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**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF S-F-USA, LLC

DATE: OCT. 8, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a business engaged in film production, seeks to classify the Beneficiary as an L-1A intracompany transferee. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner, a New Jersey limited liability company, is an affiliate of the Beneficiary's foreign employer in Brazil, [REDACTED]. It seeks to employ the Beneficiary as its President for a period of one year in order to open a new office in the United States.

The Director denied the petition, concluding that the Petitioner did not establish that: (1) a qualifying relationship existed between the Petitioner and a qualifying foreign entity; and (2) the Beneficiary will be employed in the United States in a qualifying managerial or executive capacity.

The Petitioner subsequently filed an appeal. The Director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the Petitioner asserts that the evidence of record establishes the existence of a qualifying relationship and that the Beneficiary will function in the United States in a qualifying managerial or executive capacity. The Petitioner submits a brief and 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, Petition for a Nonimmigrant Worker, 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.

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)(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.

## II. THE ISSUES ON APPEAL

### A. Qualifying Relationship

The first issue to be addressed is whether the Petitioner established that it has a qualifying relationship with the Beneficiary's foreign employer.

To establish a "qualifying relationship" under the Act and the regulations, the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e.

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one entity with “branch” offices), or related as a “parent and subsidiary” or as “affiliates.” See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The Petitioner stated on the Form I-129 that the United States employer is a branch entity of the foreign entity and that the parent company holds a 51% ownership interest of the United States branch.

In a request for evidence (RFE) issued on October 2, 2014, the Director advised the Petitioner that the documentation contained in the record did not support a finding that the U.S. petitioner was a branch of the foreign entity. Specifically, the Director noted that the documentation pertaining to the U.S. entity demonstrated that it was formed as a limited liability company in the State of New Jersey, and that it shared common ownership with the foreign entity, a limited liability partnership. The Director requested additional information clarifying the nature of the qualifying relationship between the two entities and, in response, the Petitioner again maintained that it is a branch of the foreign entity.

On January 21, 2015, the Director denied the petition, finding that the record did not establish that the United States organization was organized as a branch of the foreign entity. On appeal, the Petitioner contends that both the U.S. organization and the foreign entity are majority-owned by the Beneficiary and therefore the entities have the requisite qualifying relationship.

Upon review, we find that the evidence establishes that a qualifying relationship exists between the foreign entity and the United States organization.

The regulations define the term “branch” as “an operating division or office of the same organization housed in a different location.” 8 C.F.R. § 214.2(l)(1)(ii)(J). In this matter, the Petitioner contended in its initial letter of support and again in response to the Director’s RFE that the U.S. entity is a branch of the foreign entity. The Director, however, noted that by virtue of its formation as a limited liability company in the United States, the Petitioner could not meet the definition of a branch office and denied the petition on that basis.

A review of the evidence in the record demonstrates that, contrary to the Petitioner’s contentions, the U.S. entity and the foreign entity have an affiliate relationship. The Petitioner submitted documentation, including an amended and consolidated articles of association for the foreign entity dated October 31, 2013 and a copy of the resolution of the members for the U.S. entity dated April 15, 2013 which demonstrate that both companies are owned as follows:

Beneficiary:	51%
	49%

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(L) defines the term “affiliate” as:

- (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.

In this matter, despite its repeated contentions that the U.S. entity is a branch of the foreign entity, the Petitioner has established that the U.S. entity and the foreign entity are affiliates. Specifically, the Petitioner submitted sufficient evidence to establish that one individual, namely, the Beneficiary, owns and controls both entities by virtue of his 51% ownership interest in both companies. In addition, the record establishes that the same two individuals own and control the same proportion of each entity. For the reasons outlined above, the Director's finding with regard to this issue is hereby withdrawn.

#### B. Employment in the United States in a Managerial or Executive Capacity

The petition may not be approved, however, because the Petitioner has not established that the new office will support the Beneficiary in an executive or managerial position within one year of approval of the petition.

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. The "new office" regulations allow a newly established Petitioner one year to develop to a point that it can support the employment of a Beneficiary in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally* 8 C.F.R. § 214.2(l)(3)(v). 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.*

The Petitioner submitted an undated statement in support of the petition. According to the Petitioner, it was established in order to make corporate videos, TV commercials, and Internet videos, among other products.

The Petitioner also provided a business plan including basic financial projections, showing anticipated gross sales of \$95,000 in the first year and startup costs of \$50,000. The Petitioner included a profit and loss statement as well, showing that \$11,000 would be dedicated to payroll in the first year, \$1,500 to marketing, \$5,000 to professional fees, and \$15,000 to rent and utilities

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among other items. Finally, the Petitioner stated in the plan that staffing would be on a “per-project basis.” The Petitioner also noted that the United States organization will “count on the headquarters help for more complicated projects.”

