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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

D 7



File: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUN 01 2005

IN RE: Petitioner:  
Beneficiary:



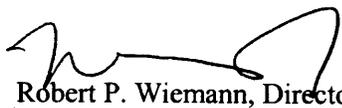
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its President as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Florida that operates a residential maid service. The petitioner claims that it is the subsidiary of [REDACTED], located in Southwold, United Kingdom. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that: (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity; (2) the petitioner and the foreign entity possess a qualifying relationship; and (3) the petitioner has been doing business for the previous year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that it has submitted sufficient evidence to establish eligibility for L-1A classification. In support of this assertion, the petitioner submits a brief, additional evidence, and previously submitted documents.

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.

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

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

The first issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

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.

In a letter submitted with the initial petition on October 28, 2003, the petitioner described the beneficiary's job duties as follows:

[The beneficiary's] continued duties as president and managing director of [the petitioner] will consist of day to day management and directing of all managers and staff members, establish [sic] all company policies, organize [sic] and implement all advertising campaigns, coordinate [sic], direct [sic], and implement [sic] all service programs associated with [the petitioner's] business. He will further develop relationships with community leaders to encourage the use of [the petitioner's] Residential Cleaning Company. He will also implement staff sales programs, cost effective advertising programs, manage and direct all customer contracts, [and] develop a cost effective and productive program for planned growth of [the petitioner.]

The petitioner stated that it employed one manager and four cleaning technicians in addition to the beneficiary.

On November 1, 2003, the director requested additional evidence. In part, the director instructed the petitioner as follows:

- [Submit a] definitive statement describing the U.S. employment of the beneficiary, including:
- Position Title
  - List all duties
  - Percentage of time spent on each duty.
  - Number of subordinate managers/supervisors or other employees who report directly to the beneficiary.

- A brief description of their job titles and duties; give their educational background; if the beneficiary does not supervise other employees, specify what essential function within the organization he manages.
- Specific dates his employment began and ended in each position with your company.
- Indicate the qualifications required for the position.
- Indicate the level of authority held by the beneficiary
- Indicate whether or not the beneficiary functions at a senior level within the corporation.
- Specify his position within the organizational hierarchy.
- Indicates who provides the product sales/service or produces the product of the business.

\* \* \*

Submit copies of [the petitioner's] . . . State, Employer's Quarterly Tax Returns for the year of 2002 and 2003.

Submit copies of Quarterly Wage Reports for all employees from 2002 to present.

In a response dated January 2, 2004, in part the petitioner submitted a letter discussing the beneficiary's duties as follows:

[The beneficiary] has been the Managing director of [the petitioner] . . . since March of 2003. His duties have been managerial in nature and in direct relation to executive control of the company, including: Supervising all managers, making all executive decisions, establishing budgets, formulating contracts.

\* \* \*

- 1) Executive Director in charge of managers and overall authority of company decisions.
- 2) Established Budgets, Company Policies, and operational procedures of company.
- 3) In charge of day to day progress of company endeavors
- 4) Created and Implemented company procedures for managers to follow
- 5) Interviewing, recruiting and hiring of managers and staff members
- 6) Creating and initiating company promotional strategies

\* \* \*

US Duties

- |    |                                     |     |
|----|-------------------------------------|-----|
| 1) | Management of Directors             | 60% |
| 2) | Establishment Policies & Procedures | 10% |
| 3) | Day to Day operations               | 20% |



4) Contract & Development Negotiation 10%

In a separate document, the petitioner further provided that the beneficiary's duties include "[e]nsuring that all required permits and licenses are acquired and in place for legal business operations" and "[e]nsuring that all health and safety regulations are implemented and adhered to." The petitioner stated that the beneficiary will be responsible for "[e]xpanding the size and scope of the [petitioner's] existing markets and product lines" and "[r]epresenting the [petitioner] at trade fairs and exhibitions." The petitioner provided that the beneficiary will "[position] the [petitioner's] products in the local market" and "[research] and [implement] all future business opportunities."

The petitioner described its staffing as follows:

[T]here is 1 operations manager and 4 supervisors who report directly to the beneficiary . . . .

\* \* \*



Operation Manager – Reviews all contracts, advises on all matters of importance, screens all potential problems with customers and staff members, directs staff in order to carry out all tasks relating to operation of business.



Cleaning Supervisor – in charge of geographical cleaning region.



Quality Control Supervisor – In charge of managing and reviewing all aspects of work performed by employees to insure [sic] quality service.



Cleaning Supervisor – In charge of geographical cleaning region.



Cleaning supervisor in charge of geographical cleaning region.

On January 26, 2004, the director denied the petition. The director determined that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Specifically, the director observed that, though the petitioner lists four of its employees as full-time supervisors, the petitioner's payroll documentation reflects that they work part-time and do not supervise any other employees. The director stated that the beneficiary is a first-line supervisor and does not supervise professionals.

