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



U.S. Citizenship
and Immigration
Services

DATE: FEB 19 2015 Office: VERMONT 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:

[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 ("the director"), denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Petition for a Nonimmigrant Worker (Form I-129) seeking to extend the beneficiary's status 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 is a Hungarian company that claims to have a qualifying relationship with [REDACTED] a sole proprietorship registered in the State of Texas. The petitioner indicates that both entities provide photography services. The beneficiary was previously granted one year in L-1A status in order to open a new office in the United States as the manager of [REDACTED] and the petitioner seeks to extend his L-1A status for one additional year.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary is employed in a managerial or executive capacity for the U.S. entity; (2) that [REDACTED] has sufficient physical premises to operate its business; and (3) that [REDACTED] is doing business in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to this office. On appeal, the petitioner asserts that the director's denial of the petition was erroneous.

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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a parent, subsidiary, or affiliate of the foreign employer.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive

capacity; and

- (E) Evidence of the financial status of the United States operation.

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 regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines doing business as:

- (H) Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

II. MANAGERIAL OR EXECUTIVE CAPACITY

The first issue to be addressed is whether the petitioner established that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity under the extended petition.

A. Facts

In a letter, dated October 17, 2013, the beneficiary's foreign employer advised that it is seeking an extension for the beneficiary to perform temporary services as the manager of [REDACTED] in the United States.¹

On the Form I-129 Supplement L, the petitioner provided the following information to describe the beneficiary's proposed duties in the United States:

[The beneficiary] was transferred to the United States to work in a capacity as a Manager of a new office of [the foreign entity] on 10/24/2012. [The petitioner] has an office in [REDACTED] Texas through its subsidiary, [the U.S. entity] providing all types of photographic services to individuals and businesses. [The beneficiary] has directed and developed the office in [REDACTED] Texas. This is a new office providing all photogenic services and is a major component [sic] of the organization. He has managed and directed the policies of the office. He has established goals and set policies for the department in order to insure that it is operating in a profitable manner. He has the power to hire and fire personnel. [The beneficiary] has exercised absolute discretion over the day-to-day activities in regard to operating the enterprise [sic] and he has received only general supervision from the board of directors in Hungary to insure organizational integrity. Under his management this company has flourished.

In the letter, dated October 17, 2013, the petitioner reiterated that the beneficiary has worked in a full-time capacity as an international manager and has "directed and specifically developed the office in [REDACTED] Texas, this past year." The petitioner again noted that the U.S. entity is a major component of the organization. The petitioner indicated that the beneficiary has "managed and directed the policies of the new office this past year," has "established goals and set policies for the department in order to insure that it is operating in a profitable manner," that he has "the power to hire and fire personnel," and that he "will exercise absolute discretion over the day-to-day activities in regards to operating the enterprise, and he received only general supervision from the board of directors to insure organizational integrity."

The petitioner's initial evidence also included [REDACTED] "Photography Studio Business Plan" prepared in 2012. The business plan indicates that the beneficiary "is the Manager of [REDACTED] Photo Studio as well as the creative director and the photographer." The business plan indicated that the company had hired a receptionist/production assistant to commence employment on December 1, 2012, and that it would hire two additional employees during its initial year of operations. However, the petitioner did not provide evidence of

¹ The petitioner in this matter is the beneficiary's former foreign employer in Hungary.

wages paid to employees hired during the first year of operations or provide information regarding staffing levels and organizational structure as of the date of filing.

The director subsequently issued a request for evidence (RFE) in which it advised the petitioner that the job description submitted at the time of filing was not sufficiently detailed and that the initial evidence lacked information regarding the staffing and organizational structure of the U.S. company. The director requested that the petitioner submit a revised statement of the beneficiary's U.S. duties, as well as a statement describing the staffing of the U.S. office, including the number of employees and the types of positions they hold, as well as evidence of wages paid to employees.

