(b)(6)

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

U.S. Citizenship and Immigration Services

[redacted]

DATE: NOV 25 2013 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a North Carolina limited liability company established in 2013, states that it intends to operate a cosmetics distribution business. It claims to be a subsidiary of [redacted] located in Israel. The petitioner seeks to employ the beneficiary as the Director of U.S. Operations of its new office for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity within one year of the approval of the new office petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the director made incorrect findings of law and fact and that the record establishes that it will be employ the beneficiary in a qualifying managerial or executive capacity within one year of commencing operations.

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 of 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 Issue on Appeal

The sole issue addressed by the director is whether the petitioner established that it would employ the beneficiary in a primarily managerial or executive capacity within one year of commencing operations in the United States.

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.

A. Facts

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker on March 27, 2013. The petitioner indicated on the Form I-129 that will operate a cosmetics distribution business with an anticipated staffing level of five to seven employees and an anticipated gross annual income of $630,600. The petitioner submitted a letter in support of the initial petition stating that the beneficiary would serve as the "Director of [redacted] According to the petitioner, the beneficiary's primary objective is to direct and coordinate the petitioner's operations as well as coordinate all business between the petitioner and the foreign company. Specifically, the petitioner stated that the beneficiary's key responsibilities would include directing all activities of the petitioner; represent the organization in senior management level meetings and play a key role in the establishment of major business strategies; oversee the performance relative to the quality of products and initiate remedial measures as appropriate; direct continual review of operations and the development and introduction of alternative approaches for providing quality products at low cost; direct sales analysis and investigations; seek and implement initiatives to achieve goals; and prepare and execute appropriate budgets.

The petitioner provided a license agreement for a 150 square foot express manicure/pedicure kiosk at a shopping center in [redacted] NC. According to the Form I-129, the beneficiary will work at this location. The petitioner also provided a business plan consisting of financial forecasts. The business plan indicates the petitioner's intent to operate three express manicure kiosks within one year and reflects that each kiosk would employ one manager and several nail technicians. The petitioner also included IRS Form W-4, Employee's Withholding Allowance Certificate, for four employees dated March 2013.

The director issued a request for additional evidence ("RFE") in which he instructed the petitioner to submit the following: (1) a statement describing the number of employee, types of positions, and evidence of wages paid to employees; (2) a copy of the proposed line and block organizational chart, showing all hierarchy and staffing levels, list of proposed positions, summary of duties, and expected educational levels; (3) information regarding the size of the U.S. investment; and (4) a copy of the business plan or executive summary for commencing the start-up of the new office in the United States.

The petitioner provided a letter in response to the RFE, stating that preparations were made for the company to operate an express manicure kiosk at a shopping center in [redacted] NC. The petitioner also clarified that plans were underway for the opening of a second kiosk location at a shopping center in [redacted] NC. The petitioner explained that the beneficiary would be responsible for inventory of all goods, personnel, contractual obligations with employees, kiosk vendors and locations, and overall financial matters on behalf of the business. The petitioner stated that four employees were already hired and it was in discussions with a fifth potential employee for hire. A subordinate kiosk manager would report to the beneficiary. The kiosk manager would then supervise approximately four other employees including a cashier, nail technicians, and sales employees.

The petitioner stated that the beneficiary's duties would fall within the statutory definition of "managerial capacity," and would include the following:

- Develop account relationships, identify opportunities and capture the specification for [the petitioner's] products
- Determine and understand key players, applications, requirements, trends, and needs as well as [the petitioner's] potential share within targeted industry
- Establish linkage between customer's desires and [the petitioner's] capabilities
- Monitor competition and develop action plan to eliminate barriers
- Serve as [the petitioner's] representative in industry trade associations
- Implement [the petitioner's] product, pricing, and market strategies and business practices
- Negotiate customer contracts to ensure acceptable return on [the petitioner's] resources invested
- Work with global partners; coordinate with sales and customer satisfaction
- Participate in strategy development, position business and develop offer; define target markets and commercial product strategy
- Establish individual performance standards, goals and objectives; measure and provide feedback
- Develop written Account Plans for strategic accounts including metrics to define annualized sales potential for individual accounts
- Develop, execute and manage sales plans and budgets
- Manage and maintain strategic relationships, cultivate new alliances, and monitor competitive activity

The petitioner provided the requested organizational chart showing a kiosk manager reporting directly to the beneficiary. Reporting to the kiosk manager, the chart depicts three nail technicians, a beautician, and one to three additional prospective nail technicians. The petitioner did not provide the salaries, educational levels, or position descriptions as requested.

