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U.S. Citizenship
and Immigration
Services

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FILE: SRC 04 219 50181 Office: TEXAS SERVICE CENTER Date: NOV 06 2006

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

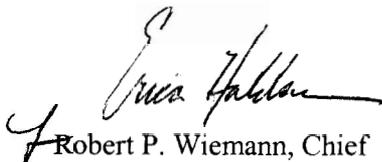
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief
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, a Florida corporation, claims to be a subsidiary of Estacionamiento Parque Canaima C.A. located in Venezuela. The petitioner states that the United States entity is engaged in the sale of construction material. Accordingly, the United States entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Act as an executive or manager for three years. 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 in order to continue to fill the position of administrative manager.

On June 8, 2005, the acting director denied the petition concluding that the record contains insufficient evidence to demonstrate: (1) that the beneficiary will be employed in a primarily managerial or executive capacity; or (2) that the United States company has been doing business for the previous year.

On July 8, 2005, the petitioner's counsel timely submitted the instant appeal. On appeal, counsel for the petitioner repeats the job description previously submitted for the beneficiary and states that the position is in a managerial and executive capacity. In addition, counsel for the petitioner asserts that the U.S. entity was "working at its minimum capacity" since there were several hurricanes where the business was located. Counsel submits a brief and additional documentation in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further 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 to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term “managerial capacity” means 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), provides:

The term "executive capacity" means 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 nonimmigrant petition was filed on August 11, 2004. The Form I-129 indicates that the beneficiary will continue to be employed in the position of administrative manager. In a support letter, the petitioner described the beneficiary's proposed duties in the United States as the following:

1. Responsible of making marketing, financial and administrative decisions in general.
2. Will develop sales and marketing strategies support with newspaper, radio and television advertising when necessary.
3. Responsible for managing the marketing and budget yearly planning that will guarantee quality, value savings and total satisfaction to small and industrial consumer.
4. Supervise the date-to-date sales numbers and assist in the projection of increasing sales targets by offering product packages to commercial businesses until deals are fully closed and serviced.
5. Responsible for controlling the organizational side of the warehouse maintaining purchase order processing at the lowest cost possible.
6. Manage and maintain the accounts receivables and accounts payable numbers.
7. Offer support and work together with auditors when a situation auditing [sic] arises.
8. Prepare monthly revenues and monthly office expenses.
9. Responsible for inventory supply, purchasing and lease contracts of location and any other equipments [sic] that will be under leasing contracts as part of the store daily use.
10. Supervise the office personnel in customer service support and clientele satisfaction.
11. Responsible for assigning salaries, promotions, terminations, selection and hiring as well as manage vacation and over time under high standards skills to the 2 customer assistants and future business personnel.
12. Redirect and apply new standard policies within the Miami branch by providing the right tools of confidence, career advancement opportunities and appropriate training to the Miami personnel in charge.

13. Establish the necessary parameters for the wholesale distribution and development of higher customer satisfaction.
14. Maintain direct control of the US business in order to send and prepare daily and monthly reports to the co-owner office in Caracas.

In addition, the petitioner submitted an organizational chart of the U.S. entity. The organizational chart for the U.S. company indicates that the board of directors will supervise the president who in turn supervises the beneficiary in the position of administrative manager. The chart shows that the beneficiary will supervise the administrative supervisor, the customer services, a sales representative for Orlando and a sales representative for Miami.

On February 22, 2005, the director requested a definitive statement describing the beneficiary's employment including: the position title and a list of all duties; the percentage of time spent on each duty; the number of subordinate managers/supervisors or other employees who report directly to the beneficiary, including a description of their job duties, educational background, and dates of employment; the qualification required for the position offered to the beneficiary; a statement indicating whether the beneficiary functions at a senior-level within the corporation; information as to the beneficiary's position within the organizational hierarchy; and, a statement describing who provides the product sales/services or produces the product of the business. In addition, the director requested copies of the Employer's State Quarterly Tax Return for the past four quarters, and proof that payment has been made to the IRS for the U.S. company.