In the RFE, the Director requested, among other items, evidence to demonstrate how the company will grow to be of sufficient size to support a managerial or executive position and evidence that the Beneficiary’s proposed position will be in a managerial or executive capacity. Specifically, the Director requested information regarding the proposed nature of the office and the size of the U.S. investment, as well as an overview of the organizational structure of the foreign entity.

In response to the RFE, the Petitioner provided, among other documents, the following evidence to show the U.S. entity will support the executive position within one year of the petition’s approval:

- Letter dated November 24, 2014, from the “Accountant”;
- Proof of a business agreement between the Petitioner and a third-party client; and
- Organizational chart of the foreign and United States entities;

The organizational chart for the United States entity showed the Beneficiary at the top of the chart. One employee, [REDACTED] is shown reporting to the Beneficiary and is titled “Partner.” Two employees both titled “Director of Sales” are showing reporting to [REDACTED]. The chart also provided a brief description for each of the employees. The Beneficiary’s duties are described as follows: “Partner, Director of Photography and camera operator, new equipment. Editing and post-production coordinator. Manager, executive and administration.”

The letter dated November 24, 2014, addressed the shared resources of the foreign entity and the new U.S. office. Specifically, the letter stated that the foreign entity supports the Petitioner by “investing money, time, as well as sending main managers to keep business and guarantee the quality of the final product.” The letter further explained that once production of films reaches completion in the United States, the “footage” is sent to the foreign entity for “post-production” and the final product is then sent back to the United States for delivery to the client. Finally, the letter stated that the Petitioner is “invoiced for all services” provided by the foreign entity.

The Director denied the petition on January 21, 2015, finding that the Petitioner had not established that the Beneficiary would be employed in a qualifying managerial or executive capacity within one year of the petition’s approval. The Director noted that the business plan lacked specificity and credibility. Specifically, the Director concluded that the Petitioner’s financial projections did not support the projected costs. In addition, the Director noted that the Petitioner’s staffing plan would not support a managerial position by the end of the first year of operations.

On appeal, the Petitioner submits a new business plan and states that the evidence of record supports a finding that the Beneficiary will be employed in a managerial position by the end of the first year of operations.

Upon review of the petition and the evidence, and for the reasons discussed herein, the Petitioner has not established that the Beneficiary will be employed by the United States entity in a managerial or executive capacity within one year of the petition's approval.

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.* Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business. The petitioner's evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally* 8 C.F.R. § 214.2(l)(3)(v).

In the instant matter, the only description the Petitioner provided of the Beneficiary's duties is very broad, noting that he is responsible for serving as director of photography and camera operator, editing and post-production coordination; manager, executive and administration. While several of the duties broadly described by the Petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the Beneficiary's actual responsibilities. 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 not provided 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 addition, the Petitioner provided a new position description for the Beneficiary on appeal, stating that he will create and review the goals; take care of investments, and develop relationships with people outside the organization. Again, the lack of specificity raises questions as to the Beneficiary's actual responsibilities. 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.*

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. Accordingly, the totality of the record must be considered in analyzing whether

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the proposed duties are plausible considering the Petitioner's anticipated staffing levels and stage of development within a one-year period.

In addition, the Petitioner has not shown who will perform that actual day-to-day work of the company. Specifically, the Petitioner is a video production company, but does not show plans for hiring any staff to perform the video production work. Therefore, it can only be concluded that the Beneficiary, whose roles include "Director of Photography" and "camera operator," will be doing the actual videography production work on the company. The petitioner states in response to the RFE that the foreign entity performs "post-production" work once production of films reaches completion in the United States. The Petitioner, however, does not show any contracts, hiring plans, or otherwise state who will be performing the film production work. Therefore, we are left to question the validity of the Petitioner's claim and the remainder of the Beneficiary's duties as described by the Petitioner. 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). If the Beneficiary is performing the video production work, we note that 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. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See sections 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).

The Petitioner shows that the Beneficiary will manage a subordinate manager who will oversee the two sales directors. The Petitioner, however, has not shown how the company will require two managerial employees to oversee a staff of only two employees. The Petitioner states on appeal that the Manager, [REDACTED] will be responsible for overseeing the work of sales people and "production staff." The Petitioner has not provided any details regarding the proposed hiring of production staff within the first year of operations. If the Petitioner plans to use the services of contracted production staff other than the foreign entity, we note that the Petitioner did not submit any documentation to support this claim.

The evidence must substantiate that the duties of the Beneficiary and his subordinates correspond to their placement in an organization's structural hierarchy; job titles alone are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position. 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.

Alternatively, the statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct[] the management" and "establish[] the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization."

