

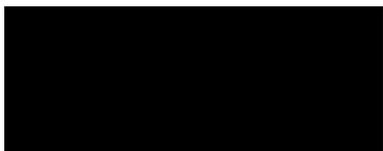
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U.S. Citizenship
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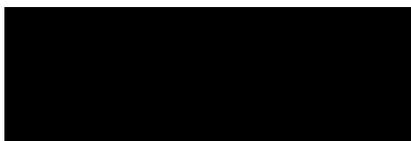


FILE: EAC 03 033 52418 Office: VERMONT SERVICE CENTER Date: **AUG 01 2005**

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioning entity was established in 2001, and is described as a music distribution company. The petitioner claims to be a branch office of Saregama PLC, located in India. The petitioner claims one employee. The petitioner seeks to extend its authorization to employ the beneficiary temporarily in the United States as its senior sales manager for a period of three years, at an annual salary of \$50,400.00. The director determined that the petitioner had failed to establish that: (1) the beneficiary had been or would be employed in a primarily managerial or executive capacity; or that (2) the petitioning entity is doing business.

On appeal, counsel disagrees with the director's decision and submits a brief in opposition thereto.

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

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a visa petition under section 101(a)(15)(L) of the Act 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 (1)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H);
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in this proceeding is whether the petitioner has established that the beneficiary has been or 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.

In a letter dated January 11, 2002, the petitioner described the beneficiary's job duties in part as:

[The beneficiary's] responsibilities include overseeing market development and sales and marketing operations throughout the east coast and Eastern Canada; supervising the sales operations of our distributors to ensure that legitimate Saregama products are available to consumers, rather than pirated materials; overseeing product development by proposing new products, and promoting U.S. based artists; liase [sic] with the Recording Industry Association of America (RIAA) to identify counterfeit Saregama products and remove them from the market; oversee promotion of Saregama products to the media (television, radio, and newspapers); and, supervise the activities of Saregama's clearing and forwarding agent to ensure availability of products.

Additionally, [the beneficiary] supervises the sales, indenting and receivable management for the east coast of the U.S. and Eastern Canada; is working to increase the width and depth of our market, primarily for catalogue products of Saregama in the above territories, with special focus given to regional and classical products; supervises consolidation and growth of the dealer and distribution network in the aforementioned territories, with special attention given to the virgin territories in Georgia, Michigan, Indiana and, in the future, Latin America; employs attorneys and oversees legal teams to enforce Saregama's rights in cases of piracy and copyright infringement; supervises licensing and royalty collections from various bodies like ASCAP, and BMI, etc. to increase revenue; proposes compilations, which will benefit the U.S. market; supervises distribution agents to ensure they increase retail presence in mainline stores like Virgin, Tower, and HMV in the above territories; is responsible for the increase and enhancement of our company's brand and product media visibility as well as corporate attendance at industry conventions, such as MIDEM; and supervises media

planning in an effort to increase awareness of Saregama.com, Hamaracd.com and other e-ventures.

Furthermore, he is responsible for overseeing and managing the expansion of our product distribution system via e-commerce sales strategies, including business to business and retailing via [the] Internet; establishing sales budgets, targets per distributor/direct accounts, and appropriate controls to achieve budgeted expenditures; identifying new sales segments and appointing and managing new distributors, wholesalers, and direct accounts; overseeing the accumulation and analysis of sales data to formulate sales policies; setting targets and adopting appropriate sales programs; managing specific product and sales techniques to train sales representatives, distributors, agents, and associates; overseeing promotional and advertising campaigns to establish product ranges (CD, DVD & MC); and, representing our company in various music industry forums and trade associations to protect label copyrights.

[The beneficiary] will be directly responsible for the supervision, management and control of our New Jersey office, and will supervise and control eight (8) distribution agents in New Jersey, New York, Virginia, Florida, and Ontario, Canada. He will thus oversee all aspects of Saregama Plc's sales activity in his territory and will act as a management liaison with the senior sales manager for the southern United States, West Coast and Internet Operations; the logistics and warehousing agent in Chicago, Illinois, and, the distribution agents. [The beneficiary] will have the authority and power to recommend the hiring and firing of individuals in his department and make such personnel decisions as recommending raises, advancements and work/vacation schedules.

