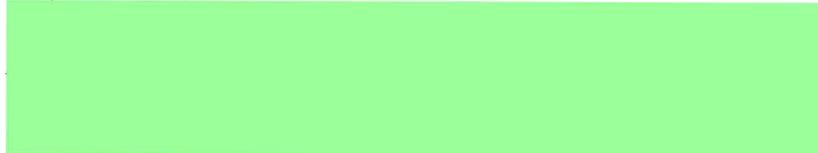


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **APR 09 2013** Office: VERMONT SERVICE CENTER

FILE:

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition to extend the beneficiary's employment as an 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, a Kentucky corporation established in 2008, is engaged in translation and language services, and claims to be an affiliate of [REDACTED] ("the foreign entity"), located in Sao Paulo, Brazil. The beneficiary was previously granted one year in L-1A classification in order to open the petitioner's new office as its president. The petitioner now seeks to extend his L-1A status for three additional years.

The director denied the petition concluding that the petitioner failed to establish: (1) that it will employ the beneficiary in a qualifying managerial or executive capacity; and (2) that the foreign entity continues to do business as a qualifying organization abroad.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petition was denied in error as the record contains evidence that the beneficiary is and will be employed in an executive capacity, and evidence that the foreign entity continues to do business in Brazil. Counsel emphasizes that the beneficiary's duties are typical of those performed by an executive in a small company and suggests that the director failed to take into account the company's reasonable needs.

I. THE LAW

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.

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.

II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

A. Procedural History

The first issue to be addressed is whether the petitioner established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it operates a language and translation services company with one employee; it claimed a gross annual income of \$110,000.

The petitioner stated on the L Classification Supplement to Form I-129 that the beneficiary, as president, is required to: "Direct operations of the company, establish goals and policies; make discretionary decisions; make and execute plans and strategies." When asked to provide a summary of the beneficiary's education and work experience, the petitioner stated that the beneficiary is currently employed as "President and principal translator and language services provider."

In an attached "Statement of Duties", the petitioner indicated that the beneficiary would have the following responsibilities under the extended petition:

- Business Development, prospecting local and foreign accounts for business opportunities and expanding the customer base. This involves customer calls, meetings and e-mail communications.
- Providing proposals and quotes to clients.

- Developing, negotiating and securing Service Agreements, Confidentiality Agreements, and all other activities related to securing translation and language services.
- Contacting, interviewing and hiring local contractors for text revision jobs.
- Outsourcing translation services abroad.
- Liaison with the CPA offices contracted by [the petitioner] for all its fiscal and administrative activities.
- Banking and financial services and activities.
- Marketing
- Updating and expanding the company's Website.
- Translating.

Despite the claimed gross annual income of \$110,000, the petitioner submitted an unaudited financial statement for the first six months of 2009 which indicates that the company achieved total sales of \$27,722.72. The petitioner's operating expenses included \$255 in "outside services," but no employee salaries or wages.

The petitioner's initial evidence also included the beneficiary's resume in which he identifies himself as a "translator and director." He states that his role with the petitioner's international organization has involved "working with technical and commercial translation," and indicates that he has rendered services to a number of companies. He indicates that these services include "written, simultaneous and consecutive translations both from English into Portuguese and Portuguese into English."

Upon review of the initial evidence, the director issued a request for evidence ("RFE"), advising the petitioner that the position description provided suggests that the beneficiary performs a number of non-qualifying operational and first-line supervisory duties. The director instructed the petitioner to provide: (1) a breakdown of the number of hours the beneficiary devotes to each of his job duties on a weekly basis; (2) an organization chart; and (3) evidence to support the petitioner's claims that it contracts out financial, administration and translation/text revision services. The director specifically requested a sampling of contracts, invoices, cancelled checks and any other evidence to corroborate that it has been using contractors or other outsourced staff to perform these duties.

