



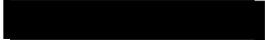
U.S. Citizenship  
and Immigration  
Services

D7



DATE: **OCT 17 2012**

Office: VERMONT 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 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,

  
Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The petitioner has appealed the denial of a 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 Director, Vermont Service Center, denied the visa petition on April 11, 2011, 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. On May 13, 2010, the petitioner filed an appeal to the Administrative Appeals Office (AAO). The AAO will dismiss the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity. The evidentiary requirements for this classification are set forth at 8 C.F.R. § 214.2(l)(3). As the petitioner indicates that it has established a "new office" as defined at 8 C.F.R. 214.2(l)(2)(ii)(F), the petitioner must satisfy the applicable regulatory requirements for new office petitions, found at 8 C.F.R. § 214.2(l)(3)(v).

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 in a primarily managerial capacity as defined at section 101(a)(44)(A) of the Act, or that the new office will support a managerial or executive position within one year.

### **I. Procedural History**

The petitioner is a Texas corporation established in October 2010. The petitioner claims to be a subsidiary of Pixeur Amusement, India. The petitioner seeks to employ the beneficiary as the President of its new office in the United States for a one-year period.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, on December 27, 2010. According to Form I-129, the petitioner engages in "retail business." In a letter dated December 7, 2010 submitted with the initial petition, the petitioner described its business plan as "to manage, own and operate retail stores and Gas Stations/Convenience Stores" in the United States. In particular, the petitioner claimed to have executed a contract to purchase an existing retail business, [REDACTED] from its current owner, [REDACTED]. The petitioner claimed the acquisition would occur "in the next few weeks." The petitioner claimed that once it has acquired the retail business, "it expects to employ at least five (5) workers and earn annual revenues of approximately \$2 Million." The petitioner further claimed that, under the beneficiary's leadership, it will "seek additional retail locations and expand its business and reinvest its profits in active commercial businesses in the United States."

With the initial petition, the petitioner submitted a copy of an Asset Purchase Agreement made on November 5, 2010, between the petitioner ("Buyer") and [REDACTED] ("Seller"), wherein the seller agreed to sell the entire business known as [REDACTED] to the petitioner for a total purchase price of \$210,000 plus the cost of inventory. The agreement states that the buyer "shall pay" \$10,000 as non-refundable earnest

money to seller upon execution of the contract (on November 5, 2010). The agreement further states that the closing of the sale and purchase of the business "shall take place" on or before January 5, 2011.

On January 4, 2011, the director issued the petitioner a request for evidence (RFE) instructing the petitioner to submit, *inter alia*: 1) the petitioner's business plan, detailing the nature and scope of the U.S. entity and describing its one, three, and five-year projections; 2) a detailed description of the staff of the new U.S. office; 3) copies of the petitioner's bank statements from October to December 2010; 4) an organizational chart; 5) a comprehensive description of the beneficiary's duties; and 6) position descriptions for all proposed U.S. employees.

The petitioner responded to the RFE on March 31, 2011. In a letter dated March 24, 2011 submitted with the RFE response, the petitioner admitted that "[a]t this time, Petitioner does not have an active business." Once again, the petitioner claimed that it has executed a contract to purchase a retail store and that the closing is expected to occur "in the next few weeks." Once again, the petitioner claimed that once it acquires the retail business, it expects to employ at least five workers and earn annual revenues of approximately \$2 Million. Once again, the petitioner reaffirmed its intent to invest in and acquire additional retail locations in the United States under the beneficiary's leadership.

In the letter dated March 24, 2011, the petitioner stated that the beneficiary "will be responsible for not only overseeing the management and operation of the retail location, but also for reviewing additional retail locations." The petitioner described the beneficiary's proposed job duties as follows:

Responsible for hiring and firing managers; supervising subordinate employees 20%; overseeing preparation of sales and inventory reports 5%; reviewing and analyzing sales data 20%; establishing and implementing policies to manage and achieve marketing goals 20%; review financial reports 5%; review budgets and expense reports prepared by subordinate employees 5%; managing the company 20%; and overseeing marketing campaign developed by subordinate managers 5%.

