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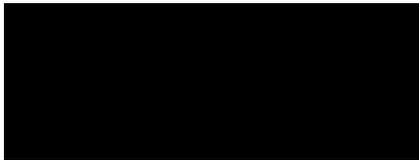
D7

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 16 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

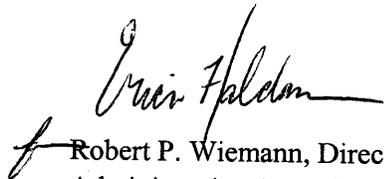
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON 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 nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, Tech IQ Corporation dba RP Connect, claims that it is a branch of RP Connect, located in the Philippines. The petitioner is a company engaged in the interaction technology, website design, and advertising business. The U.S. entity was incorporated in the State of Delaware in January 2002 and claims to have five employees. The petitioner seeks to hire the beneficiary as a new employee to work in its new U.S. office. Accordingly, in June 2002, the U.S. entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) 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 endeavors to employ the beneficiary as the U.S. entity's creative art director for a one-year period at an annual salary of \$40,000.

On March 13, 2003, the director denied the petition. The director determined that the petitioner failed to establish that 1) the beneficiary has been or will be employed in a primarily managerial or executive capacity; 2) the petitioner has sufficient physical premises to house the new office; and, 3) a qualifying relationship exists between the petitioner and foreign entity.

On appeal, the petitioner's counsel claims that the beneficiary has been and will be employed in a managerial or executive position. Counsel also claims that the petitioner has established a qualifying relationship with the foreign entity and submits a copy of the petitioner's new lease agreement. Counsel submits a brief and additional documentation in support of the appeal.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

Pursuant to 8 C.F.R. § 214.2(l)(3), 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.

(v) If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation;

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or(C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The first issue in this proceeding is whether the petitioner has established that a qualifying relationship exists between the petitioner and the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G).

The regulation at 8 C.F.R. § 214.2(l)(ii)(G) defines the term "qualifying organization" and related terms as follows:

(G) *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 (I)(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.

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operation division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

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 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.

In a May 29, 2002 letter appended to the initial petition, the petitioner indicated that the U.S. company and the foreign company are owned and controlled by the same individual, [REDACTED]. The petitioner submitted an expired "Certificate of Registration of Business Name" indicating that [REDACTED] was registered to do business as "RP Connect" in the Philippines from January 19, 1996 to January 19, 2001. For the U.S. company, the petitioner submitted its Certificate of Incorporation, which indicates that the company is authorized to issue 1500 shares of stock with a par value of \$.10 per share. The petitioner also submitted its by-laws and minutes of the first meeting of the board of directors, but these documents do not address the company's ownership or the issuance of shares.

On July 26, 2002, the director requested additional evidence to establish that the petitioner and foreign entity have a qualifying relationship. In particular, the director requested:

- Evidence documenting the ownership and control of the foreign entity including the articles of incorporation, minutes of the organizational meeting, and a list of the stock owners showing what percentages they own.
- Evidence documenting the ownership and control of the U.S. entity including minutes of the organizational meeting that lists all shareholders and the number of shares owned, stock certificates issued to the present date, proof of stock purchase, original wire transfers from the parent company, and annual report.

On October 18, 2002, the petitioner, through counsel, responded to the director's request for additional evidence. In reference to the ownership of the foreign entity, counsel stated that:

At the present time, the company still operates as a sole proprietorship, and is 100% owned by the owner of the U.S. company. The company has a business license to legally conduct business in the Philippines. But, no corporate documents, like those [annual report, list of owners, minutes of the meeting, stock ownership, and articles of incorporation], are available as they are not common business practice items in the Philippines for sole proprietorships.

The petitioner submitted another copy of the expired "Certificate of Registration of Business Name" for the foreign entity. In addition, the petitioner claims that the U.S. and foreign entity are owned by [REDACTED] a U.S. citizen. The petitioner stated that the owner "had enough funds to be able to create the U.S. company without wire transfers from the parent company in the Philippines." The petitioner submitted a copy of the stock certificate showing that Elvis Ulanday owns 50 shares of the capital stock of the U.S. company. The petitioner also resubmitted another copy of the first minutes of the meeting of the board of directors which does not indicate the number and percentages of shares issued.

