

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



87

File: EAC 08 129 51826 Office: VERMONT SERVICE CENTER Date: **MAR 27 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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, a Texas corporation, filed this nonimmigrant visa petition seeking to extend the employment of the beneficiary in the position of ranch foreman/animal breeder as an L-1B intracompany transferee with specialized knowledge 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 claims to be an affiliate of a Mexican business entity.¹

The director denied the petition, concluding that the petitioner failed to establish (1) that the beneficiary possesses specialized knowledge or that he has been or will be employed in a capacity involving specialized knowledge; or (2) that the petitioner and the foreign employer are qualifying organizations because the record does not establish that the foreign employer is "doing business" as defined by the regulations.

On appeal, counsel asserts that the petitioner has satisfied the criteria for establishing that the beneficiary will be employed in a specialized knowledge capacity. Specifically, counsel argues that the beneficiary has specialized knowledge of deer breeding. Counsel further asserts that the foreign employer continues to do business in Mexico by selling white tail deer. In support, counsel submits a brief and an affidavit signed by the principal owner of the petitioning organization describing the beneficiary's skills and the foreign employer's ongoing business operation.

To establish L-1 eligibility under section 101(a)(15)(L) of the Act, the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization. The petitioner must also demonstrate that the beneficiary seeks to enter the United States temporarily in order to continue to render services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(3) further 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

¹It should be noted that, according to Texas state corporate records, the petitioner's corporate status in Texas is not in good standing. Therefore, as the State of Texas has forfeited the petitioner's corporate privileges, the company can no longer be considered a legal entity in the United States. Therefore, this would call into question the continued eligibility of the petitioner for the benefit sought if the appeal were not being dismissed for the reasons set forth herein.

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 first issue in this proceeding is whether the petitioner has established that the beneficiary has been or will be employed in a specialized knowledge capacity and whether the beneficiary possesses specialized knowledge. 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv).

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The petitioner describes the beneficiary's proposed duties in a letter dated April 2, 2008 as follows:

[The beneficiary] will continue to be responsible for selecting and breeding deer according to his knowledge of white tail deer, genealogy, traits, and offspring desired. He will supervise the feeding and watering of animals and the cleaning of pens and yards. He will examine deer to detect symptoms of illness or injury. He will be responsible for treating minor injuries and ailments and will contact the veterinarian to treat animals with serious illnesses or injuries. He will oversee the ear-tagging as well as the recording of genealogy, weight, diets, medication, food intake, tagging and other breeding data. He will continue to monitor the diet and feeding and watering schedules of all white tail deer. [The beneficiary] will supervise the building and maintenance of pens and fenced yards. As mentioned above, [the beneficiary] will continue to develop systems of breeding desirable characteristics which will make the our [sic] white tail deer better specimens and more economically important animals.

[The beneficiary] will still be responsible for ra[i]sing the fawns through the first three to four months and will wean and separate them from the does, paying special attention to their diet regiments [sic]. Then he will forward the fawns to his assistant to continue the growth process, a process that he will continue to supervise and oversee. Eventually he will separate the deer that will be used for breeding and those that will be used for the hunt.

The petitioner further claims in the April 2, 2008 letter that these duties require the beneficiary to have specialized knowledge of the foreign employer's system, processes, and procedures in conducting white tail deer breeding and that he acquired this knowledge through seven years of experience working for the foreign employer in Mexico. The petitioner also alleges that it has been unable to locate anyone with these skills and that the combination of skills and knowledge possessed by the beneficiary is not readily available in the United States labor market.

On April 16, 2008, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's duties, an explanation of the amount of time it took the beneficiary to acquire the purported specialized knowledge, an identification of all pertinent training provided to the beneficiary, and an explanation as to why the knowledge could not be easily imparted to others within the organization or industry.

In response, the petitioner submitted a letter dated June 30, 2008. The petitioner again asserts that the beneficiary's knowledge of deer care and breeding is "special" and "advanced" and that this "knowledge can only be gained through extensive prior experience with [the] Mexican affiliate."

On July 21, 2008, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary possesses specialized knowledge or that the beneficiary has been or will be employed in a capacity involving specialized knowledge.

On appeal, counsel asserts that the petitioner has satisfied the criteria for establishing that the beneficiary has been and will be employed in a specialized knowledge capacity. Specifically, the petitioner claims in an affidavit that the beneficiary gained his knowledge of deer breeding and care through years of work experience with the foreign employer and not through any formal classroom training.