On appeal, the petitioner asserts that the beneficiary will be employed in a primarily managerial capacity. The petitioner submits a job description for the beneficiary that repeats previously submitted information. The petitioner also provides additional explanation of the beneficiary's subordinate employees.

Upon review, the petitioner's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be

performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity.

In the instant case, in the initial petition the petitioner indicated that the beneficiary will be primarily engaged with executive duties. In response to the director's request for evidence, the petitioner stated that the beneficiary will be managerial with executive control over the petitioner's operations. On appeal the petitioner again provides that the beneficiary will be a managerial employee. To sustain an assertion that the beneficiary will be employed in both a managerial and executive capacity, the petitioner must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive duties under section 101(a)(44)(B) of the Act, and the statutory definition for managerial duties under section 101(a)(44)(A) of the Act. At a minimum, the petitioner must establish that the beneficiary is primarily employed in one or the other capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

The beneficiary's job description does not establish that he will be employed in a primarily managerial or executive capacity. Many of the beneficiary's duties are non-qualifying administrative tasks. For example, the petitioner states that the beneficiary will "organize and implement all advertising campaigns." As none of the beneficiary's claimed subordinates are charged with the non-qualifying duties associated with advertising such as creating advertisements and contacting advertising sources, it is assumed that the beneficiary performs these tasks. The petitioner provides that the beneficiary will "manage and direct all customer contracts," and he will be responsible for "[e]xpanding the size and scope of the [petitioner's] existing markets." However, as none of the beneficiary's subordinates are responsible for sales activities, these appear to be a non-qualifying sales functions directly performed by the beneficiary. The petitioner indicated that the beneficiary will represent the company at trade fairs and exhibitions, yet this is a non-qualifying sales task.

The petitioner submitted a breakdown of the percentage of time that the beneficiary will devote to four categories of duties. However, the categories are broadly defined, providing little insight into the true nature of the tasks the beneficiary will perform in the United States. 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. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.*

The petitioner asserts that the beneficiary will spend 60 percent of his time on the "[m]anagement of Directors." The petitioner claims that it employs five individuals who report to the beneficiary, including an operations manager, a quality control supervisor, and three cleaning supervisors. However, the petitioner has failed to establish that any of the beneficiary's subordinates are in fact managers or supervisors, such that he manages "[d]irectors."

The petitioner operates a residential maid service. Thus, it is evident that the reasonable needs of the petitioner require its employees to provide cleaning in customers' homes. Yet, all of the petitioner's employees have managerial or supervisory titles. The petitioner describes the duties of its cleaning supervisors as "[i]n charge of geographical cleaning region." However, the petitioner's business needs reflect

that these employees are actually functioning as residential maids with no supervisory responsibility. The petitioner's organizational chart confirms that no employees report to these individuals. The fact that the petitioner represents that its maids are supervisors calls into question the veracity of the job descriptions for the remaining employees, including the beneficiary. 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).

The petitioner claims that it employs a quality control supervisor who is "[i]n charge of managing and reviewing all aspects of work performed by employees to insure [sic] quality service." Yet, the petitioner's organizational chart shows that no employees report to this individual. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner fails to explain how this individual exercises supervisory authority when no employees report to her.

The petitioner claims that it employs an operations manager with supervisory authority over the three cleaning supervisors and quality control supervisor. However, a close examination of the compensation paid to the beneficiary's five subordinates, including the alleged operations manager, reveals that they are all part-time employees earning \$5.15 per hour plus a small commission. The fact that all of the subordinates are compensated at the same rate suggests that they are all performing the same or similar duties. In addition, the petitioner's payroll records classify all five employees as "laborer-unskilled" and identify their job titles as "residential cleaning." While the petitioner claims that the duties of the operations manager require "over 10 years of experience directing and supervising staff members," it is unlikely that the petitioner would compensate such an experienced supervisor at the same rate as maids working under her control. Thus, the petitioner's documentation suggests that, rather than performing the duties of a supervisor or manager, the operations manager is in fact providing cleaning services as a residential maid. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The fact that the petitioner has misrepresented the duties of its maids further supports that the job description of the operational manager is not a true account of her duties.

Further, it is noted that the petitioner initially described its four "supervisors" as "cleaning technicians" in the letter submitted with the initial petition. Therefore, it appears the petitioner exaggerated the employees' job titles and duties in response to the director's request for evidence. Yet, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position.

The evidence of record reflects that the beneficiary is actually serving as a first-line supervisor over five residential maids. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). As the petitioner's residential maids have not been shown to be supervisory, professional, or managerial employees, the time the beneficiary invests in supervising them is not deemed time acting in a managerial or executive capacity. *See* § 101(a)(44)(A)(ii) of the Act. The petitioner indicates that the beneficiary invests 60 percent of his time supervising his subordinates, thus the majority of his time is devoted to non-qualifying tasks.

