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File: SRC 03 112 53296 Office: TEXAS SERVICE CENTER Date: 03/27/2006

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:



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 appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its executive manager 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 Texas that claims to operate an import, wholesale and retail clothing business, a Super Tire business, and a pizza restaurant. The petitioner claims that it is the subsidiary of Al-Hijjawi Factory for Readymade located in Amman, Jordan. The beneficiary was initially granted a one-year period of stay in L-1A status in order to open a new office in the United States, and the petitioner now seeks to extend his stay for three years.

The director denied the petition concluding that the petitioner did not establish: (1) that the petitioner had been doing business for the year preceding the filing of the petition; or (2) that the beneficiary would 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. Counsel for the petitioner filed the Form I-290B Notice of Appeal on August 11, 2004, indicating that he would send a brief and/or evidence to the AAO within 30 days. As no additional evidence had been incorporated into the record, the AAO contacted counsel by facsimile on November 16, 2005 to request that counsel acknowledge whether the brief and/or evidence was subsequently submitted, and, if applicable, to afford counsel an opportunity to re-submit the documents. Counsel provided a brief on November 17, 2005, but failed to provide the requested evidence to show that the brief had been timely submitted to the AAO. Counsel sent a second facsimile transmission to the AAO on November 17, 2005, indicating that additional evidence would be mailed with the brief. As of this date, no additional documentation has been received from counsel or the petitioner. The regulations do not allow a petitioner an open-ended or indefinite period in which to supplement an appeal once it has been filed. The AAO will accept counsel's brief, but will not allow additional time for the petitioner to submit evidence in support of the appeal. The record is now considered complete.

On appeal, counsel for the petitioner asserts that the denial of the instant petition was inappropriate because the beneficiary has worked continuously in a managerial and executive capacity and has ensured that the petitioner continues doing business in the United States. Counsel emphasizes that the beneficiary has established three businesses in the United States and has directly managed the operations of one of these businesses "for the past few years." Counsel asserts that the director erred by requiring that the beneficiary supervise other managers or professionals and objects to the director's conclusion that the beneficiary would have to engage in the day-to-day business activities of the company. Counsel further contends that the director inappropriately required the petitioner to establish that the beneficiary would perform exclusively, rather than primarily, managerial or executive duties.

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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in this matter is whether the petitioner has established that it has been doing business for the year preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(14)(B).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) states: “*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.”

The petitioner must therefore establish that the U.S. company has been doing business since the approval of the initial “new office” petition on March 12, 2002. In a March 7, 2003 letter, the petitioner stated that the U.S. company intended to establish “different wholesale, retail and import/export operations,” and indicated that, since his arrival in the United States, the beneficiary had started an import/export business, a pizza store and a Super Tire business.

In support of the petition, the petitioner submitted: the petitioner’s articles of incorporation filed with the Texas Secretary of State on January 3, 2002; a lease for an 1100 square foot retail clothing store that lists the beneficiary as tenant; a Certificate of Ownership for Unincorporated Business or Profession filed by the beneficiary with the county clerk of Dallas County, Texas on September 12, 2001, indicating that he would do business as a sole proprietor under the assumed name of [REDACTED]; invoices, import and customs documentation for apparel shipped to [REDACTED] between October 2001 and June 2002 (four shipments in total); bank statements for [REDACTED] A” dated January through December 2002; a certificate of occupancy for “Super Tires” dated March 26, 2002, and a lease for the Super Tires business premises identifying the beneficiary and another individual [REDACTED] as tenants; a Certificate of Ownership for Unincorporated Business or Professional filed by the beneficiary with the county clerk of Dallas County, Texas in November 2002, indicating that he would do business as a sole proprietor under the assumed name of “Mega-Riffic Pizza” at the address listed on the lease for the retail clothing store; and, a Texas sales and use tax permit for “Nepton Mega Riffic Pizza” issued in February 2003.

The director requested additional evidence on June 2, 2003, in part instructing the petitioner to submit: (1) evidence conducted by the petitioner and the two other U.S. companies during the past year such as sales contracts, invoices, shipping receipts, and orders; (2) evidence of the funding or capitalization of the petitioner’s Super Tire business and pizza restaurant, such as copies of wire transfers showing transfers of funds from the foreign organization, evidence of financial resources committed by the foreign entity, copies of bank statements, and profit and loss statements or other accountants reports; (3) documentary evidence establishing that the petitioner, Nepton International Co., Inc., the Super Tire business, and the pizza store are one and the same, or documentation to show the relationship between the businesses; (4) documentary evidence to establish the current ownership and control of the petitioner, the Super Tire store, the pizza restaurant, and the foreign entity; (5) copies of the three businesses’ state quarterly tax returns for 2002 and the first quarter of 2003; (6) copies of quarterly wage reports for all employees from 2002 to present; (7) evidence to establish when the pizza restaurant and tire business commenced business operations; and (8) copies of current leases for the three U.S. businesses.