On March 13, 2003, the director denied the petition. The director stated that the evidence was insufficient to a qualifying relationship between the foreign and the U.S. entity. The director found that the single stock certificate was insufficient evidence to establish ownership and control of the U.S. entity. The director also considered whether an affiliate relationship existed between

the petitioner and foreign entity. However, the director determined that the evidence did not support a finding of an affiliate relationship.

On appeal, counsel asserts that the petitioner submitted sufficient evidence to establish that a qualifying relationship exists between the petitioner and the foreign branch office. Counsel claims that the previously submitted documentation shows that the same individual owns and controls both companies and that such evidence establishes a "subsidiary relationship." The petitioner also submits additional documentation on appeal.

On review, there is insufficient evidence to establish that a qualifying relationship exists between the petitioner and the foreign entity pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G)(1). On Form I-129, the petitioner claims that the U.S. organization is a branch office of the foreign entity. However, on appeal, the petitioner claims that the U.S. business is a subsidiary of the foreign entity. 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 AAO notes that if any qualifying relationship exists between the two entities, it would be an affiliate relationship based on common ownership and control by an individual. *See* 8 C.F.R. § 214.2(l)(1)(ii)(L)(1). However, the petitioner has not submitted evidence to substantiate its claim that Elvis A. Ulanday is the sole shareholder of the company. As noted above, the petitioner submitted a single share certificate indicating that 50 shares of stock were issued to this individual.

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. 362 (BIA 1986). Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(l)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In this matter, the director specifically requested that the petitioner submit proof of stock purchase and the source of all funds, copies of all stock certificates, and documentation to identify the stock shareholders and the number and percentage of shares owned. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner has not established that the petitioner and the foreign entity are owned and controlled by the same individual.

In addition, the petitioner must submit evidence to establish that the U.S. company and foreign entity are or will be doing business for the duration of the beneficiary's stay in the United States. See 8 C.F.R. § 214.2(l)(1)(ii)(G)(2). The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii). The instant petition was filed in June 2002. In support of the petition, the petitioner submitted an expired certificate of registration for the foreign company, a list of clients, and various sales invoices dated 1997 through 2000. In response to the director's request for additional evidence that the foreign entity was doing business, the petitioner submitted a one-page balance sheet for 2001, 2001 Annual Income Tax Return, and two receipts which appear to be dated April 2000. However, this evidence does not indicate that the foreign sole proprietorship has been doing business regularly, systematically, and continuously. Therefore, based on this minimal documentation, the petitioner has not demonstrated that the foreign entity is a qualifying organization.

After careful consideration of the evidence, the AAO concludes that the petitioner has not established that a qualifying relationship exists between the petitioner and foreign entity. For this reason, the petition may not be approved.

The second issue in this proceeding is whether the beneficiary has been employed with the foreign entity and will be employed by the U.S. entity in a primarily managerial or executive capacity. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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), provides:

The term "executive capacity" means 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 filing, the petitioner submitted a May 29, 2002 supporting letter describing the beneficiary's foreign and proposed U.S. entity duties as:

1. Act as Creative Art Director to plan, develop, establish and direct policies and objectives of the art department.
2. Coordinate functions and operations between employees at the art department and establish responsibilities and procedures to attain objectives.
3. Oversee all creative operations of the company and meet/negotiate with all major clients.
4. Responsible for company's public perception in terms of its look and feel.
5. In charge of handling a team of graphic artists for projects for clients; formulate concepts and supervise workers engaged in executing computer designs for art work.
6. Review illustrative material and confer with client or individual responsible for presentation regarding budget, background information, objectives, presentation approaches, styles, techniques, and related factors.
7. Formulate basic layout design concept and conduct research to select and secure suitable illustrative material, or conceive and assign production of material and detail to web artists and designers.