In response, petitioner submitted a letter from the beneficiary in which he further explained his current duties:

Due to peculiarities in the work related to providing translation services, the functions currently performed by the company's executive are both those of establishing goals and policies for the new company, aiming at growing and expanding the business, but also some typical of the day-to-day functions. This is true only for the initial phases of the company, since we are still developing critical mass in terms of revenues and expansion of the client base. Once this is achieved, it is the company's expectation to hire back-office staff and reviewers/translators.

The beneficiary provided the following weekly time allocation for his duties:

- Contacting clients, preparing proposals, networking (17.5 hours, 35% of total time)
- Administration activities, defining business opportunities, financial activities and liaison with services providers (22.5 hours, 45% of total time)
- Coordination of international projects (between client teams, [the petitioner's] teams and Services providers (5.0 hours, 10% of total time)
- Other, including back-office work (5.0 hours 10% of total time)

The petitioner provided an organizational chart which depicts the beneficiary as president, supervising four vacant positions: two reviewers, one reviewer/translator and one back office employee. The beneficiary stated that the vacant positions "should be filled as the company revenues increase to sustainable levels." The beneficiary indicated that it uses the services of a CPA and noted that "all other administrative activities are still done in-house."

The beneficiary further stated that "in addition to the executive duties normally conducted, I also perform some of the day-to-day operational functions as there are no other employees. However, these duties are limited as to scope and time." Finally, the beneficiary explained that "some free-lancers and legal entities were engaged to pursue business opportunities for the company or for review services." The beneficiary's letter included a list of five individuals and indicates that the petitioner paid each person fees ranging from \$160 to \$500 between March and October 2009. The petitioner also indicated that it paid \$1,940.15 to [REDACTED] in July 2009. The petitioner did not provide an explanation of services provided by the referenced company and individuals.

The director denied the petition concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity under the extended petition. In denying the petition, the director emphasized that the petitioner described the beneficiary's claimed managerial and executive duties in an abstract manner that merely paraphrased the statutory definitions of managerial and executive capacity at section 101(a)(44) of the Act. Further, the director found that the beneficiary, as the petitioner's sole full-time employee, would be primarily engaged in non-qualifying duties associated with selling and providing the company's services.

On appeal, the petitioner asserts that it provided sufficient evidence to establish that the beneficiary is employed in an executive capacity. The petitioner emphasizes that the beneficiary has achieved the petitioner's expansion goals while overseeing the work performed by the company. The petitioner maintains that the majority of the translation services provided by the company are "done by workers" while the beneficiary "performs administrative quality assurance review for certain of the work products." The petitioner explains that "where a company has workers (employees or contract workers) there must be an administrative presence either in the form of a manager or an executive."

The petitioner further asserts that the director erroneously concluded that the majority of the beneficiary's time would be allocated to non-managerial functions. The petitioner maintains that "the majority of [the beneficiary's] time is spent cultivating and meeting with clients, negotiating and making payments to contract workers, seeking workers, conducting business with vendors, reviewing client matters and otherwise managing the business." The petitioner states that his limited participation in the day-to-day operations of the business does not prevent the approval of the petition.

In addition, the petitioner emphasizes that the beneficiary anticipates hiring two employees in addition to retaining contract employees so that he will be free to aggressively seek clients and revise and implement business practices, policies and strategies. The petitioner concedes that the company has no employees, but asserts that "the contract workers relieved [the beneficiary] of everyday duties required to run the business." The petitioner contends that "USCIS has not shown that a company cannot be viable with only contract workers," and suggests that the decision showed undue prejudice against small companies.

In support of the appeal the petitioner submits: a chart identifying "jobs performed by [redacted] in 2009 as a contractor" with fees paid listed in Brazilian and U.S. currency; a copy of a check for \$1,940.15 issued to [redacted] on July 8, 2009 for "2009 fees"; a copy of a check for \$255.00 issued to [redacted] on June 3, 2009 for "DHL Job"; a copy of a check for \$500 issued to [redacted] on July 1, 2009 for "Translation Fee"; a copy of a check for \$291.44 issued to [redacted] on October 21, 2009; and a copy of a check for \$81.85 issued to [redacted] on January 11, 2010 for "contract transl."