In the response letter dated May 20, 2005, the petitioner reiterated the job duties submitted previously but included the percentage of time spent on each duty. The duties are as follows:

- Responsible of making marketing, financial and administrative decisions in general and for managing the marketing and budget yearly planning that will guarantee quality, value savings and total satisfaction to small and industrial consumer. (15%)
- Supervise the date-to-date sales numbers and assist in the projection of increasing sales targets by offering product packages to commercial businesses until deals are fully closed and serviced. (15%)
- Responsible for controlling the organizational side of the warehouse maintaining purchase order processing at the lowest cost possible. (15%)
- Manage and maintain the accounts receivables and accounts payable numbers to offer support and work together with auditors when a situation auditing [sic] arises. (20%)
- Responsible for inventory supply, purchasing and lease contracts of location and any other equipments [sic] that will be under leasing contracts as part of the store daily use. (15%)
- Responsible for assigning salaries, promotions, terminations, selection and hiring as well as manage vacation and over time under high standards skills to the 2 customer assistants and future business personnel. (10%)
- Redirect and apply new standard policies within the Miami branch by providing the right tools of confidence, career advancement opportunities and appropriate training to the Miami personnel in charge. (10%)

In addition, the petitioner submitted Form UCT-6, Florida's Department of Revenue Employer's Quarterly Report for the quarters ending September 30, 2004, December 31, 2004, March 31, 2005 and

June 30, 2004. The Employer's Quarterly Report for the period ending September 30, 2004 indicated that the beneficiary was the only employee hired by the U.S. company. The Form UCT-6, Florida's Employer's Quarterly Report for the periods ending December 31, 2005 and March 31, 2005 indicated that the U.S. company did not have any employees. In August 2004, the date the instant petition was filed, the U.S. entity reported that the only employee working for the U.S. company was the beneficiary.

In the response letter by the petitioner, dated May 20, 2005, the petitioner provided the following explanation regarding the U.S. company's staffing levels:

There are no tax return for this period of time due [sic] to we are waiting for the approve [sic] of [the beneficiary's] Visa renewal so that we can bring [the beneficiary] to join us at our organization as our Administrative Manager as soon as possible.

The director denied the petition on June 8, 2005 determining that the petitioner had not submitted sufficient evidence to establish that the beneficiary will be employed primarily in a managerial or executive capacity. The director went on to note that in light of the organization's configuration, it was apparent that the beneficiary would be performing the day-to-day non-managerial duties.

On appeal, counsel for the petitioner asserts that the beneficiary will hold a position of managerial and executive capacity and repeats the job duties submitted previously. Counsel for the petitioner further clarifies that the beneficiary "has high percentage of Executive and Managerial responsibilities, but it does not mean that she will not be engaged in the day to day operations of the business."

Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity. 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(1)(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.*

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 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 prove 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 beneficiary's position description is too general and broad to establish that the preponderance of her duties is managerial or executive in nature. The beneficiary's job description includes vague duties such as the beneficiary will be "responsible of making marketing, financial and administrative decisions in general," "offer support and work together with auditors when a situation auditing arises," "redirect and apply

new standard policies within the Miami branch by providing the right tools of confidence, career advancement opportunities and appropriate training to the Miami personnel in charge,” and “establish the necessary parameters for the wholesale distribution and development of higher customer satisfaction.” 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 provide any detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The petitioner's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature.

