



U.S. Citizenship
and Immigration
Services

U.S. DEPARTMENT OF HOMELAND SECURITY
DIVISION OF IMMIGRATION

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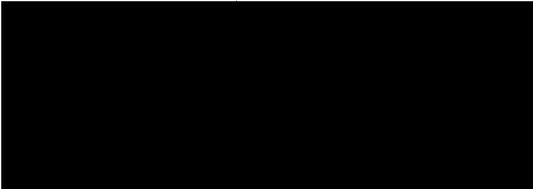


File: WAC 05 014 54339 Office: CALIFORNIA SERVICE CENTER Date: MAR 24 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The 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 chief executive officer 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 limited liability company organized in the State of Arizona that claims to be engaged in medical software consulting and sales. The petitioner claims that it is the subsidiary of Retail Automation, located in Harare, Zimbabwe. 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 concluding that (1) the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity, and (2) the petitioner has failed to secure sufficient physical premises to conduct.

The petitioner subsequently filed a motion to reconsider concurrently with an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director erred in finding that the beneficiary would not perform primarily managerial or executive duties, noting that it is permissible for him to perform non-qualifying duties during the first year of operations. Counsel further asserts that the chiropractic medical office that houses the petitioner is sufficient to meet the company's current space requirements. Counsel submits a brief and additional evidence in support of the appeal.

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 management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised,

functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner's president submitted a letter dated September 2004 with the initial petition; however, the letter did not include a description of the duties performed by the beneficiary during the previous year or a description of the duties he would perform under the extended petition. Rather, the letter provided an overview of the petitioner's business operations, noting that the company opened a chiropractic medical practice in April 2004, and that the petitioner's specialty remains medical software solutions, including provision of consulting, technical support and project implementation services. The petitioner indicated on Form I-129 that it had four employees as of the date of filing on October 18, 2004. In addition, the petitioner submitted an organizational chart depicting the beneficiary, the president, an office manager, and a technical manager is identified as a consultant. The petitioner also submitted its Form A1-QRT, Arizona Quarterly Withholding Tax Return for the second quarter of 2004, which shows only one payroll employee. In support of the initial petition, the petitioner submitted copies of letters from clients who had utilized the petitioner's software and systems consulting services. Portions of these letters appear in the director's decision and will not be repeated herein.

On November 1, 2004, the director requested additional evidence to establish that the beneficiary would be employed in a managerial or executive capacity. Specifically, the director requested a statement regarding: (1) the duties to be performed in the United States; (2) whether the beneficiary has the power to hire and fire employees; (3) the number and positions of employees who will be working under the supervision of the beneficiary; (4) the job title of the employee who will be supervising the beneficiary; and (5) a complete organizational chart specifically showing the beneficiary and all the employees, including their names and job titles. The director also requested copies of certified Forms 941, Employer's Quarterly Tax Return for all four quarters of 2003 to the present and certified state quarterly reports for the same period.

In response, the petitioner submitted a letter dated December 15, 2004, which includes the following description of the beneficiary's job duties:

As part of his duties, [the beneficiary] has sole responsibility to hire and terminate employees, develop and maintain new business affiliates and determine the marketing direction for the branches of [the petitioning organization].

As Chief Executive Officer of [the petitioner] it is the responsibility of [the beneficiary] to acquire new expertise to the corporation. Additionally, [the beneficiary] is responsible for developing profitable business relationships here and overseas, and compile the company's financials. [The beneficiary] negotiates yearly contracts with businesses and insurance carriers. This includes the negotiation of our business leases and licensing agreements.

* * *

[The beneficiary] has the discretionary capacity to change or implement corporate decisions and procedures. A recent example of this decision making ability has been with the Southern San Juan Paiute Tribe. [The beneficiary] has been directly involved with the implementation of a distributed accounting system for the Southern San Juan Paiute Tribe. . . . This has required extensive analysis in designing, implementing the systems and ensuring the various subcontractors and deadlines are met.

It is [the beneficiary's] responsibility to ensure the financial stability of the US entity which includes compiling the company's financials. [The beneficiary] has contracted a CPA who advises tax obligations, IRS regulations and legal issues on a monthly basis. [The beneficiary] appraises the financials each quarter and determines the rate of expansion with regard to operating costs, overhead expenditure and staffing. [The beneficiary] has the authority the [sic] change shareholding, add or remove partners and members of [the petitioner.]

[The beneficiary] negotiates with software and hardware distributors to determine pricing points and discounts which contribute to our bottom line and increase profitability. [The beneficiary] determines the viability of products and services which compliment [the petitioner] and add to its growth. [The beneficiary] has final authority in determining and signing any merchant contracts or affiliation that transacts with [the petitioner.]

