



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

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

MATTER OF RDMS- CORP.

DATE: JAN. 14, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a software development company, seeks to temporarily employ the Beneficiary as the CEO/manager of its new office under the L-1A nonimmigrant intracompany transferee classification. 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 petition. The matter is now before us on appeal. The appeal will be dismissed.

I. ISSUE

The issue before us is whether the evidence of record establishes that the Beneficiary will be employed in a qualifying managerial or executive capacity in accordance with the applicable statutory and regulatory provisions.¹

II. 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.

¹ We conduct *de novo* review of all issues involving the application of law, policy, and discretion to the facts of a case.

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

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

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive 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.

III. EMPLOYMENT IN A QUALIFYING MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the evidence of record did not establish that the Beneficiary would be employed in a qualifying managerial or executive capacity within one year of the approval of the petition.

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.

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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.

A. Facts

The Petitioner filed the Form I-129 on December 23, 2014. The Petitioner stated in a support letter provided with the petition that it is an affiliate of the Beneficiary's foreign employer, [REDACTED] which it described as "a [REDACTED] partner with many years of IT experience in Argentina." The Petitioner explained that the Beneficiary will be transferred to establish a new office in the United States as its chief executive officer and manager, noting that the role "is considered to be an executive position."

The Petitioner stated that the Beneficiary will be responsible for managing "business opportunities with potential and actual clients" and proposing "Software Solutions to prospective clients, to be developed by our team in [REDACTED]" The Petitioner stated that the Beneficiary will meet with supervisors employed by potential clients "to understand the business needs, and elicit the requirements that satisfy those needs." The Petitioner noted that the Beneficiary will liaise "with the team in [REDACTED] finding a solution and alternatives using proprietary [REDACTED] and making proposals to the client" taking into account the client's needs, timeframe, budget, and technical infrastructure.

Further, the Petitioner stated that the Beneficiary would perform the following "managerial" duties following the client's acceptance of a proposal:

- Together with the assigned Project Manager, define the backlog of tasks/features to be developed during the project.
- Together with the assigned Project Manager, define the practices and tailoring to the [REDACTED] to be applied in during the project.
- Oversee that the team members (Project Manager, Developers, etc.) are following the processes and practices agreed during the tailoring phase (Execution), assuring that the [REDACTED] is followed and adapted accordingly
- Actively participate in planning and executing follow-up meetings with the Project Manager during each sprint (Execution)
- At the end of the project, manage the Project Post-mortem meeting, detect improvement opportunities (Closure)

The Petitioner indicated that the Beneficiary "has a combination of managerial and technical skills that make him unique within the company and make him the optimal choice for CEO/Manager of the new office." The Petitioner explained that the Beneficiary's background allows him to "detect business needs," "validate approaches and solutions," and "brainstorm solutions."

The Petitioner submitted a 2013 profit and loss statement reflecting that it had generated \$387,658.90 since its establishment in May 2013. Likewise, it provided a business plan reflecting that the Petitioner had generated this level of income during 2013. However, the Petitioner also submitted a 2013 IRS Form 1120 U.S. Corporation Income Tax Return indicating that it had earned \$34,451 in revenue during that year.

Further, in the provided business plan the Petitioner stated that it was originally formed in 2013 and that “it acted as a broker for the operations of [the foreign employer] in the U.S.” The Petitioner stated that the Beneficiary’s focus would be to lead the company’s expansion in the United States. The Petitioner explained that its main activity would be customer software development, including “analysis, use interface and user experience design, architecture design, software development, testing, deployment and support.” The Petitioner indicated that one of its objectives is to “build a local operatives team” and develop “a local Sales and Marketing team.” The Petitioner stated that “it currently has 4 of the founders in sales related activities, 3 of which are purely focused on the American market,” and noted that its “intention is to continue in that direction.” The Petitioner explained that the Beneficiary as “Executive VP in North America” would “act as Business Developer and Account Manager for some special accounts,” and that he would be responsible for growing the U.S. team, which will initially be limited to employees in sales and marketing roles.