The petitioner submitted a business plan, which described the sales methods overseen by the beneficiary as:

1. Direct sales to distributors through sales calls.
2. Using catalogs and instock lists to create sales movements.
3. Retail level promotions and consumer promotions to create demand pull for our products.

The petitioner described the staff recruitment process in the business plan in part as:

[The beneficiary] will manage a team of distribution agents The distribution agents will maintain warehouses and sales staff to further redistribute our products to retailers and shops throughout the market. Their remuneration will be entirely on [a] commission basis These agents will not be employees of the company but will be independent companies who will be appointed in due course. [The beneficiary] will directly supervise each of the distribution agents in his territory.

The petitioner submitted copies of retail distribution contracts entered into by the London office. The petitioner also submitted copies of various business cards. The petitioner submitted a copy of the U.S. entity's organizational chart, which depicts the beneficiary as senior sales manager, and a receptionist and independent distributors as subordinates.

In response to the director's request for additional evidence on the subject, counsel described the beneficiary's duties as:

- Set corporate strategies, goals, and policies for the [U.S. entity's] New Jersey office so as to consolidate the existing music business and aggressively diversify into DVD sales. . . . 6 hours a week. 15% of time spent.
- Manage long-term distributors in the east coast U.S. and Canada. Oversee distributors to ensure that they are stocking products in adequate quantities to meet demand, as sales are time-sensitive. Make random checks in select stores to find out how well Saregama's products are distributed and displayed by distributors. Educate distributors on the investment they have made in Saregama products and returns they earn from Saregama products. Educated distributors on identifying counterfeit/pirated products and legitimate products. All distributors independently report to the senior sales manager, 3.5-4 hours a week. 10% of time spent.
- Supervise anti-piracy activities of Indian music industry in the New York region as a member of the RIAA (Recording Industry Association of America.) Oversee strategies for increasing legitimate music share of Indian music; 3.5-4 hours a week. 10% of time spent.
- Coordinate with government agencies such as U.S. Customs Service and the Royal Canadian Mounted Police (RCMP) in an ongoing effort to help fight music piracy; 2 hours a week. 5% of time spent.
- Oversee identification of gaps-opportunities for expansion of existing business by managing the expansion of the distribution network in unrepresented areas, such as Georgia, Massachusetts, and Pennsylvania. Direct expansion into DVD sales and marketing throughout the east coast and Eastern Canada. Advise UK corporate office on marketing in the east coast; 3-5 hours a week. 10% of time spent.
- Control acquisition of music and DVD rights of Tamil products for American market. As the sole manager fluent in the South Indian language of Tamil, advise Saregama Plc. on which rights to acquire based on in-depth analysis of factors such as who produces, stars in, and directs each film. . . 6 hours a week. 15% of time spent.
- Develop relationships with local ethnic media by overseeing promotion of the company on local television channels. Determine which marketing software to distribute which provides free promotion for Saregama and free software for the media. . . .Manage marketing activities for Saregama products by creating product awareness through development of effective marketing campaigns to establish that Saregama is synonymous with Indian music; 3.5-4 hours a week. 10% of time spent.
- Create relationships with music publishing bodies such as ASCAP to develop future licensing and publishing income from broadcast and public performance of Saregama's repertoire; 3.5-4 hours a week. 10% of time spent.
- Manage warehouse operations in Chicago. . . . Chicago warehouse manager . . . reports to senior sales manager on ongoing logistic activities; 2 hours a week. 5% of time spent.
- Manage new product development division. Supervise products created by [the] Indian product management team in India. Advise on product marketing in U.S. 3.5-4 hours a week. 10% of time spent.