*Id.*

Here, the Petitioner has not established that the Beneficiary will be employed in the U.S. in a primarily executive capacity. The Petitioner's business plan does not establish that the Beneficiary will supervise a subordinate level managerial employee or professional level employee by the end of the first year of operations. Moreover, the record contains insufficient evidence to demonstrate that the Beneficiary will primarily focus on the broad goals and policies of the organization, given that the Petitioner currently has only one employee and the proposed timeline for hiring subordinate staff that would otherwise perform the day-to-day operations of the enterprise does not seem feasible. Based on these deficiencies, we find that the Petitioner has not established that it will be able to support the Beneficiary in a primarily executive capacity by the end of the first year of operations.

Furthermore, our analysis of the Beneficiary's employment capacity and the Petitioner's ability to employ him in a qualifying capacity by the end of the first year of operations is severely restricted because the record does not include a credible business plan. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the

distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

*Id.*

The Petitioner's financial forecast and required start-up costs change significantly from the business plan submitted in the initial petition and the plan submitted on appeal. The Petitioner's first business plan showed anticipated gross sales of \$95,000 in the first year and startup costs of \$50,000. The Petitioner included a profit and loss statement as well, showing that \$11,000 would be dedicated to payroll in the first year, \$1,500 to marketing, \$5,000 to professional fees, and \$15,000 to rent and utilities among other items. On appeal, the Petitioner now projects gross sales of \$180,000, almost double the gross sales projections from the initial submission without any explanation for the increase in projections. Additionally, the Petitioner now projects start-up costs to be \$70,000, up from the \$50,000 initially projected. These start-up costs do not appear to include any payroll expenses, and the Petitioner does not explain from where it anticipates getting the \$70,000 in funds. The business plan states that the foreign entity will be providing \$44,000 in equipment, but it is not clear from the projected start-up costs how much of these costs are equipment costs. Even if the foreign entity's equipment investment off-sets the projected start-up costs, the Petitioner has not shown that it has the additional \$26,000 plus payroll expenses necessary to start-up operations.

Overall, the Petitioner's business plan lacks credibility. The projections do not, as required, provide the basis for sales, cost, and income projections. In addition, the unexplained changes from the initial business plan and the plan submitted on appeal cast doubt as to the credibility of the plan. 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. at 591.

Furthermore, the Petitioner has not established the size of the United States investment, the financial ability of the foreign entity to remunerate the Beneficiary and commence doing business in the United States, and/or depicted the organizational structure of the foreign entity, as required by 8 C.F.R. § 214.2(l)(1)(ii)(G). The Petitioner shows equity investments of \$15,000 in the business plan submitted on appeal, but does not state where the investment will come from or show that the investment has actually been made. In addition, the Petitioner shows total cash inflows of \$70,001, but does not document from where the additional \$55,000 in cash inflow is anticipated to come.

A review of the totality of the evidence submitted provides very little information regarding the actual number of employees to be hired, the timeline for hiring employees, the financial position of the U.S. company, the Petitioner's anticipated start-up costs and financial objectives for the first year of operations, and the physical premises secured by the U.S. company. The Petitioner's submission

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of a vague job description for the Beneficiary, and a general business plan, falls significantly short of meeting its burden to establish that the company will be able to support a qualifying managerial or executive position within a twelve-month period. The regulations require the Petitioner to present a credible picture of where the company will stand in one year, and to provide sufficient evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position within that time. 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)).

Overall, the vague job description provided for the Beneficiary, considered in light of the Petitioner's minimal business and hiring plans for the first year of operations, prohibits a determination that the Petitioner could realistically support the employment of the Beneficiary in a qualifying managerial or executive position within one year. Accordingly, the appeal will be dismissed for this additional reason.

### III. BEYOND THE DIRECTOR'S DECISION

Beyond the decision of the Director, the Petitioner indicates that the Beneficiary owns 51% of both the U.S. entity and the foreign entity. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In this matter, the Petitioner has not furnished evidence that the Beneficiary's services are for a temporary period and that the Beneficiary will be transferred abroad upon completion of the assignment.

In addition, the record suggests that [REDACTED] the other owner of both the U.S. entity and the foreign entity with a 49% interest, currently resides in the United States.<sup>1</sup> Since it appears that both owners of the foreign entity reside or will reside in the United States, there is an additional question of whether the foreign entity is or will be doing business so that a qualifying relationship exists pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). For these additional reasons, the petition cannot be approved.

We may deny an application or petition that fails to comply with the technical requirements of the law 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, 1037 (E.D. Cal. 2001), *aff'd*.

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<sup>1</sup> [REDACTED] resume, included in the record, lists her home address as [REDACTED] New Jersey. We note that this is the same address used by the Petitioner on its bank statements issued by [REDACTED]. Moreover, the Petitioner's organizational chart and claimed organizational structure demonstrates that [REDACTED] is the Beneficiary's direct subordinate employee, holding the title of "Partner, Executive Producer, Photographer, Manager – Executive" in the U.S. company.

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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).

#### 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, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-F-USA, LLC*, ID# 13976 (AAO Oct. 8, 2015)