In addition, hiring plans in the business plan reflected that the Petitioner planned to hire two employees during the first year, specifically the Beneficiary as executive vice president and an “assistant.” Hiring plans for 2016 indicated that the Petitioner planned on hiring a marketing employee during that year. The Petitioner projected that it would earn \$1,050,000 during 2015 and stated that it would have a U.S. sales force of one person, the Beneficiary, during 2015 and 2016, and that it would add one salesperson in both 2017 and 2018.

The Director later issued a request for evidence (RFE) stating that the Petitioner had not provided sufficient evidence to establish that the Beneficiary would be “insulated” from day-to-day non-managerial duties. The Director emphasized that the Petitioner had not provided any information pertaining to its projected employees, such as their positions, duties, education levels or salaries, or an organizational chart. The Director further stated that the Petitioner’s description of the Beneficiary’s duties was overly vague. The Director requested that the Petitioner articulate the Beneficiary’s typical managerial duties and the decisions he would make in his capacity and/or his typical executive duties, or how he will direct the management and establish the goals and policies of the organization. The Director asked that the Petitioner provide an organizational chart showing its proposed staffing including job titles, duties, education levels and salaries for each proposed employee.

In response, the Petitioner stated that its organizational structure currently consisted of only the Beneficiary, but that it “would hire 2 additional employees who have already been interviewed.” The Petitioner stated that it was “surprised” that the previous evidence submitted was not adequate, asserting that it was “extremely detailed.” The Petitioner added that it is “currently engaged in providing installation, maintenance and servicing of the software developed in Argentina,” and that it would add “at least two individuals...upon the arrival of the Beneficiary...which will enable him

to be fully engaged in business activities on behalf of the entity.” The Petitioner stated that it would provide “long distance guidance, maintenance and servicing through independent contractors, or through remotely controlling these activities through Argentina.”

Furthermore, the Petitioner provided the following list of proposed duties for the Beneficiary:

- A. Manage sales team which will propose software solutions to prospective clients in the US. The software solutions are developed by a software team in Argentina and the goal is to increase sales. [The Beneficiary] will meet daily with the sales team to explain the available software solutions, suggest strategies to increase sales and manage the activities of the individuals who promote the company’s products. **10%**
- B. Must follow up the initial leads developed by the sales team and meet with executives of prospective customers to acquaint them with the corporations software solution and instill a degree of confidence and reliability in utilizing the company’s products and the company’s technical service staff. **10%**
- C. Liaise daily with the software development team in Argentina in order to discuss solutions and alternatives for American clientele. **20%**
- D. Hire, fire and manage all employees of the Corporation including determining salaries, bonuses, I was of employment and parameters of responsibility. **10%**
- E. Meet daily with The Project Manager assigned to a specific project in order to define the features of the project, the timetable for development, the installation and servicing of the product and determine fee schedules for ongoing projects as well as new projects. **20%**
- F. Oversee both the project managers, the developers and the installation personnel to ascertain that the terms and conditions of the contract are being appropriately applied and that all work orders are properly executed. **10%**
- G. At the end of the project, must manage postmortems with the project manager in order to detect improvement opportunities, and suggest procedures for enhancing the company’s profile and their level of service. **10%**
- H. Determine the budget for the US subsidiary and approve all contracts, and expenses. **10%**

In addition, the Petitioner stated that the Beneficiary would be “limited to strictly managerial functions with all non-managerial duties to be conducted by support staff.”

In denying the petition, the Director found that the Petitioner did not establish that the Beneficiary would primarily perform managerial or executive duties within one year, in part, because the record did not establish that the new office would have staff to relieve him from spending a significant amount of time on non-qualifying operational and administrative tasks. The Director stated that the Petitioner had not provided information or evidence pertaining to the Beneficiary’s proposed subordinates, including their position titles, duties, educations or salaries. The Director further observed that the Petitioner did not submit a clear organizational chart and that it provided a vague position description for the Beneficiary indicating that he would oversee subordinates not included

in its proposed organizational chart. Finally, the Director concluded that the Petitioner's hiring plans did not demonstrate that the Beneficiary would be supervising and controlling managers or professionals.

