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U.S. Citizenship
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Services

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[Redacted]

File: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 19 2005

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

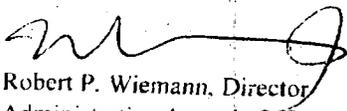
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration
and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, California 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 California that operates a grocery and acts as a distributor of computer hardware. The petitioner claims that it is the subsidiary of [REDACTED] located in Ludhiana, India. 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 the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the majority of the beneficiary's time will be devoted to managerial and executive duties, and that the petitioner employs sufficient subordinate staff members to relieve him from substantial involvement in day-to-day tasks. In support of these assertions, counsel submits a brief.

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(I)(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 (I)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (I)(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 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:

As President, [the beneficiary] will continue to be the highest-level person in the U.S. responsible for the company's operations. Specifically, as President, [the beneficiary] plans, develops, and establishes policies, and establishes responsibilities and procedures for attaining objectives. He reviews activity reports and financial statements to determine progress and status in attaining objectives and revises objectives and plans in accordance with current conditions. He directs and coordinates formulation of financial programs to provide funding for new or continuing operations to maximize returns on investments, and to increase productivity. He plans and develops public relations policies designed to improve [the] company's image and relations with customers, employees, and the public. He evaluates performance of employees for compliance with established policies and objectives of the company.

The petitioner provided that it purchased a market on July 8, 2003, and it employs seven employees to perform the necessary work. The petitioner stated that it started a computer components distribution company in September 2003, and the required day-to-day work is performed by an individual who holds a postgraduate degree in computer applications. The petitioner indicated that it intends to hire additional employees for both operations.

On December 3, 2003, the director requested additional evidence. Specifically, the director instructed the petitioner as follows:

Employees in the U.S.: Indicate the total number of employees at U.S. location where the beneficiary will be employed.

U.S. Business Organizational Chart: Submit a copy of the U.S. company's line and block organizational chart describing its managerial hierarchy and staffing levels. The chart should include the current names of all executives, managers, supervisors, and number of employees within each department or subdivision. Clearly identify the beneficiary's position in the chart and list all employees under the beneficiary's supervision by name and job title. Also include a brief description of job duties, educational level, annual salaries/wages for all employees under the beneficiary's supervision. The submitted organizational chart does not contain sufficient information as listed above.

Duties in the U.S.: Submit a more detailed description of the beneficiary's duties in the U.S.. Be specific. Indicate exactly whom the beneficiary directs including their job title and position description.

Form 941, Quarterly Report: Provide copies of the U.S. company's Federal Form 941, Quarterly Wage Reports for all employees for the last four quarters.

Payroll Summary: Submit copies of the U.S. company's payroll summary, W-2's and W-3's evidencing wages paid to employees.

Form DE-6, Quarterly Wage Report: Submit copies of the U.S. company's California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports for all employees for the last four quarters that were accepted by the State of California. The forms should include the names, social security numbers, and number of weeks worked for all employees

In a response dated February 23, 2004, the petitioner submitted: (1) an organizational chart; (2) its Forms DE-6 and Forms 941 for the last two quarters; (3) a summary of the petitioner's payroll; and (4) a more detailed description of the beneficiary's duties as follows:

[T]he majority of [the beneficiary's] time is spent supervising the overall operation of the organization. This is primarily done by supervising the heads of the two divisions – [redacted] Manager of [the petitioner's] Market, and [redacted] Purchase Manager of [the petitioner's computer hardware operation] – to ensure the company's smooth operation and continued growth. [The beneficiary] meet[s] with or speak[s] with these managers on a daily basis and discuss[es] goals and objectives that [he has] set, and to discuss with the problems and issues. While [the beneficiary] leave[s] the smaller decisions to their discretion, [he] find[s] that there are still a number of decisions that [he] must make daily.

In addition, [the beneficiary] work[s] closely with [the petitioner's] Certified Public Accountants . . . to keep [his] finger on the financial pulse of the organization. This is

perhaps [his] most important function at [the petitioner.] Specifically, [he] analyze[s] sales figures, cash flow forecasts, balance sheets, and other financial reports to form strategies and make decisions affecting the financial well-being of the company. When and where to lease office space, when to hire employees, when to buy new equipment, etc. are crucial decisions that must be timed just right to ensure the proper cash flow and to ensure that the organization is properly situated to continue its growth. In addition to keeping the two divisions of [the petitioner] operating at peak efficiency, [the beneficiary is] continuing to look for additional business ventures for [the petitioner] to embark upon.

[The beneficiary is] also responsible for all personnel decisions, including hiring, firing, and related matters. Most importantly at this stage in [the petitioner's] development, [the beneficiary] spend[s] a fair amount of time in recruitment. This involves determined [sic] the staffing needs of the organization, and then searching for an individual to meet these needs. [The beneficiary has] recently hired a Sales Manager and Shipping Clerk for [the computer hardware operation], and [he] will closely monitor the staffing situation to be ready to hire additional staff as sales continue to grow.

The petitioner indicated that it employs ten individuals including the beneficiary, six of who work in the market and three who work in the computer hardware division.

