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

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

MATTER OF R-P- LLC

DATE: OCT. 16, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a tortilla manufacturer and wholesaler, seeks to employ the beneficiary as an intercompany transferee under the L-1A classification. *See* section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner is a Texas general partnership that claims to be a subsidiary of [REDACTED] in Mexico. The Petitioner seeks to employ the Beneficiary as "Industrial Graphic & Marketing" for a period of one year.

The Director denied the petition concluding that the Petitioner did not establish (1) that the Beneficiary will be employed in the United States in a qualifying managerial or executive capacity and (2) that the Beneficiary was employed abroad in a qualifying managerial, executive, or specialty knowledge capacity. On appeal, the Petitioner asserts that the Director's basis for denial was erroneous and contends that it satisfied all evidentiary requirements.

I. THE LAW

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

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

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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

II. ISSUES ON APPEAL

The main issues to be addressed are whether the Petitioner established that the Beneficiary will be employed in the United States in a qualifying managerial or executive capacity and that the Beneficiary was employed abroad in a qualifying managerial, executive, or specialty knowledge capacity.

A. Managerial or Executive Capacity in the United States

1. Facts

The Petitioner filed the Form I-129 on August 12, 2014. The Petitioner stated on the petition that it is a tortilla factory and wholesale business, has 10 employees and a net annual income of \$45,802. According to the documents submitted, the Petitioner wishes to employ the Beneficiary in the position of “Industrial Graphic & Marketing”¹ with an annual salary of \$15,000.

In the Form I-129, the Petitioner stated that the proffered position of “Industrial Graphic & Marketing” will include the following proposed duties:

Duties will include but not limited to Duties abroad include planning and directing the company’s policy in regard to products, prices, promotions and distributions.
Design company’s plan and implement marketing plans of the company
Coordinate and control the release of publicity and promotional campaigns
Direct and supervise the studies of hedges, quotas, and distribution support to the sales area in terms of strategies, policies, channels, advertising, and merchandising.
Make commercial research of existing products or new, carrying out of the study of the strengths, weaknesses, opportunities and threats of the same in the market.

In the translation of the support letter filed with the initial petition, the Petitioner described the proffered position as follows:

[The Beneficiary’s] mission in this post is:

- planning and directing the company’s policy in regard to products, prices, promotions and distribution
- Design plans for short, medium and long term, by determining the priorities and strategies of the products of the company
- Access to the markets as a final goal in the best conditions of competitiveness

¹ We note that throughout this petition, the Petitioner refers to the proffered position as “Marketing & Administration,” “Graphic Design, Sales & Marketing,” “Sales and Marketing Manager,” and “Industrial Graphic, Sales, and Marketing.”

Profitability her main functions are:

- Design, plan design and implement marketing plans of the company;
- Coordinate and control the release of publicity and promotional campaigns;
- Direct and supervise studies on hedges, quotas, and distribution support to the sales area in terms of strategies, policies, channels, advertising, merchandising;
- Make commercial research of existing products or new, carrying out the study of strength, weaknesses, opportunities and threats of the same in the market;
- Some of the tasks carried out in his post are: market research, promotion and advertising, communication and public relations, direct marketing, advertising design, among others.

This post is and today more than ever will be indispensable to the maintenance as well as the growth of our company due to the continuous increase of competitiveness in our branch. It is vitally important that our business, image, products, as well as the effectiveness of coverage and distribution of the products in our company that we handle are properly aligned and work always in praise more optimal conditions for the best presence in the market and most importantly, meet the needs of our customers.

The Petitioner provided an organizational chart of its current employees in the United States, showing seven employees in addition to the beneficiary, which include the Owner, Manager, Operations, Local Sales, Foreign Sales, Operator and Operational Packaging. The chart indicated that the Beneficiary is employed in a "Marketing & Administration" position, will report to the Owner and supervise the individuals filling the positions of Local Sales and Foreign Sales.

After reviewing the submitted documentation, the Director issued an RFE, advising the Petitioner that the initial evidence did not establish that the beneficiary would be employed in a qualifying managerial or executive capacity. The director requested additional information regarding the Beneficiary's proposed duties, such as a letter from the Petitioner describing her expected managerial or executive duties and the percentage of time she would allocate to each duty.

