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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

File: [Redacted] Office: VERMONT SERVICE CENTER

Date: MAR 15 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

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, Vermont 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 Commonwealth of Virginia that claims to be engaged in the import/export and international trade of steel, commodities, industrial raw materials, and industrial products. The petitioner claims that it is the subsidiary of [REDACTED]. [REDACTED] 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: (1) that the United States entity had a qualifying relationship with the foreign entity; (2) that the beneficiary was continuously employed by a related foreign entity for one year within the three years preceding the time of his application for admission into the United States; and (3) that the beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition.

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, counsel for the petitioner disputes the director's findings and asserts that the petitioner submitted sufficient information to establish a qualifying relationship between the foreign entity and the petitioner. Counsel also asserts that the beneficiary will serve in a managerial or executive capacity, and notes that the petitioner intends to hire additional staff in the future. In support of these assertions, the petitioner submits additional evidence.

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 petitioner has established that the United States entity has a qualifying relationship with a foreign entity.

On Form I-129, the petitioner indicated that the United States entity is a wholly-owned subsidiary of the beneficiary's former Pakistani employer. The petitioner's articles of incorporation indicate that the United States entity is authorized to issue 1,000 shares of stock, and the petitioner submitted its stock certificate indicating that 1,000 shares were issued to the foreign entity. The record establishes that the beneficiary is the sole proprietor of the foreign entity.

On January 29, 2004, the director requested additional evidence, included copies of wire transfers to document the transfer of funds to and from the foreign entity since December 1, 2003. The director also requested that the petitioner submit its 2002 and 2003 Forms 1120, U.S. Corporation Income Tax Return, with all schedules and attachments, or its audited financial statements for the same period.

In response, the petitioner submitted copies of its 2002 and 2003 U.S. Corporation Income Tax Returns. As noted by the director, Schedules E and K indicate that 100 percent of the petitioner's stock is owned by the beneficiary, rather than by the foreign entity. The director concluded that, in light of the discrepancy in the record, it is not apparent who in fact owns the U.S. entity. Therefore, the director determined that the petitioner had not established a qualifying relationship with the claimed foreign parent company.

On appeal, counsel asserts that the beneficiary clearly owns and controls the foreign entity as its sole proprietor, and that his ownership of the foreign entity, which in turn owns 100 percent of the petitioner's stock, "falls squarely within the definition of a subsidiary as set forth in the regulations."

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) defines "qualifying organization" as 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.

Further, the regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides, in pertinent part, the following definitions to be used in determining whether a qualifying relationship exists between two entities:

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

* * *
- (K) *Subsidiary* means a firm, corporation or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity [.]
- (L) *Affiliate* means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual[.]

Upon review of the petition and the evidence on record, the petitioner has not established a qualifying relationship between the United States entity and the foreign entity. Although the petitioner has submitted de minimis evidence of the claimed foreign ownership, the petitioner has not submitted evidence to establish that the petitioner continues to maintain a qualifying relationship with the overseas entity. 8 C.F.R. § 214.2(l)(14)(ii)(A). Specifically, the director requested evidence of the funds transfers or transactions with the foreign company. The petitioner submitted two wire transfer statements for funds received from unrelated parties, but failed to demonstrate that it had any transactions with the foreign entity since the date that the

beneficiary entered the United States as a nonimmigrant. Although the petitioner could have explained the lack of evidence and submitted alternate evidence, the petitioner failed to submit an explanation. A 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).

It is further noted that the petitioner has not submitted any evidence to establish that the foreign sole proprietorship continues to do business, as required at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *Matter of United Investment Group*, 19 I&N Dec. 248 (Comm. 1984). A sole proprietorship is a business in which one person owns all of the assets and operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Edition). As the beneficiary claims to be the owner and sole proprietor of the foreign business, the presence of the beneficiary in the United States raises the question of whether the foreign business continues to do business abroad. The lack of current evidence leads the AAO to conclude that the foreign sole proprietorship is no longer doing business and therefore, no qualifying relationship exists.

