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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

File: WAC 06 034 53600 Office: CALIFORNIA SERVICE CENTER Date: APR 05 2007

IN RE: Petitioner: [redacted]
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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, California 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 petition seeking to extend the employment of its president 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, a California corporation, claims to be engaged in the installation of pipe lining for residential and commercial buildings. The petitioner states that it is an affiliate of Rikos GmbH, located in Mannheim, Germany. The beneficiary was initially granted a one-year period in L-1A classification in order to open a new office in the United States, and the petitioner now seeks to employ the beneficiary for three additional years.

The director denied the petition on March 21, 2006, concluding that the petitioner had not established: (1) that the beneficiary would be employed in the United States in a primarily managerial or executive capacity under the extended petition; or (2) that the U.S. company was doing business.

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, the petitioner asserts that the beneficiary will be employed in the United States in a "managerial, executive capacity that involves specialized knowledge." The petitioner discusses at length its business plans in the United States and obstacles encountered during the first year of operations, and states that, as of April 2006, the petitioner is generating revenue through provision of training services to a U.S. client. The petitioner asserts that it anticipated having three years in which to develop the U.S. company, and that in fact, it had only ten months from the date the beneficiary was granted his L-1A visa at the U.S. Consulate in Frankfurt. The petitioner submits a brief and additional evidence in support of the appeal.

Upon review and for the reasons discussed herein, the petitioner's assertions are not persuasive. The L-1 visa classification is not an entrepreneurial visa or intended for nonfunctional start-up companies. 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 a new office petition to support an executive or managerial position. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii). Here, the petitioner has failed to demonstrate that the U.S. company has expanded to the point where it can support the beneficiary in a primarily managerial or executive capacity. Further, the petitioner's claim that the U.S. company has been doing business is not supported by sufficient documentary evidence. As the petitioner has failed to establish these essential elements of eligibility for the extension of its "new office" petition, the appeal will be dismissed.

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 this proceeding is whether the petitioner established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

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 nonimmigrant petition was filed on November 25, 2005. On Form I-129, the petitioner stated that as president of the company, the beneficiary would act as "executive/chief engineer" with responsibility for "technology transfer and employee training, project supervision, company management." The petitioner stated that it had two employees, including the beneficiary and the other claimed owner of the company. The petitioner did not submit any of the initial evidence required in support of an L-1 extension involving a new office pursuant to the regulation at 8 C.F.R. § 214.2(l)(14)(ii).

Accordingly, on December 29, 2005, the director requested additional evidence to establish that the petitioner would employ the beneficiary in a managerial or executive capacity. Specifically, the director instructed the

petitioner to submit: (1) a copy of the U.S. company's organizational chart, clearly identifying the beneficiary's position and listing all employees under the beneficiary's supervision by name and job title; (2) a brief description of job duties, educational level, and annual salaries/wages for all employees under the beneficiary's supervision; (3) copies of the U.S. company's IRS Forms 941, Employer's Quarterly Federal Tax Return, for the last four quarters; (4) copies of the U.S. company's payroll summary, Forms W-2 and W-3 evidencing wages paid to employees in 2004; and (5) copies of the company's California Forms DE-6, Quarterly Wage and Withholding Report, for the last four quarters. The director also provided the statutory definition for executive capacity, and requested that the petitioner provide the following evidence in support of its claim that the beneficiary would serve in such a capacity: a list of specific goals and policies the beneficiary established; a list of the specific discretionary decisions the beneficiary executed over the last six months; and, a specific day-to-day description of the duties the beneficiary has performed over the last six months.

In a response dated February 22, 2006, the petitioner stated that, since arriving in the United States, the beneficiary "was active in transferring, purchasing, manufacturing and setting up all the equipment necessary to perform the epoxy lining of potable water pipes in residential, commercial and industrial buildings," and "devoted much of his time to developing tooling and adjustments to procedures to overcome technical problems." The petitioner further stated that the beneficiary is in the process of studying to obtain a California plumber's license, the possession of which is required in order to obtain business insurance. In addition, the petitioner indicated that the company has an agreement with a plumbing company who will purchase the petitioner's epoxy product and receive training and ongoing technical assistance from the beneficiary once they receive the equipment. The petitioner noted that upon renewal of the beneficiary's visa, the company intends to pursue the sale of its proprietary technology and training services as its major source of revenue in 2006.

In response to the director's request for evidence regarding the staffing of the company, the petitioner noted that the company's two owners, including the beneficiary, "have worked as necessary throughout 2005 . . . without receiving compensation for these activities since the company generated no revenue." The petitioner noted that the company's other owner, Frank Sanderson, serves as secretary, with responsibility for general administration and marketing activities. Finally, the petitioner noted that the beneficiary made the decision to file an L-1A visa petition on behalf of his son so that he could "assist in evaluating and refining new procedures for the Southern California market. . . and train new employees." The petitioner indicated that the petition process for the beneficiary's son took longer than expected and "delayed plans for operating a business with adequate trained staff."