On April 13, 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 stated that following:

Since the purchasing manager, sales manager and food retail market manager do not have any professional worker[s] under their supervision, they are not performing duties of [a] manager as defined in 8 C.F.R. [§] 214.2(l)(ii)(B). . . . With three managers performing non-managerial duties and with no professionals working for the petitioner the beneficiary must have been engaged in the petitioner's daily business activities. There is no evidence on record of a subordinate staff of professional, managerial or supervisory personnel to relieve the beneficiary from performing non-managerial duties. As such, the beneficiary's duties are not primarily managerial or executive as claimed.

The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate the beneficiary would be managing the organization, or managing a department, subdivision, function, or component of the company.

On appeal, counsel asserts that the majority of the beneficiary's time will be devoted to managerial and executive duties, and that the petitioner employs sufficient subordinate staff members to relieve him from substantial involvement in day-to-day tasks. On Form I-290B, counsel asserts that "[m]anagement of non-professionals is not a basis for denial under the L-1A classification." Counsel cites an unpublished AAO

decision to stand for the proposition that a sole employee can qualify as an executive or manager. Counsel states that "[CIS's] statement that the beneficiary is not performing in an executive capacity because of the types of employees being supervised does not hold weight." Counsel cites the decision of the United States Court of Appeals for the Fifth Circuit in *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.2 (5th Cir. 1989) to stand for the proposition that "[the Act] was not intended to limit managers or executives to persons who supervise large numbers of persons." Counsel further asserts that the beneficiary manages an essential function of the petitioner.

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.* In the instant matter, counsel initially claims that the beneficiary will be primarily engaged with both managerial and executive duties, and later argues that the majority of the beneficiary's time will be devoted to executive tasks. To sustain an assertion that a beneficiary is primarily employed in both a managerial and an 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 petitioner indicates that the beneficiary's duties include responsibility for the petitioner's two divisions, and that he supervises managers and subordinate staff members who carry out the day-to-day tasks. The descriptions of the beneficiary's duties reflect that he does perform some executive and managerial duties, such as making financial and personnel decisions. Yet, a close examination of the petitioner's staffing reveals that he is required to spend a majority of his time engaged with non-qualifying duties such as acting as a first-line supervisor in the petitioner's grocery store, as discussed below.

Counsel cites an unpublished AAO decision and *National Hand Tool Corp. v. Pasquarell*, 889 F.2d 1472, n.2 (5th Cir. 1989) to stand for the proposition that the petitioner's staff size cannot be a determinative factor in denying the petition. In the unpublished decision, the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished matter. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *National Hand Tool Corp. v. Pasquarell*. It is noted that *National Hand Tool Corp. v. Pasquarell* relates to an immigrant visa petition, and not the extension of a "new office" nonimmigrant visa. As the new office extension regulations call for a review of the petitioner's business activities and staffing after one year, *National Hand Tool Corp. v. Pasquarell* is distinguishable based on the applicable regulations. See 8 C.F.R. §

214.2(l)(14)(ii). As counsel has not discussed the facts of the cited matters, they will not be considered in this proceeding.

Yet, counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See section 101(a)(44)(C), 8 U.S.C. § 1101(a)(44)(C). Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" 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 does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

The petitioner operates a grocery store and a computer hardware division. The petitioner provided photographs of its grocery that reflect that it is a moderately-sized full-service market with a substantial stock of food items, produce, and meats. Thus, it is evident that the reasonable needs of the petitioner require its grocery employees to perform numerous non-managerial and non-executive tasks such as placing orders for goods, answering questions about merchandise from customers, tracking the petitioner's inventory, managing a checking account and paying bills, answering the telephone, receiving deliveries, stocking shelves, conducting sales transactions using a cash register, and providing custodial services. The petitioner states that it employs six employees in addition to the beneficiary to operate the grocery, including a manager, two butchers, a supervisor, a box boy, and a cook. The manager's duties are to "[m]anage day-to-day operation of [the grocery.]" The butchers' duties are limited to acting as butchers. The supervisor's duties are to "[s]upervise [the] grocery" and to act as a cashier. The box boy is responsible for bagging groceries, and the cook's duties are limited to cooking.

The petitioner provided documentation of its payroll, including the hourly or weekly wages of its employees. The petitioner further submitted its California Form DE-6, Quarterly Wage and Withholding Report, for the fourth quarter of 2003 that indicates the amount that each of the petitioner's employees were paid during the three-month period. Using these documents in tandem, the AAO can calculate the approximate number of hours per week each employ works. The manager works an average of 32 hours per week. The butchers each work approximately 30 hours per week. The supervisor works an average of 29 hours per week. The petitioner has indicated that the box boy and cook are both part time employees.