In response, the Petitioner submitted a letter reiterating the previously described duties but did not respond to the request for the percentage of time spent on each duty. The Petitioner also added:

[The Petitioner] has big plans to expand our business and create more jobs, more revenue, more products, but we need a person who can work the market and sales aspect of our business to make sure that our company is well known and have business proper. [The Beneficiary] has been handling the business for the parent company in Mexico. Her duties in the US company will be like those in Mexico are to promote the business and make sure that sales are increasing and our business stays on top of their game.

With the RFE response, the Petitioner provided a revised organizational chart that showed a change of ownership of the company, provided an amended job title for the beneficiary, "Graphic Design, Sales, & Marketing," and showed that the Beneficiary would now supervise the position of "Operations." There are lines indicating that the Beneficiary reports to the "Owner/President" and that the "Operations" position reports to the beneficiary, but it is unclear as to the reporting structure for the remaining five employees.

The Director denied the petition, concluding that the Petitioner did not establish that the beneficiary will be employed in a qualifying managerial or executive capacity. The director found that the Petitioner described the beneficiary's proposed duties in overly broad and non-specific terms and that, given the size and nature of the business; it is more likely than not that the beneficiary would all perform the tasks necessary to the operation of the business. In this regard, the director observed that the Petitioner had not established that it has employees to perform the day-to-day tasks of the company.

2. Analysis

Upon review, and for the reasons discussed herein, the Petitioner has not established that the beneficiary would be employed in a qualifying managerial capacity. The Petitioner does not assert that the Beneficiary will be performing in an executive capacity.

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 definitions of executive and managerial capacity 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 prove that the beneficiary *primarily* performs these specified responsibilities and does 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 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).

Here, the Petitioner initially provided a list of the Beneficiary's job duties as "[d]esign, plan design and implement marketing plans of the company;" "[c]oordinate and control the release of publicity and promotional campaigns;" "[s]upport to the sales area in terms of strategies, policies, channels, advertising, merchandising;" and "[m]ake commercial research of existing products or new, carrying

out the study of strength, weaknesses, opportunities and threats of the same in the market.” In the RFE response, the Petitioner emphasized that the Beneficiary would “promote the business and make sure that sales are increasing and our business stays on top of their game.” Based on this description, it is reasonable to conclude that the beneficiary would spend her time involved in performing non-qualifying market research, sales, and advertising activities. The Petitioner did not explain how these duties and broad business objectives fall within the statutory definitions of managerial capacity. The Petitioner’s statements reflect that the beneficiary would perform these duties herself, rather than assigning them to the company’s employees.

The Petitioner also indicated that the Beneficiary’s responsibilities would include “[d]irect[ing] and supervis[ing] studies on hedges, quotas, and distribution; planning and directing the company’s policy in regard to products, prices, promotions and distribution;” and “[d]esign[ing] plans for short, medium and long term, by determining the priorities and strategies of the products of the company.” While such tasks may generally fall within the statutory definition of managerial capacity, the Petitioner did not indicate that these would be her primary duties, nor did it explain how non-qualifying duties associated with implementing these goals would be performed by the Petitioner’s other employees. Despite specific requests from the Director for additional specificity, these responsibilities were described in vague terms with no accompanying breakdown of the percentage of time spent of each duty, leaving us unable to determine the true nature of the proffered position.

In the instant matter, the description of the beneficiary's proposed position is insufficient to show that the beneficiary will primarily perform qualifying duties at the U.S. company. The Petitioner did not demonstrate what proportion of the beneficiary's duties would consist of managerial duties and what proportion would consist of non-managerial duties. 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's description of the proposed duties does not provide any detail or explanation of the Beneficiary's claimed managerial activities in the course of her 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 (2nd Cir. 1990). In response to the RFE, the Petitioner reiterated the previously provided duties but did not provide any additional specificity. 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.* at 1108. Absent a clear and credible breakdown of the time spent by the beneficiary performing her/his duties, we cannot determine what proportion of those duties would be managerial or executive, nor can we deduce whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Therefore, the Petitioner has not shown how the beneficiary’s duties would be primarily managerial in nature.

Additionally, the Petitioner has not established that the Beneficiary would perform as a personnel manager. Although the Beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the Petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the Beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

The organizational chart submitted with the initial position indicates that the Beneficiary will supervise two employees filling the Local Sales and Foreign Sales positions. In response to the RFE, the Petitioner indicated that the Beneficiary would only be supervising one individual filling the Operations position. The Petitioner has not provided evidence, such as descriptions of job duties and requirements, which would indicate that these positions are professional, managerial or supervisory in nature. The Petitioner also has not demonstrated that the Beneficiary's duties would primarily be more than those of a first-line supervisor. Therefore, it is evident that the Beneficiary will not be employed as a personnel manager, as defined by the regulations.