8. Assign and direct staff members to develop design concepts into art layouts; to complete design ideas and prepare sketches, illustrations, and detailed drawings of sets.
9. Direct design and production of graphics or animation to produce graphics or animation for websites. Estimate construction costs and present plans and estimates for approval.
10. Lead internal and freelance creative staff upgrade design and project management.
11. Implement design changes that enhance and improve the conversion process, as well as develop value-added features to increase site popularity and traffic.
12. Design, develop, install, modify, and maintain Internet sites for businesses.
13. Work and review creative materials with marketing team to ensure strategies and company objectives are met, find creative, innovative and cost effective solutions to business requirements.
14. Provide graphic design support and maintenance.
15. Correct and troubleshoot graphics issues ranging from color and image editing, creation and recreating of graphics, setting proper resolutions and sizing, animated imaging, opening and converting files into proper file formats for the web.
16. Supervise outside creative and production resources.
17. Review activity reports and financial statements to determine progress towards goals.
18. Revise objectives and plans in accordance with current conditions.
19. Determine projects to be undertaken based on demand and industry reaction to past production projects and current market conditions.

On July 26, 2002, the director requested additional evidence including the foreign entity's payroll records, organizational chart, total number of employees abroad, a more detailed list of the beneficiary's foreign duties and what percentage of time the beneficiary spends in each of the listed duties. In addition, the director requested additional information concerning the beneficiary's proposed U.S. duties including the U.S. entity's organizational chart and a more detailed description of the beneficiary's duties.

In response, on October 18, 2002, the petitioner submitted the foreign entity's payroll records and organizational chart indicating that the foreign entity has eleven employees. The petitioner claims that the beneficiary is directly supervising the web developer. In addition, the petitioner resubmitted the description of the beneficiary's duties and added the percentage of time the beneficiary spends on each of the following foreign and proposed U.S. duties listed previously: 1) 100%; 2) 100%; 3) 100%; 4) 100%; 5) 25%; 6) 5%; 7) 5%; 8) 10%; 9) 10%; 10) 5%; 11) 5%; 12) 5%; 13) 5%; 14) 10%; 16) 5%; 17) 5%; and, 19) 5%.

On March 13, 2003, the director denied the petition. The director determined that the petitioner failed to establish that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The director found that the beneficiary's duties were described in broad and general terms. The director further noted that the record indicates the beneficiary has been and would be directly providing the services of the business.

On appeal, counsel claims that the beneficiary has been and will be employed in a managerial and executive capacity. Counsel provides an additional description of the beneficiary's foreign and proposed U.S. duties.

In 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). On review, the petitioner has failed to establish that the beneficiary has been and will be employed in a primarily managerial or executive capacity. The beneficiary's foreign and proposed duties are described as "plan, develop, establish and direct policies," "coordinate functions and operations between employees," "find creative, innovative and cost effective solutions to business requirements," and "in charge of handling a team of graphic artists for projects for clients." These phrases are vague and general. The petitioner has not provided details of the beneficiary's primary duties. For instance, the petitioner fails to elaborate how the beneficiary has and will plan, develop, establish and direct policies. These duties are generalities that fail to list any concrete policies that will be established. The petitioner did not enumerate any of these aspects or policies. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In addition, on appeal, the petitioner submitted an additional description of the beneficiary's foreign and U.S. proposed duties. However, these duties are also general. For example, the petitioner describes the beneficiary as "exercise absolute discretionary power in day-to-day operation of the Art Department and make all vital executive decisions relating to the Art Department and successful operation." 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).

Further, the beneficiary appears to be primarily involved in the daily operations abroad and in the United States. The petitioner indicated that the beneficiary will “design, develop, install, modify, and maintain Internet sites for business,” “work and review creative materials,” implement design changes,” “review illustrative material,” and “formulate basic layout design.” These duties primarily appear to comprise daily operational tasks required to provide a service or product. 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)

Moreover, the petitioner asserted that the beneficiary will “direct Art Department professional and managerial personnel.” 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. According to the petitioner’s description of the beneficiary’s job duties, the beneficiary directs a web developer and will direct a graphic artist. Based on the organizational charts, it is apparent that the beneficiary’s current and proposed subordinates are not managerial or supervisory as the subordinates have no employees to manage or supervise and have not been or shown to manage an essential function within either organization.

In addition, section 101(a)(32) of the Act states that the term “profession” includes, but is not limited to architects, engineers, lawyers, physicians, surgeons, and teachers of elementary or secondary schools, colleges, academies, or seminaries. Additionally, as provided in 8 C.F.R. 204.5(k)(2), the term “profession” includes not only one of the occupations listed in section 101(a)(32) of the Act, but also any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation. It is apparent that these types of positions are not those that would normally require college graduates. The petitioner has not established that the subordinates are professional employees within the statutory and regulatory definitions. Therefore, the organizational charts indicate that the beneficiary is and would be performing as a first-line supervisor of a non-professional employees, rather than as a manager or executive. 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.