In a response received on December 24, 2004, the petitioner submitted copies of the same invoices and bank statements submitted in support of the initial petition. The petitioner also submitted the beneficiary’s personal

bank statements showing various wire transfers from the claimed proprietor of the foreign entity to the beneficiary. The petitioner's response also included: tax payment receipts showing that the beneficiary submitted quarterly sales and use tax payments for the first three quarters of 2003; a profit and loss statement showing that the petitioner had no income in 2002; the petitioner's Form SS-4, Application for Employment Identification Number, prepared on November 7, 2003; the petitioner's Texas Employer's Quarterly Report and IRS Form 941, Employer's Quarterly Federal Tax Return, for the third quarter of 2003, showing wages of \$2,025 paid to two employees; the petitioner's 2002 Texas Corporation Franchise Tax Report; and two copies of the petitioner's purported 2002 IRS Form 1120, U.S. Corporation Income Tax Return, which include identical information but for the employer identifying number which is shown as 80-0010194 on one form and as 20-0372088 on the other form. The petitioner re-submitted copies of evidence previously provided with respect to the pizza restaurant and Super Tires business, and provided a new lease for the pizza restaurant which identifies the tenant as the beneficiary "dba Nepton International Co." The lease term commenced on June 1, 2003. The petitioner provided a copy of the expired lease for the retail clothing store.

The director denied the petition on June 12, 2004 concluding that the petitioner had not established that the company was doing business for the previous year as defined at 8 C.F.R. § 214.2(l)(ii)(H). The director observed that the evidence submitted shows that the petitioner conducted business transactions in 2001, three transactions in 2002, and no business transactions in 2003. The director therefore determined that the petitioner had not conducted business operations for the previous twelve months. The director also acknowledged the petitioner's claim that the beneficiary is involved in two other business ventures, but noted that the petitioner had failed to provide evidence of the qualifying relationship of the businesses, evidence that the two businesses are operational, and evidence pertaining to the beneficiary's role in the various businesses.

On appeal, counsel for the petitioner asserts that the petitioner has "regularly, systematically and continuously provided goods and services" and summarizes the petitioner's business operations as follows:

Nepton received its first shipment of Jordanian clothes in October of 2001, which [the beneficiary] then promptly distributed to local merchants. Nepton received a second shipment in February of 2002 and sold some of the clothes in a small boutique, as well as distributing to local vendors. . . . Nepton formed "Super Tires" in Garland, Texas in March of 2002, and "Mega-riffic Pizza" in Richardson, Texas in November of 2002. [The beneficiary] executed lease agreements for both enterprises on Nepton's behalf, obtained certificates of occupancy from the local authorities, hired and trained employees, and generally oversaw the operation of Nepton's various enterprises.

[The beneficiary] formed another restaurant, "Sicilian Pizza," in Dallas, Texas in August 2003.

Counsel concludes: "It is clear that since November of 2001, [the petitioner] has steadily and sequentially increased the amount of goods and services it provides to the marketplace."

Upon review, the petitioner has not established that it was doing business at any time during the year preceding the filing of the instant petition. As a preliminary matter, the AAO notes that while the petitioner

in this matter, Nepton International Company, Inc., is incorporated in the State of Texas, nearly all of the documentation in the record of proceeding pertains to the beneficiary doing business as a sole proprietor under the assumed name [REDACTED]. The evidence suggests that the beneficiary registered as a sole proprietor in September 2001 and began to import goods from Jordan, incorporated a legal entity in order to provide evidence of a qualifying organization in the United States for L-1 visa purposes, and continued to operate as a sole proprietor following approval of the new office petition in March 2002. For example, all of the submitted leases identify the beneficiary, not the petitioner, as tenant. The petitioner's claimed [REDACTED] business is actually another assumed name used by the beneficiary rather than an asset or holding of the petitioner. There is evidence that the beneficiary paid sales and use taxes as a sole proprietor in 2003. Further, the IRS employer identification number indicated for the petitioner on the I-129 petition is actually the taxpayer number assigned by the State of Texas to the beneficiary doing business as Mega-Riffic Pizza. The record shows that the petitioning company did eventually apply for an IRS employment identification number, but not until November 2003, eight months after this petition was filed. Based on the evidence of record, the AAO must conclude that at the time of filing and for the year preceding the filing the petition, the petitioner was a "shell company" that was not conducting business in a regular and continuous manner. A corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). The petitioner cannot show that it was doing business through a sole proprietorship owned by one of its claimed shareholders.

