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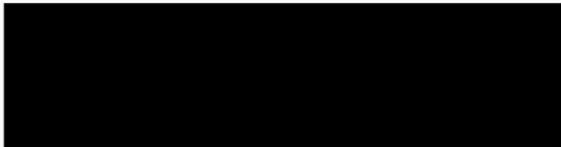
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File: EAC 07 023 50782 Office: VERMONT SERVICE CENTER Date: **APR 03 2008**

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, Vermont 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 president/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 allegedly operates a restaurant.<sup>1</sup> The beneficiary was granted a one-year period of stay to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel to the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of a manager.

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

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<sup>1</sup>According to the records of the Department of State of Florida, the petitioner's correct corporate name is "A.I.G. Inc.," and not AIG Inc.

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 primary 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 will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. Although counsel appears to limit the beneficiary to the managerial classification on appeal, counsel earlier asserted that the beneficiary will be employed as both a manager and an executive in the response to the director's Request for Evidence. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary will be employed as either a manager *or* an executive and will consider both classifications.

The petitioner asserts in the Form I-129 that it currently employs three workers. Also, in a letter dated October 4, 2006, the petitioner describes the majority of the beneficiary's proposed duties in the United States as follows:

[The beneficiary's] main responsibilities within our Company (60% of his time):

- Directs the management of the organization or a major component of [sic] function of the organization;
- Establishes the goals and policies of the organization, component, or function;
- Exercises wide latitude in discretionary decision making; and
- Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner also indicates that the beneficiary will devote the remaining 40% of his time to a variety of duties pertaining to staffing, scheduling, financial matters, marketing, customer relations, and reporting to the foreign parent company.

Finally, the petitioner submits an organizational chart for the United States operation. The chart shows the beneficiary at the top of the organization directly supervising a "general accountant" who, in turn, is shown supervising a secretary and six proposed positions.

On March 19, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties in the United States; job descriptions for all other employees in the United States; a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis, including a breakdown for the beneficiary; and photographs of the United States operation.

In response, the petitioner submitted a document titled "List of Employees and Job Duties" in which it describes the beneficiary's proposed job duties as follows:

- Direct the management of [the petitioner]
- Establish the goals and policies of [the petitioner]
- Exercise wide latitude in discretionary decision[-]making
- Receive only general supervision or direction from higher level executives, the board of directors, or stockholders of [the petitioner]
- Develop staffing plans and establish work plans and schedules for each phase of projects in accordance with time limitations and funding
- Evaluate project proposals and determine methods and procedures for accomplishing the projects, including staffing requirements and allotting funds to various phases of projects:
- Plan and develop labor and public relations policies designed to improve the company's image and relations with customers, suppliers, employees and the general public;
- Review Activity Reports and Financial Statements to determine status in obtaining objectives;
- Assist with product development in order to assure that the Company is kept abreast of current conditions
- Hire, dismiss and recommend the appropriate personnel and supervise personnel decisions and relations
- Report to the Board of Directors on plans and progress toward set goals for the company's international trade business and establishing the company policies and management directives for meeting these goals
- Develop marketing strategies in order to promote [the petitioner's] image. This will include planning and setting prospective annual budget allocations for all marketing and promotion, in consultation with the President and CEO of the foreign company.
- Manage and coordinate service representatives sales of marketing and support services to members and trade partners.
- Exercise discretion in settling customer complaints and disputes in accordance with general company policies

It is noted that the first four duties listed above are materially identical to the four duties which the petitioner asserts in the letter dated October 4, 2006 will consume 60% of the beneficiary's time. The remaining ten duties are materially identical to the remaining duties listed in the October 4, 2006 letter, which the petitioner asserts will collectively consume 40% of the beneficiary's time.

The petitioner also submits a materially different organizational chart for the United States operation. The new chart shows the beneficiary at the top of the organization directly supervising five workers who, in turn, are portrayed as supervising an unidentified "staff." The five workers are described as an administrative manager, a food service manager, an executive chief, a chief of delivery, and a senior account manager. The "senior account manager," [REDACTED] was previously ascribed the title "general accountant" and described as having supervisory authority over a "secretary," [REDACTED] in the organizational chart submitted with the initial petition. Likewise, the "administrative manager," [REDACTED] was previously ascribed the title "secretary" and described as reporting to the "general accountant" in the previously submitted organizational chart. Moreover, given the previously submitted organizational chart and the petitioner's averment that it employs three workers in the Form I-129, it appears that the petitioner hired the food service manager, the executive chief, and the chief of delivery after the filing of the instant petition on November 1, 2006.

Finally, the petitioner described the duties of the subordinate staff listed in the revised organizational chart. As these job descriptions are in the record, they will not be repeated here verbatim. Generally, the petitioner described the "senior account manager" as overseeing the financial aspects of the business. The "administrative manager" is described generally as training, supervising, and scheduling "staff" and as administering internal controls, customer relations, and health and inventory matters. None of the five subordinate employees is specifically described as supervising one or more existing employees.

On July 20, 2007, 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, counsel asserts that the beneficiary's duties are primarily those of a manager. Counsel further indicates that the petitioner only became operational in May 2007, approximately six months after the filing of the instant "new office extension" petition. Finally, counsel submitted a letter dated August 8, 2007 from the petitioner's certified public accountant indicating that the petitioner "started business in May of 2007 and had [its] first payroll at the end of May."

