U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

MAY 13 2013

DATE: Office: VERMONT SERVICE CENTER FILE: [redacted]

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, ("the director") initially approved the nonimmigrant visa petition. Upon subsequent review, the director issued a Notice of Intent to Revoke (NOIR) approval of the petition, and ultimately revoked approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

This nonimmigrant petition was filed seeking to classify the beneficiary 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 was organized under the laws of the State of Florida in May 1997. On the Form I-129 (Petition for a Nonimmigrant Worker), the petitioner noted that it employed 17 personnel and had earned a gross annual income of $4,259,454 when the petition was filed. The Form I-129 lists the petitioner's type of business as " The Form I-129 Supplement L indicates that the petitioner is affiliated with , a Venezuelan company established in November 2007. According to the Form I-129, the petitioner seeks to employ the beneficiary in L-1A classification as its financial manager for three years.

As observed above, the director initially approved the petition but upon subsequent review issued a Notice of Intent to Revoke (NOIR) and ultimately revoked approval, concluding that the petitioner failed to establish: (1) the beneficiary's employment abroad was in either a managerial or executive capacity; and (2) that the foreign entity existed and continued to do business when the instant petition was filed.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director's basis for revocation of the petition approval was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof in that the evidence establishes that the beneficiary had been employed in a primarily managerial or executive position for the foreign entity and that the foreign entity continued to do business.

I. The Law

Under United States Citizenship and Immigration Services' (USCIS) regulations, the approval of an L-1 petition may be revoked on notice under six specific circumstances. The regulation at 8 C.F.R. § 214.2(l)(9)(iii) provides in pertinent part:

> (iii) Revocation on notice.
>
> (A) The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he/she finds that:
>
> (*1*) One or more entities are no longer qualifying organizations;
> (*2*) The alien is no longer eligible under section 101(a)(15)(L) of the Act;
> (*3*) A qualifying organization(s) violated requirements of section 101(a)(15)(L) and these regulations;

(4) The statement of facts contained in the petition was not true and correct;
(5) Approval of the petition involved gross error; or
(6) None of the qualifying organizations in a blanket petition have used the blanket petition procedure for three consecutive years.

(B) The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. Upon receipt of this notice, the petitioner may submit evidence in rebuttal within 30 days of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If a blanket petition is revoked in part, the remainder of the petition shall remain approved, and a revised Form I-797 shall be sent to the petitioner with the revocation notice.

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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a parent, subsidiary, or affiliate of the foreign employer.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

The regulation at 8 C.F.R. § 214.2(l)(3) provides 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

II. The Issues on Appeal

A. Managerial or Executive Capacity

The first issue addressed by the director in the NOIR is whether the petitioner established that the beneficiary had been employed by the foreign entity in a managerial or executive position for one year within the three years preceding the filing of the petition. 8 C.F.R. § 214.2(l)(3)(iii), (iv).

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.

Facts and Procedural History

The petitioner described the foreign entity as "a national integrator of technology and business management pioneer in Consultancy Services in the area of computer science, software development, and IT solutions." The petitioner initially provided a lengthy description of the beneficiary's duties for the foreign entity. The petitioner stated:

> [T]he beneficiary's job duties as Administrative Manager of [*sic*] President of [the foreign entity] are as follows:
>
> Plans, organizes, directs, and controls the activities of all company operations. Responsible for the performance of all Department functions - - -Legal, Projects, and Sales.

The petitioner added a list of the beneficiary's duties allocated to essential functions and management responsibilities. The petitioner identified the "essential functions" as:

1. Reviews and approves adequate plans for the control of planned outputs, budget spending, labor efficiency, material efficiency, marketing effectiveness, customer services, and order efficiency, along with human utilization.
2. Reviews performance against operating plans and standards. Provides reports to subordinates on interpretation of results and approves change in directions of plans.
3. Reviews monthly reports on performance, and reviews matters requiring a decision.
4. Develops and implements company operations policy.
5. Defines and implements objectives in each area of operations. Develops specific short-term and long-term plans and programs, together with supporting budget requests and financial estimates.
6. Reviews and approves cost-control reports, cost estimates, and manpower and facilities requirements forecasts.
7. Reviews and approves major projects involving major functional changes within the company.
8. Develops plans for new areas of technology for marketing functions along with sufficient planning for areas that support the mission of the company.