The petitioner has not indicated the hours that its grocery is open for business. For the sake of analysis, it is assumed that it is open from 9:00AM to 9:00PM Monday through Saturday, and 10:00AM to 6:00PM on Sunday. Thus, the petitioner's grocery requires staff for 80 hours per week. The only employee charged with serving as a cashier is the supervisor. As he only works 29 hours per week, it is evident that the petitioner requires other employees to serve as cashiers. It is assumed that the manager serves as a cashier during his 32

hours per week, yet 19 hours are left unaccounted for. The duties of the butchers, box boy, and cook clearly do not involve handling money or conducting sales, thus it is assumed that the beneficiary serves as a cashier in the grocery for a minimum of 19 hours per week. Many of the above-listed tasks are not accounted for, such as stocking shelves, receiving deliveries, paying bills, and tracking inventory. While it is reasonable to assume that the beneficiary's subordinates share in these duties, it appears that the beneficiary must also perform some of these tasks to meet the petitioner's requirements. Given the petitioner's current staffing, in light of the reasonable needs of its business operations, it is evident that the beneficiary devotes substantial portions of his time to non-qualifying duties. 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 failed to show that these non-managerial and non-executive tasks do not constitute the majority of the beneficiary's time. See 8 C.F.R. § 214.2(I)(3)(ii).

Further, the petitioner has not established that the beneficiary's subordinates include supervisors, professionals, or managers. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

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

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner's staff who work in the grocery do not have college degrees, thus they are not deemed professionals. The petitioner provides that it employs a purchasing manager for its computer hardware division who completed a professional diploma in computer applications. Yet, the duties of the purchasing manager consist of purchasing and day-to-day functions, and the petitioner has failed to establish that a degree in computer applications is in fact required for the position. Thus, the purchasing manager has not been shown to be a professional.

Nor has the petitioner clearly shown that any of the employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. While two of the beneficiary's subordinates have managerial titles, and one has the title "supervisor," the petitioner has failed to adequately explain their tasks such to establish that they are in fact managers or a supervisor. The actual duties themselves 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). Further, as discussed above, the reasonable needs of the petitioner suggest that the manager of the grocery and the supervisor invest the majority of their time acting as cashiers and performing routine, non-managerial tasks. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The director stated that "[s]ince the purchasing manager, sales manager and food retail market manager do not have any professional worker[s] under their supervision, they are not performing duties of [a] manager as defined in 8 C.F.R. [§] 214.2(l)(ii)(B)." The beneficiary's subordinates are not required to supervise professionals in order to be considered managers. The director's statement of law in this regard will be withdrawn. Yet, to establish that one of the beneficiary's subordinates is a manager, the petitioner must clearly define the function managed and show that the employee is primarily engaged with managerial tasks. A managerial title, by itself, is insufficient. In the present matter, the petitioner has failed to show that any of the beneficiary's subordinates are managers.

The petitioner stated that it hired additional employees after the date of filing. 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). The fact that the petitioner hired a sales manager and shipping clerk for its computer hardware division is not probative of the petitioner's eligibility as of the filing date.

Counsel claims that the beneficiary is 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). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must 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. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. 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). As discussed above, the petitioner has not provided evidence to show that the beneficiary is primarily engaged with managerial duties such that he manages an essential function.

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 managers and employees in the future. However, once again 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. at 248. Again, 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 shown 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.

Beyond the decision of the director, the petitioner has not established that it has a qualifying relationship with the beneficiary's foreign employer as required by 8 C.F.R. § 214.2(l)(1)(ii)(G), as the petitioner has failed to establish that the foreign entity is a qualifying organization engaged in the regular, systematic, and continuous provision of goods and/or services pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H). The regulation at 8 C.F.R. § 214.2(l)(ii)(G)(2) reflects that, in order for an entity to be considered a qualifying organization, the petitioner must show that it:

is or will be doing business (engaging in international trade is not required) as an employer in the United States and 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

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 regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) requires the petitioner to submit "[e]vidence that the United States and foreign entities are still qualifying organizations." The petitioner provided documentation of the foreign entity's business activity before and up to January 7, 2003. Yet, the petition was filed approximately ten months later on October 28, 2003. Thus, the petitioner's documents do not serve as sufficient evidence that the foreign entity was engaged in "the regular, systematic, and continuous provision of goods and/or services" throughout 2003, including the date the petition was filed. See 8 C.F.R. § 214.2(l)(ii)(H). Thus, the petitioner has failed to show that the foreign entity is a qualifying organization. See 8 C.F.R. § 214.2(l)(ii)(G)(2). Accordingly, the petitioner has not established that it has a qualifying relationship with the foreign entity. See 8 C.F.R. § 214.2(l)(14)(ii)(A). For this additional reason, the petition may not be approved.

Also beyond the decision of the director, the petitioner has not shown that it has been doing business in the United States for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). The petitioner submitted documentation to show that it purchased its grocery on August 25, 2003. The petitioner further provided that it began its computer hardware division in September 2003. The petitioner's Forms W-4 were executed on August 25, 2003, suggesting that the beneficiary was the sole employee until that date. The record contains no clear documentation of business activity prior to July 2003. Thus, the petitioner has failed to show that it

was doing business from October 2002 to July 2003, or nine months out of the year prior to filing the petition. For this additional reason, the petition may not be approved.

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.