Upon review, counsel'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. Future hiring plans, or staff hired after the filing of the instant petition, may not be considered. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new

set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). 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.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. As explained above, a petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will spend 60% of his time directing the management of the organization, establishing goal and policies, exercising wide latitude in discretionary decision-making, and receiving only general supervision or direction from executives, the board of directors, or the stockholders. The petitioner's response to the Request for Evidence appears to reinforce this job description and allocation of duties. However, this job description simply repeats the statutory definition of "executive capacity" found in section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), and fails to specifically define any of the goals, policies, or decision-making which will consume 60% of his time or to describe what, exactly, the beneficiary will do in "directing the management of the organization." Such vague executive-sounding duties are not probative of the beneficiary performing qualifying duties. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive 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).

Likewise, the record is not persuasive in establishing that the petitioner employs a subordinate staff capable of relieving the beneficiary of the need to perform primarily non-qualifying administrative or operational tasks in his operation of the enterprise. As noted on appeal, the petitioner did not begin operating until May 2007 and did not have its first payroll until the end of that month. As the instant petition was filed over six months prior to the petitioner's first payroll and the commencement of business operations, it does not appear that the petitioner employed a subordinate staff at the time the instant petition was filed in November 2006. As noted above, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. Accordingly, the record is not persuasive in establishing that the beneficiary will be relieved by a subordinate staff from the need to perform the non-qualifying administrative and operational tasks inherent to his ascribed

duties and, thus, it has not been established that he will be "primarily" employed as a manager or an executive. 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. First, as noted above, it does not appear that the petitioner actually employed any of the claimed staff members at the time of the instant petition was filed. Therefore, for this reason alone, the petitioner has failed to establish that the beneficiary will supervise and control subordinate employees. Second, even assuming that the petitioner employed the workers claimed in the petition, the record is not persuasive in establishing that any of these workers will truly have supervisory or managerial responsibilities over other existing employees. As noted in the organizational chart submitted in response to the Request for Evidence, all five subordinate workers are shown reporting directly to the beneficiary. Furthermore, while some of the subordinate workers are described as training and scheduling prospective staff members, not one of the subordinate workers is specifically described as having supervisory responsibilities over any of the other four subordinate employees. In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional workers, 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 failed to establish the skills and education required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.<sup>2</sup> Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>3</sup>

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<sup>2</sup>In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

<sup>3</sup>While the petitioner has not 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

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 stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce with any certainty what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears instead that the beneficiary will be primarily employed as a first-line supervisor and will perform the 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.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9<sup>th</sup> Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, 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). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

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beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(1)(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 that the beneficiary's duties will be primarily managerial. Also, as explained above, the record establishes that the beneficiary will primarily be a first-line supervisor of non-professional employees and/or will perform 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 will 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).

In this matter, the petition contains serious inconsistencies regarding its staffing and business operations. For example, while the petitioner claims in the Form I-129 to employ three workers, counsel submitted a letter from an accountant on appeal which indicates that the petitioner did not have any employees until May 2007, over six months after the filing of the Form I-129. Furthermore, while the petitioner submitted an organizational chart with the initial petition, this chart differs materially from the chart submitted in response to the Request for Evidence. The first chart shows the beneficiary at the top of the organization directly supervising a "general accountant" who, in turn, is shown supervising a secretary and six proposed positions. However, the second chart shows the beneficiary at the top of the organization directly supervising five workers who, in turn, are portrayed as supervising an unidentified "staff." The "senior account manager," [REDACTED] was previously ascribed the title "general accountant" and was described as having supervisory authority over a "secretary," [REDACTED] in the organizational chart submitted with the initial petition. Likewise, the "administrative manager," [REDACTED], was previously ascribed the title "secretary" and described as reporting to the "general accountant" in the previously submitted organizational chart. The petitioner offers no explanation for these various inconsistencies in the record. 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). 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. *Id.* at 591.

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

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed abroad for at least one continuous year in a position that was managerial or executive in nature. 8 C.F.R. §§ 214.2(l)(3)(iii) and (iv).

Upon review, the petitioner failed to specifically describe the beneficiary's job duties abroad. Specifics are clearly an important indication of whether a beneficiary's duties will be 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, *aff'd*, 905 F.2d 41. Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad, if any. Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. See sections 101(a)(44)(A) and (B) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary was employed in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition, and the petition may not be approved for this reason.

Beyond the decision of the director, the petitioner has failed to establish that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." *See also* 8 C.F.R. § 214.2(l)(14)(ii)(A). 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." "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

In this matter, the record is devoid of evidence of the foreign employer or the petitioner currently doing business. The record does not contain any evidence from 2006 addressing the regular, continuous, and systematic provision of goods and/or services by either entity. While counsel on appeal submitted evidence that the petitioner was engaged in setting up its business in Florida in 2006 and 2007, counsel admits that "[t]he restaurant has been fully operational since May 2007." The instant petition was filed on November 1, 2006. Also, setting up a business does not constitute the regular, systematic, and continuous provision of a good or service. As noted above, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248. In view of the above, the record is not persuasive in establishing that the foreign entity was engaged in "doing business." The record is also not persuasive in establishing that the petitioner was "doing business" at the time the instant petition extension was filed.

Accordingly, the petitioner has not established that it and the foreign entity are qualifying organizations. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has also failed to establish that the petitioner has been "doing business" for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). As indicated above, the petitioner did not commence doing business until over six months after the filing of the instant petition. Accordingly, the petitioner has failed to establish that the petitioner has been "doing business" for the previous year, and the petition may not be approved for this additional reason.

The previous approval of an L-1A petition does not preclude CIS from denying an extension based on a reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 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

