



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAR 25 2015** 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 (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. We will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a New York corporation established in [REDACTED], states that it operates as a "furniture" business. The petitioner claims to be a subsidiary of [REDACTED] located in [REDACTED] China. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been employed in a managerial capacity in a company abroad that has a qualifying relationship with the U.S. entity.<sup>1</sup>

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 contends that the beneficiary's named employer abroad is the same as that listed in the documentation and that the names are interchangeable. The petitioner submits additional evidence in support of the appeal.

#### I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

<sup>1</sup> Although not addressed in the RFE or a basis for denial, the director noted in her decision that the beneficiary previously applied for her nonimmigrant visa at the U.S. Consulate in [REDACTED] in 2008 and on her application, stated under oath that she had been working for [REDACTED] a company that is different from the other companies listed within the record. The petitioner need only establish that the beneficiary was employed in a qualifying capacity by a qualifying foreign entity for one year within the three years preceding the filing of the petition, which is February 14, 2011. As such, this matter is not relevant to this proceeding.

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

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.

II. THE ISSUES ON APPEAL

A. Qualifying Relationship and Qualifying Employment Abroad

The sole issue addressed by the director is whether the petitioner established that the United States and foreign entities are qualifying organizations, such that the beneficiary's foreign employment meets the requirements for visa eligibility. 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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
  - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
  - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

\* \* \*

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

\* \* \*

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

#### 1. Facts

On the Form I-129, the petitioner indicated that it is a subsidiary of the foreign entity. Specifically, where asked to explain the stock ownership and managerial control of each company, the petitioner stated, "[REDACTED] - 100%."

In its initial letter of support, the petitioner stated that it has 200 shares of stock for distribution, "of which 120 shares were fully issued to [REDACTED], while the 100 shares remained unissued."

The petitioner submitted its share certificate number one indicating that it issued 200 shares of stock to [REDACTED] on December 10, 2013.

The petitioner submitted a letter of support from a foreign entity, [REDACTED], dated December 13, 2013, and signed by [REDACTED] Vice President. The petitioner also submitted various government documents issued to a foreign entity as follows:

- License of Business Corporation for [REDACTED] dated May 12, 2006;
- Tax Registration Certificate for [REDACTED] dated June 16, 2005;
- Trademark Office of the State Administration for Industry & Commerce of the People's Republic of China, Notice of Application for Registration Acceptance, for [REDACTED] dated August 10, 2011;
- A second copy(formatted differently) of the License of Business Corporation for [REDACTED] dated May 12, 2006, reflecting the 2008 Annual Inspection Seal;
- People's Republic of China Organization Code Certificate for [REDACTED] reflecting the 2008 Annual Inspection Seal; and

- Permit for Opening Bank Account for [REDACTED] dated March 5, 2008.

The petitioner submitted various company certifications and awards issued to a foreign entity as follows:

- Member of China National Furniture Association (this document does not list a date or the name of the foreign entity);
- Certificate of "Environmental protection" famous furniture brand in ten provinces of China for [REDACTED], dated March 15, 2005;
- Certificate of 2005 "Credible" enterprise of furniture industry in 18 provinces of China for [REDACTED], dated March 15, 2005;
- Letter of Authorization for [REDACTED] that appears incomplete, undated and unsigned;
- Green Environmental Protection Products Promotion Certificate for [REDACTED] issued November 16, 2008;
- Environmental Management System Certificate for [REDACTED] issued November 13, 2006;
- Certificate indicating that [REDACTED] is a Rural Credit Cooperatives' VIP client, dated January 24, 2008;
- China Environmental Labeling Product Certificate for [REDACTED], issued February 22, 2008; and
- Quality Management System Certification for [REDACTED] dated August 24, 2005.

The petitioner also submitted a brochure for [REDACTED] along with photos of foreign premises and print-outs of [REDACTED] website.

In the RFE, the director noted that the petitioner failed to submit evidence to satisfy the requirement demonstrating that it has a qualifying relationship with the beneficiary's foreign employer. The director specifically instructed the petitioner to submit evidence of ownership and control for the foreign entity.

In response to the RFE, the petitioner submitted the exact same government documents and company certificates and awards listed above. The petitioner also submitted the same brochure for [REDACTED], premise photos, and website print-outs.

