

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



37

FILE: SRC 05 015 50081 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



MAR 28 2006

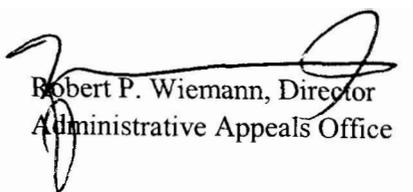
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON 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 general 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 Florida engaged in the import and wholesale of teakwood outdoor furniture. The petitioner claims that it is a subsidiary of [REDACTED] located in Malang-East Java, Indonesia. The beneficiary was initially granted L-1A classification for a one-year period in order to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay for two additional years.

The director denied the petition concluding the petitioner did not establish: (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the U.S. company was doing business for the previous year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner notes that the beneficiary did not arrive in the United States until April 2004, and emphasizes that the petitioner has achieved revenues of approximately \$250,000 during its first six months of operation. Counsel also asserts that the beneficiary has "specialized skills" necessary to perform the executive management function of negotiating contracts. Counsel further contends that the director placed undue emphasis on the number of employees supervised by the beneficiary in concluding that the beneficiary would not serve in a primarily managerial or executive capacity. Counsel submits a brief and additional evidence in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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 proceeding 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 filed on October 21, 2004. In an October 12, 2004 letter, the petitioner described the beneficiary's duties as follows:

[The beneficiary] continues to actively establish the new U.S. company. He continues to provide leadership and direction of the company; hires and trains qualified professionals to help in establishing the US company's operations; oversees the sales/marketing, finance and administrative functions, provides consulting services pertaining to the company's products; promotes strategic vision and monitors objectives, operating business plans, policies, budgets and programs.

He has opened a business bank account with Wachovia Bank. He has also hired a Certified Public Accountant to oversee the financial matters of the company, and has hired two employees. He continues to market the products and services of [the petitioner]. He has attended Trade Shows in Chicago, San Francisco and other locations, and has scheduled plans for the coming year to be in other trade shows.

The petitioner submitted its Florida Form UCT-6, Employer's Quarterly Report for the second quarter of 2004, which confirmed the employment of three employees, including the beneficiary.

The petitioner also provided the beneficiary's resume, which provides the following information regarding his role as general manager of the U.S. company:

Reporting directly to the board of directors of the parent company, responsible for managing all aspects of the branch's business operations; setting up procedures/policies and ensuring goals and objectives are met; including hiring, training qualified professionals to meet the company objectives; responsible for the sales performance and marketing including

establishing new accounts and maintaining existing accounts; contract negotiation with key accounts; import and export of products; organising [sic] trade shows and promotional events to support marketing forces; provide consultation pertaining products and services.

On November 1, 2004, the director requested additional evidence to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. Specifically, the director instructed the petitioner to submit: (1) an organizational chart listing all employees by name and title; (2) the duties and educational background of each employee listed on the state quarterly tax return; (3) evidence that the beneficiary is managing other managers and professionals; and (4) an explanation regarding how the beneficiary will primarily be engaged in executive duties.

In a response dated January 17, 2005, the petitioner provided the following expanded job description for the beneficiary:

- Manages and directs the U.S. operations
- Develop short range and long range business planning
- Establish goals and policies of company
- Use latitude in decision making and day to day operation
- Oversee work of other employees
- Receive general direction from higher management, Board of Directors of parent company
- Provide feedback on branch performances and recommendations to corporate office senior managers, and Board of Directors
- Seeking out, hiring and training qualified personnel, and can also fire staff
- Determining pricing, discounts, commissions and develop selling strategies.
- Develop market network through participations in major trade shows, advertisement, and by working with territorial independent sales representative.
- Determine, attend, and organize participation in trade shows including designing booths, preparing product information / literature and promotions.
- Responsible to develop new accounts and maintaining existing accounts including maintaining viable network of business contacts and prospective clients.
- Negotiate and secure contracts.
- Providing assistance in product development or custom design orders to meet customer specifications.
- Monitor proper and timely delivery of orders, account performance and resolve collection problems and account discrepancies.
- Maintain extensive communications with, including visiting, customers and dealers.
- Provide product information and presentation, design, engineering, pricing, manufacturing time, and quality information and processing assurance.

The petitioner indicated that it also employed an office manager with a bachelor's degree in business administration who is responsible for the following duties: maintaining account receivable / payable, including payroll; processing orders, credit memos, letters of credit, wire transfers, substitution authorizations, and advise on delivery and order specifications; maintaining communication with corporate

office and customers on manufacturing and shipping schedules; working with import/export companies regarding schedules, shipping costs, shipment documentation and bills of lading; preparing invoices and ensuring payment collection; preparing documents to be processed by a hired accountant; tracking inventory and advising on reordering; providing company and product information; and, maintaining good customer relations. The petitioner also stated that it employed a secretary who performs general administrative functions including typing reports and correspondence, handling mail, ordering office supplies, answering telephone calls and arranging meetings and travel vouchers.