The petitioner provided the same business plan provided with the initial submission and evidence of a $100,000 investment by the parent company.

The director denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity within one year of the approval of the new office petition. In denying the petition, the director found that the evidence does not support a finding that, within one year of approval of the petition, the beneficiary would be responsible for supervising the work of other supervisory, professional, or managerial employees. The director further noted that the beneficiary's duties do not appear to be managerial in nature. Finally, the director found that the beneficiary would not manage an essential function as the petitioner failed to show he will function at a senior level within the organizational hierarchy and would be directly engaged in providing sales and other services to the organization's clients.

On appeal, counsel for the petitioner asserts that the evidence established that a majority of the beneficiary's duties would be managerial in nature and that the beneficiary would manage an essential function. Furthermore, counsel states that the beneficiary would be overseeing a kiosk manager who would in turn oversees the kiosk employees. Counsel states that the beneficiary's executive capacity is exemplified by the following tasks: (1) execution of contractual agreements, (2) oversight of the company financial records, and (3) overall expansion of the company's profile.

B. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity within one year of approval of the petition.

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 in either an executive or a managerial capacity. *Id.*

The petitioner's initial description of the beneficiary's duties for the petitioner fails to establish that the beneficiary would be engaged in primarily managerial or executive duties. The beneficiary's duties, as described by the petitioner, included such tasks as direct all activities of the petitioner; overseeing performance relative to qualify of products; direct continual review of operations; and develop strategies to achieve organizational goals. While such responsibilities generally suggest that the beneficiary is responsible for oversight of the business, the descriptions provide little insight into what specific duties he will perform or how he would actually allocate his time on a day-to-day basis. 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 failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In response to the RFE, the petitioner provided a more detailed version of the beneficiary's duties but failed to provide the specific percentage of time that the petitioner would spend performing each duty. 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 because several of the beneficiary's daily tasks, such as developing account relationships, determining industry requirements and trends, monitoring competition, serving as the petitioner's representative in industry trade associations, negotiating customer contracts, developing account plans, and defining target markets, do not fall directly under traditional managerial duties as defined in the statute. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Furthermore, the petitioner bears the burden of documenting what portion of the beneficiary's duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

On appeal, counsel for the petitioner states that the beneficiary's managerial duties comprise three areas: (1) execution of contractual agreements, (2) oversight of the company financial records, and (3) overall expansion of the company's profile. Even though the petitioner claims that the beneficiary directs and manages the financial records and overall expansion of the company's profile, it does not claim to have anyone on its staff to actually perform the financial accounting or marketing work. Rather, the petitioner indicates that all employees to be hired during the first year of operations will be directly operating express manicure kiosks in shopping malls. Therefore, based on the evidence submitted, the beneficiary would be responsible for all other administrative aspects of the business, including the accounting and marketing duties. Further, although the petitioner indicates that the beneficiary will not be directly involved in the operation of the manicure kiosks, it stated on the petition that the beneficiary would work at the petitioner's shopping mall location, which consists solely of a kiosk.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary will perform the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and will 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). The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

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. When a new business is 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 activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed.

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. See generally, 8 C.F.R. § 214.2(l)(3)(v)(C). In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to also disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

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*).

In response to the RFE, the petitioner provided an organizational chart showing a kiosk manager reporting to the beneficiary and the kiosk employees in turn reporting to the manager. The petitioner, however, failed to provide the requested job descriptions, educational levels, or salaries for the subordinate employees. 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. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As a result of these deficiencies, the petitioner has not corroborated its claims regarding the intended organizational structure.