The AAO acknowledges counsel's claim that the beneficiary is the sole proprietor of the foreign company, which in turn owns the United States entity, and that the director erred by finding that they companies do not have a qualifying relationship. The AAO concurs that such an ownership structure, if established by probative evidence, would indicate that the companies had an affiliate relationship at the time the United States entity was incorporated. However, as discussed above, the petitioner has not established that the two entities continued to have a qualifying relationship at the time the instant petition was filed, and therefore, the petition may not be approved.

In response to counsel's claim that the director erred in his reasoning with respect to the ownership and control of the two companies, the AAO notes for the record that the director's reliance on the ownership information contained in the petitioner's income tax return was misplaced in this case. The petitioner's stock certificate was issued in the name of the beneficiary's foreign sole proprietorship. Again, a sole proprietorship is a business in which one person operates the business in his or her personal capacity. *Id.* Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. at 248. Therefore, the fact that the petitioner's tax return shows the beneficiary's name, rather than the fictitious name of the beneficiary's sole proprietorship, as the sole owner of the United States entity does not present an inconsistency. However, such evidence is insufficient to establish a continuing qualifying relationship with the foreign entity.

The second issue cited by the director is whether the petitioner has established that the beneficiary was continuously employed for one year within the three years preceding the time of his application for admission into the United States by a firm or corporation or other legal entity, or an affiliate or subsidiary of the United States entity. The AAO notes that pursuant to the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A), the petitioner is required to submit evidence to establish that the United States and foreign entities are still qualifying organizations at the time the request for an extension of status is requested. The issue cited by the director refers to whether there was a qualifying relationship between the two organizations at the time the beneficiary was initially granted L-1A status and is based on the perceived inconsistency regarding the petitioner's ownership as reflected in the petitioner's U.S. income tax returns. As noted above, the petitioner has not made

inconsistent statements with respect to the ownership and control of the United States entity, nor did the director request additional documentation to establish the relationship between the two entities at the time of the beneficiary's transfer. The petitioner's failure to submit specific evidence that was never requested by the director cannot be used to discredit a petitioner's otherwise consistent claim. The AAO therefore finds insufficient documentation in the record to affirm or withdraw the director's decision on this issue.

The final issue in this matter is whether the petitioner has established that the beneficiary will be employed in a managerial or executive capacity under the extended 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.

In a November 28, 2003 letter appended to the initial petition, the petitioner described the beneficiary's job duties as follows:

The Director/President is primarily responsible for overseeing and developing importing and exporting business and representing manufactures [sic] and suppliers worldwide for the sale of machinery, industrial raw materials and a multitude of products. He will also be consulting with and recommending new marketing strategies to [the parent company]. In particular, the duties of the position include:

To manage, direct and conduct the business of [the petitioner];

To negotiate and sign contracts and binding agreements on behalf of [the petitioner];

To recommend and oversee the implementation of new systems, policies and strategies for [the petitioner];

To manufacture, construct, buy, sell, lease and deal in and with goods, wares, merchandise, personal property and real property of every kind and nature and description;

To perform services:

To engage in business of consulting and services in business;

To import and or export and offer for sale at retail or wholesale sale of . . .

To hold company for the purpose of making investment opportunities in other companies; [the beneficiary] also has board executive and managerial authority to conduct the business of said Corporation.

The petitioner indicated on Form I-129 it had two employees as of November 28, 2003. The petitioner's Virginia Employer's Quarterly Payroll Report indicates that the petitioner had two payroll employees, including the beneficiary, as of September 2003.

On January 9, 2004, the director requested additional evidence to establish that the beneficiary has been and will be employed in a primarily executive or managerial capacity in the United States firm. Specifically, the director requested: (1) a complete position description for the beneficiary and all current employees in the United States, including a breakdown of the number of hours devoted to each job duty on a weekly basis; (2) a copy of the petitioner's Form 941, Employer's Quarterly Tax Return, for the fourth quarter of 2003; (3) evidence of wages paid to any contractors whose services were utilized, along with a description of duties performed, if applicable; and (4) copies of fully executed Forms I-9 for all employees.