In response, the petitioner submitted a letter dated April 14, 2014 from its general manager, who stated:

[The beneficiary] has worked in a full-time capacity as an International Manager. He has directed and specifically developed the office in Texas during this past year. This was a company relating to the photography business and printlab and a major component of our organization. He has managed and directed the policies of the new office this past year.

He established goals and set policies for the department in order to insure that it is operating in a profitable manner. He has the power to hire and fire personnel. [The beneficiary] will exercise absolute discretion over the day-to-day activities in regards to operating the enterprise, and he received only general supervision from the board of directors to insure organizational integrity.

In a letter, dated May 7, 2014, in response to the director's request for further evidence (RFE), the petitioner claimed that the beneficiary had hired an assistant manager prior to leaving for Hungary on October 25, 2013. The petitioner asserted that the beneficiary had other persons working in the U.S. office but that the beneficiary has had to rely on emails and the internet to try to run the business while out of the United States. At the same time, the petitioner stated that had to temporarily stop doing business because of the beneficiary's absence from the United States.

The petitioner did not identify or provide evidence of wages paid to the "assistant manager" or any of the "other persons" working in the U.S. office. According to the beneficiary's 2013 IRS Form 1040, Schedule C, Profit or Loss from Business, he operates as a sole proprietor and did not report any expenses for wages, contract labor, or professional services. The record shows that the U.S. business paid \$750 in "commissions and fees."

Upon review of the record, the director determined that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity under the extended petition. In denying the petition, the director found that the petitioner failed to provide a detailed description of the beneficiary's duties or any evidence in support of its claims that the beneficiary had hired an assistant manager or any other staff during the first year of operations. The director concluded that the beneficiary was more likely than not performing the day-to-day operations of the U.S. photography business.

On appeal, the petitioner avers that the beneficiary has provided a detailed description of his managerial duties. The petitioner claims that the main issue in this matter is that the beneficiary had just hired an assistant when he had to return to Hungary in October 2013. The petitioner also notes that the lease for the 2013 year indicates that receptionist services are included with the lease and thus the beneficiary received support from a contract employee.

In support of the appeal, the petitioner submits a month-to-month lease dated January 1, 2014 for office space at [REDACTED]. The terms of the lease indicate that [REDACTED] monthly rent of \$500 would include receptionist and administrative support services which include answering service, appointment setup and assistance with copying and clerical duties.

B. Analysis

Upon review of the totality of the record, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity under the extended petition.

When examining the executive or managerial capacity of the beneficiary, we 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.*

Here the petitioner provided a broad overview of the beneficiary's proposed duties which paraphrases the statutory definitions of executive and managerial capacity. For example, the petitioner stated that the beneficiary "has managed and directed the policies of the office," "established goals and set policies," and "exercised discretion over the day-to-day activities." However, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities related to these broadly stated tasks, 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). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.* Thus, while the petitioner has paraphrased the definitions of managerial or executive capacity, the lack of specificity regarding the beneficiary's duties raises questions as to the beneficiary's actual primary responsibilities.

Beyond the required description of the job duties, U.S. Citizenship and Immigration Services reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the nature of the businesses, the beneficiary's subordinates' duties, if any, and any other factors that will contribute to an understanding of a beneficiary's actual duties and role in a business.

The petitioner has not provided any evidence that [REDACTED] employs or contracts with employees to carry out the photographic services it offers to individuals and businesses. Moreover, the submitted business plan states that the beneficiary fills the roles of manager, creative director and photographer and emphasizes his experience in photography and film processing. Therefore, we must conclude that the job description

provided by the petitioner is, at best, incomplete, as it does not acknowledge the beneficiary's role as photographer and creative director, and the record otherwise reflects that the beneficiary is the individual who has been and will be providing the company's photography services. The U.S. company has not hired a photographer and the business plan mentions no plans to hire a photographer in the future.