In response to the director's request for a list of individuals employed by the New Jersey office that identifies each employee by name and position title, the petitioner stated:

Unfortunately, due to the turndown in the economy, the New Jersey office has not hired any new employees. Thus, [the U.S. entity] is unable to provide such a list, and cannot submit pages from the Forms 941, Employer's Quarterly Tax Return, which list[s] employees by name. Additionally, the New Jersey office has not used independent contractors to perform any functions.

In response to the director's request for additional evidence describing the beneficiary's duties in relation to the independent distribution agents, the petitioner stated:

[The beneficiary] does supervise independent distribution agents. He oversees these distribution agents to ensure that they are stocking products in adequate quantities to meet demand, as sales are time-sensitive; makes random checks in select stores to find out how well Saregama's products are distributed and displayed by distributors; educates distributors on the investment they have made in Saregama products and returns they earn from Saregama products; and, educates distributors on identifying counterfeit/pirated products and legitimate products. . . . Saregama Plc. does not pay remuneration to the distributors as, per their contracts, they are entitled to mark-up their prices to the public.

The director denied the petition after determining that the petitioner had failed to establish that the beneficiary had been and would be employed by the U.S. entity primarily in a managerial or executive capacity. The director stated that the job duties described were too vague to determine the extent of the beneficiary's daily activities. The director noted that the beneficiary's job description and other evidence contained in the record demonstrated that he performed all of the functions of the U.S. entity. The director also noted that the petitioner indicated, in response to the director's request for additional evidence, that the U.S. entity didn't employ any subordinates or utilize any independent contractors. The director stated that although the retail distributors independently display and sell music products they are not employees of the U.S. entity. The director further stated that it is the beneficiary who is responsible for all promotional activities, site visits, sales, marketing, and administrative functions of the business. The director concluded by noting that based on the size and nature of the U.S. business, it appeared that the beneficiary would primarily be engaged in the day-to-day functions of the operation as the foreign entity's agent, without any subordinate staff to relieve him from performing non-managerial duties.

On appeal, counsel disagrees with the director's decision and asserts that the beneficiary's job duties have been set forth in great detail and are not vague or general in nature. Counsel also asserts that the beneficiary sets corporate strategies, goals, and policies in dealing with the distributors who he manages. Counsel contends that the beneficiary also has the authority to grant payment credit or allow the substitution for damaged or mis-sent items, and negotiate credit terms with Pyramid AV (Canada). Counsel further contends that the beneficiary sets pricing policy and the amount of deposit to be collected, and makes all other financial arrangements with distributors. Counsel also asserts that the beneficiary's primary managerial function includes locating, negotiating with, appointing, managing and controlling the work of the retail distributors. Counsel contends that the retail distributors qualify as independent contractors. Counsel further contends that the beneficiary manages independent contractors, supervises the company's anti-piracy activities, oversees expansion effort, supervises and oversees the acquisition of music and DVD rights, develops relationships with local ethnic media, serves as a liaison to music publishing bodies and contracts with the organizations to gain royalty payments, manages warehouse operations in Chicago, directly supervises the warehouse manager, manages and develops marketing strategies for the company's new product development division, and oversees the CPA's work.

Upon review, counsel's assertions are not persuasive. The evidence submitted is not sufficient to demonstrate that the beneficiary has been or will be employed by the New Jersey office primarily 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(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The 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 record shows that the beneficiary was the sole employee of the U.S. entity at the time the petition was filed. There is no evidence that the independent contractors actually perform the day-to-day non-qualifying duties of the New Jersey office. Consequently, there is insufficient evidence to show that the beneficiary has performed or will perform the high-level responsibilities as defined, or that he has performed or will primarily perform those duties rather than spending the majority of his time performing day-to-day functions of the organization.