The petitioner identified the "management responsibilities" as:

1. Exercises complete discretion on personnel matters regarding hiring, dismissals and salary evaluations.
2. Reviews and approves the implementation of distribution and organizational plans that support the company's master plan.

3. Establishes objectives and procedures governing the performance of assigned activities. Issues specific annual objectives to immediate subordinates and reviews objectives of the company's management.
4. Directs, monitors, and appraises the performance of staff reporting and provides the necessary coordination between activities.
5. Identifies training needs, initiates development of subordinates, and recommends effective personnel actions.
6. Keeps employees informed as to company plans and progress.
7. Consults with sales manager for policy or action implementation. Ensures compliance within area of responsibility. Makes recommendations for improving effectiveness of policies and procedures.
8. Determines specific dollar amounts for approval of budget expenses.

The petitioner provided a list of the foreign entity's staff, identifying six positions, including president, administration, legal, manager of web projects, manager of SAP projects, and sales manager. The petitioner indicated that every department reports directly to the president. The beneficiary was identified as the administration executive.

Based on the limited and general information in the record regarding the actual duties the beneficiary performed for the foreign entity, the director improperly approved the petition. Such approval constituted gross error.

Upon review of the record, including a review of the beneficiary's work credentials by U.S. embassy immigration authorities, the director informed the petitioner that the beneficiary was not able to respond to questions during the U.S. consulate interview regarding the foreign entity. The director also noted that the beneficiary admitted that she only performed "administrative" work, for the foreign entity which had five executives and an unspecified number of free-lance associates.

In response to the NOIR, the petitioner provided a translated version of a letter signed by the foreign entity's vice-president of special projects addressed to the petitioner. The vice-president declared that the administration and business of the foreign entity is conducted at the same location visited by the U.S. embassy authorities but that "sometimes the Management personnel is out of the office doing business presentations or bank procedures" and that is why the U.S. embassy authorities did not see anyone at the office. The petitioner also provided a translated version of a letter signed by the beneficiary addressed to the petitioner. The beneficiary explained that she told the consular officer that she "was in charge of the company's goods administration at that moment and that [the foreign entity] was waiting to start new business."[1]

[1] Contrary to the director's finding, the NOIR response included a notarized translation certificate from who stated that he prepared Spanish to English translations for documents included in the response and labeled "No. 12-30" to "No. 12-36." The letter signed by the foreign entity's vice-president of special projects and the letter signed by the beneficiary are labeled 12-35 and 12-36, and appear to be complete, certified translations of the letters written in Spanish.

Upon review of the documentation submitted in response to the NOIR, the director determined that the translated summary of a document and uncertified translations of the letters and documents were unacceptable as evidence. The director found little probative evidence that specifically addressed the queries by USCIS set out in the NOIR.

On appeal, counsel for the petitioner asserts that it included summaries of some translated documents as well as some translated documents and included one translator's certificate for all the translated documents. Counsel contends that the beneficiary worked at the foreign entity since December 2007 and that she is currently the foreign entity's administrative manager. Counsel also submits copies of translated documents that include the translator's certificate of authenticity for each document. The translated versions of the foreign entity's letter and the beneficiary's letter do not include any additional information. The translated documents pertinent to the beneficiary's foreign employment include the beneficiary's bank statements from November 2011 to April 2012 to demonstrate that she had received a salary (evidenced by online deposits) during this time period.

Analysis

Upon review, the petitioner's assertions are not persuasive. Preliminarily, as footnoted above, the record included a notarized translation certificate from who stated that he prepared Spanish to English translations for the Spanish language documents submitted. Accordingly, the director's finding that the translated documents submitted did not include a certification is withdrawn. However, the petitioner has not established that the beneficiary's employment for the foreign entity was in a managerial or executive capacity as defined at 101(a)(44)(A) or (B) of the Act.

