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**U.S. Citizenship  
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Services**

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File: SRC 06 013 52824 Office: TEXAS SERVICE CENTER Date: **AUG 06 2007**

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:

SELF-REPRESENTED

INSTRUCTIONS:

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to extend the employment of its vice president/director 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 under the laws of the State of Florida and is allegedly engaged in the business of marketing, research, and media relations. 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 the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

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, the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of an executive or manager. In support of this assertion, the petitioner 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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The primary 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 does not clarify in the initial petition whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

The petitioner described the beneficiary's job duties in a letter dated October 6, 2005 as follows:

- Control sales records and regularly inform the progress of the U.S. company, so [the foreign entity] can assess the status of its investment;
- Budget and resource allocation decisions;
- Hire and train employees;
- Leadership technique and coordination of employees;
- Decisions about methods for showing, promoting and selling [the beneficiary's] products and services;
- Decisions about marketing strategy and tactics, sales techniques and sales control systems, pricing and negotiation;
- Evaluation of customer satisfaction;
- Maintenance of control procedures, which were established by her, to ensure that the U.S. financial [s]tatements will be combined with statements of [the foreign entity] in a form that allows the foreign company to understand the meaning of the information and use it effectively. Rather, the financial reporting model sent to the holding [sic] must use the same recognition criteria and measure methods;
- Ensure that Financial Statements will also meet regulations and Federal Laws in Brazil;
- Asset management (inventory, cash, receivables and investments);
- Design and implement the Organizational Structure of the U.S. Company, altering the current organizational chart.

The petitioner also submitted a document titled "Duties & Responsibilities" related to the beneficiary's

employment with the petitioner. This document identifies the beneficiary's position as "Vice-President-Operations," and lists her duties as follows:

- Establish objectives for the company and formulate or approve policies and programs
- Allocate funds to implement company policies and programs
- Establish Administrative and Financial controls
- Select or approve staff to be employed by the company
- Coordinate work within the varying tasks within the Company
- Represent the Company with Customer and Vendors and Negotiate on behalf of the Company
- Create and implement solicitation programs to establish and increase Company market share
- Create and Provide Customers with a tailored scope of services proposal predicated on their respective industry and target market
- Oversee and plan advertising; marketing and public relations campaigns specific to Customer needs.
- Ensure with directing staff that suitable product is produced for the customer and time schedules are met
- Coordinate tasks internally and with outsource strategic partners
- Liaison with superiors in Brazil – Preparing and providing Company administrative and financial report as to U.S. based operations
- Exercise complete day[-]to[-]day discretionary authority over Administrative, Financial, and Art operations and staff of the Company.

Also, the petitioner provided wage reports indicating that the petitioner employed three people, including the beneficiary, during the quarter immediately preceding the filing of the instant petition as well as copies of cancelled checks which allegedly represent payments made to contractors not listed on the wage reports. This evidence is generally consistent with the letter dated October 6, 2005 in which the petitioner alleged that it currently employs 3 employees and several independent contractors.

On November 15, 2005, the director requested additional evidence. The director requested, *inter alia*, an organizational chart for the petitioner, which reveals the names, titles, and job descriptions for each employee, and copies of the petitioner's wage reports.

In response, the petitioner provided an organizational chart which shows the beneficiary at the top of the organization directly supervising 3 individuals. Two of these supervised individuals, the "marketing supervisor" and the "account director," are, in turn, shown supervising 6 additional staff members. The third staff member supervised by the beneficiary is described as a secretary. The petitioner explained in a letter dated January 31, 2006 that it employs 9 individuals (3 employees and 6 independent contractors). The petitioner provided wage reports and records which confirm that only three of the individuals identified on the organizational chart are indeed employees (the beneficiary and 2 secretaries). Also, the petitioner provided copies of "Master Contract Assignment Agreements" for each of the independent contractors identified in the organizational chart. While these contracts each list hourly wages, the contracts explain neither the contractors' duties nor the amount of time they are obligated to devote to the petitioner's business.