The petitioner describes the beneficiary as shipping the product, performing sales functions, writing business checks, being involved in the negotiating process, marketing the petitioner's product, etc. Since the beneficiary actually distributes the foreign entity's products, negotiates the contracts, markets the petitioner's product, and performs administrative duties, he is performing tasks necessary to provide a service or product and these duties will not be considered managerial or executive in nature. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Even though the petitioner claims that the beneficiary directs and manages the petitioner's sales and marketing activities, it does not claim to have anyone on its staff to actually perform the sales and marketing functions. Thus, either the beneficiary himself is performing the sales and marketing functions or he does not actually manage the sales and marketing functions as claimed by the petitioner. In either case, the AAO is left to question the validity of the petitioner's claim and the remainder of the beneficiary's claimed duties. 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). If the beneficiary is performing the sales and marketing functions, the AAO notes that an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church of Scientology International, supra*.

On appeal, counsel contends that the beneficiary is a functional manager in that he manages the sales and marketing functions of the organization. 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, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must 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. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties

demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International, supra*. In this matter, the petitioner has not provided sufficient evidence to establish that the beneficiary manages an essential function. Moreover, it appears from the record that the beneficiary performs the functions of the organization rather than managing them.

Counsel further contends that the beneficiary manages the activities of independent contractors. Contrary to counsel's contention, the evidence shows that the independent distributors contracted with the London office to distribute the foreign entity's products in the United States and Canada. There is nothing in the contractual agreements indicating that the beneficiary has authority to manage the retail distributors or their businesses. Furthermore, the petitioner indicated that the beneficiary devotes only ten percent of his time managing distributors. Counsel contends that the beneficiary manages a CPA who is responsible for preparing tax records for the New Jersey office. Contrary to counsel's assertion, there has been no evidence submitted to show whether the contractor will be retained by the New Jersey office on a full-time or part-time as needed basis. Additionally, the petitioner has not explained how the services of the independent contractors will obviate the need for the beneficiary to primarily perform non-qualifying duties. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The second issue in this proceeding is whether there has been sufficient evidence submitted to establish that the U.S. entity is doing business.

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 record shows that the U.S. entity is a branch office of the foreign company. Based upon evidence presented in the record, the foreign entity is engaged in manufacturing and marketing Indian music, including DVD, cassettes, and other media instruments. The foreign company's products are sold through its London

office and subsequently shipped to the United States where they are stored in its Chicago warehouse for distribution. From the Chicago warehouse the items are shipped to retail establishments for sale.

In a letter dated November 12, 2002, counsel stated that the London-based office filed the petition on behalf of the beneficiary to extend his employment as senior sales manager of his employer's New Jersey branch office. As evidence that the U.S. entity is doing business, the petitioner submitted copies of the New Jersey office's bank account records and business plan. The petitioner also submitted copies of retail distributor's contracts, proof of television advertising, janitorial bills, and the New Jersey executive's earnings statement. The petitioner further submitted a copy of a New Jersey state filing certification for the New Jersey office, dated November 1, 2001.

The director determined that insufficient evidence had been submitted to determine whether the New Jersey office has been doing business and subsequently requested additional evidence. The director specifically requested:

Submit additional evidence to show the level of business activity currently being conducted by your New Jersey office. Evidence to submit should include:

A copy of Saregama II Inc.'s business tax return for 2001, including all schedules, if one was filed.

An audited or reviewed financial statement for Saregama II Inc. covering the last six months.

A representative sample of business activities for the New Jersey office since incorporation such as copies of marketing brochures, purchase orders, contracts, invoices, occupational licenses, advertisements etc.

In response to the director's request for additional evidence on the subject, the petitioner submitted copies of the New Jersey office's IRS Form 1120-F, U.S. Income Tax Return of a Foreign Corporation for the year 2001, a financial statement, advertisements, and business invoices. The petitioner also submitted copies of retail distributor's contracts entered into by the foreign entity's London office.

In a letter of response, dated February 13, 2003, the petitioner stated in part:

The RFE requests additional evidence to show the level of business activity currently being conducted by the New Jersey office. The office is, in fact, engaging in setting up infrastructure, appointing dealer network, anti piracy activity-with the objective of starting direct commercial activity. . . .