The director denied the petition on March 21, 2006, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director acknowledged the petitioner's explanation regarding its inability to provide the requested organizational chart, payroll records and detailed description of the beneficiary's job duties, but noted that petitioner must establish eligibility as of the date the petition was filed. The director determined that since the petitioner had no other employees, "the beneficiary has to perform all the business activities of the petitioner including the non-qualifying duties." The director found insufficient evidence to establish that the beneficiary's daily activities or the specific scope and nature of the beneficiary's activities will be

managerial or executive, as he will have no subordinate staff of professional, managerial, or supervisory personnel who would relieve him from performing non-qualifying duties.

On appeal, the petitioner asserts that the beneficiary "is employed in a managerial, executive capacity that involves specialized knowledge." The petitioner asserts "information provided by USCIS indicates that an L-1 visa application is associated with a three-year term," and noted that such a timeframe is consistent with the petitioner's expectations for establishing a viable epoxy pipe lining company. With respect to the beneficiary's duties the petitioner notes that during the previous year, the beneficiary developed and tested procedures for the lining of larger diameter pipes used on ships, refined epoxy mixing and application methods and equipment to enable pipe lining in hot weather, and developed equipment for applying epoxy to pipes in a single family residence setting. The petitioner further indicated that the beneficiary spent a considerable amount of time determining the appropriate business model for the U.S. company.

The petitioner again notes that it had filed an L-1 visa petition for another employee, but that processing of the petition took several months and the employee was thus not available to deliver training or to manage individual projects. The petitioner states that the employee has since been transferred to the United States and is currently training a client's employees in the application of the petitioner's epoxy products. The petitioner further asserts:

> [The beneficiary] was fully engaged in Executive duties as per the terms of his visa. He also had some ongoing obligations to support Rikos Ltd. in Canada because of his personal customer relationships with their existing major clients. Without an experienced project manager and training it was impractical for [the petitioner] to contract for pipe-lining services or to make training commitments.
>
> The two company owners had the financial resources, without immediate compensation, that enabled them to engage in planning, development, market research and organizational activities that were executive and managerial in nature during a period in which a visa had not yet been made available to employ an employee with essential skills and specialized knowledge.
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> [The beneficiary] is the President and Chief Financial Officer of [the petitioner]. He has been responsible for all the development activities discussed above including large project marketing and proposal preparation. He is the lead in developing relationships with Plumbing and Leak Detection companies. As Chief Engineer, he is responsible for refining [the petitioner's] [t]echnology to the special needs of plumbing practices in California. His responsibilities are managerial, executive and involve specialized knowledge. His activities and responsibilities include all the items defined as "Executive Capacity."

The petitioner notes that the petitioner's inability to commence provision of its principal services in the United States during the first year of operations "freed up [the beneficiary] from many executive and management

responsibilities that would have been incurred in a quicker start up of business services." The petitioner submits an organizational chart depicting the beneficiary as president and treasurer, supervising a company secretary responsible for marketing and administration, and the above-referenced L-1B employee, who is responsible for technical training and project management. The petitioner states that the L-1B employee received his visa in October 2005, but indicated that he began to receive wages during the second quarter of 2006.

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In addition, the definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his or her duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

The record contains no comprehensive description of the beneficiary's duties, nor any evidence to suggest that his duties at the time of filing would rise to the level of those contemplated by the statutory definitions of managerial or executive capacity. Initially, the petitioner described the beneficiary's duties as "technology transfer and employee training, project supervision and company management." This general job description, considered in light of the petitioner's statement that the company employed only the beneficiary and one other employee at the time the petition was filed, suggested that the beneficiary may perform non-qualifying duties associated with the technical aspects of the petitioner's business and the provision of the company services. The petitioner did not identify any employees to be trained by the beneficiary, the "projects" he would supervise, or what specific duties would be involved in "technology transfer" or "company management." 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).

Accordingly, the director reasonably requested a detailed description of the beneficiary's duties, including a specific day-to-day account of the duties the beneficiary performed during the six months preceding the filing of the petition. The petitioner did not provide the requested detailed description, and instead, its response focused primarily on explaining the factors leading to the petitioner's delay in commencing operations in the United States. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed.