With the RFE response, the petitioner submitted, *inter alia*, an "Organization Chart" reflecting that the petitioner will employ a President, a Manager, an Assistant Manager, and three cashiers. The petitioner also submitted its "Business Projection For Five Years Ending December 31, 2015," which provided the following description of the petitioner's projected business:

[The petitioner] will consist of one business location, a convenience store/gas station with deli and cell phone booth. The business name and address is as follows:

On April 11, 2011, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity as defined in section 101(a)(44) of the Act.

On May 13, 2011, the petitioner filed Form I-290B, Notice of Appeal or Motion. On appeal, counsel for the petitioner asserts that the beneficiary will be employed solely as an executive or manager. Counsel asserts that the petitioner has already acquired a retail store in Clute, Texas, and has hired five (5) workers. Counsel asserts that the beneficiary will be responsible for overseeing the management of the acquired retail location, as well as acquiring multiple other retail locations.

On appeal, the petitioner submitted various documents purporting to establish the petitioner's acquisition of [REDACTED] from [REDACTED] and its employment of five employees. These documents include, *inter alia*:

- 1) A Bill of Sale, reflecting that [REDACTED] sold all the inventory and personal property located at [REDACTED] Clute, TX 77531 for a sum of \$10.00 on April 29, 2011;
- 2) An "Asset Purchase Agreement" dated October 15, 2010, reflecting that [REDACTED] ("Seller") agrees to sell the business known as [REDACTED] to the petitioner ("Buyer") for a total purchase price of \$200,000 plus the cost of inventory;
- 3) An Addendum to the Asset Purchase Agreement, reflecting that the closing of the purchase and sale of [REDACTED] "shall be held" on or before April 30, 2011;
- 4) A "Certificate of Corporate Resolution of [REDACTED] reflecting that [REDACTED] the "sole shareholder, officer, and director" of the corporation, authorized and conducted the sale of all of the company's interest in [REDACTED] to the petitioner;
- 5) A Promissory Note dated April 29, 2011, reflecting that the petitioner will pay [REDACTED] a total of \$45,000, to be paid in equal quarterly installments of \$11,250 on May 10, 2011, August 10, 2011, November 10, 2011, and February 10, 2012;
- 6) Forms W-4, Employee's Withholding Allowance Certificate, for [REDACTED] all signed between April 27, 2011 and May 5, 2011;
- 7) Paychecks from the petitioner to [REDACTED] and [REDACTED] dated May 5, 2011;
- 8) The petitioner's bank statements;
- 9) [REDACTED] Texas Sale and Use Tax Permit showing the petitioner as the business owner, with an effective date of February 1, 2011;
- 10) [REDACTED] & Beer Retailers' Off Premise Permit showing the owner as [REDACTED];
- 11) An "Assumed Name Records Certificate of Ownership for Incorporated Business" for [REDACTED] dated December 10, 2010 showing its owner as the petitioner; and
- 12) An "Assumed Name Records Certificate of Ownership for Incorporated Business" for [REDACTED] dated April 12, 2011 showing its owner as [REDACTED]

## II. Analysis

The petitioner claims the beneficiary will be employed in a primarily managerial or executive capacity in order to manage [REDACTED], as well as to manage additional retail stores it plans to acquire in the future. However, the petitioner failed to establish that it had acquired an existing business, namely [REDACTED] or that it had imminent plans to acquire this or any other retail business at the time it filed the petition. The

petitioner also failed to establish that it would realistically acquire additional retail stores within its first year of operations.

The petitioner submitted contradictory and unreliable claims and documents regarding its plan to acquire [REDACTED] from [REDACTED]. In a letter dated December 7, 2010 submitted with the initial petition, the petitioner claimed that it will acquire [REDACTED] and that the closing would occur "in the next few weeks." As initial evidence of its executed purchase contract, the petitioner submitted an "Asset Purchase Agreement" between the petitioner ("Buyer") and [REDACTED] ("Seller") that was dated November 5, 2010. According to this contract, the petitioner agreed to purchase the business for \$210,000 plus the cost of inventory, with an initial payment of \$10,000 as non-refundable earnest money due upon execution of the contract. The contract stated that the closing of the sale "shall take place" on or before January 5, 2011.