Regardless, the director correctly observed that there was insufficient evidence of business conducted by the petitioner or its claimed tire store or pizza restaurant in the year preceding the filing of the petition. The director specifically requested evidence to establish when the various businesses began to operate and the petitioner failed to submit the requested evidence in response. 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). Further, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Rather, the evidence submitted showed that the petitioner had no income in 2002 and did not pay wages to any employees until three months after the petition was filed. At most, the evidence reflects that the beneficiary may have done business as a sole proprietor in 2003, based on evidence that he paid sales and use taxes. On appeal, counsel merely asserts that the petitioner has been continuously doing business since November 2001. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has not submitted evidence on appeal to overcome the director's determination on this issue. For this reason, the appeal will be dismissed.

The second issue in the present matter is whether the beneficiary will be employed by the United States entity in a 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.

The petition was submitted on March 13, 2003. In its March 7, 2003 letter, the petitioner provided the following description of the beneficiary's duties:

As Executive Director for [the petitioner], [the beneficiary] formulated and implemented all corporate goals and policies, both executive and managerial. As such, [the beneficiary] focused primarily on establishing the joint venture by networking with other business professionals and analyzed and considered various business prospects. As the company plans developed and various business enterprises were acquired and developed, [the beneficiary] was concentrating on the long-range goals of the company and directed the company to successful achievement of those goals.

The petitioner indicated its number of employees on Form I-129 as “4 (estimated).”

The director requested additional evidence on June 2, 2003, in part instructing the petitioner to provide more information regarding its various businesses, and evidence of wages paid to employees by each business from 2002 through the first quarter of 2003.

In a response dated December 19, 2003, former counsel for the petitioner provided the following information regarding the beneficiary’s proposed duties under the extended petition:

In this position, the Beneficiary will be responsible for formulating and implementing corporate policy and goals, both executive and managerial. The beneficiary will focus primarily on establishing the joint venture by networking with other identified and chosen business enterprises to establish and/or invest in, and he will hire and train a qualified staff to fill different positions with the company. The Beneficiary will be working 40-50 hours weekly divided as follows:

- 20-25 hours weekly developing various business enterprises, formulating corporate policy and goals, and directing the company to the successful attainment of these goals;
- 10-15 hours weekly training and supervising his co-workers;
- 8-10 hours weekly in administrative duties;

Counsel provided a simple organizational chart showing that the beneficiary would supervise two employees identified as “Kitchen” and “Driver.” The petitioner submitted its quarterly wage report for the third quarter of 2003 only, which confirms the employment of the two employees named on the organizational chart for the months of July, August, and September 2003. The kitchen worker received wages of \$975 and the driver received wages of \$1,050 during this time period. The petitioner did not provide the requested quarterly wage reports for 2002 and the first quarter of 2003.

The director denied the petition on June 12, 2004, concluding that the petitioner would not be employed in a managerial or executive capacity. The director observed that the evidence submitted does not demonstrate that the beneficiary will manage professionals or managers. The director also noted that the beneficiary would have to engage in the day-to-day business activities of the company, given the structure of the company and the pay data submitted.

On appeal, counsel for the petitioner asserts that the beneficiary has “at all times since his visa was issued, worked for [the petitioner] in a managerial capacity.” Counsel elaborates on the beneficiary’s claimed managerial duties as follows:

He organized the company and oversaw its incorporation in Texas. He acted as promoter of the company, and was responsible for drafting its articles of incorporation and bylaws. He is responsible for formulating and directing company policy. He is responsible for filing [the petitioner’s] federal corporate tax returns and state franchise tax returns, and he personally

manages a component of the organization, Sicilian Pizza. [The beneficiary] directly supervises the four full-time employees of Sicilian Pizza, and has the power to hire and fire employees throughout [the petitioner's] entire organization. Finally, though he delegates authority over certain items to his employees, [the beneficiary] has discretion over the day-to-day operations of Nepton and the pizza store. He therefore exhibits all of the managerial characteristics enumerated in the regulations, and the Bureau's decision to the contrary is in error.

