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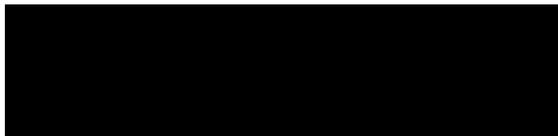
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U.S. Citizenship  
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Services

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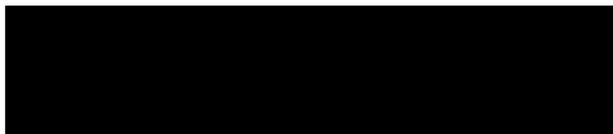
File: SRC 06 049 50353 Office: TEXAS SERVICE CENTER Date: **SEP 10 2007**

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, 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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa 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 under the laws of the State of Florida and is allegedly engaged in the business of graphic design, marketing, and advertising. The beneficiary was initially granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; (2) that the petitioner still has a qualifying relationship with the foreign entity; or (3) that the petitioner has secured sufficient premises to house its business operation.

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 to the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of an executive or manager. Counsel further asserts that the record establishes that the petitioner and the foreign entity are qualifying organizations and that discrepancies in the record are clerical errors. Finally, counsel asserts that the premises secured by the petitioner sufficiently house its business operation. In support of the appeal, counsel submits a brief and additional evidence.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner does not clarify in the initial petition whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act, and counsel on appeal asserts that the beneficiary may be classified as either an executive *or* a manager.

The petitioner described the beneficiary's job duties in the Form I-129 as follows:

GENERAL MANAGER IN CHARGE ESTABLISH THE DIFFERENT DEPARTMENT OF THE CORPORATION, HIRING AND FIRING THE NECESSARY PERSONAL [sic], COORDINATE THE VARIUOS [sic] TEAMS TO ASSURE EACH IS SERVICED ON SCHEDULE, ETC.

The petitioner also submitted an organizational chart showing the beneficiary supervising an "assistant" and an "executive." However, the petitioner did not describe the duties of these two subordinate employees.

On January 30, 2006, the director requested additional evidence. The director requested, *inter alia*, descriptions of the subordinate employees and the beneficiary's job duties.

In response, the petitioner submitted a letter dated February 18, 2006 in which the petitioner described the beneficiary's duties as follows:

- Obtain service requests from clients (8 hours per week)
- Coordinate team's efforts to ensure services are rendered as requested (16 hours per week)
- Hire and manage performance of all personal [sic] (6 hours per week)
- Manage company's accounts and payroll (10 hours).

The petitioner also described both the beneficiary's and the subordinate employees' duties in a document titled "employee report." The "secretary" is described as assisting the beneficiary, and the "executive" is described as being responsible for keeping contracts on time. The beneficiary is further described as coordinating "all the bussines [sic] strategic and financial aspects" and also as working "as an account executive."

On May 9, 2006, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary's duties are primarily those of an executive or manager.

Upon review, the petitioner's assertions are not persuasive.

Title 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 Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the United States operation has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

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.*

As a threshold issue, it is noted that on appeal the petitioner has attempted to substantially expand upon the beneficiary's purported job duties and on the duties of the subordinate employees. However, the petitioner was put on notice of required evidence in the Request for Evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. The AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Moreover, on appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary will coordinate the "team's efforts" and manage accounts and payroll. However, the petitioner does not explain what efforts he will coordinate or what,

exactly, he will be doing to "manage" accounts and payroll. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description does not establish that the beneficiary will actually perform managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Moreover, most of the duties listed by the petitioner appear to be non-qualifying administrative or operational tasks which do not rise to the level of being managerial or executive in nature. For example, the petitioner states that the beneficiary will obtain service requests from clients, "manage" accounts and payroll, and act as a first-line supervisor of non-professional employees (*see infra*). However, these duties constitute administrative or operational tasks when the tasks inherent to these duties are performed by the beneficiary. As the petitioner has failed to provide detailed job descriptions for the subordinate employees, the record fails to establish that the petitioner employs workers who will relieve the beneficiary of the need to perform the non-qualifying tasks inherent to the duties ascribed to him as well as to the provision of graphic design services. Therefore, it must be concluded that he will perform these tasks and it cannot be confirmed that he will be "primarily" employed as a manager. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As explained in the organizational chart and vague job descriptions for the subordinate staff members, the beneficiary appears to supervise a staff of two employees. However, the petitioner has not established that the two employees are primarily engaged in performing supervisory or managerial duties. To the contrary, it appears that these employees are performing the tasks necessary to produce a product or to provide a service, i.e., clerical work and contract administration. In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner did not establish the skill level or educational background required to perform the duties of the two subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.<sup>1</sup> Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>2</sup>