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 performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

In this matter, the petitioner does not clarify whether its claim is that the beneficiary's duties fall under both definitions of managerial and executive capacity as set out in section 101(a)(44)(A) of the Act and section 101(a)(44)(B) of the Act or just one of the definitions. If the petitioner is claiming that the beneficiary qualifies as both an executive and a manager, the petitioner must demonstrate that the beneficiary's responsibilities will meet the requirements of each capacity. The petitioner may not claim to employ a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. On review, the petitioner's description of the beneficiary's duties fails to establish that the beneficiary has been engaged in primarily managerial or executive duties for the foreign entity.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary will perform the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary will *primarily* perform these

specified responsibilities and will 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 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.

In this matter, the petitioner has not provided evidence of a subordinate level of managerial employees or any employees for the beneficiary to direct. The petitioner has only indicated that the foreign entity employs six "executive" employees. The petitioner has not identified the number or type of personnel employed by the foreign entity other than these employees. The petitioner's indication that all the identified employees report directly to the president establishes that these employees are on the same level in the organizational hierarchy. We note that the director acknowledged the beneficiary had referenced the five executives at the foreign entity and an unspecified number of free-lance associates; however, such a reference is insufficient to establish that the beneficiary in her administrative position with the foreign entity had authority to direct any of the foreign entity employees or "free-lance associates."

Upon review of the description of the beneficiary's duties for the foreign entity, we find that the description is overly broad and fails to provide details of the beneficiary's actual duties. Moreover, in the foreign entity's letter, the vice-president referenced the management personnel being out of the office doing business presentations or bank procedures, duties that are indicative of personnel performing the routine operating tasks of the organization. In addition, it is unclear from the initial letter in support of the petition whether the beneficiary is primarily performing administrative tasks to assist the president of the foreign entity or is providing some other service. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner in this matter does not include probative evidence establishing that it employs any individuals to obviate the need for the beneficiary to primarily perform the routine tasks associated with the operation of the foreign entity. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Accordingly, the petitioner has not established the beneficiary will perform in primarily an executive capacity.

Turning to the definition of "managerial capacity," the statutory definition allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the

work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

To determine whether the beneficiary in this matter primarily performed the duties of a personnel manager, we turn first to the petitioner's description of duties. Although the petitioner stated generally that the beneficiary exercises complete discretion on personnel matters, monitors and appraises staff performance, and recommends personnel actions, among other things, the petitioner does not provide evidence that the foreign entity employs any individuals subordinate to the beneficiary. Again, 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. 158, 165 (Comm'r 1998). As the record does not evidence that the foreign entity employs personnel subordinate to the beneficiary, the petitioner has not established that the beneficiary primarily performed the duties of a personnel manager for the foreign entity.

We now turn to an analysis of the record as it relates to a "function manager." 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). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. 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 Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)). In this matter, the petitioner has not articulated the essential function the beneficiary allegedly manages. Moreover, the petitioner does not include probative evidence that the foreign entity employs individuals who relieved the beneficiary from primarily performing the requisite day-to-day tasks necessary for the company to operate.

The record does not include a substantive description identifying the beneficiary's daily job duties. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. We also observe that the beneficiary informed the consular officer that she only performed "administrative" work for the foreign entity. Similarly, we note the beneficiary's explanation to the petitioner that she told the consular officer that she "was in charge of the company's goods administration at that

moment and that [the foreign entity] was waiting to start new business." The information provided by the beneficiary fails to provide additional probative detail regarding her activities in the course of her daily routine for the foreign entity; but rather undermines the petitioner's claim that the beneficiary performs primarily managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava, Id.*

Finally, we observe that the beneficiary provided translated copies of her bank statements for the months of November 2011 until April 2012 to demonstrate that she had received a salary (evidenced by online deposits) during this time period. The online deposits identified by the beneficiary as "salary" vary in amount and do not reveal the source of the deposit. Further, the evidence post-dates the petition by more than one year. 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). Even if it were established that the foreign entity paid the beneficiary during this six-month period, in order to establish eligibility, the petitioner must establish that the beneficiary was employed by the foreign entity for at least one continuous year between August 2007 and August 2010, during the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii).