In response, the petitioner submitted a letter dated April 20, 2004, which included the following description of the beneficiary's duties:

[The beneficiary] manages, directs and conducts the businesses of [the petitioner]. He negotiates and sign[s] contracts and binding agreements on behalf of [the petitioner] and recommends and oversees the implementation of new systems, policies and strategies for [the petitioner]. He trains, hires, fires and supervises and sets personnel policy. He manages, administers, controls and plan[s] activities for the company and directs and divides duties according to the skills competences and functions of the staff. He has been authorized by the parent company to direct the overall operations of the subsidiary company. The duties of [the beneficiary] could be best described towards the research, development and finalization of major businesses related to the Steel, Machinery and Commodities which generate greater revenues for the company which is the most essential function of the entity. . . .

The petitioner indicated that its employees include the beneficiary, a vice president who is not active in the company, a marketing assistant and an office assistant. The petitioner provided the requested breakdown of time allocated to various job duties for the marketing assistant and the office assistant, but not for the beneficiary's position. The petitioner also submitted its Virginia Employer's Quarterly Tax Report and Form 941, Employer's Quarterly Federal Tax Return, for the fourth quarter of 2003, confirming employment of the beneficiary and the individuals identified as the marketing assistant and office assistant.

On June 29, 2004, the director denied the petition concluding that the petitioner had not established that the beneficiary is or would be predominantly engaged in executive or managerial duties. The director noted that the petitioner had provided only a vague description of the beneficiary's duties and had failed to provide an hourly breakdown of the duties performed by the beneficiary on a weekly basis. The director also noted that the documentation provided by the petitioner indicates the beneficiary is the company's sales contact for all business transactions. The director concluded that the beneficiary is primarily performing non-qualifying sales duties, and that the United States entity had not grown to a point where the services of a bona fide manager or executive would be required.

On appeal, counsel for the petitioner asserts that, as the manager of a new business, the beneficiary is "permitted to engage in the mundane tasks of creating the start up company." Counsel asserts the beneficiary will perform executive and managerial duties "during this upcoming year," including initiating business ventures and hiring additional personnel who will oversee contracts, contract performance, and the viability of upcoming ventures. Counsel states that the beneficiary has hired a full-time secretary and sales associate, and expects to hire a sales manager, assistant supervisor, products and marketing manager, accountant, office assistant and administrative personnel "during the coming year."

Upon review, counsel'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.*

On review, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the

beneficiary's duties include "managing, directing and conducting business," "representing manufacturers and suppliers," "overseeing implementation of systems, policies and strategies," "performing services," and "engaging the in the business of consulting and services in business," and "researching, developing and finalizing major business." The petitioner did not, however, define the clarify what types of consulting and "services" the beneficiary performs, define or describe the beneficiary's policies and strategies, or explain the specific day-to-day tasks entailed by "researching and developing" business or "representing" manufacturers and suppliers. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990)."

In the request for evidence, the director requested that the petitioner submit a comprehensive position description for the beneficiary, including a breakdown of the number of hours devoted to his job duties on a weekly basis. The petitioner failed to submit this information in response. This evidence is critical as it would have established whether the beneficiary is engaged predominantly in managerial or executive tasks. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying a petition. 8 C.F.R. § 103.2(b)(14).

In addition, as noted by the director, all of the sales contracts, correspondence and invoices provided as evidence of the petitioner's business activities indicate the beneficiary as the point of contact for these sales transactions. Thus, the AAO concurs with the director's conclusion that the beneficiary is actively involved in all of the routine activities required to generate sales contracts for the petitioner, including making inquiries to potential clients and suppliers, placing and following up orders, arranging shipping and logistics, providing customer service. Since the beneficiary actually markets and sells the petitioner's services, he is performing a task necessary to provide a service or product and these duties will not be considered managerial or executive in nature. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Although the petitioner employed two other individuals at the time of filing, the petitioner has not established that these employees would relieve the beneficiary from primarily providing the services of the organization. In addition, although the petitioner asserts that the beneficiary is managing two subordinate employees, the record does not establish that the subordinate staff is composed of supervisory, professional, or managerial employees. See section 101(a)(44)(A)(ii) of the Act. A first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

It is noted that, on appeal, counsel does not dispute the director's finding that the beneficiary has been engaged in mundane duties related to generating sales. Counsel merely states that the company is growing and the beneficiary expects to hire sales and marketing managers, an accountant, a supervisor, and other personnel during 2004 who will be responsible for locating and meeting with potential customers, making

shipping and transport arrangements, and making presentations to clients. Counsel's statement suggests that the beneficiary was performing many of these duties at the time the petition was filed. While the petitioner may indeed be growing and hiring additional personnel, 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).