Although [REDACTED] lease agreement signed on January 1, 2014 includes the use of receptionist services, the record does not include evidence that there is any individual that will carry out the petitioner's day-to-day operational tasks, nor is there evidence that the petitioner had the use of such services at the time the petition was filed. The lease agreement for the period September 2012 through September 2013, which was submitted at the time of filing, had no similar provisions for the use of receptionist services. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

In addition, the petitioner has not provided evidence in support of its claim that the beneficiary hired an assistant manager for [REDACTED] prior to his departure from the United States in October 2013. The petitioner did not provide any payroll records or other evidence of wages paid to this employee. 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)). Further, the beneficiary's tax returns reflect that the business paid no wages or contract employee expenses. The evidence of record does not support a finding that anyone other than the beneficiary was working for [REDACTED] during the one-year validity period of the new office petition.

Upon review of the general descriptions of the beneficiary's duties, we are unable to ascertain exactly what the beneficiary does on a daily basis, other than provide the [REDACTED] photography services and perform other duties necessary to the business's day-to-day operations. 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations require USCIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D).² The regulation at 8 C.F.R.

² Following the enactment of section 101(a)(44)(C) of the Act in 1990, the former Immigration and Naturalization Service (INS) recognized that that managerial capacity could not be determined based on staffing size alone and deleted reference to "size and staffing levels" at 8 C.F.R. § 214.2(l)(3)(v)(C)(3) (1990), setting out the evidentiary requirements for initial new office petitions. See 56 Fed. Reg. 61111, 61114 (Dec.

§ 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. Although the U.S. company's business plan indicates that it intended to hire three staff to support the beneficiary during the first year of operations, the petitioner has not established that [REDACTED] employed anyone other than the beneficiary by the end of its initial year, and has not established a reasonable need for him to perform primarily managerial duties as the sole employee of the photography studio.

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 will *primarily* perform these specified responsibilities and will not spend a majority of his or her 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 owns and 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").

Based on the limited probative evidence furnished, it cannot be found that the beneficiary has been or will be employed in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

III. PHYSICAL PREMISES AND DOING BUSINESS

The remaining issues addressed by the director are whether the petitioner established that it has maintained sufficient physical premises to operate its photography business and whether the petitioner established that it is and will be doing business as of the date of filing the petition on November 7, 2013.

When filing a petition for a new office, the petitioner must establish that it has secured sufficient physical premises to house the intended business. *See* 8 C.F.R. § 214.2(l)(3)(v)(A). The "physical premises" requirement that applies to new offices serves as a safeguard to ensure that a newly established business immediately commence doing business so that it will support a managerial or executive position within one year. *See* 52 FR 5738, 5740 (February 26, 1987). After one year, USCIS "will determine, in [its] discretion, whether the new office is 'doing business' when an extension of the petition is adjudicated." *Id.*; *see also* 8 C.F.R. § 214.2(l)(14)(ii). A petitioner is not absolved of the requirement to maintain "sufficient physical premises" simply because it has been in existence for more than one year. In order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic and continuous manner. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Inherent to that requirement, the petitioner must possess sufficient physical premises to conduct business.

2, 1991). However, the INS chose to maintain the review of the new office's staffing, among other criteria, at the time that the new office seeks an extension of the visa petition. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D).

A. Facts

At the time of filing, the petitioner indicated on the Form I-129 that the beneficiary would work at [REDACTED]. The petitioner provided this same address where asked to provide the beneficiary's current residential address in the United States.

The petitioner provided a copy of a Texas Commercial Lease Agreement for an office located at [REDACTED] which had a term of September 1, 2012 until September 1, 2013 at a monthly rent of \$500. The terms of the agreement indicate that the petitioner would be required to vacate the premises at the end of the term unless the parties agreed to extend the lease in writing or execute a new written agreement, or unless the landlord willingly accepts new rent from the tenant, at which time a month-to-month tenancy would be created. The agreement indicates that "starting 12/01/12 rent will be \$1,000.00/month and the space will double to 1200 sq. feet of rental space for expansion." The U.S. entity's business plan describes the premises as a 1200 square foot studio, but the submitted photographs showed only an "office for client meetings," and were accompanied by notes indicating that [REDACTED] provides "on location photo shoots."