B. Analysis

Upon review, and for the reasons discussed below, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

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 definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Here, while the beneficiary exercises the appropriate level of authority over the business as its co-owner and president, the evidence of record does not support the petitioner's claims that the beneficiary's actual duties will be primarily managerial or executive in nature.

The petitioner's initial description of the beneficiary's duties indicated that, while the beneficiary is ultimately responsible for overseeing the development of the petitioning company, he is also responsible for performing

the majority of the administrative and operational tasks necessary for it to operate. For example, the petitioner indicated that the beneficiary is responsible for locating and securing customers (essentially, promoting and selling the petitioner's services), preparing proposals and quotes, marketing, updating the company's web site, handling day-to-day banking and financial activities, and even performing translating services. The petitioner also described the beneficiary's role on the Form I-129 as "President and principal translator and language service provider." 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 Int'*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Given the prevalence of non-qualifying duties included in the initial statement of duties, the director reasonably requested that the petitioner provide a breakdown of the number of hours allocated to each of the beneficiary's duties on a weekly basis. However, rather than clarifying the number of hours spent performing each duty in the initial position description, the petitioner attributed hours and percentages to four broad areas of responsibility, indicating that the beneficiary spends 35% of his time "contacting clients, preparing proposals, networking" and 45% of his time performing "administration activities" including "defining business opportunities, financial activities and liaison with services providers." The petitioner acknowledged that the beneficiary must perform "some of the typical . . . day-to-day functions of the business" and "day-to-day operational functions as there are no other employees." It is not clear from the provided breakdown which duties the petitioner considers to be qualifying and which it considers to be non-qualifying. The petitioner stated that the beneficiary allocates 10% of his time to "other" activities including "back-office" work, but the AAO notes that several of the tasks included within the beneficiary's primary duties, such as contacting clients, networking and administration activities, would also include duties that do not fall within the statutory definitions of managerial or executive capacity. Further, the breakdown provided in response to the RFE did not include the beneficiary's previously stated responsibilities for web site maintenance, marketing and translating.

While the AAO acknowledges that no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, the petitioner must establish that the beneficiary's non-qualifying tasks do not require more than half of his time. Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

Here, a review of the totality of the record supports a finding that the beneficiary, as of the date of filing, was required to perform the vast majority of the day-to-day activities associated with operating the petitioner's business. Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS

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. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *See Systronics*, 153 F. Supp. 2d at 15.

Furthermore, in the present matter, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 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 USCIS 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 petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

The petitioner operates a translation and language services business with the beneficiary as its sole employee. The petitioner indicates that it uses the services of a CPA, and submits evidence that it made occasional payments to "free-lancers" to provide translation or other undefined services. The petitioner has not identified with any specificity what services these free-lance employees provide and the extent of their contribution to the petitioner's day-to-day operations. Additionally, the petitioner has not explained how the services of the contracted employees, who had been paid minimal fees as of the date of filing, obviates the need for the beneficiary to primarily conduct the petitioner's business by performing all of its sales, marketing, administrative and other functions, including, according to the initial position description, at least some portion of its translation services. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

While the petitioner, as a relatively new business, may have a reasonable need for the beneficiary to carry out tasks that are outside the parameters of the statutory definitions, the petitioner maintains the burden of establishing that the beneficiary would more likely than not "primarily" perform tasks within a qualifying managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties.

The AAO acknowledges the petitioner's assertion that the beneficiary intends to hire back-office/administrative staff and translators in the upcoming year. However, such future hiring plans are not relevant to the beneficiary's eligibility in this matter. 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'r 1978).