On appeal, the Petitioner contends that the Director failed to take into account that the Beneficiary is not allowed to engage in commercial activities in the United States until the petition is approved. As such, the Petitioner contends that the Director incorrectly focused on the Petitioner's current activity and staffing levels in determining that the Beneficiary is not employed in a qualifying managerial capacity. The Petitioner asserts that the foreign employer provides, and will provide, technical support and assistance to Beneficiary and the U.S. office in general.

The Petitioner further asserts that the Director acted in error by finding that the Beneficiary will be involved primarily in non-qualifying operational duties. The Petitioner stated that it will hire one to two employees during the first year and that the Beneficiary will manage these personnel and instruct them regarding the company's products. Further, the Petitioner explains that "it is evident that the beneficiary . . . directs and manage the companies [*sic*] financial and sales activities, establishes financial and budgetary plans and goals and reviews and monitors sales activities." The Petitioner states that the "one of the beneficiary's most important duties is to serve as the chief liaison with the parent company" and that this permits the Beneficiary "to exercise full authority over negotiations with customers and outside professional service providers, as well as hiring and firing employees." The Petitioner states that the Beneficiary will be "primarily responsible for directing and managing the US company's operations, with responsibility for implementing all operational goals and objectives."

Finally, the Petitioner asserts that it was a "blatant error to disregard the Beneficiary's management activities as a direct essential function." The Petitioner states that the Director failed to consider the Beneficiary's supervision of foreign company staff and his overall place within the greater international organization.

B. Analysis

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 in a qualifying managerial or executive capacity within one year.

When examining whether a beneficiary is employed in a managerial or executive capacity, 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. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Here, while the evidence reflects that the Beneficiary will be the senior employee in the United States with authority over its day-to-day operations, the record does not demonstrate that he would be primarily engaged in managerial or executive duties within one year.

The Petitioner has submitted duty descriptions indicating that the Beneficiary will more likely than not be primarily engaged in the performance of non-qualifying operational duties after one year. For instance, the Petitioner stated in support the petition that the Beneficiary will be engaged in various sales and support duties, including proposing new software solutions, eliciting requirements from customers, finding solutions for customers, defining software features, and being involved in each step of the service provision process from initial client contact to development of the software. In its business plan, the Petitioner stated that the Beneficiary will be involved in “sales related activities,” manage “special accounts,” and act as the only sales representative in the United States during the first two years of the company’s operation. Further, non-qualifying operational duties were also prevalent in the Beneficiary’s duty description submitted in response to the Director’s RFE. For example, the duties reflected that the Beneficiary would spend a significant amount his time following up on leads, acquainting customers to the company’s software solutions, liaising with the software development team in Argentina, working directly with project managers on customer solutions, managing project post mortems and detecting improvement opportunities while engaged with customer projects. The Petitioner also states that the Beneficiary will be involved in all contracts and the approval of all expenses, suggesting that he will delegate few activities to subordinates within the first year, other than some technical functions required for solutions development.

In sum, the Beneficiary’s duties suggest that he will primarily perform non-qualifying operational duties directly related to the direct provision of services to clients. An employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm’r 1988).

By contrast, the Petitioner does not clearly articulate the qualifying managerial duties the Beneficiary would perform after the company’s first year of operation. Indeed, the Petitioner indicates that the Beneficiary will oversee a sales team, project managers and developers that are not projected to be a part of its organizational structure during the first year. On appeal, the Petitioner states that “it is evident” that the Beneficiary will direct and manage the company’s financial and sales activities and its financial and budgetary plans. However, we do not concur that this is evident, without specific details as to the qualifying tasks the Beneficiary will perform by the end of the first year. 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. Conclusory assertions regarding the beneficiary’s employment capacity are not sufficient. 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).

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. The Petitioner has the burden to establish that the U.S. company would

realistically develop to the point where it would require the Beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. See generally, 8 C.F.R. § 214.2(l)(3)(v)(C).

In the RFE, the Director requested that the Petitioner submit a detailed organizational chart reflecting each projected employee, their position titles, duties, expected educations and their projected salaries. However, on appeal, the Petitioner submitted no such organizational chart or evidence relevant to the its projected hiring plans. In fact, the Petitioner's statements with respect to projected subordinates are vague and do not provide a sufficiently detailed picture of what the organization will look like after one year. The Petitioner indicated in the business plan that it would hire only an "assistant" during the first year of operation, and it does not detail the duties or expectations of this 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)).