Upon review, the petitioner's assertions are not persuasive in demonstrating that the beneficiary has specialized knowledge or that he has been or will be employed in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

Looking to the language of the statutory definition, Congress has provided USCIS with an ambiguous definition of specialized knowledge. In this regard, one Federal district court explained the infeasibility of applying a bright-line test to define what constitutes specialized knowledge:

This ambiguity is not merely the result of an unfortunate choice of dictionaries. It reflects the relativistic nature of the concept special. An item is special only in the sense that it is not ordinary; to define special one must first define what is ordinary. . . . There is no logical or principled way to determine which baseline of ordinary knowledge is a more appropriate reading of the statute, and there are countless other baselines which are equally plausible. Simply put, specialized knowledge is a relative and empty idea which cannot have a plain meaning. *Cf. Westen, The Empty Idea of Equality*, 95 Harv.L.Rev. 537 (1982).

1756, Inc. v. Attorney General, 745 F.Supp. 9, 14-15 (D.D.C., 1990).²

While Congress did not provide explicit guidance for what should be considered ordinary knowledge, the principles of statutory interpretation provide some clue as to the intended scope of the L-1B specialized knowledge category. *NLRB v. United Food & Commercial Workers Union, Local 23*, 484 U.S. 112, 123 (1987) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987)).

First, the AAO must look to the language of section 214(c)(2)(B) itself, that is, the terms "special" and "advanced." Like the courts, the AAO customarily turns to dictionaries for help in determining whether a word in a statute has a plain or common meaning. *See, e.g., In re A.H. Robins Co.*, 109 F.3d 965, 967-68 (4th Cir. 1997) (using *Webster's Dictionary* for "therefore"). According to *Webster's New College Dictionary*, the word "special" is commonly found to mean "surpassing the usual" or "exceptional." *Webster's New College Dictionary*, 1084 (3rd Ed. 2008). The dictionary defines the word "advanced" as "highly developed or complex" or "at a higher level than others." *Id.* at 17.

Second, looking at the term's placement within the text of section 101(a)(15)(L) of the Act, the AAO notes that specialized knowledge is used to describe the nature of a person's employment and that the term is listed among the higher levels of the employment hierarchy together with "managerial" and "executive" employees. Based on the context of the term within the statute, the AAO therefore would expect a specialized knowledge employee to occupy an elevated position within a company that rises above that of an ordinary or average employee. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 14.

Third, a review of the legislative history for both the original 1970 statute and the subsequent 1990 statute indicates that Congress intended for USCIS to closely administer the L-1B category. Specifically, the original

² Although *1756, Inc. v. Attorney General* was decided prior to enactment of the statutory definition of specialized knowledge by the Immigration Act of 1990, the court's discussion of the ambiguity in the legacy Immigration and Naturalization Service (INS) definition is equally illuminating when applied to the definition created by Congress.

drafters of section 101(a)(15)(L) of the Act intended that the class of persons eligible for the L-1 classification would be "narrowly drawn" and "carefully regulated and monitored" by USCIS. *See generally* H.R. Rep. No. 91-851 (1970), reprinted in 1970 U.S.C.C.A.N. 2750, 2754, 1970 WL 5815. The legislative history of the 1970 Act plainly states that "the number of temporary admissions under the proposed 'L' category will not be large." *Id.* In addition, the Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally, id.* The term "key personnel" denotes a position within the petitioning company that is "[o]f crucial importance." *Webster's New College Dictionary* 620 (3rd ed., Houghton Mifflin Harcourt Publishing Co. 2008). Moreover, during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *See* H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (Nov. 12, 1969).

Neither in 1970 nor in 1990 did Congress provide a controlling, unambiguous definition of "specialized knowledge," and a narrow interpretation is consistent with so much of the legislative intent as it is possible to determine. H. Rep. No. 91-851 at 6, 1970 U.S.C.C.A.N. at 2754. This interpretation is consistent with legislative history, which has been largely supportive of a narrow reading of the definition of specialized knowledge and the L-1 visa classification in general. *See 1756, Inc. v. Attorney General*, 745 F.Supp. at 15-16; *Boi Na Braza Atlanta, LLC v. Upchurch*, Not Reported in F.Supp.2d, 2005 WL 2372846 at *4 (N.D.Tex., 2005), *aff'd* 194 Fed.Appx. 248 (5th Cir. 2006); *Fibermaster, Ltd. v. I.N.S.*, Not Reported in F.Supp., 1990 WL 99327 (D.D.C., 1990); *Delta Airlines, Inc. v. Dept. of Justice*, Civ. Action 00-2977-LFO (D.D.C. April 6, 2001)(on file with AAO).