The record is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner indicates that it plans to hire additional employees in the future. However, 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. 1978). Furthermore, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not established that it has reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(ii). For this reason, the appeal will be dismissed.

The second issue in the present proceeding is whether the petitioner has submitted sufficient evidence to show that it has a qualifying relationship with the foreign entity. *See* 8 C.F.R. § 214.2(l)(14)(ii)(A).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
  - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
  - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
  - (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

- (H) *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.
- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) *Affiliate* means
  - (I) One of two subsidiaries both of which are owned and controlled by the same parent or individual . . . .

In the initial petition, the petitioner indicated that it is the subsidiary of the beneficiary's foreign employer. The petitioner reported that it and the foreign entity are both owned by the same individual. In the request for evidence, the director instructed the petitioner to submit additional documentary evidence of the current ownership and control of the petitioner and foreign entity, such as stock certificates, copies of corporate bylaws or constitutions that clearly indicate stock ownership, or copies of published annual reports that reveal affiliates and subsidiaries. The director further requested a copy of the petitioner's franchise agreement for its maid service. The petitioner provided additional evidence as requested.

In denying the petition, the director found that the petitioner did not establish that it and the foreign entity possess a qualifying relationship. The director stated that the petitioner is operating its maid service under a franchise agreement which cedes ultimate control over its business activity to the franchisor, and thus the petitioner's claimed stock holder does not have full control over the entity. As such, the director determined that the petitioner "does not and cannot meet the definition in the regulations as a qualifying relationship."

On appeal, the petitioner asserts that the franchise agreement does not limit its control over its operations, and that the single stockholder owns and controls the petitioner and the foreign entity.

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

possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In the instant matter, the evidence of record shows that the petitioner purchased a [REDACTED] franchise on March 17, 2003. The purchase agreement provides that the national franchisor will provide training and good will for the benefit of the petitioner's residential cleaning business. However, the agreement does not limit the petitioner's ultimate decision-making authority and control over its operations. As stated above, the director found that the national franchisor holds actual control of the petitioner due to the franchise agreement, and that the petitioner is merely acting as an agent of the franchisor. The director's analysis on this issue will be withdrawn.

The petitioner has otherwise submitted sufficient evidence to establish that it has a qualifying relationship with the foreign entity due to common ownership and control by the same individual. It is noted that, on Form I-129, the petitioner indicated that it is a subsidiary of the foreign entity. Yet, the petitioner submitted evidence to support that a single individual owns and controls the petitioner due to owning a majority of the petitioner's stock. Accordingly, the petitioner is not a subsidiary of the foreign entity. Yet, as the same individual owns and controls the foreign entity, the petitioner and the foreign entity are affiliates due to being "owned and controlled by the same . . . individual." 8 C.F.R. § 214.2(l)(1)(ii)(L)(I). As the petitioner has shown that it has a qualifying relationship with the foreign entity, the director's finding in this issue will be withdrawn.

The third issue in the present proceeding is whether the petitioner has established that it has been doing business for the previous year, as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulation at 8 C.F.R. § 214.2(l)(ii)(H) defines the term "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner submitted evidence of its business activity with the initial petition, including bank statements and invoices issued to it for the purchase of supplies and services.

In his request for evidence, the director instructed the petitioner to "[s]ubmit evidence of the business conducted by the petitioner during the past year, such as sales contracts, invoices, bills of lading, shipping receipts, [and] orders." In response, the petitioner resubmitted the documents that it provided with the initial filing.

In denying the petition, the director found that the petitioner failed to show that it has been doing business for the previous year. The director noted that the petitioner failed to submit additional evidence of its business activity as requested.

On appeal, the petitioner now submits invoices that it issued to its customers for services rendered. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted its invoices to customers to be considered, it should have submitted them in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the invoices submitted on appeal.

While the petitioner has provided evidence that it maintains employees and has purchased a franchise and supplies, it has failed to provide sufficient documentation that it is in fact engaged in "the regular, systematic, and continuous *provision* of goods and/or services." 8 C.F.R. § 214.2(l)(ii)(H)(Emphasis added). The petitioner has provided no clear documentation of the sources of its income, or direct evidence to show that it has been providing services to clients. Furthermore, the petitioner is expected to submit evidence that it has been doing business since the date of approval of the initial petition in November 2002. On appeal, the petitioner claims that it has been conducting business only since April 1, 2003. Thus, the petitioner failed to respond to the director's request for evidence, and failed to show that it has been doing business for the previous year. *See* 8 C.F.R. § 103.2(b)(14); 8 C.F.R. § 214.2(l)(14)(ii)(B). For these additional reasons, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The director's decision will be withdrawn in part, and the petition will be denied.

**ORDER:** The appeal is dismissed.