In addition, the job duties required of the beneficiary include non-qualifying duties such as the beneficiary will be "responsible [for] making marketing, financial and administrative decisions in general," "will develop sales and marketing strategies support with newspaper, radio and television advertising when necessary," "responsible for managing the marketing and budget yearly planning that will guarantee quality, value savings and total satisfaction to small and industrial consumer," "manage and maintain the accounts receivables and accounts payable numbers," "prepare monthly revenues and monthly office expenses," and will be "responsible for inventory supply, purchasing and lease contracts of location and any other equipments that will be under leasing contracts as part of the store daily use." However, as discussed further below, there is no evidence that the U.S. company has hired employees to perform the marketing, promotion, purchasing, finances, and sales tasks that are necessary to produce or provide services. It appears that the beneficiary will be providing the services of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 International*, 19 I & N Dec. 593, 604 (Comm. 1988).

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary will perform or the amount of time she will devote to her various duties. While the petitioner has provided a breakdown of the percentage of time the beneficiary will spend on various duties, the petitioner has not articulated whether each duty is managerial or executive. Thus, the AAO must attempt to glean the nature of the beneficiary's proposed duties from the vague descriptions submitted.

The petitioner indicates that the beneficiary will spend 15 percent of her time “responsible of [sic] making marketing, financial and administrative decisions in general and for managing the marketing and budget yearly planning that will guarantee quality, value savings and total satisfaction to small and industrial consumer.” The record does not resolve whether the beneficiary will perform the day-to-day tasks to develop and implement the marketing programs and policies, or whether she will direct others to do so. The petitioner did not submit evidence that any employee is actually hired by the U.S. company and therefore the lack of employees for the beneficiary to direct and coordinate raises questions as to whether the beneficiary will be managing these activities or actually performing the petitioner's marketing duties and budget functions.

The petitioner further states that the beneficiary will spend 15 percent of her time to “supervise the date-to-date sales numbers and assist in the projection of increasing sales targets by offering product packages to commercial businesses until deals are fully closed and serviced.” It does not appear that the U.S. company has hired any sales employees to sell the product, thus, it appears the beneficiary will be directly providing the sales operations for the company rather than supervising subordinate sales employee who would perform the services required to perform the sales functions. These duties have not been shown to be managerial or executive in nature. 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)).

In addition, the petitioner states that the beneficiary will spend 15 percent of her time being “responsible for controlling the organizational side of the warehouse maintaining purchase order processing at the lowest cost possible”, and 20 percent of her time being “responsible for inventory supply, purchasing and lease contracts of location and any other equipments that will be under leasing contracts as part of the store daily use,” which is a total of 35 percent of the beneficiary’s time. As noted above, since the beneficiary is the only employee and the U.S. company has not hired a subordinate to supervise the purchasing and inventory functions of the company, it appears that these responsibilities are principally composed of non-qualifying duties that preclude her from functioning in a primarily managerial or executive role.

Finally, the petitioner states that the beneficiary will spend 20 percent of her time managing and maintaining the “accounts receivables and accounts payable numbers to offer support and work together with auditors when a situation auditing arises.” As noted above, it does not appear that the U.S. company has hired a finance employee to prepare the budget and manage financial growth, thus, the petitioner is preparing the financial documents rather than reviewing the work prepared by a subordinate employee. In addition, without additional clarification from the petitioner regarding the managerial or executive duties involved, the AAO cannot distinguish this vague responsibility from routine administrative tasks. These duties have not been shown to be managerial or executive in nature. 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.

As the United States company has not hired any employees, it is reasonable to assume, and has not been proven otherwise, that the beneficiary will be performing all sales, acquisition and marketing functions and financial development, and all of the various operational tasks inherent in operating a company on a daily basis, such as acquiring new businesses, negotiating contracts, paying bills, and performing marketing functions. 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). Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude her from functioning in a primarily managerial or executive role. Since 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 appeal will be dismissed.

Furthermore, the petitioner indicated in its response to the director that there were no tax returns for the last four quarters as requested by the director since the petitioner is “waiting for the approve [sic] of [the beneficiary’s] Visa renewal so that we can bring [the beneficiary] to join us at our organization...” 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 second issue in this proceeding is whether the United States entity is doing business as defined in the regulations.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

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

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

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 nonimmigrant petition was filed on August 11, 2004. In support of its initial claim that the United States entity has been doing business in 2004, the petitioner submitted bank statements in the U.S. company’s name from January 2004 through June 2004; a copy of the U.S. entity’s occupational license; seven invoices in total from March 2004, June 2004 and July 2004; and photographs of the business premises of the U.S. entity.