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<sup>1</sup>In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or

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schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). While it is noted that, on appeal, the petitioner asserts that at least one of the subordinate employees possesses a university degree, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the duties of either of the subordinate employees.

<sup>2</sup>While the petitioner has not clearly argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions, if any, and what proportion would be non-managerial. Also, as explained above, the record establishes that the beneficiary is primarily a first-line manager of non-professional employees and/or is engaged in performing non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties would be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will be acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, the beneficiary appears to be primarily employed as a first-line supervisor and is performing tasks necessary to produce a product or to provide a service. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

It is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g., Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will be primarily performing managerial or executive duties, and the petition may not be approved for that reason.

The second issue in the present matter is whether the petitioner has established that it still has a qualifying relationship with the foreign entity.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) states that a petition to extend a "new office" petition filed on Form I-129 shall be accompanied by:

Evidence that the United States and the foreign entity are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section[.]

Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "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" and "is or will be doing business." A "subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity."

In this matter, the petitioner, a corporation, asserts that it is 100% owned by the foreign employer. In support, the petitioner provided copies of its articles of incorporation authorizing the issuance of 300 shares of stock and a stock certificate purporting to issue 100 shares of stock to the foreign entity. The petitioner did not submit a stock ledger or any other organizational documents.

On May 9, 2006, the director denied the petition. The director concluded that the petitioner failed to establish that it is owned and controlled by the foreign entity and is thus a qualifying organization. The schedules K to the petitioner's 2004 and 2005 Forms 1120 both indicate that the petitioner is not a subsidiary of another corporation. As the petitioner has failed to explain these inconsistencies in the record regarding the petitioner's ownership and control, the petition could not be approved.

On appeal, counsel argues that the cited inconsistencies in the Forms 1120 were "clerical errors" and that the petitioner has since filed amended tax returns to correct these errors.

Upon review, the petitioner's assertions are not persuasive.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In this matter, the petitioner has not established that it has a qualifying relationship with the foreign entity. As correctly noted by the director, the petitioner's Forms 1120 indicate that the petitioner is not a subsidiary of another corporation. As these averments are fundamentally inconsistent with the petitioner's assertion that it is 100% owned by a foreign company, the director properly denied the petition. 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).

While counsel on appeal attempts to explain these inconsistencies in the tax returns by asserting that the averments were "clerical errors" and by submitting "amended" tax returns purporting to correct these errors, this explanation fails for two reasons. First, the amended Forms 1120 are still inconsistent with the petitioner's assertion that it is 100% owned by the foreign entity. While the amended Forms 1120 now indicate that a "foreign person" owns at least 25% of its voting stock, the Forms 1120 still indicate that no single stockholder owns 50% or more of the petitioner's stock. The petitioner offers no explanation for this additional inconsistency. Second, counsel offers no explanation for how the alleged "clerical error" was made by the petitioner's tax preparer in the first place. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Moreover, counsel's assertions on appeal regarding the petitioner's ownership and control have created a second serious inconsistency in the record which will also compel the denial of the petition. As explained above, the petitioner originally asserted that it is 100% owned by the foreign entity. In support of this assertion, the petition submitted, *inter alia*, a stock certificate (#01) dated May 14, 2004 purporting to issue 100 shares of stock to the foreign entity. However, on appeal, counsel and the petitioner both assert that the petitioner is two-thirds owned by the foreign entity. In support of this new assertion, the petitioner submitted the above-described certificate #01, certificate #02 dated May 14, 2004 purporting to issue 100 more shares to the foreign entity, and certificate #03 dated May 14, 2004 purporting to issue 100 shares to the beneficiary. The petitioner does not offer any explanation for why these stock certificates were not submitted with the original petition and does not attempt to identify which description of its ownership and control is correct. As explained above, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. In this matter, such serious and serial inconsistencies in the record regarding the petitioner's ownership and control cast doubt on the veracity of the entire petition. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Accordingly, the petitioner has failed to establish that it still has a qualifying relationship with the foreign entity, and the petition may not be approved for this additional reason.