Further, the Petitioner states in the Beneficiary's duty description submitted in response to the RFE that the Beneficiary will supervise a sales team, development team, and project managers. However, the Petitioner's hiring plans do not include these employees. On appeal, the Petitioner asserts that the Beneficiary oversees the aforementioned employees who work for the foreign employer. However, the Petitioner has not submitted any supporting evidence to corroborate that the Beneficiary will regularly oversee foreign employees while employed with the Petitioner in the United States. Further, the Petitioner has not identified any of these employees, provided duty descriptions for these positions, or submitted supporting documentation to indicate their existence and engagement by the Petitioner. The Petitioner also states that it has engaged, and will engage independent contractors to provide services to customers, but again, it submits no supporting documentation to substantiate this assertion. Likewise, the Petitioner indicates that it has interviewed two employees, but provides no evidence of these potential employees nor does it describe the roles in which they will be employed. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

As noted, the Petitioner's hiring plans indicate that the Petitioner will only hire one other employee during the first year, suggesting that the Beneficiary will be no more than a first-line supervisor after one year. 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). In short, the Petitioner has not demonstrated with sufficient evidence that the Beneficiary will oversee subordinates who are managers or professionals within one year.

On appeal, the Petitioner asserts that the Director acted in error when he concluded that it must establish that the Beneficiary is currently engaged primarily in qualifying tasks. We agree with this assessment. When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. 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. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). 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. Here, the Petitioner has submitted little supporting evidence to substantiate that the Beneficiary will be relieved from performing his stated non-qualifying operational tasks within the first year.

Furthermore, the Petitioner asserts on appeal that it was a “blatant error to disregard the Beneficiary’s management activities as a direct essential function.” In short, the Petitioner appears to suggest that the Beneficiary will act as a function manager. The term “function manager” applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an “essential function” within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term “essential function” is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary’s daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner’s description of the beneficiary’s daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm’r 1988).

In this matter, the Petitioner has not provided sufficient evidence to establish that the Beneficiary will manage an essential function within one year. Again, as previously explained, the Petitioner has submitted duty descriptions for the Beneficiary which suggest that he will primarily perform operational duties related directly to the sale and provision of services to clients. Although the Beneficiary’s performance of non-qualifying tasks during the first year does not make him ineligible, the Petitioner has neither articulated nor documented how the business will develop to the extent that the Beneficiary will be required to perform primarily managerial duties within one year. For instance, contrary to the very specific operational tasks it explains in the Beneficiary’s duty

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descriptions, it does not provide this same level of detail with respect to his qualifying managerial tasks. Therefore, the preponderance of the evidence does not indicate that the Beneficiary will be primarily managing an essential function of the organization, but that he will be mainly tasked with selling and delivering the Petitioner's services.

Finally, the Petitioner has not articulated its investment in the new office as required by the regulations. Section 8 C.F.R. § 214.2(l)(3)(v)(C)(2) states that the Petitioner must submit evidence to establish size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and commence doing business in the United States. In the current matter, the Petitioner has not described or documented its financial plans with respect to launching its new business in the United States.

For the reasons set forth above, the Petitioner has not demonstrated that the Beneficiary will be employed in a qualifying managerial or executive capacity within one year. Therefore, the appeal will be dismissed.

IV. BEYOND THE DIRECTOR'S DECISION

Beyond the decision of the Director, the Petitioner has not established that it has secured sufficient premises to house its new office as required by the regulations. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

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. Further, consistent with this requirement, the regulations directly state that the petitioner must demonstrate that it has secured sufficient premises to house the new operation and thereby immediately commence doing business. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

The Petitioner states that its office is located at [REDACTED] New York. However, the record does not include a copy of the Petitioner's lease agreement or other evidence to document that it has secured physical premises at this address. The Petitioner states in its business plan that it opened offices in [REDACTED] but there is no further information or evidence regarding the physical premises in the record. For this additional reason, the appeal will be dismissed.

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).

V. 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 RDMS- Corp.*, ID# 15337 (AAO Jan. 14, 2016)