* * *

[The beneficiary] has cultivated our relation with the Southern San Juan Paiute Tribe which will make us an essential part of their new casino development in 2005. [The beneficiary] will also be releasing our in house software package for marketing in the New Year which has been in development. [The beneficiary] is creating a dealership channel for our new product in which will see a considerable increase in our revenue.

The petitioner also submitted an updated organizational chart depicting the beneficiary's management of support, billing, and administration functions, and the job duties of its employees, including: a technical manager, paid as a consultant; a billing manager who enters and tracks invoices, returns and orders, collects outstanding monies, and monitors receivables; an office manager, who manages the daily running of the office including telephony, filing, faxing, general administration and installation of software systems; the president, who is the doctor at the chiropractic office and is responsible for formulating sales strategies, hosting seminars, consulting with clients to compile technical specifications, and overseeing sales; and a chiropractic assistant who assists the doctor in his patient-related duties. The individual identified as the chiropractic assistant on the updated organizational chart was previously identified as the petitioner's office manager. The petitioner further noted that the office manager is a medical software specialist who oversees the administrative aspects of the office and also holds responsibility for deploying the petitioner's software solutions. The petitioner did not submit the requested Form 941 for the third quarter of 2004, nor did it submit any of its state quarterly reports evidencing wages paid to these employees. It is noted, however, that the director requested copies of California Form DE-6, Quarterly Wage and Withholding Report; the petitioner is not a California company. The submitted Forms 941 confirms that the petitioner had one employee during the second quarter of 2004 and no employees prior to April 2004.

On January 12, 2005, the director denied the petition concluding that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity under the extended petition. The director noted that the petitioner had provided insufficient descriptions of the duties performed by the beneficiary and his subordinates, and noted that the petitioner had not demonstrated that it supports the organizational structure depicted in the chart, or the structure needed to engage in the business of providing medical software consulting and sales. Rather, the director noted that the petitioner appears to be doing business as a chiropractic medical office. Finally, the director noted that, to the extent that the petitioner is providing software and computer consulting services, the beneficiary himself is performing day-to-day duties related to this aspect of the business. This conclusion was based in part on the letters from customers submitted by the petitioner, and excerpted in the director's decision, which suggest that the beneficiary directly provides the software consulting and support services on behalf of the petitioner.

On appeal, counsel for the petitioner asserts that the director applied an inappropriate standard and failed to consider that the instant matter is an extension of a petition that involved the opening of a new office. Counsel contends that while the beneficiary may have provided computer system and network solutions to customers, such duties are permissible during the first year of operations. Counsel further contends that, as the beneficiary has added additional staff, including the billing manager and the office manager, who is also a "medical software specialist" the beneficiary will now supervise a staff sufficient to relieve him from performing non-qualifying duties under the extended petition. In support of the appeal, the petitioner submits a letter dated January 20, 2005, which includes a more detailed description of the beneficiary's duties; brief statements from the petitioner's billing manager and office manager stating that they report to the beneficiary; and an updated organization chart which depicts the beneficiary, the president, the office manager and the billing manager, and a brief description of the duties performed by each employee. Counsel concludes that the "U.S. entity has evolved into an operation supporting the beneficiary's capacity as a manager or executive of the entity within the prescribed one year from the Beneficiary['s] initial L-1A approval."

Upon review, counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing the beneficiary is both an executive and a manager.

On review, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include "determining the market direction," holding authority to "change or implement corporate decisions and procedures," and to "develop profitable business relationships." The petitioner did not, however, clarify who performs routine marketing tasks, provide examples of procedures implemented, or clarify what specific tasks the beneficiary performs to develop business relationships. 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. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Without a detailed description of the beneficiary's daily tasks, the AAO is unable to determine whether the beneficiary will primarily perform managerial or executive duties under the extended petition.

The petitioner attempts to provide a more detailed description of the beneficiary's duties on appeal, including a description of his "daily tasks." This description is insufficient to establish the beneficiary's eligibility for two reasons. First, rather than providing a specific description of the beneficiary's duties, the petitioner generally paraphrased the statutory definition of executive capacity. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). For instance, the petitioner depicted the beneficiary as "establishing all the goals for the business," "exercising wide latitude in discretionary decision making" and exercising "significant authority over generalized policy." However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient to meet the petitioner's burden of proof. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Second, the more detailed portion of the job description submitted on appeal largely describes the beneficiary's supervision of the petitioner's office manager and billing manager, who were hired by the company in November 2004 and January 2005, respectively. The petition was filed in October 2004, at the end of the beneficiary's initial year in L-1A status. 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). The petitioner has not explained how the other daily tasks performed by the beneficiary, which include answering e-mails, setting appointments, and meeting with the president/partner/chiropractor to

discuss marketing, advertising and “business deals,” can be considered managerial or executive in nature. Merely claiming that the beneficiary is a manager or an executive is insufficient to establish eligibility.

