regarding the petitioner's business and hiring plans; a failure to show that managerial or professional employees will exist after one year to relieve the beneficiary from performing

non-qualifying duties; and a failure to provide sufficient evidence with respect to the investment in the petitioner by the foreign employer. 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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

D. Sufficient physical premises to house the new office

Beyond the decision of the director, upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has also not established that the petitioner has secured sufficient physical premises to house the new office as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

The petitioner submitted a lease agreement with a term extending from June 11, 2011 through May 31, 2012, claiming that this document secures the petitioner's use of [REDACTED] (a partner of the foreign employer) home office. However, the presented lease is between [REDACTED] and a third party landlord, and no documentation is provided on the record, beyond the petitioner's statements, to establish that a sub-lease arrangement exists between the petitioner and [REDACTED]. Further, the petitioner does not provide any details regarding the anticipated space requirements for the business conducted at this location, and the lease in question does not specify the amount or type of space secured. Additionally, the lease is not signed by the third party landlord, calling into question its credibility. As such, based on the insufficiency of, and discrepancies in, the information furnished, it cannot be concluded that the petitioner had secured sufficient space to house the new office as of the date of filing. Indeed, the petitioner has not even provided an explanation of what sufficient space for the operation would be or where additional employees necessary to relieve the petitioner would perform their duties. 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)). For this additional reason, the petition may not 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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

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. 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.