However, in the petitioner's response to the director's RFE, the petitioner submitted a letter dated March 24, 2011 stating, once again, that the petitioner will acquire [REDACTED] and that the closing would occur "in the next few weeks." The petitioner's response to the RFE that it will acquire [REDACTED] "in the next few weeks" conflicts with the initial "Asset Purchase Agreement" which stated that the closing would occur on or before January 5, 2011. The petitioner provided no explanation for why the purchase did not occur according to the terms of the executed contract.

The petitioner submitted no evidence that it purchased [REDACTED] according to the terms of the initial asset purchase agreement. The initial agreement stated that the petitioner would pay \$10,000 as non-refundable earnest money on November 5, 2010, the date the contract was executed. However, the record is completely devoid of evidence showing that the petitioner made a corresponding payment of \$10,000 to [REDACTED] on or about November 5, 2010.

Based upon the absence of a credible purchase agreement and corroborating evidence of payment in accordance with the contract terms, as well as the petitioner's contradictory claims regarding when it would acquire [REDACTED], the petitioner failed to establish that it had imminent plans to acquire the business at the time it filed the petition. Therefore, the petitioner failed to establish that, at the time the petition was filed, the petitioner would realistically support the beneficiary in a primarily managerial or executive role. As discussed further below, although the petitioner indicated its intent to operate multiple retail stores, its business plan does not corroborate these claims.

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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

On appeal, the petitioner claims that it has now acquired [REDACTED] from [REDACTED] and has five employees. The petitioner submits an array of new documents as purported evidence of the acquisition and employment. However, the documents the petitioner submits on appeal are contradictory and therefore not credible or probative.

On appeal, the petitioner submits a second Asset Purchase Agreement, dated October 15, 2010, reflecting that the petitioner agrees to purchase [REDACTED] for a total purchase price of \$200,000 plus the cost of inventory. The agreement states that the closing of the sale and purchase of the business "shall take place" on or before January 5, 2011. When compared with the initial asset purchase agreement, the second asset purchase agreement contains different execution dates, purchase prices and closing dates. The petitioner fails to explain why it submitted two different asset purchase agreements. Moreover, the petitioner fails to explain why it did not submit this document with the initial petition or in response to the director's RFE, considering that this contract was purportedly executed in October 2010. Therefore, the AAO does not consider this document as credible evidence of its acquisition of [REDACTED]

On appeal, the petitioner submits an Addendum to the Asset Purchase Agreement, dated April 29, 2011, reflecting that the closing of the purchase shall be held on or before April 30, 2011. The petitioner submits a Bill of Sale dated April 29, 2011, in which [REDACTED] signed and acknowledged on behalf of [REDACTED] that it has "bargained, sold and delivered" all of the inventory and personal property of the business to the petitioner. The petitioner also submits a Promissory Note in which the petitioner promised to pay \$45,000 in equal quarterly installments of \$11,250, payable on May 10, 2011, August 10, 2011, November 10, 2011, and February 10, 2012. However, none of these documents are probative of the petitioner's claimed acquisition of [REDACTED]. The petitioner's failure to explain its conflicting claims regarding when it acquired the retail business or why it has two different asset purchase agreements as well as an addendum, renders these documents unreliable. In addition, the record is completely devoid of evidence that the petitioner paid Natalia Food, Inc. for the purchase of [REDACTED] in accordance with the terms of the Addendum, Bill of Sale, or Promissory Note. The only payments the petitioner has established it made to [REDACTED] is a check for \$500 on April 1, 2010, and another check for \$3700 on April 1, 2010. The petitioner's bank statements show an amount for \$11,250 was debited from its account on April 29, 2011, but the debit date is inconsistent with the payment dates specified in the Promissory Note, and the bank statement does not identify the payee.

Furthermore, the petitioner submitted the "Assumed Name Records Certificate of Ownership for Incorporated Business" for [REDACTED] which the petitioner filed with the County Clerk of Brazoria County, Texas on December 10, 2010. The petitioner failed to explain how it was possible for it to file official documents on behalf of [REDACTED] in December 2010, when it now claims on appeal that the acquisition did not occur until April 2011.