Counsel also asserts that the director erred in finding that the beneficiary would not be employed in an executive capacity, noting:

It is he alone who determines which businesses and properties to invest in. It is he alone who formulates goals and directs the policies of [the petitioner]. Although he is under a general mandate from [the foreign entity] in Jordan to study the U.S. economy and suggest possible investment opportunities or joint ventures, [the beneficiary] is given almost complete autonomy over the decision-making processes at Nepton. As president and executive director, there are no higher executives from which [the beneficiary] could receive direction

Counsel objects to the director's finding that the beneficiary does not qualify as a manager or executive because he appears to be engaged in the day-to-day business activities of the company. Counsel asserts: "This betrays the Bureau's misconception that an employee working as a manager or executive must function only in the capacity of a manager or executive. . . . As a practical reality of small business ownership, [the beneficiary] must perform some day-to-day activities of Sicilian Pizza, even though he is principally concerned with the management and direction of [the petitioner] as a whole." Counsel emphasizes that the statute only requires that the beneficiary be engaged primarily in managerial or executive duties. Counsel also contends that the director incorrectly found that the beneficiary does not serve in a managerial capacity because he does not manage other managers or professionals, noting that a manager may manage an essential function within the organization. Counsel emphasizes that "Sicilian Pizza" is the petitioner's most profitable and productive business and could be considered the company's "most essential function."

Upon review, the petitioner has not established that the beneficiary will be employed in a managerial or executive capacity under the extended petition. 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.*

Rather than providing a specific description of the beneficiary's duties, the petitioner initially paraphrased the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). For example, the petitioner indicates that the beneficiary "formulated and implemented all corporate goals and policies" and "directed the company to successful achievement of those goals." However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden

of proof. *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); *Avyr Associates Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The expanded job description provided in response to the director's request for evidence is similarly vague, providing little insight into the true nature of the tasks the beneficiary will perform for the U.S. company. For example, the petitioner stated that the beneficiary devotes 20 to 25 hours per week to "developing various business enterprises, formulating corporate policy and goals, and directing the company"; 10 to 15 hours "training and supervising his co-workers;" and 8 to 10 hours "in administrative duties." The petitioner did not, however, define the beneficiary's policies and goals, describe what specific efforts the beneficiary takes to "develop various businesses," explain how performing "administrative duties" meets the definition of either managerial or executive capacity, or provide evidence that the beneficiary actually supervised employees at the time the petition was filed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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. at 1108. The provided job description does not allow the AAO to determine the actual tasks the beneficiary performs, such that they can be classified as managerial or executive in nature.

On appeal, counsel correctly asserts that the beneficiary need not be engaged in exclusively executive or managerial duties in order to be eligible for an extension of his L-1A status. The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary primarily performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940, F.2d 1533 (Table) 1991 WL 144470 (9th Cir. July 30, 1991). Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of providing that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. The word "primarily" is defined as "at first," principally, or "chiefly." Webster's II New College Dictionary 877 (2001). Where an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, that individual cannot also be "principally" or "chiefly" perform managerial or executive duties.

Counsel concedes that the beneficiary devotes some portion of his time to the day-to-day operations of the business known as "Sicilian Pizza," but spends the majority of his time engaged in the overall management of the petitioning company. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). There is no documentary evidence in the record to establish that the petitioning organization operates a business known as "Sicilian Pizza." Regardless, counsel claims that the business was established in August 2003, five months subsequent to the filing of the instant petition. Accordingly, counsel's claim that the beneficiary manages this "essential" function or

component of the petitioner's organization and its four employees will not be considered in this proceeding. 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 examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. As discussed above, the petitioner has not submitted evidence that the petitioning company was doing business at any time prior to the filing of the petition, much less substantiated its claim that it was operating an import export business, a pizza restaurant and a "Super Tire" store during the previous year. There is no evidence in the record that the petitioner employed anyone other than the beneficiary at the time the petition was filed. Even if the company was doing business, it has not been established that the beneficiary would have been relieved from primarily performing non-managerial duties associated with its operations. Finally, as discussed above, the record does not contain the required detailed description of the beneficiary's actual job duties. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

On review, the record as presently constituted 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 the U.S. company has hired employees subsequent to the filing of the petition. However, 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 reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not submitted evidence to establish that a qualifying relationship exists between the United States and foreign entities as required by 8 C.F.R. § 214.2(l)(14)(ii)(A). The petitioner indicated that beneficiary and the foreign entity each own 50 percent of the petitioning entity pursuant to a joint venture arrangement, and therefore claimed that the U.S. company is a subsidiary of the beneficiary's foreign employer. In his request for evidence, the director specifically instructed the petitioner to submit documentary evidence to establish the current ownership and control of the petitioner and the foreign entity, including stock certificates, corporate bylaws or any other document that clearly indicates stock ownership. In response to the director's request, the petitioner submitted only the U.S. company's articles of incorporation, which do not address the company's ownership and control. 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). As the petitioner has failed to submit documentary evidence to substantiate the claimed qualifying relationship, the petition cannot 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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.