Further, although the Immigration Act of 1990 provided a statutory definition of the term "specialized knowledge" in section 214(c)(2) of the Act, the definition did not generally expand the class of persons eligible for L-1B specialized knowledge visas. Pub.L. No. 101-649, § 206(b)(2), 104 Stat. 4978, 5023 (1990). Instead, the legislative history indicates that Congress created the statutory definition of specialized knowledge for the express purpose of clarifying a previously undefined term from the Immigration Act of 1970. H.R. Rep. 101-723(I) (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6749, 1990 WL 200418 ("One area within the L visa that requires more specificity relates to the term 'specialized knowledge.' Varying interpretations by INS have exacerbated the problem."). While the 1990 Act declined to codify the "proprietary knowledge" and "United States labor market" references that had existed in the previous agency definition found at 8 C.F.R. § 214.2(l)(1)(ii)(D) (1988), there is no indication that Congress intended to liberalize its own 1970 definition of the L-1 visa classification.

If any conclusion can be drawn from the enactment of the statutory definition of specialized knowledge in section 214(c)(2)(B), it would be based on the nature of the Congressional clarification itself. By not including any strict criterion in the ultimate statutory definition and further emphasizing the relativistic aspect of "special knowledge," Congress created a standard that requires USCIS to make a factual determination that can only be determined on a case-by-case basis, based on the agency's expertise and discretion. Rather than a bright-line standard that would support a more rigid application of the law, Congress gave the INS a more flexible standard that requires an adjudication based on the facts and circumstances of each individual case. *Cf. Ponce-Leiva v. Ashcroft*, 331 F.3d 369, 377 (3d Cir. 2003) (quoting *Baires v. INS*, 856 F.2d 89, 91 (9th Cir. 1988)).

To determine what is special or advanced, USCIS must first determine the baseline of ordinary. As a baseline, the terms "special" or "advanced" must mean more than simply "skilled" or "experienced." By itself, work experience and knowledge of a firm's technically complex products will not equal "special knowledge." See *Matter of Penner*, 18 I&N Dec. 49, 53 (Comm. 1982). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. In other words, specialized knowledge generally requires more than a short period of experience; otherwise special or advanced knowledge would include every employee in an organization with the exception of trainees and entry-level staff. If everyone in an organization is specialized, then no one can be considered truly specialized. Such an interpretation strips the statutory language of any efficacy and cannot have been what Congress intended.

Considering the definition of specialized knowledge, it is the petitioner's, not USCIS's, burden to articulate and prove that the beneficiary possesses "special" or "advanced" knowledge. Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B). USCIS cannot make a factual determination regarding the beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, and explain how and when the beneficiary gained such knowledge.

Once the petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. A petitioner's assertion that the beneficiary possesses advanced knowledge of the processes and procedures of the company must be supported by evidence describing and distinguishing that knowledge from the elementary or basic knowledge possessed by others. Because "special" and "advanced" are comparative terms, the petitioner should provide evidence that allows USCIS to assess the beneficiary's knowledge relative to others in the petitioner's workforce or relative to similarly employed workers in the petitioner's specific industry.

In examining the specialized knowledge of the beneficiary, the AAO will look to the petitioner's description of the job duties and the weight of the evidence supporting any asserted specialized knowledge. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner must submit a detailed job description of the services to be performed sufficient to establish specialized knowledge. At a minimum, the petitioner must articulate with specificity the nature of the claimed specialized knowledge. Merely asserting that the beneficiary possesses "special" or "advanced" knowledge will not suffice to meet the petitioner's burden of proof.

Upon review, the petitioner in this case has failed to establish either that the beneficiary's position in the United States or abroad requires an employee with specialized knowledge or that the beneficiary has specialized knowledge. Although the petitioner repeatedly asserts that the beneficiary has been and will be employed in a "specialized knowledge" capacity, the petitioner has not adequately articulated any basis to support this claim. The petitioner has failed to identify any special or advanced body of knowledge which would distinguish the beneficiary's role from that of other similarly experienced animal breeders and handlers employed by the petitioning organization or in the industry at-large. Going on record without 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)). Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *See 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 petitioner asserts that the beneficiary possesses specialized knowledge of the employer's system, processes, and procedures in conducting white tail deer breeding and caring for animals. The petitioner claims that the beneficiary acquired this knowledge through seven years of experience working for the foreign employer in Mexico and not through any formal classroom training. The petitioner also alleges that it has been unable to locate anyone with these skills and that the combination of skills and knowledge possessed by the beneficiary is not readily available in the United States labor market. However, even though requested by the director, the petitioner failed to explain why the beneficiary's knowledge of deer breeding and animal care could not be easily imparted to others within the organization or the deer breeding or animal care industry. 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).