Furthermore, as discussed above, the petitioner has no stated plans to hire office support staff to assist the beneficiary with the oversight and administration of the company and indicated on the Form I-129 that he will work at the kiosk location. Without the requested position descriptions for the subordinates, it is not clear how the duties of the beneficiary as manager of U.S. Operations and the kiosk managers would differ. When examining the managerial or executive capacity of a beneficiary, USCIS reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

In the present matter, the totality of the record does not support a conclusion that the beneficiary's subordinates will be supervisors, managers, or professionals. Instead, the record indicates that the beneficiary's subordinates would perform the actual day-to-day tasks of operating the kiosk. The petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial under the statutory definitions.

Based on the petitioner's failure to provide the requested information regarding the beneficiary's subordinates, the petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel by the end of the first year of operations. *See* section 101(a)(44)(A)(ii) of the Act. Furthermore, the petitioner has not established that it will employ a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial duties. Regardless of the beneficiary's position title, the record does not establish that the beneficiary will function at a senior level within an organizational hierarchy.

In response to the RFE, the petitioner claims that the evidence supports a finding that the beneficiary will qualify as a function manager by the end of the first year of operations. The petitioner then states that the beneficiary's function will including identifying new business opportunities, closing new business, implementing the petitioner's management policies and procedures, establishing goals and objectives, and developing account relationships. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. 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)).

In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner has not articulated an essential function to be managed by the beneficiary but rather indicates that he will be responsible for management of the company as a whole. Further, the petitioner's evidence does not establish that the beneficiary will perform primarily managerial duties or that it will have sufficient employees to relieve the beneficiary from performing administrative functions associated with operating the business.

Based on the foregoing discussion, the petitioner has not established that it would employ the beneficiary in a qualifying managerial or executive capacity within one year of commencing operations in the United States. Accordingly, the appeal will be dismissed.

III. Employment Abroad in a Managerial or Executive Capacity

Although not addressed in the director's decision, the petition has not submitted evidence to establish that the foreign entity employed the beneficiary in a qualifying managerial or executive position. *See* 8 C.F.R. § 214.2(l)(3)(v)(B). The petitioner stated in the initial supporting letter that the beneficiary began employment with the foreign company in January 2012 as a "Director." At the time of filing, the petitioner stated that the beneficiary has been responsible for overseeing "much of the American-based cosmetics and consumer trade," however; it provided a list of duties that appeared to include a number of non-qualifying sales and marketing duties. For example, the petitioner stated that the beneficiary was responsible for submitting sales and marketing analysis to the President, arranging sales meetings, visiting customers, liaising with customers and providing solutions and recommendations, monitoring competitor activities and market trends, and representing the company at trade shows. Although the petitioner initially claimed that the beneficiary worked with sales agents and had the authority to hire/fire or recommend other actions with respect to distributors or agents, the petitioner stated in response to the RFE that the beneficiary does not directly supervise subordinate employees in his position as Director. 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).

The petitioner's description of the beneficiary's duties in the initial petition, and in response to the RFE, includes many non-qualifying duties. 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 included managerial functions and what proportion was spent on non-managerial duties. 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. Several of the beneficiary's daily tasks, such as submitting sales reports and marketing analysis, arranging sales meetings, visiting overseas customers; serving as company representative at industry trade shows; liaise with customers; monitor competitor activities and emerging market trends; and identifying potential markets for expansion, and locating potential sales opportunities; do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Furthermore, the petitioner has not clearly established that the beneficiary has the required one year of full-time employment with the foreign employer. The petitioner states that the beneficiary began employment with the foreign entity in January of 2012. On the Form I-129, the petitioner states that the beneficiary was last admitted to the United States on January 9, 2013. In response to the RFE, the petitioner submitted flight records for the beneficiary during his time as Director of the foreign employer. The records show that the beneficiary spent time in the United States in September and October of 2012, thus calling into question whether the beneficiary had one full year of employment with the foreign employer. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A)(stating that brief trips to the United States for business or pleasure shall not be counted toward fulfillment of the one year of continuous employment abroad requirement). For these additional reasons, 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 conducts appellate review on a *de novo* basis).

IV. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.