The petitioner submitted what appear to be bank account statements for [REDACTED] from November 1, 2013 to February 27, 2014.

The petitioner submitted two separate Furniture Sell and Purchase Agreements, both dated October 13, 2007, listing the seller as [REDACTED] and the buyer as [REDACTED] Representative Office.

The petitioner also submitted a letter stating that it has 200 shares of stock for distribution, "of which 120 shares were fully issued to [REDACTED], while 80 shares remain unissued."

The petitioner submitted a second letter of support from a foreign entity, [REDACTED], dated April 24, 2014, and signed by [REDACTED] (title unlisted), stating the following about its organizational structure:

[REDACTED] is a member of [REDACTED], which consists of five specialized business entities in close collaboration and active business cooperation, including:

[REDACTED]  
and [REDACTED] [REDACTED] is part of the established prime luxury department store and outlet at [REDACTED] where they operate over hundreds of internationally well-known brands, including furnitures, fashions, shoes, luggage, sunglasses, cosmetic, and accessories, etc.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has been employed in a managerial capacity in a company abroad that has a qualifying relationship with the U.S. entity. In denying the petition, the director found that the evidence in the record to establish the existence and continued business of the foreign entity bear the name [REDACTED] which do not relate to [REDACTED], as claimed in the petition.

On appeal, the petitioner contends that the names of the foreign entity are interchangeable and they are the same company. The petitioner explains as follows:

[REDACTED] is the popular trade name, or fictitious name, used by the parent entity, [REDACTED] which also uses the name of [REDACTED] after the factory was established and registered in [REDACTED]. However, the names are sometimes simplified to just "[REDACTED]" in some of the Chinese to English translations of the documents that were submitted. . . . They are in fact two parts of one company and the names are often used interchangeably depending on which department is involved because both are registered names under the laws and regulations of China.

As can be seen in the copy of the Notice from the Trademark Office, the name "[REDACTED]" is a registered trademark of [REDACTED] which our parent company uses as its 'brand name.' . . . [REDACTED] is actually the trademarked name under which [REDACTED] does business.

In support of the appeal, the petitioner submits the following documents:

- Trademark Office of the State Administration for Industry & Commerce of the People's Republic of China, Notice of Application for Registration Acceptance, for [REDACTED] dated August 10, 2011 (previously submitted but now reflecting [REDACTED] as the trademark name);

- Test Report of [REDACTED], indicating the client as [REDACTED] Sales Department, undated;
- Test Report of [REDACTED], indicating the client as [REDACTED] Sales Department, issued January 3, 2013;
- Individual Industrial and Commercial Household Business License for [REDACTED] dated December 29, 2011;
- Letter of Appointment of the beneficiary as the general manager of [REDACTED], dated February 1, 2008; and
- Authorization Letter where [REDACTED] authorizes the U.S. company to manage itself, dated December 5, 2013.

## 2. Analysis

Upon review, and for the reasons stated herein, we concur with the director's determination that the petitioner failed to establish that it has a qualifying relationship with a foreign entity, the beneficiary's foreign employer.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As a preliminary matter, there is a discrepancy in the claimed share distribution of the U.S. company and the single share certificate submitted. In its initial letter of support, and again in response to the RFE, the petitioner states that it has issued 120 shares of stock to [REDACTED] and the remaining shares of the 200 total shares remains outstanding. In support of the petition, the petitioner submits its share certificate number one indicating that it has issued all 200 total shares of stock to the foreign entity, [REDACTED]. There is an inconsistency in the petitioner's claimed share distribution. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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 claims a parent-subsidiary relationship between the U.S. and foreign entities based on the foreign entity's 100% ownership of the U.S. company. The petitioner claims that the beneficiary's foreign employer is [REDACTED] or any variation of the name thereof, which are all the same company with interchangeable names.

In support of the foreign entity's existence and continued business operations, the petitioner submitted numerous government documents and company certificates and awards for [REDACTED]. In the initial evidence and in response to the RFE, the petitioner did not submit a single government issued document with the [REDACTED] name. The only documents submitted with that name is the copy of the brochure and the web print-outs that appear to belong to [REDACTED] as stated at the bottom of each page. According to the petitioner, on appeal, the [REDACTED] name is a trademark or name brand of [REDACTED] and is used interchangeably as the actual name of the foreign entity. In support of this claim, the petitioner submits a government issued document for the third time, now reflecting the name [REDACTED] under "trademark" on the Trademark Office of the State Administration for Industry & Commerce of the People's Republic of China, Notice of Application for Registration Acceptance, dated August 10, 2011. That same document specifically states that it "only indicates that the Trademark Office has received the application for trademark registration, and does not mean that the application has been approved." Therefore, even if this document shows that the two names are related and could potentially be used interchangeably, it does not establish that [REDACTED] has actually registered its trademark [REDACTED] such that it could be used as a legal entity.