The petitioner fails to document what proportion of the beneficiary’s duties would be managerial and executive functions and what proportion would be non-managerial. The petitioner lists the beneficiary’s duties as managerial, but it fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary’s described tasks, such as meeting with potential customers “to try and develop business for selling” software, “designing and implementing systems,” “direct involvement in the implementation of an accounting system,” “creating a dealership channel for our new product” and related marketing duties, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

As noted by counsel, when a new business is 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 activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. 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 support an executive or managerial position. Counsel concedes that the beneficiary has been directly providing systems consulting and implementation services to customers during the first year of operations. In order to qualify for an extension of L-1 nonimmigrant classification under a petition involving a new office, the petitioner must demonstrate through evidence, such as the required description of both the beneficiary’s duties and the staff of the organization, that the beneficiary will be employed in a primarily managerial or executive capacity. However, a critical analysis of the nature of the petitioner’s business makes it unclear who would be performing operational duties related to software solutions development, consulting and technical support services under the extended petition, if not the beneficiary.

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). 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.

The fact that the petitioner shares the staff and runs its operations from a chiropractor’s office raises significant questions regarding the beneficiary’s claimed duties. At the time of filing, the petitioner claimed that its “specialty” remains the provision of medical software solutions and related services, including the support of various medical sector software packages, consulting services and feasibility studies for other medical practices, consulting and implementation services for other types of business, and a large project for a client which involves expertise in business infrastructure, computer networking and accounting databases.

The petitioner also indicated that it is developing its own software and preparing to market and distribute it through dealership channels. The petitioner employed the beneficiary as chief executive officer, the president, and a third employee who has been described as either a chiropractic assistant or an office manager. In addition to the software and systems consulting business, the petitioner operates a chiropractic medical practice which, according to an advertisement submitted with the petition, is open for business at least 50 hours, six days per week. The petitioner states that the president performs duties related to the software solutions aspect of the business, including consulting with clients to compile technical specifications, formulating sales strategies and overseeing sales. However, as the petitioner's only chiropractor, it is assumed that the president would be required to primarily work in the petitioner's medical office providing patient care. Although counsel states on appeal that the petitioner employed a consultant as "technical manager," the petitioner has neither presented evidence to document the existence of this employee identified the services this individual provided, identified the number of hours he worked, nor does he appear on the petitioner's latest organizational chart. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner's only other employee at the time of filing, the office manager/chiropractic assistant, did not appear to perform any duties related to the software solutions aspect of the petitioner's business.

Therefore, it can be assumed and has not been proven otherwise, that at the end of the petitioner's first year of business operations, the beneficiary was essentially the only employee performing any duties related to the petitioner's software solutions and consulting business, including in-house software development, project design and implementation, technical support, systems consulting, and related sales and marketing duties. While the petitioner claims that the beneficiary would no longer perform such duties under the extended petition, the petitioner submitted letters from customers dated September 28 and 29, 2004, approximately three weeks before the petition was filed, which referred to the beneficiary's active role in ongoing technical projects. Furthermore, although the petitioner claims that the beneficiary subsequently hired an office manager who is a "medical software specialist" responsible for both managing the chiropractor's office and "deploying software solutions," the petitioner claims that she was hired after the petition was filed, and has provided no documentary evidence to establish her date of hire, qualifications, duties or any evidence of wages paid. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* Since the beneficiary actually performs the petitioner's software and systems consulting work, he is performing a task necessary to provide a service or product and this duty will not be considered managerial or executive in nature. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Although the petitioner asserts that the beneficiary is managing a subordinate staff, the record does not establish that the subordinate staff is composed of supervisory, professional, or managerial employees. See section 101(a)(44)(A)(ii) of the Act. As discussed above, the petitioner has only established that it employed the beneficiary, a president/chiropractor, and another employee who was initially described as an office manager and later identified as a chiropractic assistant. Although the beneficiary occupies a higher position within the organizational hierarchy, the petitioner has not established that the beneficiary actually supervises the medical services provided by the chiropractor, who is also a member in the limited liability corporation.

The other employee performs non-professional, non-managerial duties related to office administration and/or patient care. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act, or that he is primarily engaged in supervision of such staff.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Neither the title of a position or ownership of the business are, by themselves indicators of managerial or executive capacity. Here, the beneficiary evidently exercises discretion over the petitioner's operations, but the petitioner has not shown that the majority of his time would be allocated to operational or policy management, the supervision of managerial or professional employees, or management of an essential function. As noted above, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). CIS reviews the totality of the record, including the descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees and any other facts contributing to a complete understanding of a beneficiary's actual role in a business, when examining the managerial or executive capacity of a beneficiary. In this matter, upon review of the totality of the record, the petitioner has not established that the beneficiary performs primarily executive or managerial duties. Rather it appears that the majority of the beneficiary's time would necessarily be devoted to the performance of technical consulting work for the petitioner's clients.