Finally, the petitioner provided job descriptions for the subordinate staff members. As explained in the organizational chart, the two other employees are secretaries and have been described as being engaged in performing clerical duties. The two subordinate staff members who are identified in the organizational chart as having supervisory responsibilities, the "marketing supervisor" and the "account director," are allegedly independent contractors and are not employees of the petitioner. The "marketing supervisor" is described as follows:

- supervise and coordinate marketing staff;
- assign duties to employees and c[o]ntractors;
- evaluate work performance of staff;
- coordinate and measure effectiveness of marketing campaign;
- consulte [sic] with manager and other subordinates to resolve problems;
- train employees;
- assist in planning budget[.]

The "account director" is described as follows:

- determine the demand for services offered and identify potential customers;
- develop procedures and ensure the firm's customers are satisfied;
- manage the hiring and coordinate performance evaluations of staff;
- manage and coordinate staff's activities;
- develop marketing strategies;
- evaluate budgets, expenditures, research and return-on investment/profit-loss projections.

The remaining positions identified in the organizational chart are ascribed tasks necessary to the provision of the petitioner's services. The remaining staff members have not been assigned supervisory or managerial duties.

The "Master Contract Assignment Agreements" for the "account director" and the "marketing supervisor" list their salaries as \$20.00 per hour. While the petitioner provided copies of cancelled checks for several of the independent contractors listed on the organizational chart, the petitioner failed to present any checks dated on or before the petition filing date made payable to the two individuals identified as the "account director" or the "marketing supervisor." The petitioner also failed to provide copies of Forms 1099, copies or examples of work products, or any other evidence that the "account director" or the "marketing supervisor" were employed by the petitioner in any capacity prior to the filing of the instant petition. The petitioner also failed to identify these two alleged staff members in the letter dated October 6, 2005 appended to the initial petition.

On March 8, 2006, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary's duties are primarily those of an executive or manager.

Upon review, the petitioner's assertions are not persuasive.

Title 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. 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. In the instant matter, the United States operation has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

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.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. As explained above, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided two vague and nonspecific descriptions of the beneficiary's duties that fail to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary establishes objectives, coordinates tasks, and exercises complete day-to-day discretionary authority over the organization. However, the petitioner does not explain what objectives will be established, what tasks will be coordinated, and what, exactly, the beneficiary will do on a day-to-day basis in exercising complete discretionary authority over the organization. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes lofty duties does not establish that the beneficiary will actually perform managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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).

Likewise, the petitioner did not provide a breakdown of how much time the beneficiary will devote to the many duties ascribed to her. This is particularly important in this matter because many of the duties listed by the petitioner appear to be non-qualifying administrative or operational tasks which do not rise to the level of being managerial or executive in nature. For example, the petitioner states that the beneficiary sets budgets, trains employees, manages assets (including receivables), meets and negotiates with customers and vendors, plans marketing and advertising campaigns, and prepares financial reports. Such duties as generally described constitute administrative or operational tasks essential to the operation of almost any business and appear related to the provision of the petitioner's services. Moreover, the supervision or management of independent contractors is not a qualifying duty as a matter of law. *See* section 101(a)(44)(A)(ii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). As the petitioner has not established how much time the beneficiary will devote to such non-qualifying tasks, it cannot be confirmed that she will "primarily" be employed as a manager. An employee who "primarily" performs the tasks necessary to produce a product or to provide

services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Finally, the petitioner has not established that it employs a subordinate staff which could relieve the beneficiary of the need to perform non-qualifying tasks inherent in the petitioner's business. As indicated above, the petitioner asserts that the beneficiary supervises directly or indirectly two secretaries and six independent contractors. While the secretaries may relieve the beneficiary of the need to engage in basic clerical tasks, the role of the independent contractors has not been adequately defined. The petitioner failed to establish how much time these contractors, who are paid by the hour, devote to the petitioner's business. While the petitioner provided evidence that some of these contractors have been paid, it is unclear what services they are providing, what services they will provide in the future, and for how long their services will be needed. Therefore, based on the record, it cannot be confirmed that these independent contractors will relieve the beneficiary of the need to perform non-qualifying tasks.