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. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

The petitioner submits copies of several permits issued by the State of Texas purporting to show that it is the current owner of [REDACTED]. However, these documents do not corroborate the petitioner's claim of ownership. The petitioner submits its Texas Alcoholic Beverage Commission Wine & Beer Retailers' Off Premise Permit for [REDACTED] issued on April 19, 2011, but this permit shows the owner of [REDACTED]

██████████ as "██████████".<sup>1</sup> Furthermore, the petitioner submits two "Assumed Name Records Certificate of Ownership for Incorporated Business" for ██████████. One certificate, dated December 10, 2010, shows the petitioner as the owner; the second certificate, dated April 12, 2011, shows ██████████ as the owner of ██████████. The petitioner has not explained its relationship to ██████████ nor has the petitioner claimed to share ownership of ██████████ with ██████████. Based on these documents, it is reasonable to conclude that either ██████████ has two or more different owners, including ██████████, or that ██████████ subsequently acquired ██████████ and is the sole owner of ██████████.<sup>2</sup> In either case, these documents undermine the petitioner's claim that it owns and operates the business known as ██████████.

The petitioner submits documents reflecting that ██████████, authorized the sale of ██████████ to the petitioner. Specifically, the petitioner submits a "Certificate of Corporate Resolution of ██████████ from ██████████, in which he affirmed that he is "the sole shareholder, officer, and director" of ██████████. In this certificate, ██████████ affirmed that during a duly constituted meeting of the board of directors (consisting of solely himself) on January 31, 2011, the board passed a resolution authorizing him to "enter into a transaction to sell, transfer, and convey all of the corporation's interest in ██████████ located at ██████████ ██████████ Clute Texas." ██████████ further affirmed that he has "the authority to make for and on behalf of the corporation" this decision.

However, the "Certificate of Corporate Resolution of ██████████" is not credible. Notably, this certificate was signed by ██████████ on April 29, 2011, even though the purported meeting occurred on January 31, 2011. Moreover, both of the Asset Purchase Agreements the petitioner submitted, dated October 15, 2010 and November 5, 2010, pre-date the January 31, 2011 meeting wherein the transaction was purportedly first authorized. The petitioner also fails to submit evidence from the State of Texas confirming that ██████████ was truly "the sole shareholder, officer, and director of ██████████" and that he had the sole authority to sell ██████████ to the petitioner.<sup>3</sup>

The petitioner submits several documents purporting to show that it employs ██████████ five employees. However, since the petitioner failed to make the threshold showing that it has, in fact, acquired the retail business, the documents regarding ██████████ employees have no probative value. Even

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<sup>1</sup> Public records of the Texas Alcoholic Beverage Commission confirm that ██████████ registered owner is "██████████." See <https://www.tabc.state.tx.us/PublicInquiry/StatusResults.aspx> (last accessed on October 10, 2012).

<sup>2</sup> Although the petitioner submitted a Texas Sale and Use Tax Permit for ██████████ showing the petitioner as the owner, public records of the Texas Comptroller of Public Accounts reflect that there are two active permits issued to ██████████ both issued on February 1, 2011: one permit (no. 3-20429-1306-4) shows the petitioner as the owner, while the other permit (no. 32043102345) shows "██████████" as the owner. See <https://ourcpa.cpa.state.tx.us/staxpayersearch/salestaxpayer.do> (last accessed October 10, 2012).

<sup>3</sup> Public records of the Texas Comptroller of Public Accounts reflect that there are currently two registered officers and directors for ██████████ listed as President, and ██████████ listed as Vice President. See: <https://ourcpa.cpa.state.tx.us/coa/servlet/cpa.app.coa.CoaOfficer> (last accessed October 3, 2012).

assuming *arguendo* that the petitioner demonstrated that it acquired [REDACTED] the documents are unreliable. The petitioner submitted no evidence that it actually submitted the IRS Forms W-4 and I-9 to the United States Government. The W-4 and I-9 forms are all signed by [REDACTED], the Vice President of the petitioner, but the petitioner's organizational chart lists no Vice President position. Considering the unreliability of the petitioner's submitted evidence, the petitioner failed to establish that it actually acquired [REDACTED] or that it had imminent plans to do so.