. . .

Exhibit "F": a financial statement from Saregama PLC's CPA covering the last six months, showing profit and loss generated by the US operations. Please note that an audited or reviewed financial statement specifically for the New Jersey office is not available as all sales are generated from the UK office. . . . During 2002-03, the New Jersey office has been in the process of setting up its operations by appointing distribution agents, conducting anti-piracy activity, and setting up warehouse facilities. As a result, all sales transactions are being

carried out by the UK office in London. Although the New Jersey office posted paper losses in the last year, those are due to set-up costs, no infrastructure, and the resultant higher costs of sales.

The director denied the petition stating that the petitioner had failed to demonstrate that the New Jersey office was engaged in the regular, systematic or continuous provision of goods and/or services. The director noted that the general manager of the foreign entity, in response to the Request For Evidence, stated in part: "the New Jersey office has been in the process of setting up its operations" and that "all sales transactions are being carried out by the UK office." The director further noted that the general manager indicated that the New Jersey office was not conducting business, and for that reason was not submitting any business tax returns. The director noted the financial statement submitted by the petitioner showed combined business activities of the New Jersey and Texas branch offices, and did not clearly show business activity on the part of the New Jersey branch. The director also noted that the London office generated all sales invoices submitted. The director concludes by stating that based upon the record, it appeared that the beneficiary was acting as an "agent" for the foreign entity, in that he promotes the company's products, makes follow-up visits with distributors, represents the foreign company at various trade associations and events, and performs any necessary marketing or administrative tasks required by the foreign company.

On appeal, counsel disagrees with the director's decision and asserts that the evidence clearly demonstrates that the New Jersey office is engaged in the regular, systematic or continuous provision of good and/or services. Counsel further contends that the New Jersey office has been doing business since January 2002. Counsel quotes from a letter written by the foreign entity's general manager and submitted on appeal, to substantiate his claim. As evidence of the New Jersey office doing business, the petitioner submitted business policy documents; set-up and expansion plans; contracts between the New Jersey office and independent contractors; correspondence between the New Jersey office and independent contractors; letters from independent contractors; business cards of independent contractors; a contract between the New Jersey office and a CPA firm; sample invoices; wire transfers; and issued checks.

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. 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) require 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, there has been insufficient evidence submitted to show that the New Jersey office has been doing business. The evidence initially submitted by the petitioner demonstrated that independent distributors entered into contracts with the foreign entity's London office, not the New Jersey office. The evidence also showed that the financial statements submitted failed to distinguish the financial status of the New Jersey office from that of the Texas office. The invoices submitted demonstrate business transactions conducted by the London office, Texas office, and Chicago office. The general manager of the foreign entity admits that the New Jersey office is still in its developmental stages and that as a result the London office had carried out all business transactions. The general manager also notes that as a result of a downturn in the music industry and the events of 9/11 it had to "temporarily postpone additional employment plans." The general manager stated in part: "the planned setup and expansion of the New Jersey office's infrastructure was postponed until turnover and margins returned to normal and the

branch offices were no longer reliant on the shared infrastructure and personnel of their U.K. parent.” The New Jersey office’s IRS Form 1120-F, U.S. Income Tax Return of a Foreign Corporation, for the year 2001 shows no income from sales for 2001. The petitioner failed to submit copies of the New Jersey office’s financial statement covering the last six months of business as requested by the director.

On appeal, the petitioner submitted copies of contracts between the New Jersey office and independent contractors; correspondence between the New Jersey office and independent contractors; sample invoices; wire transfers; and company issued checks. The invoice dates are not complete. The other business documents including the correspondence, independent contractor agreements, and wire transfers are dated from November of 2002 through 2003. Although the petitioner submitted copies of two canceled checks dated July and September of 2002, this evidence alone is insufficient to demonstrate that the entity was doing business. The record as presently constituted does not demonstrate that the New Jersey office was engaged in the regular, systematic, and continuous provision of goods and/or services during the period in question. For this additional reason, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.