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File: WAC-03-207-54456 Office: CALIFORNIA SERVICE CENTER Date: FEB 18 2005

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The 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 and General 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 corporation, organized in the State of California that is engaged in the marketing of audio cable and related products. The petitioner claims that it is the subsidiary of [REDACTED] located in Fenghua, China. 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 the petitioner did not establish that: (1) the beneficiary will be employed in the United States in a primarily managerial or executive capacity; (2) the petitioner and the beneficiary's foreign employer have a qualifying relationship; and (3) the petitioner has been doing business for the previous year.

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, counsel for the petitioner asserts that the petitioner has provided sufficient evidence to establish that the beneficiary will be employed in a managerial or executive capacity. Counsel states that, other than a clerical error, the evidence shows that the petitioner and the beneficiary's foreign employer have a qualifying relationship. Counsel finally asserts that the petitioner is engaged in ongoing business. In support of these assertions, counsel submits a brief and additional evidence.

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.

In the initial petition filed on July 8, 2003, on Form I-129 the petitioner described the beneficiary's job duties as follows:

[The beneficiary] is the president and general manager of [the petitioner]. Her duties include running [the] daily operation of the entire company [The beneficiary] will continue to oversee the [daily] operation of [the petitioner]. Her duties will include hiring and firing local employees, formulating business plans and sales projection, establishing a local customer service sector, and expanding product lines for the US market.

On July 11, 2003, the director requested additional evidence. Specifically, the director requested: (1) an organizational chart for the petitioner showing the employees under the beneficiary's supervision, including their job titles, educational level, annual compensation, and a detailed account of their duties; (2) four quarters of the petitioner's California Forms DE-6; (3) the petitioner's IRS Form 1120, U.S. Corporate Income Tax Return; and (4) a breakdown of the percentage of time the beneficiary devotes to various duties, including an indication as to whether she performs them herself or through the supervision of subordinate staff members.

In a response dated July 22, 2003, the petitioner submitted: (1) an organizational chart for the petitioner; (2) the petitioner's California Forms DE-6 for the second, third, and fourth quarters of 2002, and the first and second quarters of 2003; (3) the petitioner's 2002 IRS Form 1120, U.S. Corporate Income Tax Return; and (4) a letter describing the petitioner's staffing and the beneficiary's duties. In the letter, the petitioner further discussed the beneficiary's duties as follows:

- a. Planning and developing policies – [The beneficiary] spends about 25% of time in this area. [A subordinate employee] will assist [the beneficiary] in this area by providing sales and marketing information.
- b. Directing legal affairs – [The beneficiary] spends about 10% of time in this area. [The beneficiary] handles this area by herself.
- c. Planning and supervising marketing – As this is the major area of importance, [the beneficiary] allocates most of her time up to 50% focusing in this area to expand the business of [the petitioner]. She is assisted by . . . the sales manager.
- d. Supervising financial matters – [The beneficiary] spends about 15% of time in this area and she is performing this function by herself.

The letter further describes the petitioner's staff members as follows:

- a. Alexis V. Corval – Sales Manager. Job duties include making calls, coordinating with independent salespersons, communicating with customers, and also assisting the president and general management of [the petitioner]. 4-year bachelor degree. Annual salary \$30,000.
- b. Bao Zhen Wei – Receptionist/Secretary. Job duties include answering phones, typing, file organization, and other secretarial chores. High School diploma. Annual salary \$14,400.
- c. Trung Le – Technician/Customer Service Representative. Job duties include providing basic technical support to customers and researching for new products development. 2-year associate degree. Annual salary \$14,400.

On August 1, 2003, the director denied the petition. In part, the director determined that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The director stated that "[t]here is no indication that the beneficiary will exercise significant authority over generalized policy or that the beneficiary's duties will be primarily managerial or executive in nature." The director further noted that the petitioner's 2002 Form 1120, Schedule E, does not reflect that compensation was paid to the beneficiary as an officer of the company.