Again, 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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. *Id.*

Based on the foregoing, the petitioner has not met its burden to establish that the U.S. and foreign entities have a qualifying relationship. Accordingly, the appeal will be dismissed.

### III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

Beyond the decision of the director, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity within one year of approval of the new office petition.

In its initial letter of support, the petitioner listed 12 proposed duties that the beneficiary will perform as the general manager of its U.S. company. The petitioner also described the beneficiary's foreign employment in a managerial capacity as the general manager of the foreign entity and stated that she will essentially be performing the same duties in the United States. In the same letter, the petitioner indicated that a business plan is attached to the record.

The petitioner submitted a proposed organizational chart depicting the beneficiary at the top tier of the hierarchy as general manager, reporting only to the Board of Directors. As general manager, the beneficiary supervises the following: "Department of Administration," with one manager and one secretary; "Accounting Department (Internal)," with one manager and one bookkeeper; "Business Development Department," with one manager and two sales representatives; "Accounts," with two managers, two account representatives, and two project managers; "Import & Shipping," with one manager and four import/distribution management; and "Customer Service Dept," with one manager, one technical support (internal) and one telephone support.

The petitioner also submitted brief job descriptions for the six departments listed on the organizational chart and the positions therein.

The petitioner did not submit any additional information about the beneficiary's proposed position in the United States or the staffing plan and projections of the U.S. company. The petitioner indicated that a business plan was attached; however, there is no business plan in the record.

Upon review, and for the reasons stated herein, 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.

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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to 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. The petitioner is required to describe the nature of the office, the anticipated scope of the entity, its proposed organizational structure and its financial goals. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. In its initial letter of support, the petitioner stated that its business plan was attached. However, the record does not contain a business plan, hiring plan, or other evidence that would indicate the timeframe for hiring the proposed staff. As such, it is impossible to determine, based on the lack of evidence submitted, that the beneficiary would be relieved from performing non-qualifying duties within one year of commencing operations. The regulations require the petitioner to present a credible picture of where the company will stand in one year, and to provide sufficient supporting evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position. Going on record without supporting documentary evidence is not sufficient for purposes

of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational 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 or 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").

In the instant matter, the petitioner stated that the beneficiary will be the general manager and provided a vague list of proposed job duties for her position. Although the petitioner briefly stated that the beneficiary's position in the United States will be similar to her position at the foreign entity, the petitioner did not provide any additional details about the proposed position and failed to demonstrate that she would have sufficient subordinate staff to relieve her from primarily performing non-qualifying tasks within one year. While these tasks may be undoubtedly necessary in order to continue operations, the petitioner has not indicated how these duties qualify as managerial or executive in nature.

Furthermore, the petitioner listed various supervisory duties, such as, supervise and control the hours and responsibilities of other supervisory and managerial staff, hire and fire personnel and other perform other personnel actions such as promotion and leave, coordinate the various teams to assure that each business plan is implemented adequately and on schedule, and supervise the implementation and management of the policy. However, the petitioner failed to provide its staffing plan or any projections on hiring during its first year to establish that the beneficiary could perform those listed duties or that she will have sufficient subordinate staff to relieve her from primarily performing non-qualifying operational and administrative duties. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Given the vague and general descriptions of the beneficiary's duties, the record reflects that the beneficiary would more likely than not allocate more than 50% of her time to duties that are non-qualifying. 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). 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).

Based on the evidentiary deficiencies addressed above, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity within one year of the approval of the new office petition. For this additional reason, the petition cannot be approved.

The AAO maintains discretionary authority to review each appeal on a *de novo* basis. The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd* 345 F. 3d 683 (9<sup>th</sup> Cir. 2003).

#### IV. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, 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 petitioner has not met that burden.

**ORDER:** The appeal is dismissed.