In the RFE, the director observed that the petitioner submitted an expired lease in support of the petition and further noted that the evidence did not support a finding that [REDACTED] was leasing a 1200 square foot photo studio as referenced in its business plan. The director requested additional evidence related to the U.S. entity's physical premises and ongoing business activities.

In response to the RFE, the petitioner submitted a copy of "Business Associate Agreement – HIPAA" entered into on January 2, 2013 by [REDACTED] and [REDACTED] who owns and operates a counseling services business with offices at [REDACTED]. The agreement references a lease agreement between the parties dated January 1, 2013 and indicates that [REDACTED] agrees not to use or disclose protected health information during the 12-month term of the Business Associate Agreement. The petitioner did not submit a copy of the referenced January 1, 2013 lease agreement.

The petitioner submitted copies of the beneficiary's IRS Form 1040, U.S. Individual Income Tax Return, for 2013, along with accompanying Schedule C, Profit or Loss from Business, identifying the beneficiary as the proprietor of [REDACTED]. The Schedule C indicates that [REDACTED] paid \$5,500 in rent or lease expenses for "other business property" and had gross receipts or sales of \$17,501. Along with the tax returns, the petitioner submitted copies of [REDACTED] bank statements for the months of May, June and July 2013, which included copies of three checks in the amount of \$500 issued to [REDACTED] for "rent."

The petitioner stated that [REDACTED] had a normal income in comparison to other new starting companies in the US" and explained that the \$17,000 in sales reflected on the beneficiary's tax return was for only three quarters because the beneficiary went to Hungary in October 2013, and the company had to temporarily stop doing business.

The director denied the petition, finding that the petitioner did not establish that it was maintaining physical premises or doing business at the time the petition was filed. The director observed that the only lease

agreement submitted had expired as of the date of filing, and that the business associate agreement submitted in response to the RFE referred to a lease agreement that also would have expired at the end of 2013. The director acknowledged the petitioner's submission of the beneficiary's tax return and bank statements and noted that the return reflected minimal income and no employee salaries. Finally, the director emphasized the petitioner's statements that [REDACTED] stopped doing business when the beneficiary departed the United States in October 2013.

On appeal, the petitioner states that it is submitting amended tax returns showing that the beneficiary earned \$13,662 in 2012 and \$21,822 in 2013. The petitioner also submits the above-referenced lease dated January 1, 2014 which indicates that the petitioner has access to "700 of 830 square feet" of office premises located at [REDACTED] which includes a private office, kitchen, bathroom, private entrance, reception area, meeting area and private garden. The petitioner also submits a Business Associate Agreement between [REDACTED] and [REDACTED] dated January 2, 2014.

B. Analysis

Upon review, the petitioner has not submitted evidence on appeal to overcome the director's findings with respect to the U.S. entity's physical premises and ongoing business operations. In the instant matter, the petitioner has not submitted probative evidence that [REDACTED] sufficiently operational at the time of filing in November 2013 to establish that it was doing business.

The petitioner indicates that the beneficiary left the United States in October 2013 and that [REDACTED] was not doing business in the last quarter of 2013 subsequent to his departure. Further, the petitioner indicated on the Form I-129 that the beneficiary's would work at his home address under the extended petition and submitted a lease for commercial office space that had expired in September 2013. While the petitioner subsequently provided a "Business Associate Agreement" signed in January 2013, this document is not a lease agreement. The petitioner did not provide a lease agreement that was valid during the last quarter of 2013 and thus it has not established that [REDACTED] was maintaining physical premises when the petition was filed.