In a January 18, 2005 letter, the foreign entity noted that the petitioner had hired two independent sales representatives, located in Chicago and Los Angeles, on a commission basis to assist with sales.

On January 31, 2005, the director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in a managerial or executive capacity under the extended petition. The director observed that the described job duties were very general in nature, and, given the current structure of the company, the record was not persuasive in establishing that the beneficiary would be relieved from performing non-qualifying duties associated with the day-to-day operations of the business.

In an appeal filed on March 1, 2005, counsel for the petitioner emphasizes that the beneficiary did not enter the United States until April 2004 and has not had a full year in which to develop the business. Counsel asserts that the beneficiary has nevertheless been serving the petitioner in a qualifying managerial or executive capacity, and contends that the petitioner's office manager relieves the beneficiary from performing day-to-day "office functions." Counsel further claims that the beneficiary's responsibility for negotiating contracts with retailers is "that of an Executive Manager" and could not be delegated to lower-level personnel who lack the beneficiary's "specialized knowledge" gained with the foreign entity. Counsel also emphasizes the complexity of the petitioner's distribution network and the need to use a number of independent contractors to perform certain routine functions. Finally, counsel cites *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570 (N.D. Ga. 1988) to stand for the proposition that the size of the petitioning company is irrelevant to a determination regarding the beneficiary's managerial or executive capacity.

Counsel's assertions are not persuasive. Upon review of the petition and the evidence, the petitioner has not established that the beneficiary would 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.*

The petitioner claims that the beneficiary qualifies as a manager or executive because he occupies the highest-level position within the company, manages its employees, and is responsible for expansion of the business. However, the fact that an individual has a managerial or executive job title and exercises discretion over a company's operations 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 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).

Although the petitioner has provided a lengthy description of the beneficiary's duties, portions of the description merely paraphrase the statutory definition of executive capacity at section 101(a)(44)(B) of the Act, while other portions are too vague to convey an understanding of what duties the beneficiary will perform on a day-to-day basis. General, over-broad statements such as "promotes strategic vision," "manages and directs the U.S. operation," "establish goals and policies of company," and "use latitude in decision making and day to day operation," do not assist the AAO in assessing the beneficiary's actual tasks. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Furthermore, the petitioner's descriptions of the beneficiary's duties include a number of operational tasks that do not fall under traditional definitions of managerial or executive capacity. For example, the petitioner indicates that the beneficiary is responsible for developing a marketing network, advertising, designing and preparing trade show exhibits and product literature, developing and maintaining client accounts and business contacts, providing product development and design assistance to customers, maintaining communications and visiting customers and dealers, and providing product information and presentations. These duties are more indicative of an employee who directly performs marketing, sales and customer service functions than of an employee performing primarily managerial or executive duties associated with these activities. Notwithstanding counsel's assertion on appeal that the petitioner's office manager relieves the beneficiary from performing "office functions," the petitioner has not established that either of the beneficiary's subordinates relieve him from performing the business' day-to-day sales, marketing and customer support functions. Given that the U.S. entity was established for the purpose of marketing and selling the foreign entity's products in the United States and Canada, it is reasonable to conclude, and has not been shown to be otherwise, that the beneficiary devotes a substantial proportion of his time to these operational sales and marketing activities. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm. 1988).

Although the petitioner stated that it utilizes two sales representatives on a commission basis to assist the beneficiary, the petitioner has not submitted documentary evidence to corroborate the existence of these commissioned sales representatives, identified when they were hired, or described the nature and scope of the services they provide. Additionally, the petitioner has not explained how the services of the contracted employees obviate the need for the beneficiary to perform the above-mentioned non-qualifying duties associated with the petitioner's sales, marketing and customer service functions. 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)).

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).

The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower level employees, performance of the duties of another type of position, or other involvement in the operational activities of the company. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, as discussed above, do not fall directly under traditional managerial or executive duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager or executive. *Se, e.g., IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). The petitioner has failed to show that non-qualifying duties will not occupy the majority of the beneficiary's time.

Counsel argues on appeal that the director placed undue emphasis on the petitioner's limited number of employees at the time the petition was filed. 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 extension cannot be approved. Although the petitioner employs an office manager and a secretary who perform some of the day-to-day administrative and operational tasks of the business, based on the petitioner's representations, the beneficiary is clearly not relieved from performing non-qualifying tasks such as meeting with vendors and customers, preparing product information and displays for trade shows, marketing the petitioner's products, negotiating sales, and providing customer and product support.

Counsel cites *Mars Jewelers, Inc. v. INS*, 702 F.Supp. 1570, 1573 (N.D. Ga. 1988), to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Mars Jewelers, Inc. v. INS*. It is noted that the case cited by counsel 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, the case cited by counsel is distinguishable based on the applicable regulations. *See* 8 C.F.R. § 214.2(l)(14)(ii). Additionally, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. As counsel has not discussed the facts of the cited matter, it will not be considered in this proceeding.