The third issue in the present matter is whether the director properly denied the petition because of the petitioner's alleged failure to establish that it has secured sufficient physical premises to house its business operation.

As indicated above, the instant petition seeks to extend a previously approved "new office" petition. In denying the petition, the director stated the following:

Further, it appears that sufficient space may not have been secured for conducting a graphic arts/advertising business. The commercial lease and cancelled checks for rented space presented in the [request for evidence] reply appear to describe a small warehouse space that would not be adequate for a business, as described in the regulations above.

On appeal, counsel asserts that the physical premises secured by the petitioner are sufficient to house its business operation. Counsel submitted photographs of the office and asserted that many of the services provided by the petition are performed offsite.

Upon review, counsel's assertions are not persuasive.

In this matter, the sufficiency of the petitioner's business premises, and the petitioner's need to establish this fact, are both made relevant to this "new office extension" petition by 8 C.F.R. §§ 214.2(l)(14)(ii)(A) and (B). Both of these criteria require the beneficiary to establish that it is, and has been for the previous year, "doing business" as defined in 8 C.F.R. § 214.2(l)(1)(ii)(H). "Doing business" is defined in pertinent part as "the regular, systematic, and continuous provision of goods and/or services." In this matter, the petitioner was obligated to establish that it occupies physical premises sufficient to permit the United States operation to conduct business. As correctly determined by the director, the physical premises described in the lease submitted by the petitioner do not appear to be sufficient to house the petitioner's business operation.

The lease submitted by the petitioner commenced on November 7, 2005, less than one month prior to the filing of the instant "new office extension" petition. The record is devoid of any evidence regarding the petitioner's physical premises prior to its securing of the premises described in the lease. Moreover, the lease describes the premises only as "unit 11" and as including two parking spaces. The lease does not describe the square footage or provide a floor plan. The record is also devoid of any explanation as to how the petitioner operates its business in such a location. While counsel attempts to supplement the record on appeal with photographs and other evidence regarding the sufficiency of the physical premises, the director specifically requested additional evidence regarding the sufficiency of the physical premises in the Request for Evidence. The petitioner failed to submit the requested evidence and now submits it on appeal. The AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764; *Matter of Obaighena*, 19 I&N Dec. 533.

Also, while it is noted that the petitioner submitted additional evidence regarding its purported business activities such as invoices, tax returns, and bank statements, this evidence when considered in conjunction

with the above described lease is nevertheless insufficient to establish that the petitioner is, or had been, "doing business." While the petitioner submitted invoices, it submitted no evidence that these invoices had ever been paid. Therefore, the record does not establish that the petitioner has been engaged in the regular, systematic, and continuous provision of goods and/or services. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Accordingly, as the petitioner has failed to establish that it is, or had been, "doing business" during the previous year, the petition may not be approved for this additional reason.<sup>3</sup>

The initial approval of an L-1A new office petition does not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. See section 291 of the Act, 8 U.S.C. § 1361.

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>3</sup>It is noted that the director cited 8 C.F.R. § 214.2(l)(3)(v)(A) as authority for denying the instant petition. However, as the instant petition does not concern the opening of a new office in the United States, the director's reliance on this regulation was misplaced. Instead, the criteria at 8 C.F.R. § 214.2(l)(14)(ii), as explained above, apply to this petition. Therefore, the petition's denial is withdrawn in part to the extent the director treated the petitioner as a "new office."