Further, while the beneficiary's tax returns reflect modest sales, well below the \$120,000 first year sales projected in [REDACTED] business plan, the petitioner has not provided corroborating evidence of business activities such as purchase orders, customer invoices, receipts or other evidence of its activities to establish that the U.S. entity was doing business as defined in the regulations since the new office petition was approved. The record reflects that the [REDACTED] did pay rent in 2013 and likely provided photography services until the beneficiary's departure from the United States. However, the petitioner must establish that it was maintaining physical premises and doing business as of the date of filing. The petitioner has not met this burden. For these additional reasons, the appeal will be dismissed.

IV. QUALIFYING RELATIONSHIP

Beyond the decision of the director, the petitioner has not established that it has a qualifying relationship with [REDACTED] or that [REDACTED] is a qualifying organization. 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 petitioning Hungarian company indicates that it is "principally owned" by [REDACTED] who are identified as the beneficiary's brother-in-law, wife and mother-in-law. The petitioner stated that each individual owns 33.3 percent of the Hungarian entity and that they "have complete ownership and complete control of the Hungarian and US sole proprietorship."³

Although the petitioner has stated in the record that it owns the U.S. sole proprietorship, [REDACTED] all of the supporting documentary evidence indicates that the beneficiary is the sole proprietor.

The petitioner submitted an Assumed Name Records Certificate of Ownership For Unincorporated Business or Profession, dated December 21, 2012, which identified the beneficiary as the owner of the U.S. entity, and was filed in the [REDACTED] Texas records on December 21, 2011. The record also contained an application for an "EIN" number for the U.S. business as a sole proprietorship. Further, as discussed above, the beneficiary filed 2012 and 2013 tax returns for [REDACTED] on his individual income tax return as the proprietor of the business.

Therefore, the record reflects that the petitioning foreign entity is a Hungarian limited liability company owned by three relatives of the beneficiary and the U.S. business is a sole proprietorship owned by the beneficiary. The companies have no common ownership and control and do not have a qualifying relationship for the purposes of this visa classification.

Moreover, a sole proprietorship owned by a beneficiary of a nonimmigrant visa petition, is not a qualifying organization. A sole proprietorship is a business in which one person personally owns all of the assets, personally owes all the liabilities, and operates the business in his or her personal capacity. Black's Law Dictionary 1520 (9th Ed. 2009). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual proprietor. See *Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm'r 1984). As in the present matter, if the intended L-1 employer is actually the individual beneficiary doing business as a sole proprietorship, with no authorized branch office of the foreign employer or separate legal entity in the United States, there is no U.S. entity to employ the beneficiary.

Accordingly, as a matter of law, the beneficiary is ineligible for the classification sought. Fundamental to this nonimmigrant classification, the petition must be filed by a United States importing employer. Section 214(c)(1) of the Act. Furthermore, in order to meet the definition of "qualifying organization," there must be a United States employer. See 8 C.F.R. 214.2(l)(1)(ii)(G)(2). As the beneficiary in this matter is doing business as a sole proprietorship, there is no "importing employer." The petitioner has not established that

³ The petitioner also submitted its deed of association which indicates that [REDACTED] owns 30%, [REDACTED] owns 30% and [REDACTED] owns 40% of the Hungarian entity. 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).

[REDACTED] is a qualifying organization or that it has a qualifying relationship with the beneficiary's former Hungarian employer. For these additional reasons, the petition cannot be approved.

V. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by this office 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).

In this matter, upon review of the totality of the record, the record does not demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition or that the U.S. business was maintaining physical premises or doing business at the time the petition was filed. Accordingly, we will uphold the director's determination on these three issues. In addition, we find beyond the decision of the director, that the petitioner has not established that [REDACTED] is a qualifying organization or that it has a qualifying relationship with the beneficiary's foreign employer.

When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003). The petition will be denied and the appeal dismissed for the above stated reasons. 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.