U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

D-7

MAR 0 6 2007

FILE: SRC 04 197 52557 Office: TEXAS SERVICE CENTER Date:

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, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its operations 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 Tennessee corporation, and claims to be engaged in cleaning services. The petitioner states that it is the affiliate of [redacted]., located in Venezuela. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition on June 25, 2005, concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. In addition, the director found that the petitioner's failure to submit the requested evidence, thereby precluding a material line of inquiry, is grounds for denying the petition. The director further stated that the record does not indicate the number of individuals employed by the United States entity, and the gross annual income of the U.S. entity. In addition, the director stated that the United States entity does not appear to have subordinate manager employees, and thus the beneficiary will be carrying out the day-to-day operations of the U.S. entity rather then supervising subordinate employees who would relieve the beneficiary from primarily performing non-qualifying duties.

On the Form I-1290B, the petitioner asserts the following:

> [The U.S. company] is a Tennessee based corporation established in October, 2002. As a consequence of the September 11, 2001 changes in our economy, and through a comprehensive analysis of the actual market needs, [the U.S. company] decided to expand its business into the cleaning business and has also recently purchased a gas station, namely, [redacted]
>
> Although we do not show what you consider "qualified employees", we have had and currently have, several part-time employees which [the beneficiary] manages, one of them being a subordinate manager. Projections for the next twelve months for our company are very promising. The company has invested a lot of time and effort in [the beneficiary] and if we lose him at this time, it would be highly detrimental to our future efforts.
>
> I therefore respectfully request that his L-1 visa extension be granted even if for only one year. We are sure that if our company is given an additional twelve (12) months, we will be able to provide you with all the evidence previously requested.

The petitioner did not submit a brief or documentation in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed

the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Upon review, the AAO concurs with the director's decision and will affirm the denial of the petition. The petitioner's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well founded and logical conclusions the director reached based on the evidence submitted by the petitioner.

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

The petitioner has not established that it is eligible for an extension of the initial one-year "new office" validity period. As previously noted, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides strict evidentiary requirements that the petitioner must satisfy prior to the approval of this extension petition. Upon review, the petitioner has not satisfied any of the enumerated evidentiary requirements. The petitioner has not submitted evidence that the United States and foreign entities are still qualifying organizations as defined in 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner has not submitted evidence that the United States entity has been doing business for the previous year as defined in 8 C.F.R. § 214.2(l)(1)(ii)(H). The petitioner has not submitted a detailed statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition so that the AAO can determine whether the beneficiary is employed in a primarily managerial or executive capacity. The petitioner has not submitted a statement describing the staffing of the new operation. Finally, the petitioner has not submitted evidence of the financial status of the United States operation. For all of these reasons, the petition may not be approved and the appeal will be dismissed.

In addition, the regulations state 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. *See* 8 C.F.R. § 103.2(b)(14). The director sent a request for evidence on August 30, 2005 and January 13, 2005, and the petitioner subsequently submitted a response, yet failed to include: 1) evidence of the staffing level in the United States for the past year; 2) position titles, qualifications and duties of all employees; and, 3) a statement of the duties of the beneficiary for the past year, including the percentage of time the beneficiary spent performing each duty. 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 petitioner did submit its IRS Form 941, Employer's Quarterly Federal Tax Return, for the quarter ending December 2003, which confirms that the petitioner employed only one employee. The petitioner did not submit quarterly wage reports, financial statements, paystubs, payroll records, or its IRS Forms W-2 or Forms 1099 to indicate that any other individuals were employed by the U.S. entity at the time the instant petition was filed on July 12, 2004. 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.

As the United States company appeared to employ only the beneficiary at the time of filing, it is reasonable to assume, and has not been proven otherwise, that the beneficiary is directly performing sales, promotion, purchasing, marketing and financial development, and all or many of the various operational tasks inherent in operating a cleaning business and a gas station on a daily basis, such as acquiring products, maintaining inventory, paying bills, and customer service. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. Accordingly, the director reasonably concluded that the beneficiary will be performing the day-to-day operations and directly be providing the services of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Although the petitioner states on appeal that the petitioner utilizes "several part-time employees," the petitioner has neither presented evidence to document the existence of these employees nor identified the specific services these individuals provide. Additionally, the petitioner has not explained how the services of the part-time employees obviate the need for the beneficiary to primarily perform non-qualifying duties associated with running two businesses. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Thus, even if the petitioner does utilize the services of part-time employees or independently contracted employees, the record does not reflect that the employees are professional, maintain supervisory positions, work on a full-time basis, or that they take direction from the beneficiary in performing their duties. There is no evidence of formal agreements or contracts entered into by the petitioner that explains the usage of outside sources. The petitioner has failed to submit job descriptions or duties performed by the independent contractors. There is no evidence on record to show that the claimed independent

contractors would engage in the day-to-day operations of the business or that they would relieve the beneficiary from performing other routine, non-qualifying tasks associated with the business' daily marketing, sales, administrative, clerical and financial functions.

Beyond the decision of the director, the evidence submitted is insufficient to establish that the U.S. entity has been or is engaged in the regular, systematic, and continuous provision of goods and/or services as a qualifying organization. On appeal, the petitioner asserts that due to the economic effects of September 11, 2001, the U.S. entity needed to expand its business from cleaning services to owning a gas station. According to the bill of sale submitted by the petitioner, the U.S. entity purchased the gas station on June 8, 2004, one month prior to filing the instant petition. The petitioner has failed to provide any documentation of the U.S. company when the petitioner first commenced the business as a cleaning service. In addition, the petitioner failed to present evidence that the U.S. entity is doing business as a gas station. The petitioner did submit two financial statements for the U.S. entity; one statement is for the period ended December 1, 2003 and the second is for the period ended March 31, 2004. Although the financial statements indicate gross sales and assets and inventory, it is unclear how the business achieved its sales as the petitioner failed to submit any supporting documentation, such as invoices, purchase orders, or receipts, to establish that it has regularly, systematically and continuously conducted business since the beneficiary was granted L-1A status in August 2003. The petitioner has not provided sufficient evidence of the U.S. entity doing business in the United States during the initial year of business and up to the date the instant petition was filed.

Furthermore, it appears that the U.S. company is still deciding as to what kind of business they wish to pursue. In the original petition, the Form I-129 indicates that the petitioner is engaged in the cleaning service business. On appeal, counsel for the petitioner indicates that the petitioner is looking to expand the business into other industries and has purchased a gas station. However, the petitioner has not submitted sufficient evidence that the U.S. company has been doing business in any of these areas.

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).

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the petitioner has not sustained that burden. Therefore, the appeal will be summarily dismissed.

ORDER: The appeal is summarily dismissed.