On appeal, the Petitioner asserts that the director failed to review the totality of the evidence submitted and instead based her determination on the size of the company and the number of employees in the United States. The Petitioner must establish that it does in fact employ the claimed individuals such that the Beneficiary is relieved from performing non-qualifying duties. Without such documentation or explanation, we cannot determine the true size of the U.S. entity nor can we ascertain the entity's organizational structure or the Beneficiary's place in it.

Furthermore, the record contains material inconsistencies regarding the number of employees in the U.S. company. As discussed above, the Petitioner claimed to have 10 employees on Form I-129. The Petitioner further submitted copies of its Employers Quarterly Reports filed with the Texas Workforce Commission's Unemployment Tax Services for October 2013 to June 2014 reflecting total wages paid to three to four employees ranging from \$8,966 to \$10,274 each quarter. The Petitioner also submitted copies of IRS Form 941, Employers Quarterly Federal Tax Returns from January 2014 to September 2014 reflecting total wages paid to three to four employees ranging from \$8,238.88 to \$10,274.00 each quarter. These reports reflect that the Petitioner had between three and four employees during this time period, while the organizational charts show seven individuals employed, in addition to the beneficiary. In addition, the petitioner submitted copies of payroll records reflecting monthly wages paid ranging from \$2,720 to \$3,970 to two to three employees from December 2013 to May 2014. The Petitioner has not provided an explanation for these discrepancies. 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). Additionally, the wages paid to the employees do not reflect fulltime employment such that the Beneficiary would be relieved of performing non-qualifying duties.

The Petitioner also states on appeal that “[t]he evidence previously provided overwhelmingly supports the conclusions that the Beneficiary meets all of these criteria and, therefore, can easily be deemed a functional manager.” The Petitioner further asserts that the marketing function managed by the Beneficiary represents a “significant portion of the Petitioner’s business” and therefore the function being managed is inherent and indispensable to the Petitioner’s operations.

The term “function manager” applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an “essential function” within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term “essential function” is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a detailed description of the beneficiary’s duties that explains how he manages the function, identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary’s daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner’s description of the beneficiary’s daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); see also *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm’r 1988)).

The Petitioner has not provided evidence that the Beneficiary manages an essential function. The petitioner appears to assert that the Beneficiary’s authority to oversee the Petitioner’s marketing activities and functions is tantamount to managing an essential function, but does not attempt to define the beneficiary’s specific duties, articulate the essential function she manages, or establish the amount of time the beneficiary allocates to managing an essential function. Rather, the Petitioner’s claim that the Beneficiary “manages a huge marketing function representing a significant portion of the Petitioner’s business” is unsupported by the record, as discussed above. For these reasons, the Petitioner has not established that the Beneficiary will be employed as a function manager.

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 understanding of a beneficiary’s actual proposed duties and role in a business. Here, the totality of the evidence does not support the

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Petitioner's claims that the beneficiary will be employed in a qualifying function manager or personnel manager capacity.

For the foregoing reasons, the Petitioner has not established that the beneficiary will be employed in a qualifying managerial capacity. Accordingly, for this reason alone the appeal will be dismissed.

B. Manager or Executive Capacity (Abroad)

1. Facts

In the Form I-129, the Petitioner stated that the Beneficiary had been working for [REDACTED] since November 1, 2012 in a post specializing in marketing and advertising. The Petitioner stated that the Beneficiary's duties abroad were the same as the duties described for the offered U.S. position, as detailed in the previous section.

The Petitioner also provided an organizational chart of its employees abroad, showing the Beneficiary in the position of "Mercadotecnia Y Publicidad," no translation was provided. The chart shows that the Beneficiary reports to the company's president and does not have any subordinate employees.

After reviewing the submitted documentation, the Director issued an RFE, advising the Petitioner that the initial evidence did not establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. The director requested additional information regarding the Beneficiary's duties abroad, such as a letter from the Petitioner describing her managerial or executive duties and the percentage of time she allocated to each duty, but the Petitioner did not provide this information.