On appeal, counsel for the petitioner asserts that the petitioner has provided sufficient evidence to establish that the beneficiary will be employed in a managerial or executive capacity. In a brief, counsel states:

[The] Beneficiary has been acting in a capacity comparable to that of a manager or executive under the guidelines of the current regulation. Since the approval of the original I-129, the beneficiary has been actively managing the [petitioner]. She runs the day to day operation, has the authority to hire and fire employees, establishes the goals and policies of the

company, and receives direction and instruction from [the foreign entity]. The [petitioner] currently has three full time employees and each performs a different function, however all three are directly reporting to and under the supervision of the beneficiary. At this stage, the [petitioner] is still growing and the beneficiary is responsible for everything from formulating business plans to decorating the show room. She is the one person responsible for running the company, though it is small in size. [Citizenship and Immigration Services (CIS)] also based its denial on the fact that Schedule E of the Form 1120 did not include officer compensation. Schedule E needs only to be filled out when total receipts are \$500,000 or more. Since during the initial 8 months of operation there was no revenue generated, the officer compensation was only reported on Line #12 instead of Schedule E.

(Emphasis in original).

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(1)(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.* Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary will perform. While the petitioner has provided a breakdown of the percentage of time the beneficiary will spend on various duties, the petitioner has not articulated whether each duty is managerial or executive. Thus, the AAO must attempt to glean the nature of the beneficiary's proposed duties from the vague descriptions submitted.

The petitioner indicates that the beneficiary will spend 25 percent of her time planning and developing policies with the assistance of a subordinate employee. However, the petitioner has not provided sufficient information to allow the AAO to understand exactly what this duty entails. The petitioner has provided no indication as to what policies are anticipated or required for its operations, such that the AAO can determine what tasks are associated with developing them. The petitioner has failed to indicate what associated tasks will be performed by the beneficiary, and what tasks will be performed by her subordinate. 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 reveal the true nature of the employment. *Id.*

The petitioner indicates that the beneficiary will spend 50 percent of her time planning and supervising marketing, with the assistance of a subordinate employee, "focusing in this area to expand the business of [the petitioner]." However, the record does not resolve whether the beneficiary will perform day-to-day, non-managerial marketing tasks such as calling potential customers, creating advertisements, and developing marketing materials, or whether she will only direct her subordinate to do so. Counsel's brief indicates that

the beneficiary is responsible for "decorating the showroom," which implies that she performs significant non-qualifying duties related to marketing. Again, the beneficiary's actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The petitioner indicates that the beneficiary will spend approximately 15 percent of her time supervising financial matters "by herself." However, the petitioner has not sufficiently explained what associated tasks the beneficiary will perform. As the beneficiary is solely responsible for financial matters, it appears she performs numerous day-to-day, non-managerial duties such as paying bills, issuing invoices, and reconciling a checking account.

The petitioner indicates that the beneficiary will spend approximately 10 percent of her time directing legal affairs "by herself." However, the petitioner has not sufficiently explained this duty such that the AAO can determine what tasks are required.

Counsel states that the beneficiary "runs the day to day operation, has the authority to hire and fire employees, establishes the goals and policies of the company, and receives direction and instruction from [the foreign entity]." However, this statement largely paraphrases the statutory definition for managerial capacity, and is not supported by documentation in the record. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Further, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Thus, the beneficiary's job description does not allow the AAO to determine whether the beneficiary would primarily perform in a managerial or executive capacity as defined in sections 101(a)(44)(A) and (B) of the Act.

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

The petitioner's organizational chart reflects that the beneficiary's subordinates do not have supervisory authority over other employees, thus the beneficiary's subordinates are not supervisory employees. *See* § 101(a)(44)(A)(ii) of the Act. One of the beneficiary's subordinates is titled "Sales Manager," yet the duties of this employee reveal that he is engaged with direct marketing tasks, and thus he is not deemed to be a managerial employee as contemplated by section 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner indicates that its Sales Manager completed a four-year bachelor's degree. However, the petitioner has failed to document this credential, indicate in what field the employee studied, or explain the relevance of the Sales Manager's education to his position. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. The duties of the Sales Manager are routine marketing functions that, without further explanation, do not appear to require a bachelor's degree. Thus, the petitioner has not established that the Sales Manager is a professional. See § 101(a)(44)(A)(ii) of the Act.