Accordingly, despite the petitioner's claim, the record does not establish how, exactly, this knowledge materially differs from knowledge possessed by other workers employed by the petitioning organization or in the deer farm or animal care industry at large. The record does not establish what qualities of this knowledge of deer breeding and animal care are of such complexity that the impartation of this knowledge amounts to the acquisition of special or advanced knowledge. Importantly, the record is not persuasive in establishing why, exactly, any of the beneficiary's knowledge cannot be imparted to a similarly experienced animal care worker in a relatively short period of time. The petitioner's unsubstantiated assertion that the beneficiary's knowledge of deer breeding and animal care is unique or uncommon will not establish that this knowledge is truly special or advanced. Again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190)). The petitioner does not articulate with specificity the nature of the claimed specialized knowledge, describe how such knowledge is typically gained within the organization, or explain how and when the beneficiary gained such knowledge. Accordingly, the record is not persuasive in establishing that the beneficiary will be a "key" employee having special or advanced knowledge of a company product or service, the application of this product or service, or a process or procedure of the petitioning organization.

Overall, the record does not establish that the beneficiary's knowledge is substantially different from the knowledge possessed by animal care workers and breeders generally throughout the industry or by other employees of the petitioning organization. The fact that few other workers possess very specific knowledge of certain aspects of the petitioning organization's processes or products, e.g., the petitioner's preference for breeding certain types of deer, does not alone establish that the beneficiary's knowledge is indeed advanced or special. All employees can be said to possess uncommon and unparalleled skill sets to some degree; however, a skill set that can be easily imparted to another similarly educated and generally experienced animal care worker is not "specialized knowledge." Moreover, the proprietary or unique qualities of the petitioner's animals do not establish that any knowledge of these is "specialized" or "advanced." Rather, the petitioner must establish that qualities of the processes, procedures, and technologies require this employee to have knowledge beyond what is common in the industry. This has not been established in this matter. The fact that other workers outside of the petitioning organization may not have very specific knowledge

regarding the petitioner's enterprise is not relevant to these proceedings if this knowledge gap could be closed by the petitioner by simply revealing the information to a newly hired, generally experienced worker.

The AAO does not discount the likelihood that the beneficiary is a skilled and experienced deer breeder. There is no indication, however, that the beneficiary has any knowledge that exceeds that of any experienced animal care worker, or that he has received special training in the company's methodologies or processes which would separate him from any other worker employed within the petitioner's organization or in the industry at-large. The petitioner has failed to demonstrate that the beneficiary's knowledge is any more advanced or special than the knowledge held by a skilled worker. *See Matter of Penner*, 18 I&N Dec. at 52.

Based on the evidence presented, the petitioner has not established that the beneficiary has specialized knowledge or that he was or will be employed in a capacity involving specialized knowledge. For this reason, the appeal will be dismissed.

The second issue in the present matter is whether the petitioner has established that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." 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." "Affiliate" is defined in pertinent part as "[o]ne of two subsidiaries both of which are owned and controlled by the same parent or individual." 8 C.F.R. § 214.2(l)(1)(ii)(L)(1). "Doing business" is defined in pertinent part as "the regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 214.2(l)(1)(ii)(H).

In this matter, the petitioner claims that it and the foreign employer are principally owned and controlled by the same individual, [REDACTED]. In support, the petitioner submits organizational documents indicating the ownership of each entity.

On April 16, 2008, the director requested additional evidence. The director requested, *inter alia*, evidence that the foreign employer is doing business, including audited and reviewed financial statements, tax returns, and bank documents.

In response, the petitioner submitted three invoices and a Mexican tax document all dating from 2007. The instant petition was filed on April 3, 2008.

On July 21, 2008, the director denied the petition. The director determined that the petitioner failed to establish that the foreign employer is currently "doing business" in Mexico. Accordingly, the director concluded that the petitioner failed to establish that the foreign employer is a qualifying organization.

On appeal, the petitioner claims that, although it does not maintain a bank account, the foreign employer continues to do business in Mexico through the sale of white tail deer.

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

As noted above, the instant petition was filed on April 3, 2008. The record is devoid of evidence of the foreign employer "doing business" in Mexico in 2008. The invoices and tax documents submitted for the record are from 2007. While the petitioner asserts on appeal that the foreign employer still sells white tail deer in Mexico, it did not submit any evidence corroborating this assertion. Once again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190)). Furthermore, as the petitioner did not describe the magnitude of the foreign employer's purported white tail deer sales operation in Mexico, or submit the other documents requested by the director, it cannot be determined whether the foreign employer is doing business in a regular, systematic, and continuous fashion as required by the regulations. 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 non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Accordingly, as the petitioner failed to establish that the foreign employer is "doing business," it has failed to establish that the foreign employer is a qualifying organization, and the petition may not be approved for this additional reason.

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.