After careful consideration of the evidence, the AAO concludes that the beneficiary has not been employed by the foreign entity and will not be employed by the U.S. entity in a primarily managerial or executive capacity. For these reasons, the petition may not be approved.

The AAO now turns to the third issue in this proceeding of whether the petitioning entity has secured sufficient physical premises to house the new office.

Initially, the petitioner submitted a copy of the U.S. entity’s lease. The leased premises at [REDACTED] [REDACTED] is for a period of six months from April 11, 2002 until October 31, 2002. The lease indicated that it was restricted to residential use only. The lease stated that the property was leased for “use as a residence and for no other purpose.”

On July 26, 2002, the director requested additional evidence including a description of the type of business the petitioner plans to operate, an explanation of the worksite, location, type of building being utilized, and floor plan. In addition, the director requested photographs of the premises, business hours, telephone number, and lease agreement showing square footage. Finally, the director requested clarification as to why the original lease indicated that the premises shall be used for residential purposes only.

In response to the request for additional information, the petitioner submitted an October 18, 2002 letter stating that the U.S. company “specializes in the creation of various web applications and develop[s] corporate web pages.” In addition, the petitioner claims that, “. . . no customer interaction is conducted by the company since the web services product to be patented is still in the process of being finalized and approved. Upon L-1 approval . . . the owner, will rent or purchase a more suitable business location.” The petitioner resubmitted the original lease. The petitioner also submitted an operating business telephone number, hours of operation, and photographs of the premises.

On May 30, 2002, the director denied the petition because the petitioner failed to establish that that it had secured sufficient physical premises to house its office. The director found that the lease was restricted to residential use of the premises rather than commercial use of the premises.

On appeal, the petitioner submits a new lease agreement. The lease indicated that the agreement was made and entered into on March 31, 2003 for a term of one year. The lease is for the office space at [REDACTED] 5th Floor. The petitioner will pay \$450 per month.

On review, the AAO agrees with the decision of the director. The record does not establish that the petitioner has secured sufficient physical premises to house the new office. On appeal, counsel submits a new lease describing the premises to be secured for the U.S. entity’s operations. Counsel states that the petitioner “has at this point in time, a new lease had been secured.” 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). Therefore, at the time of filing on June 3, 2002, the petitioner did not have sufficient physical premises to house the new office.

In addition, the petitioner failed to establish that it had secured sufficient physical premises to house the new office at the time of the director’s request for additional information on July 26, 2002. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence

to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Therefore, the petitioner has not secured sufficient physical premises to house the new office. *See* 8 C.F.R. § 214.2(l)(3)(v). For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that the beneficiary had least one continuous year of full-time employment with the foreign entity within the three years preceding the filing of the instant petition as required by 8 C.F.R. § 214.2(l)(3)(iii). At the time the petition was filed on June 3, 2002, the beneficiary had been in the United States as a nonimmigrant visitor pursuant to section 101(a)(15)(B) of the Act for a period of two years and one day. Counsel indicated in her May 29, 2002 cover letter that the beneficiary "has been working for the company in the Philippines for over a one year period in the last four years." The petitioner submitted a letter from the foreign entity indicating that the beneficiary was employed with the claimed related entity from 1995 to 2000. The beneficiary's resume indicates that she was employed with the foreign entity from December 1995 to December 2000, and also worked as the creative director/owner of "TIQ Communications" in Manila, Philippines from 1997 to 2002. When the petitioner requested payroll records as evidence of the beneficiary's qualifying one year of employment abroad, the petitioner provided pay slips showing monthly payments to the beneficiary from January 2001 to March 2002. The pay slips do not indicate the name of the employer, and do not reference the relevant time period, which is June 2, 1999 to June 2, 2000. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Based on the above, the petitioner has not established that the beneficiary was employed by the foreign entity for one year in the three years preceding the filing of this petition. 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 appeal will be dismissed.

ORDER: The appeal is dismissed.