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. The regulation at 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. In order to qualify for an extension of L-1 nonimmigrant classification under a petition involving a new office, the petitioner must demonstrate through evidence, such as a description of both the beneficiary's duties and the staff of the organization, that the beneficiary will be employed in a primarily managerial or executive capacity. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

The fact that an individual manages a small business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. The record does not establish that a majority of the beneficiary's duties have been or will be primarily directing the management of the organization. The record indicates that a preponderance of the beneficiary's duties have been and will be directly providing the services of the business. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel who relieve her from performing non-qualifying duties. The petitioner has not demonstrated that it has reached or will reach a level of organizational complexity wherein the hiring/firing of personnel, discretionary decision-making, and setting company goals and policies constitute significant components of the duties performed on a day-to-day basis. Nor does the record demonstrate that the beneficiary primarily manages an essential function of the organization or that he operates at a senior level within an organizational hierarchy. Based on the evidence furnished, it cannot be found that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this additional reason, the petition may not be approved.

Beyond the decision of the director, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. The term "doing business" is defined in the regulations as "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." 8 C.F.R. § 214.2(l)(1)(ii). 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 new office petition was approved for a one-year period commencing on December 3, 2003. The beneficiary received an L-1 visa on March 17, 2003, but did not enter the United States until almost two months later, on May 9, 2003. He made one additional short visit to the U.S. in May 2003, departed on June 3, and did not return again until September 9, 2003. The petitioner did not hire any additional employees until September 2003, and none of the documentation submitted as evidence of the petitioner's business transactions is dated prior to September 2003. Finally, the petitioner's Form 1120, U.S. Corporation Income Tax Return for 2003 reflects gross receipts of only \$12,272. The director noted these facts in her decision, but nonetheless did not enter a determination that the petitioner was not doing business for the year preceding the filing of the instant petition.

On appeal, counsel for the petitioner explains the reasons for the beneficiary's delayed entry to the United States and subsequent three-month absence, noting that the beneficiary and his family experienced delays in visa issuance. Counsel also states in his brief that "[the beneficiary] could not enter with his family to the United States until September 9, 2003. At that date, [the beneficiary] commenced his operations as the manager of [the petitioner] in the United States." Counsel later states "[the beneficiary] set up the office in May 2003 commenced to operate the office on that date. Because [the petitioner] is an import/export trading company, it is rational for [the beneficiary] to travel and not return to the United States until September 2003." Finally, counsel states "[the petitioner] has engaged in the systematic movement of goods for more than one year as of May 2004."

Therefore, based on counsel's statements on appeal, the petitioner commenced doing business in either May 2003 or September 2003. 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). Upon review of the evidence submitted, the petitioner has not established that it was doing business prior to September 2003, ten months after the approval of the initial petition. Therefore, the petitioner has not met the requirements set forth at 8 C.F.R. § 214.2(l)(14)(ii)(B) and is ineligible by regulation for an extension. Although the petitioner provided an explanation for the delay in the beneficiary's arrival and his subsequent departure from the United States, there is no provision in CIS regulations for an extension of the one-year period granted to establish a new office. Furthermore, the petitioner provided no supporting documentation to substantiate its claims regarding delays in visa issuance or other factors delaying the commencement of business operations in the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Although the petitioner submitted evidence purportedly demonstrating business conducted in 2004, 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).

It is also noted that the invoices and shipping documents fail to list the petitioner as a party to the business transactions. Although the record includes e-mails purportedly sent by the beneficiary in conjunction with the transactions, the e-mails at most demonstrate that the beneficiary acted as an agent. Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(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.

Accordingly, the petitioner has not demonstrated that it has been doing business for the previous year, as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). For this reason, the petition may not be approved.

Finally, the petitioner has claimed that the beneficiary is the sole owner of both the United States and foreign entities. It remains to be determined that the beneficiary's services are for a temporary period. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of his services in the United States. As the appeal will be dismissed, this issue need not be examined further.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.

ORDER: The appeal is dismissed.