Accordingly, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

Counsel states that "[CIS] also based its denial on the fact that Schedule E of the Form 1120 did not include officer compensation," and that "Schedule E needs only to be filled out when total receipts are \$500,000 or more." The AAO notes that, while the director pointed out this apparent discrepancy in the petitioner's documentation, the director did not explicitly use this matter as a direct basis for denial. Nevertheless, the AAO acknowledges that counsel correctly states that the petitioner was under no obligation to complete Schedule E, as its total receipts were under \$500,000. The fact that the petitioner did not complete Schedule E has no bearing on the petitioner's eligibility.

Based on the foregoing, the record is not persuasive in demonstrating that the beneficiary will be employed in a primarily managerial or executive capacity. The petitioner indicates that it plans to hire additional managers 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.

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily or managerial capacity, as required by 8 C.F.R. § 214.2(l)(3). For this reason, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner has established that it has a qualifying relationship with the beneficiary's foreign employer as required by 8 C.F.R. § 214.2(l)(14)(ii)(A).

In the initial petition, on Form I-129 Supplement E/L the petitioner stated that it is a wholly-owned subsidiary of the foreign entity. In support of this assertion, the petitioner submitted a support letter in which it again stated that it is a wholly-owned subsidiary of the foreign entity.

As noted above, in the director's request for additional evidence, the director requested that the petitioner submit a copy of its IRS Form 1120, U.S. Corporate Income Tax Return. In response, the petitioner provided its 2002 IRS Form 1120 with accompanying schedules.

The director denied the petition in part based on a finding that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer. Specifically, the director noted that the petitioner's 2002 IRS Form 1120, Schedule K indicates that the petitioner is not a subsidiary, and that no foreign person owns at least 25 percent of the petitioner's stock.

On appeal, counsel asserts that, other than a clerical error, the evidence shows that the petitioner and the beneficiary's foreign employer have a qualifying relationship. Counsel provides that the petitioner's 2002 IRS Form 1120, Schedule K contained clerical errors. The petitioner submits an IRS Form 1120X, Amended U.S. Corporation Income Tax Return, reflecting that it amended the Schedule K to show that the petitioner is 100 percent owned by the foreign entity. Counsel further notes that the original Form 1120 included Form 5472 that indicates that the petitioner is owned by a foreign corporation.

Upon review, the petitioner's assertions are not persuasive. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact

number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In the instant matter, the record contains little evidence to show the ownership and control of the petitioner as of the filing date of the petition. The petitioner provided its 2002 Form 1120. The AAO finds counsel's assertion that the initial Schedule K contained clerical errors to be reasonable, particularly given that Form 5472 was included with the return. Yet, the petitioner's Form 1120, by itself, is insufficient to establish the ownership of the petitioner as of the date of filing. The petitioner has failed to provide evidence such as stock certificates, a corporate stock certificate ledger, a stock certificate registry, corporate bylaws, the petitioner's articles of incorporation, or the minutes of relevant annual shareholder meetings. Going on record without ample supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. The AAO is unable to determine the number of shares of stock the petitioner is authorized to issue, the number of shares actually issued, and the owner of such shares as of the date of filing the petition.

Based on the foregoing, the petitioner has failed to submit adequate evidence to establish that it has a qualifying relationship with the foreign entity. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G). For this additional reason, the appeal will be dismissed.

The third issue in the present proceeding is whether the petitioner has established that it has been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The regulation at 8 C.F.R. § 214.2(l)(ii)(H) defines the term "doing business" as:

[T]he 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.