Lastly, the petitioner failed to establish that it will realistically acquire additional retail stores within its first year of operations. The petitioner's "Business Projection For Five Years Ending December 31, 2015" states that it intends to consist of only one business location, namely [REDACTED] within the next five years. The petitioner's own business plan contradicts the petitioner's claims it planned to acquire additional retail stores. Moreover, the petitioner's organizational chart does not reflect a structure that is sufficient to accommodate its intended expansion into additional retail locations. The petitioner's organizational chart, consisting of one manager, one assistant manager, and three cashiers, does not appear sufficient to accommodate more than a single retail location. When considered with the petitioner's business plan stating that it will only consist of one business location, namely [REDACTED] within the next five years, the petitioner has not credibly established that it will, or genuinely plans to, acquire additional businesses within its first year.

Considering the fact that the petitioner plans only to be a single retail location, a gas station/convenience store which the petitioner failed to establish that it will immediately acquire or has actually acquired, the petitioner failed to establish that it will employ the beneficiary in a primarily managerial or executive capacity within its first year of operations.

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). In the instant matter, the petitioner failed to establish that it would realistically develop to the point where it could support the beneficiary in a primarily managerial or executive capacity within its first year of operations.

On appeal, counsel cites the U.S. Department of Labor Statistics Occupational Outlook Handbook (OOH) 2010-2011, and relies on the "primary duties of a retail general manager" according to "famous job sites such

as Monster.com." However, general position descriptions compiled by the U.S. Department of Labor or drafted by unrelated employers have no bearing on an assessment of the beneficiary's duties within the context of the petitioning company's business, and the petitioner cannot satisfy its evidentiary burden by relying on such descriptions. The regulations require the petitioner to submit a detailed description of the beneficiary's actual duties within the context of the petitioner's business. 8 C.F.R. § 214.2(l)(3)(ii). The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Beyond the decision of the director, the record contains insufficient evidence to establish that the petitioner 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 petitioner claims the foreign company, [REDACTED] owns 90% of the petitioner's shares. As primary evidence of the qualifying relationship, the petitioner submitted its stock certificates numbers 1 and 2. Stock certificate number 1 reflects that the petitioner issued 900 "fully paid shares" to the foreign company on October 30, 2010. Stock certificate number 2 reflects that the petitioner issued 100 "fully paid shares" shares to [REDACTED] on October 30, 2010.

The stock certificates are not credible. Foremost, the stock certificates do not conform to the requirements specified in the petitioner's bylaws. The petitioner's by-laws state that: "The shares of the Corporation shall be represented by certificates signed by the President or a vice-president and the Secretary or an Assistant Secretary of the Corporation, and shall be sealed with the seal of the Corporation." Stock certificates number 1 and 2 were signed by only one director, despite the requirement that the certificates be signed by both the President or vice-president, and the Secretary or Assistant Secretary. The stock certificates also did not contain the seal of the corporation.

The petitioner submitted no evidence of payment from the foreign company in exchange for the 900 "fully paid shares" issued on October 30, 2010. According to the petitioner's Certificate of Formation filed on October 26, 2010 with the Secretary of State of Texas, the par value is one dollar (\$1.00). The petitioner's bank statements identified no payments from the foreign company, or any deposits for an amount roughly equal to \$900.<sup>4</sup> Similarly, the foreign company's bank statements identified no payments to the petitioner. Although the petitioner submitted a bank statement from [REDACTED] for a checking account ending in 6663 for activity occurring between October through December 2010, the petitioner failed to establish that this bank statement pertains to the petitioner's account. This bank statement does not identify the name of the account holder, and the account number is different from the petitioner's known [REDACTED] bank account number ending in 1680.

Based on the foregoing, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer. For this additional reason, the petition cannot be approved.

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<sup>4</sup> It is noted that the petitioner did not open its bank account in the United States until November 2, 2010.

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).

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.