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory or managerial employees. As explained in the organizational chart, wage reports, and job descriptions for the subordinate staff members, the beneficiary appears to supervise a staff of two employees and six independent contractors. While the petitioner has given two of the independent contractors lofty titles and has described the "marketing supervisor" and the "account director" as having supervisory or managerial functions, the petitioner has not established that these alleged staff members are primarily engaged in performing supervisory or managerial duties. First, the petitioner has not established that these two "supervisory" independent contractors were employed by the petitioner at the time the instant petition was filed. As explained above, the petitioner does not identify the "marketing supervisor" and the "account director" in the initial petition and offers no evidence that these two staff members worked for the petitioner in any capacity at the time the petition was filed. To the contrary, it appears that these two supervisory independent contractors were engaged after the filing of the instant petition. 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). Second, the vague job descriptions for the "marketing supervisor" and the "account director" fail to establish that these staff members are primarily engaged in performing supervisory or managerial duties. Not only are their duties vaguely described, it is unclear how much time the independent contractors actually devote to the petitioner's business. Third, as explained above, the supervision or management of independent contractors will not permit a beneficiary to be classified as a managerial employee as a matter of law. *See* section 101(a)(44)(A)(ii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). The Act is quite clear that a managerial employee must manage *employees* in order to be classified as a manager for purposes of this visa classification. In view of the above, the beneficiary would appear to be primarily a first-line supervisor of non-professional clerical employees, the provider of actual services, or a combination of both. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.<sup>1</sup>

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<sup>1</sup>It is noted that, on appeal, the petitioner makes reference to at least one additional staff member who was hired after the adjudication of the petition. As indicated above, the petitioner must establish eligibility at the

Moreover, the petitioner has not established that the beneficiary will manage professional employees. 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 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 has not, in fact, established that a bachelor's degree is actually necessary to perform the duties of any of the beneficiary's subordinate employees. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>2</sup>

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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. Therefore, the addition of staff after the filing of the petition is not relevant in these proceedings.

<sup>2</sup>While the petitioner has not specifically argued that the beneficiary manages an essential function of the organization, the record nevertheless would not support this position even if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties would be managerial functions, in any, and what proportion would be non-managerial. Also, as explained above, the record establishes that the beneficiary will primarily be a first-line manager of non-professional employees. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her duties would be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will be acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, the beneficiary appears to be primarily employed as a first-line supervisor and to be performing tasks necessary to produce a product or to provide services. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

It is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g., Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will be primarily performing managerial or executive duties, and the petition may not be approved for that reason.

Beyond the decision of the director, another issue in this matter is whether the petitioner has established that the foreign entity is "doing business" and, thus, is still a qualifying organization.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(A) states that a petition to extend a "new office" petition filed on Form I-129 shall be accompanied by:

Evidence that the United States and the foreign entity are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section[.]

Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Doing Business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization." 8 C.F.R. § 214.2(l)(1)(ii)(H).

In support of its assertion that the foreign entity is still "doing business," the petitioner submitted two invoices dated after the Request for Evidence which sought evidence of the viability of the foreign entity; an expired contract for services; 2004 tax documents and financial data; and copies of information printed off of a

website. Much of the tax documentation and the internet materials are untranslated and include no explanation. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims and thus will not be accorded any weight in this proceeding. *See* 8 C.F.R. § 103.2(b)(3). None of the evidence presented establishes that the foreign entity is currently engaged in the regular, systematic, and continuous provision of goods and/or services. While it appears that the foreign entity may have had some business activity in 2004, the current petition was filed on October 18, 2005. Moreover, while the two invoices submitted were generated in 2005, evidence of two transactions will not establish that the foreign entity is conducting business in a regular, systematic, and continuous fashion. Regardless, as these two invoices were dated after the filing of the instant petition and also appear to concern "services" rendered after this date, this evidence is not relevant to these proceedings. As indicated above, 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.

Accordingly, the petitioner has not established that the foreign entity is "doing business" and, thus, has not established that the foreign entity is still a qualifying organization. For this additional reason, the petition may not be approved.

The initial approval of an L-1A new office petition does not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications. *Texas A&M Univ.*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Despite any number of previously approved petitions, CIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act, 8 U.S.C. § 1361.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.