The AAO recognizes the petitioner's claim that the beneficiary had only six months to establish the business, as he did not enter the United States until April 2004. The petitioner provided no explanation for the beneficiary's delayed entry to the United States. 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. Regardless, any request for an extension of a petition that was originally approved as a new office must be evaluated under the criteria set forth at 8 C.F.R. § 214.2(l)(14)(ii) and establish the beneficiary's eligibility as of the date of filing. Again, 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.

The AAO acknowledges that the record contains numerous references to the future objectives of the U.S. operation, outlining the petitioner's participation in upcoming trade shows. However, business activity that occurs after the date of filing is not probative of the petitioner's eligibility as of the filing date. The AAO is not required to consider evidence of speculative future activity. 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). While the beneficiary may have achieved significant accomplishments toward establishing the petitioner's operations in the United States, the petitioner has not shown that it has reached the point that he will be employed in a primarily managerial or executive capacity as of the date this petition was filed.

Finally, counsel's reference to the beneficiary's possession of "specialized knowledge" pursuant to the definition at 8 C.F.R. § 214.2(l)(1)(ii)(O) is misplaced and has no bearing on a determination regarding the beneficiary's eligibility for an extension of L-1A status as a manager or executive employee of the petitioning company. The AAO will therefore not evaluate counsel's claim that the beneficiary possesses specialized knowledge. The petitioner's claims regarding the complexity of its business and the specialized nature of the beneficiary's role are not sufficient to elevate the beneficiary's position to one which is primarily managerial or executive as those terms are defined at sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. §§ 1101(a)(44)(A) and (B).

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity. For this reason, the petition will not be approved.

The second issue in this proceeding is whether the petitioner 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 regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" 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."

The beneficiary was previously granted L-1A classification for a one-year period in order to open a new office in the United States. The previous petition, SRC 04 022 50156, was approved on November 4, 2003 with a validity period of November 4, 2003 until November 3, 2004.

The petitioner indicated that the beneficiary was admitted to the United States for the first time on April 11, 2004. In support of the instant petition, the petitioner submitted its Florida Forms UCT-6, Employer's Quarterly Wage Report, for the first two quarters of 2004; business correspondence dated September 28, 2004; a sales order dated September 19, 2004; four purchase orders dated May, July and August 2004; and a packing list for documents shipped from the foreign entity on September 21, 2004.

On November 1, 2004, the director instructed the petitioner to submit evidence, including sales receipts and invoices, to establish that the U.S. company has been doing business for the previous year.

In a response dated January 17, 2005, counsel for the petitioner again noted that the beneficiary did not arrive in the United States until April 11, 2004, and that, prior to his entry, "all sales transactions for the company's products were processed directly with the parent company" The petitioner submitted documentation establishing that the foreign entity has exported its products to the United States since January 2003, along with a letter of payment requested dated October 2004, purchase orders, and a letter from a client confirming an order from the petitioner in September 2004.

The director denied the petition on January 31, 2005, concluding that the petitioner had not established that the U.S. company was doing business for the previous year. Specifically, the director stated: "The petitioner submitted purchase orders, invoices and a wire transfer. No other evidence was submitted to established [sic] that the U.S. Company is doing regular, and systematic business for the previous year."

On appeal, counsel asserts that since the office "officially opened" on May 1, 2004 and there is therefore only a "six month track record" to establish the regular and systematic conduct of business. Counsel also emphasizes the seasonal nature of the petitioner's business and notes that the petitioner did not have an opportunity to complete a full cycle of industry trade shows. The petitioner submits evidence of recent business activities and upcoming trade shows in support of the appeal.

Counsel's assertions are not persuasive. The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(C) provides that a petition to extend a visa petition that involved the opening of a new office be accompanied by 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*. Since the approval of a new office petition is granted for no more than one year, the regulations implicitly require that the new office be operational, i.e., engaged in the provision of good and/or services, as soon as it is granted authorization to employ an intracompany transferee in the new office.

Upon review of the evidence submitted by the petitioner, it has not established that the U.S. entity has been doing business since the initial new office petition was approved on November 4, 2003. While some delay between the approval of the petition and the beneficiary's admission to the United States in L-1A status is to be expected, the beneficiary in this case did not re-locate to the United States until six months after the approval of the petition, and nearly two months following the issuance of his L-1 visa on February 20, 2004. The petitioner has provided no explanation for this lengthy delay in opening its United States office. 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.

The record as presently constituted contains minimal evidence of business activities conducted since May 2004, and no evidence of business conducted prior to that date. Accordingly, the petitioner has not established 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 additional reason, the appeal will be dismissed.

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.