The petitioner indicates that it plans to expand its operations and employees in the future. 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). Furthermore, 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 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 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. For this reason, the petition cannot be approved.

The second issue in this proceeding is whether the petitioner has secured sufficient physical premises to conduct business. The director noted that the petitioner, which claims to be primarily engaged in medical software consulting and sales, is located within a chiropractic medical office. The director determined that such office appears insufficient to house the various operational departments claimed on the petitioner's organizational chart. On appeal, counsel for the petitioner states that the office space is more than sufficient

to accommodate the petitioner's current staff and that the fact that the office is located within a chiropractic medical office is irrelevant.

Upon review, the AAO concurs with counsel that the type of office should not be the relevant issue in this case, and finds that the petitioner has provided a plausible explanation for using such an office. The decision of the director will be withdrawn with respect to this issue. However, upon review of the lease agreement submitted, the AAO notes that the petitioner did not sign a commercial lease for the medical office until April 2004, nearly six months after the approval of the initial new office petition. The beneficiary's 2003 U.S. Income Tax Return indicates that he used his home for business purposes in 2003, and the petitioner submitted no other lease agreement to establish that it previously held a commercial lease. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(A) requires a petitioner that seeks to open a new office to submit evidence that it has acquired sufficient physical premises to commence doing business. In the present matter, the record indicates that either the petitioner did not comply with this requirement, misrepresented that they had complied, or the director committed gross error in approving the new office petition without evidence of the petitioner's physical premises. Regardless, the approval of the initial petition may be subject to revocation based on the evidence submitted with this petition. *See* 8 C.F.R. § 214.2(l)(9)(iii).

Beyond the decision of the director, 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 all of the enumerated evidentiary requirements. 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). While the record establishes that the petitioner has been doing business as a chiropractic office since April 2004, the petitioner has submitted minimal evidence that it has been engaged in the regular, systematic and continuous provision of goods and/or services since the petition was approved in October 2003, namely a few letters from customers confirming that the beneficiary assisted them with software or systems problems or projects. Based on this evidence, it appears that the beneficiary provided occasional technical consulting services from a home office prior to the petitioner's opening of the medical office. For this additional reason the petition may not be approved.

In addition, the petitioner has not submitted sufficient 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 notes that the petitioner's ownership structure has changed since the initial petition was filed, but provides insufficient evidence to establish a continuing relationship with the foreign entity. The petitioner claims that, originally, the beneficiary owned 100 percent of the foreign entity, which in turn was the sole owner of the petitioner. With respect to the U.S. entity, the petitioner claims that it is currently 70 percent owned by the beneficiary and 30 percent owned by [REDACTED]. With the initial petition, the petitioner submitted two stock certificates numbered two and three, dated January 5, 2004, indicating that the beneficiary owns 70 shares and his partner owns 30 shares. The certificates indicate on their face that the petitioner is authorized to 30,000 shares of stock. The director subsequently requested copies of all stock certificates, stock transfer ledgers, articles of incorporation and other documents to establish the petitioner's ownership. The petitioner replied that, as a limited liability company, it does not issue stock, but failed to explain the existence of the stock certificates previously submitted. Instead, it submitted its articles of organization dated August 11, 2003.

Although the petitioner stated that the foreign entity was the original owner of the U.S. entity, the articles of organization indicate that the founding members were the beneficiary and Tim Munderloh. 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 only evidence submitted to establish the beneficiary's ownership of the foreign company is a notation in the company's unaudited financial statements for the year ended December 31, 2003. This minimal and conflicting evidence is insufficient to establish a continued qualifying relationship between the petitioner and the foreign entity. For this additional reason, the petition may not be approved.

Although not addressed by the director, a remaining issue to be examined is whether the petitioner has established that the beneficiary's services are for a temporary period. The regulation at 8 C.F.R. § 214.2(l)(3)(vii) states that if the beneficiary is an owner or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and that the beneficiary will be transferred to an assignment abroad upon the completion of the temporary services in the United States. In this matter, the petitioner claims that the beneficiary is the sole stockholder of the foreign entity and the majority owner of the United States entity. On the petition, the petitioner indicated that the beneficiary's services would be required for three years. No evidence of the claim was provided. In the absence of persuasive evidence, it cannot be concluded that the beneficiary's services are to be used temporarily or that he will be transferred to an assignment abroad upon completion of the position in the United States. For this additional reason, the petition may not 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).

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.