In the initial petition, the petitioner provided that the foreign entity manufactures audio cable and other accessories. The petitioner stated that "[t]he main function of [the petitioner] will be providing existing clients with better and direct service, increasing [the] client base in [the] US, upgrading existing products and exploring the market for future new products." The petitioner provided that, in the first year of operation, it "made several sales totaling over \$215,000." The petitioner further provided that it is making two trademark applications. The petitioner submitted a financial statement for the quarter ending June 30, 2003, reflecting total sales revenue of \$225,865.30. The petitioner provided product brochures for the parent company and four invoices issued for products the petitioner sold, dated April 27, May 2, May 15, and May 16, 2003.

As noted above, in the director's request for additional evidence, the director requested that the petitioner submit a copy of its IRS Form 1120, U.S. Corporate Income Tax Return. In response, the petitioner provided its 2002 IRS Form 1120 with accompanying schedules.

In denying the petition, the director concluded that the petitioner did not establish that it has been doing business for the previous year. Specifically, the director stated that:

From the evidence of record, [CIS] concludes that the petitioner is merely maintaining the presence of an office or is acting as an agent of the foreign company. Copies of 2002 Corporate Income Tax Return support this, which show that the petitioner is not conducting business in the United States.

On appeal, the petitioner provides no new evidence to show that it conducted business during the one-year period prior to filing the petition. In the attached brief, counsel asserts that:

The Petitioner is actively engaged in selling goods and providing services as defined under 8 C.F.R. 214.2(1)(1)(ii)(H). Although the petitioner had no revenue during the first 8 months of operation, it has already generated \$225,865.30 in gross revenue during the first quarter of its current fiscal year If the success of a business entity is entirely judged during its first 8 months of existence, there may not be any company that could be qualified under this restriction. While the current regulation does allow [a] new entity to be qualified, this petition should not be denied on the basis that the first 8 months of the operation did not generate income and therefore it is not "Doing Business."

(Emphasis added).

Upon review, counsel's assertions are not persuasive. At the time the petitioner seeks an extension of a new office petition, the regulation 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 only evidence that the petitioner submitted to show that it is engaged in continuous business consists of four sales invoices from April and May 2003. As these invoices reflect sales activity during only two consecutive months out of the prior 12-month period, they do not establish the regular, systematic, and continuous provision of goods and/or services over the one-year period prior to filing. The petitioner provided its 2002 Form 1120, yet, as the director concluded, this document reflects that the petitioner received no funds for goods or services provided in that year. Thus, the petitioner generated no revenue during its first six months of operation. The petitioner provided a financial statement, yet this document only addresses business activity during the second quarter of 2003.

The petitioner described numerous activities that it was purportedly engaged in throughout its first year of operation, yet the petitioner has failed to document these activities with independent evidence. For example, the petitioner states that it is making two trademark applications, yet the record contains no evidence of this. The petitioner provides that one of its purposes is to "upgrade[e] existing products and explor[e] the market for future new products," yet the record contains no evidence of these activities. The petitioner submitted product brochures for the foreign entity, yet these brochures do not serve as evidence that the petitioner actually sold the foreign entity's merchandise. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. Counsel asserts that the petition should not be denied

based on the fact that the petitioner generated no revenue during its first eight months. Considering the petitioner has documented no significant activity, profit-generating or otherwise, during the first eight months, counsel's assertion is not persuasive.

In summary, the petitioner has shown that it engaged in the sale of goods in April and May of 2003. Yet, the petitioner has failed to document any business activity that occurred during 2002, or during the first eight months of its operation. Thus, the petitioner has failed to establish that it has been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not provided sufficient evidence of the financial status of the United States operation, as required by 8 C.F.R. § 214.2(l)(14)(ii)(E). The petitioner submitted an internal financial statement for the second quarter of 2003. This document is stamped "draft," thus its accuracy is in question. The document contains the phrase "See Accompanying Accountant's Compilation Report," yet the record contains no such report. The petitioner's 2002 IRS Form 1120 is of limited use in establishing the petitioner's financial viability, as it shows that the petitioner operated at a loss of \$75,187 and generated no revenue during that year. The record is devoid of independent evidence of current resources, such as checking or savings account statements. For this additional reason, the appeal will be dismissed.

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 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.