See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The minimal information provided regarding the beneficiary's actual job duties suggested that he was engaged in developing tools and procedures to overcome unforeseen technical problems, evaluating and refining equipment to meet market requirements, and studying for a California plumber's license. The petitioner also mentioned an agreement with a customer which would require the beneficiary to provide training and ongoing assistance with the petitioner's technology. The petitioner did not indicate how any of these duties would fall under the statutory definitions of managerial or executive capacity, nor did it indicate what qualifying duties the beneficiary would perform under the extended petition. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). As the evidence of record indicated that the beneficiary would be the only employee available to provide the petitioner's services, the director reasonably determined that he would not be employed in a primarily managerial or executive capacity.

On appeal, the petitioner attempts to clarify the beneficiary's job duties, noting his involvement in "development activities" for "large project marketing" and "proposal preparation," responsibility for developing relationships with potential clients and business partners, and responsibility for refining technologies "to the special needs of plumbing practices in California." The petitioner asserts that these duties, along with other organizational, planning and market research duties performed by the beneficiary, meet the statutory requirements of "executive capacity." The petitioner's assertions are not persuasive. The new, vaguely defined duties introduced on appeal are insufficient to establish the beneficiary's employment in a qualifying capacity, as they appear to confirm the beneficiary's involvement in non-qualifying marketing, sales and technical product development functions.

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, 8 U.S.C. § 1101(a)(44)(B). 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 managerial 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.* In this matter, the petitioner has not established that the beneficiary is relieved from performing various routine activities related to the company's marketing, sales and service functions, such that he could primarily focus on the goals and policies of the organization, nor does the record establish that the organization has a subordinate level of managerial

employees. Accordingly, the record does not support the petitioner's assertion that the beneficiary has been and would be performing primarily executive duties.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. In this matter, the petitioner has not established that it employed any employees to sell or deliver the services offered by the company. Based on the evidence of record, it must be concluded that the beneficiary would be performing primarily non-qualifying tasks associated with the technical development, marketing and delivery of products and services, rather than managing or supervising the performance of these routine duties by other subordinate employees. Although the petitioner indicates that it now employs a project manager, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Notwithstanding the petitioner's claim that it believed it had three years in which to complete its start up operations and establish its business, the one-year "new office" provision is an accommodation for newly established enterprises, provided for by CIS regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner only one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. Accordingly, the appeal will be dismissed.

The second issue in this matter is whether the petitioner has established that the U.S. company has been doing business for the year preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) states: "*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 petitioner must therefore establish that the U.S. company has been doing business since the approval of the initial "new office" petition in December 2004. At the time of filing, the petitioner did not indicates a gross income figure on the Form I-129, nor did it submit any evidence that the company was doing business, or evidence of the financial status of the company.

Accordingly, on December 29, 2005, the director requested a signed copy of the petitioner's corporate tax return for the 2004 year, as well as color photographs of the petitioner's business premises.

In a response dated February 22, 2006, the petitioner stated that the U.S. company "did not generate any Revenue or incur any Corporate Expense during Calendar 2005." The petitioner noted that the beneficiary's activities in the United States upon his arrival included "transferring, purchasing, manufacturing and setting up all the equipment necessary to perform the epoxy lining of potable water pipes in residential, commercial and industrial building," as well as receiving inquiries regarding lining of pipes for U.S. Navy "Shipboard and Housing" pipe installations.

The petitioner outlined a number of factors that "prevented the Company from actively engaging in the Epoxy Lining of Pipes In California." The petitioner noted a serious illness affecting the petitioner's business collaborator, a delay in obtaining an L-1 visa for the beneficiary's son, and the beneficiary's need to study for and obtain a California plumber's license in order to obtain business insurance. The petitioner further noted that it was required to change its business model and noted that "the sale of proprietary technology, certified epoxy and training is anticipated to be a major source of revenue in 2006." The petitioner mentioned an agreement with a U.S. company "who are in the process of purchasing the specialized equipment required for epoxy pipe lining, and which calls for the beneficiary to work with them for training purposes upon receipt of the equipment." The petitioner also mentioned that the company has "had discussions and serious interest from various established plumbing companies," which would be pursued upon receipt of the beneficiary's renewed visa.

In response to the request for photographs of the petitioner's premises the petitioner noted its ongoing relationship with "Clarke Plumbing, who supply a physical home and comprehensive support facilities as described in [the beneficiary's] initial visa application." The petitioner enclosed a photograph of a van bearing the name "Wes Clarke Pipe Lining." The petitioner also submitted a letter dated February 21, 2006, which states that American Sewer Detection Inc. dba A to Z Lead Detection has entered into an agreement to receive technical training from the petitioner, with an expected commencement date of March 2006.

The director denied the petition on March 21, 2006, concluding that the petitioner had not established that it was doing business at the time of filing or for the previous year. The director noted that the petitioner had failed to address his request for copies of the petitioner's federal tax returns or color photographs depicting the petitioner's business premises.