2. Analysis

Upon review, and for the reasons discussed herein, the Petitioner has not established that the beneficiary was employed in a qualifying managerial capacity abroad for at least one year in the three years preceding her application for admission. The Petitioner does not assert that the Beneficiary's employment abroad would qualify as specialty knowledge; therefore, we will restrict our analysis to whether or not the Beneficiary was employed abroad in a managerial capacity.

The Petitioner states that the Beneficiary's duties abroad are identical to those ascribed to the proffered U.S. position. As noted, we find that the Petitioner has not established that these duties are managerial in nature. Therefore, we incorporate the previous discussion concerning the deficiencies present in the record regarding the description of the Beneficiary's duties. As such, the evidence in the record does not support the Petitioner's assertion that the Beneficiary was employed abroad in a qualifying managerial capacity.

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III. BEYOND THE DIRECTOR'S DECISION

Beyond the Director's decision, we find that the Petitioner has not 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. 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 record contains numerous inconsistencies regarding both the foreign employer and U.S. employer. Specifically, on the Form I-129 L Classification Supplement the Petitioner states that it is a subsidiary of [REDACTED] located in Mexico. However, as the Director noted in the RFE, the documents submitted indicate that the foreign entity operates as [REDACTED] and the letters submitted in response to the RFE state that [REDACTED] is the sole owner of a business named [REDACTED]. Also, the letter from the foreign entity describing the Beneficiary's duties does not contain a business name but is written under the cover of [REDACTED]. The Petitioner has not provided any statement or evidence to explain these inconsistencies or to establish the legal identity of the foreign employer or its relationship to the Petitioner. 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).

Furthermore, the Petitioner is registered as a limited liability company (LLC) in the state of Texas, but it filed its 2013 taxes as a general partnership and submitted a copy of its Articles of Incorporation (an LLC would have article of organization), leaving us unable to determine the actual structure of the company. The ownership of the U.S entity is also in question. The 2013 IRS Form 1065 show that the Petitioner is 70% owned by [REDACTED] and 30% owned by [REDACTED] while the Articles of Incorporation dated May 26, 2014 state that [REDACTED] [sic] [REDACTED] owns 100% of the company's shares, and the new Articles of Incorporation submitted in response to the RFE show that [REDACTED] owns 100% of the company shares, as of December 2, 2014.² Assuming that [REDACTED] 100% ownership of the foreign company and his 100% ownership of the Petitioner was found to be sufficient to establish a qualifying relationship between the employer abroad and the Petitioner, the Petitioner must show that this relationship existed at the time of filing. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

² The Petitioner did not submit evidence of the financial transaction transferring ownership of the company from [REDACTED] to [REDACTED]

Also, even if the grounds of ineligibility identified by the director were overcome on appeal, the petition could still not be approved due to the wage offered to the beneficiary. We note that the Petitioner states on the Form I-129 that it will pay the Beneficiary \$15,000 per year for a fulltime position of 40 hours per week. This calculates to \$7.21 per hour. We take administrative notice that the federal minimum wage has remained at \$7.25 per hour since July 24, 2009. *See* 29 U.S.C. § 206(a)(1)(C); *see also* <http://www.dol.gov/whd/minimumwage.htm> (last accessed October 9, 2015). The state of Texas imposes the same minimum wage standards. If the petitioner's offer of employment proves to be \$7.21 per hour, as represented on the Form I-129, the salary would violate the minimum wage protections and the offer of employment would be invalid under the Fair Labor Standards Act of 1938 (FLSA). To avoid a potential conflict with the FLSA in this matter, any approval of employment authorization under the Act must be conditioned upon sufficient evidence that the nonimmigrant worker will be paid a wage that meets the minimum required wage under state or federal law, whichever is higher. *See* 29 U.S.C. § 218(a). The expressed policy of the FLSA is to eliminate labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers, including that which constitutes an unfair method of competition in commerce. *See* Fair Labor Standards Act of 1938, § 2(b), 52 Stat. 1060 (June 25, 1938), *codified as amended at* 29 U.S.C. § 202. Such detrimental working conditions include the payment of a wage below that set by the FLSA as the minimum wage. *See* FLSA at § 6, 29 U.S.C. § 206. The Petitioner must remedy this issue in any future filings.

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*, 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

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of R-P- LLC*, ID# 14091 (AAO Oct. 16, 2015)