In light of the prevalence of non-qualifying duties included in the beneficiary's position description and the lack of subordinate employees or contractors to relieve the beneficiary from non-qualifying tasks, the petitioner has not established that it would employ the beneficiary in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

III. QUALIFYING ORGANIZATION ABROAD

The remaining issue addressed by the director is whether the beneficiary's foreign employer continues to do business as a qualifying organization abroad.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) defines the term "qualifying organization" as 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 (l)(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.

"Doing business" means 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)(2)(H).

At the time of filing, the petitioner stated that the foreign entity provides translation and language services in Brazil to companies such as [REDACTED]

The petitioner submitted evidence of the ownership of the foreign company, but did not provide any evidence that the foreign entity continues to do business in Brazil following the relocation of its owners, the beneficiary and his spouse, to the United States.

In the RFE, the director requested that the petitioner submit evidence that the foreign organization has been engaged and is presently engaged in the regular, systematic and continuous provision of goods or services. The director advised that the evidence should include purchase contracts, purchase orders, invoices and bank statements.

The petitioner's response did not directly acknowledge the director's request for evidence that the foreign company is doing business. Counsel stated that the petitioner was including "copies of some contracts, invoices, bank statements and other evidence, all of which support the organization's activities between October 2, 2008 and August 31, 2009." The AAO notes that the director had specifically requested evidence pertaining to the U.S. company's activities for this period and the documents submitted pertained to the petitioner, not the foreign entity.

The evidence did include three invoices issued by the petitioner to the foreign entity, including: (1) Invoice No. 1568, requesting payment of \$4,000 for "Translation and Review Services" rendered in October 2008; (2) Invoice No. 1611, requesting payment of \$2,500 for "Language services" related to student [REDACTED] (the co-owner of both companies); and (3) Invoice No. 1613, requesting payment of \$2,500 for "Translation and Business English Course for [REDACTED]

The director denied the petition pursuant to 8 C.F.R. § 103.2(b)(14), based on a finding that the petitioner failed to submit the requested evidence to demonstrate that the foreign entity continues to do business.

On appeal, the petitioner asserts that "the statement by USCIS that [the foreign entity] did not submit any such evidence is inaccurate and misstates the facts." The petitioner maintains that the foreign entity continues to provide translation services for its own accounts and for the petitioner's accounts, and that it continues to pay salaries for both the beneficiary and his spouse.

In support of its claim that the petitioner provided evidence that the foreign company continues to do business, the petitioner references "Invoice No. 1611" as it was "issued by [the petitioner] to [the foreign entity] in the conduct of business" and "contained bank routing numbers for payment purposes." Further, the petitioner maintains that it clearly stated in its supporting letter the foreign entity continues to do business in Brazil. The petitioner submits additional evidence in support of the appeal, including evidence of monthly tax payments made by the foreign entity and evidence of salaries paid to the beneficiary and his spouse.

Upon review, the AAO agrees with the director's determination. A review of the complete record reveals that the petitioner did not respond to the director's specific request for evidence that the foreign entity has been and is presently doing business as defined in the regulations. The director specifically requested that the petitioner submit copies of the foreign entity's purchase contracts, purchase orders, invoices and bank statements and correctly concluded that the petitioner submitted none of this documentation in response to the RFE. Further, as noted above, the petitioner's response to the RFE did not even acknowledge the director's request for evidence that the foreign entity continues to conduct business.

While the petitioner did submit copies of three invoices issued by the petitioner to the foreign entity, these invoices were not accompanied by evidence of payments received by the foreign entity. Moreover, they predated the filing of the petition by at least seven months and thus did not sufficiently document the foreign entity's continuing business operations.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. 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). 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 director appropriately denied the petition, in part, based on the petitioner's failure to provide requested evidence of the foreign entity's ongoing business operations.

Where, as here, 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); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the newly 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. Consequently, the appeal will be dismissed.

IV. CONCLUSION

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.