On appeal, the petitioner asserts that "a grant of intracompany transfer on a specific date is not synonymous with the capability to operate a business that is dependent upon the issuance of visas to individuals with necessary specialized knowledge." The petitioner again notes that the beneficiary did not take up residence in California until approximately March 1, 2005, and emphasizes that the company's operations were on hold until the beneficiary's arrival as the other owner of the company did not have the expertise or proprietary knowledge to commence operations.

The petitioner notes the company's marketing activities during the first year, and noted that it did receive requests for proposals from eight or more large condominium projects in southern California that are either still awaiting funding commitments or have been abandoned and therefore have not yet generated any revenue. The petitioner also references the lack of controlling statewide regulations governing the epoxy lining of potable water pipe lines, but notes that it some of the petitioner's activities will require a California plumbers license, which involves "complex and time consuming requirements for study activities and examinations."

The petitioner further notes its relationship with Wes Clarke Plumbing Company, which "is able to provide a contracting capability," and noted that Clarke Plumbing had submitted proposals for amounts in the hundreds of thousands of dollars. The petitioner cites various factors causing delays, and indicates that the "cooperative technical relationship between the two companies was not able to develop fully until late in the Summer 2005." The petitioner explains that the two companies worked together to adapt the petitioner's epoxy technology to California single family residence requirements. The petitioner further notes that it has since transferred another employee in L-1B status to provide training to customers who purchase the petitioner's products and to manage individual projects. The petitioner asserts that it now has the capability to pursue large building pipelining projects, single family residence projects, and to sell technology and epoxy to other plumbing and lead detection companies and provide training.

The petitioner also confirms that it did not file federal tax returns in 2005 because it generated no revenue. The petitioner again emphasizes that the company's revenue generating operations were dependent upon the presence of the beneficiary's son as an L-1B employee, and the company did not have the reasonable availability of the necessary employees during the first year of operations. The petitioner asserts that it is currently generating revenue from training activities under contract to A to Z Lead Detection Co. The petitioner notes that it maintains equipment at Clarke Plumbing, performs services at client sites, and performs other business activities at the beneficiary's home office.

In support of the appeal, the petitioner submits excerpts from the web site of Rikos Ltd. in Canada, which lists operations at "System Rikos USA," a copy of a newspaper advertisement for the petitioner, and copies of proposals submitted to potential clients by "Wes Clarke Pipe Lining."

Upon review of the petition and evidence, the petitioner has not established that it was doing business for the previous year, or at the time the petition was filed. The petitioner has not submitted evidence that it was engaged in the regular, systematic, and continuous provision of goods and/or services at any time during the beneficiary's initial period of L-1A classification.

As noted above, the regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii).

If a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.* After one year, CIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B).

Upon review of the current petition, it is apparent that the petitioner was not prepared to commence doing business upon approval of its initial new office petition and did not in fact start up its operations until more than one year after the approval of the petition. Many of the activities undertaken by the petitioner during the first year of operations involved research of the market, adaptation of its product and processes for the market, studying for required licenses, and other activities which would reasonably be expected to be completed prior to the filing of an initial new office petition. This failure on the petitioner's part is not a result of some impossibility created by the law or regulations. The one-year period was not included in the regulations as a hindrance to new offices. On the contrary, the new office provisions were added to the regulations in 1987 specifically in recognition that it would be impossible for some new offices to immediately employ someone in an executive or managerial capacity as defined in the regulations. *See* 52 Fed. Reg. at 5739-5740. At the same time, the legacy INS stated that it "must concern itself with abuse or the potential for abuse of any visa category" and further noted that "one year is sufficient for any legitimate business to reach the 'doing business' standard." *Id.* Thus, it appears that the petitioner's present ineligibility for the benefit sought is not the result of a restrictive regulation but rather a lack of legal and business planning juxtaposed with what appears to be normal and expected business delays in the petitioner's given industry.

The petitioner asserts on appeal that the U.S. entity is now doing business. However, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Regardless, the petitioner has provided no new evidence to show that the petitioner has actually commenced sales, support or pipelining installation activities. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner has not submitted any evidence on appeal to overcome the director's conclusion that the U.S. company was not doing business at the time of filing or for the previous year. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the U.S. company and the foreign employer continue to maintain a qualifying relationship as required by 8 C.F.R. § 214.2(l)(14)(ii)(A). To establish eligibility, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same entity or are related as a "parent and subsidiary" or "affiliates." The petitioner claims to be an affiliate of Rikos GmbH, located in Germany, and notes that the beneficiary has an ownership interest in each company. However, the petitioner has not submitted any evidence of the U.S. company's or foreign entity's ownership and control to substantiate this claim. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.