Other than the petitioner's statement that the beneficiary had been employed at the foreign entity since December 12, 2007, the record does not include probative evidence of the beneficiary's employment at the foreign entity in any capacity for one year in the three years preceding the beneficiary's application for admission into the United States.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. Upon review of the totality of the record, the petitioner failed to establish that the beneficiary's employment, for the foreign entity, even if established, is in a bona fide manager or executive position. For this reason, the appeal will be dismissed.

B. Doing Business

Facts and Authority

The remaining issue addressed by the director is whether the foreign entity is a qualifying organization doing business as defined in the regulations.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) states that a 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 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 in this matter has established that it is an affiliate of the beneficiary's claimed foreign entity employer. However, to qualify for an L classification, the foreign entity must continue to actively engage in the regular, systematic, and continuous provision of goods while the beneficiary is temporarily assigned to work in the United States. As the location and physical premises of the petitioner and foreign entity are material to eligibility for this nonimmigrant visa classification, the director must determine whether the petitioner and its foreign affiliate possess sufficient physical premises to conduct business in a regular, systematic, and continuous manner. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Moreover, the Department of Homeland Security and USCIS have the right to verify any information the petitioner submits to establish eligibility for the claimed immigration benefit. The legal right to verify this information is conferred by 8 U.S.C. §§ 1103, 1155, 1184, and 8 C.F.R. parts 103, 204, 205, and 214. In this matter, upon review of the foreign entity's older website and attempts to call the foreign entity during normal business hours were unsuccessful, the U.S. consular office conducted a site visit of the foreign entity's premises.

The director informed the petitioner in the NOIR that:

> [A] site visit to the company that is the alleged foreign affiliate revealed the company to be closed with no workers prevalent, [*sic*] despite the fact that immigration authorities visited during normal work hours. A telephone call to the company also went unanswered. A person who works next door said only three people work at the facility that was closed, and when shown a picture of the beneficiary, said she was not one of the workers. A second visit at another time also found the business locked and empty. There were also no signs indicative of its presence, all of which led immigration investigators to conclude that the company is not operating.

In response to the NOIR, counsel for the petitioner asserted that the immigration investigator's conclusions were erroneous. Counsel provided documents in a foreign language and partial

translations in support of the assertion. The director found the summary translations unacceptable and found little probative evidence to support counsel's claim that the foreign entity was doing business.

On appeal, the petitioner provides certified translations: of the foreign entity's lease for physical premises dated August 1, 2010; rent invoices for the months of October, November, December 2011 and January and February 2012; a March 22, 2012 corporate tax return for the previous year; sales tax declarations for the months of December 2011, January, February, April, and May 2012; and phone bills for September 2011, and January, February and April 2012.

In the certified translated letter from the foreign entity's vice-president, the vice-president explained that its consultants worked from home or at the clients' offices and that "sometimes the Management personnel is out of the office doing business presentations or bank procedures." The vice-president also noted that the prefix to its telephone number had been changed by the phone company. The vice-president asserts that these circumstances resulted in the phone not being answered and no one being at the office when the consulate investigator appeared. The beneficiary in her explanatory letter to the petitioner noted she told the consular officer that the foreign entity "was waiting to start new business."

Analysis

Upon review of the record, the petitioner has provided evidence that the foreign entity has physical premises in Venezuela. However, the record does not include evidence that the corporate tax return and the sales declarations were filed. Moreover, the beneficiary's statement that the foreign entity "was waiting to start new business" raises questions regarding the ongoing nature of the foreign entity's business. The foreign entity's vice-president's suppositions in her explanatory letter fail to provide the probative evidence necessary to establish the foreign entity continues to do business. 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*, *supra*. There is insufficient documentation to establish that the foreign company is actively engaged in the regular, systematic, and continuous provision of goods or services as an employer in a foreign country. Therefore, it cannot be concluded that the petitioner has established that the foreign affiliate company is a qualifying organization as required by the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). For this additional reason, the petition may not be approved.

III. Conclusion

Approval of the petition will be revoked and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.