On February 22, 2005, the director requested additional evidence to demonstrate that the U.S. company was doing business during the past year. In particular, the director requested copies of bank statements, payroll records, invoices, sales records, bills of sale, shipping receipts and orders for goods and services.

In the petitioner's response, dated May 20, 2005, the petitioner submitted bank statements in the U.S. company's name from January 2004 through July 2004 and from September 2004 through April 2005. The account's balances ranged from approximately \$1337.00 to approximately \$10,000. In addition, the petitioner submitted copies of the Florida Sales and Use Tax Return for 2004; a lease agreement, phone bills issued to a [REDACTED]; bills issued to the company from May 2004 through May 2005; and invoices from March 2004 through April 2005.

The director denied the petition asserting that the petitioner did not submit sufficient evidence demonstrating that the U.S. entity has been or is engaged in the regular, systematic, and continuous provision of goods and/or services as a qualifying organization.

On appeal, counsel for the petitioner asserts that the U.S. entity was "working at its minimum capacity" since there were "four heavy hurricanes, the three of them passed over Vero Beach and West Palm Beach, which is it considered [sic] as an excellent work area."

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii). There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

On review, the evidence submitted is insufficient to establish that the U.S. entity has been or is engaged in the regular, systematic, and continuous provision of goods and/or services as a qualifying organization. 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 petitioner submitted copies of sales and use tax returns which show minimal retail sales for 2004. The company does not demonstrate that it has any assets, inventory or salaried employees, thus it is unclear how the U.S. entity accomplished selling the merchandise indicated in the sales and the use tax return.

In addition, the petitioner submitted a business plan for the U.S. company that stated that an investment of \$80,000 and a loan of \$115,000 will be secured in order to start the new office in the United States. In reviewing the bank statements submitted by the petitioner, there is no indication that an amount of \$80,000 was deposited into the bank account, and there is no documentation evidencing that a loan was secured. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the

petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner did not submit documentation regarding the gross sales of the U.S. company such as the company's IRS Form 1120, U.S. Corporation Income Tax Return for 2004, the company's financial statements or any other evidence of the financial status of the company. 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.

Finally, as noted above, the petitioner submitted Form UCT-6, Florida's Department of Revenue Employer's Quarterly Report for the quarters ending September 30, 2004, December 31, 2004, March 31, 2005 and June 30, 2004. The Employer's Quarterly Report for the period ending September 30, 2004, indicated that the beneficiary was the only employee hired by the U.S. company. Thus, in August 2004, the date the instant petition was filed, the U.S. entity reported the beneficiary as the only employee working for the U.S. company. It is implausible that a company is doing business if it has not hired any additional individuals to run the business operations. The petitioner does not explain how the U.S. company was doing business with only one employee. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. 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. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not submitted sufficient evidence to establish the existence of a continuing qualifying relationship between the United States and foreign entities as required by 8 C.F.R. § 214.2(l)(14)(ii)(A). As general evidence of a petitioner's claimed qualifying relationship, the articles of incorporation alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The stock certificates, corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In the instant matter, the petitioner submitted the articles of incorporation of the U.S. company. The director specifically requested documentary evidence to establish the ownership and control of the foreign entity and the U.S. entity such as stock certificates and copies of annual reports which indicate affiliates

and/or subsidiaries and the percent of ownership held by the parent company. In the petitioner's response, the petitioner failed to submit the requested documentation to establish ownership or control by the foreign entity. 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). For the foregoing reasons, the petitioner has not established that a qualifying relationship exists between the U.S. company and the beneficiary's foreign employer. For this additional reason, 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 and the appeal dismissed 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.