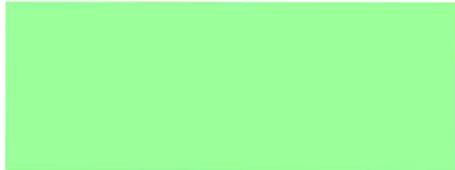


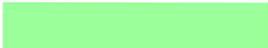
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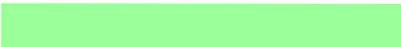
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

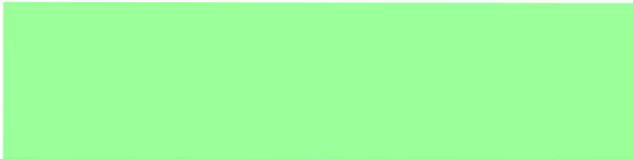


DATE: **JUL 23 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's status 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 Nevada limited liability company, established in 2011, engaged in the international money remittance business. The petitioner states that it is a wholly owned subsidiary of [REDACTED]. The beneficiary was previously granted one year as an L-1A nonimmigrant intracompany transferee as the company's Executive Vice President in order to open a "new office" in the United States. The petitioner now seeks to extend the beneficiary's employment for an additional year.¹

The director denied the petition, concluding that the record was not persuasive in demonstrating that the beneficiary has been or will be employed primarily in a managerial or executive capacity. Further, the director found that the petitioner had failed to establish that there was a qualifying relationship between the petitioner and the foreign employer noting that the petitioner had submitted insufficient evidence of ownership in the petitioner to establish it as a wholly owned subsidiary of the foreign employer.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director failed to consider the totality of the evidence related to the beneficiary's employment and states that her position is clearly in an executive capacity. Additionally, counsel states that a qualifying relationship is established through the petitioner's submittal of an operating agreement that designates the foreign employer as the only controlling member of the petitioner.

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.

¹ The AAO notes that the petitioner again seeks to qualify the beneficiary as an executive or manager establishing a new office in the United States. The Supplement to the I-129 Petition for a Nonimmigrant Worker, Section 1, Part 12 states this intention. However, the beneficiary was already granted one year as the executive or manager of a new office pursuant to 8 C.F.R. § 214.2(l)(3)(v) and there is no provision for United States Citizenship and Immigration Services (USCIS) to grant a second "new office" L-1A visa approval. As such, the petitioner will be adjudicated as a company seeking to extend a one year "new office" petition for the beneficiary. See 52 Fed. Reg. at 5740 and 8 C.F.R. § 214.2(l)(14)(ii).

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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a one year "new office" petition accompany their Form I-129 petition with 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.

II. The Issues on Appeal:

A. Employment with the petitioner in a managerial or executive capacity:

The first issue to be addressed on appeal is whether the petitioner established that the beneficiary has been and will be employed in the United States in a primarily executive or managerial capacity as required by 8 C.F.R. § 214.2(l)(3)(ii).

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.

On appeal, counsel asserts that the beneficiary was delayed in arriving in the United States following the approval of the original new office petition in August 2011, noting that the beneficiary did not enter the United States until April 2012 due to a project she was finalizing related to the establishment of a money remittance network between Hong Kong and the Philippines. The petitioner states that the completion of the project in Hong Kong was a preliminary step to expansion into the United States market and that it would serve as a model for the establishment of the petitioner. Counsel further states that the petitioner is

currently not functioning as designed due to “complex and lengthy” negotiations that are still ongoing between the petitioner and a “network medium provider” in the United States that will allow the petitioner to transmit monies by and between the United States and its current financial network in the Philippines. Counsel asserts that until the aforementioned agreement is established, along with another agreement with a banking institution in the United States, that the petitioner will not be fully functioning business in the United States garnering revenue and employing its originally intended employees.² Further, the petitioner did not submit federal income tax forms relevant to 2011 instead providing a letter note from an accountant stating that the petitioner elected not to file these forms as it did not garner any revenue or incur any expenses during this year. In support of the petition, the petitioner projected that it would finalize agreements with a network provider and a banking institution necessary to commence remittance transactions between the United States and the Philippines in November 2012, approximately four months after filing the petition for extension. Additionally, the petitioner asserts that it employs one consultant who is assisting the beneficiary in establishing the necessary agreements to do business in the United States. In sum, counsel asserts that USCIS should consider the petitioner’s lack of staffing and operations in light of unique circumstances, including the beneficiary’s executive title, and grant the beneficiary an additional year as an L-1A transferee. As noted in a previous footnote, the petitioner requests that the petitioner be granted a second year as a new office to establish the business pursuant to 8 C.F.R. § 214.2(l)(3)(v).

The AAO does not find counsel’s assertions persuasive. Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the petitioner performs primarily executive duties with the petitioner as required by the Act or that the petitioner operates as necessary to support the beneficiary in her asserted 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). In a request for evidence, the director asked the petitioner to submit a more detailed description of the beneficiary’s proposed duties in the U.S. and to identify the percentage of time required to perform the proposed duties of the managerial or executive position. In response, the director provided the following description of the beneficiary’s job duties:

[The beneficiary] will oversee the day-to-day functions of the office as well as all financial transactions. [The petitioner] wants to stay lean and efficient in its infancy, and thus increase its overall profitability in the near and long term, [the beneficiary] will manage both the financial and human resources department until the office fully expands to anticipated operating levels. Until the office is fully staffed, it is difficult to estimate the amount of time [the beneficiary] will be required to devote to each of her duties. However, referencing the Organizational Chart, and given her past work in executing the expansion

² The petitioner noted in its business plan dated March 7, 2011, submitted in support of the new office petition approved in August 2011, that it planned in hiring the following employees during the first year of operations: an executive vice president of finance/human resources manager (the beneficiary), a senior vice president, a vice president of operations, a compliance/risk manager, a bookkeeper, an office secretary, outside legal counsel, and an investment consulting firm.

into the Hong Kong market which has served as the model for expansion into the United States, there is no issue as to the activity and scope of her position with the Petitioner.

The definitions of executive and managerial capacity 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 prove 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).

In the present matter, despite the direct request of the director, the petitioner has not provided a detailed description of the beneficiary's duties (including requisite percentages of time spent on each duty) as necessary to establish that she primarily performs executive duties. The petitioner only offers future duties the petitioner will perform once it reaches a projected level of development. 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). Despite counsel's assertions, the petitioner may not be granted a second "new office" L-1A visa approval. The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business. The regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. By allowing multiple petitions under the more lenient standard, USCIS would in effect allow foreign entities to create under-funded, under-staffed or even inactive companies in the United States, with the expectation that they could receive multiple extensions of their L-1 status without primarily engaging in managerial or executive duties. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii).

In creating the "new office" accommodation, the legacy Immigration and Naturalization Service (INS) recognized that the proposed definitions of manager and executive created an "anomaly" with respect to the opening of new offices in the United States since "foreign companies will be unable to transfer key personnel to start-up operations if the transferees cannot qualify under the managerial or executive definition." 52 Fed. Reg. at 5740. The INS recognized that "small investors frequently find it necessary to become involved in operational activities" during a company's startup and that "business entities just starting up seldom have a large staff." *Id.* Despite the fact that an alien engaged in the start-up of a new office may not be "primarily" employed in a managerial or executive capacity, as then required by regulation and later by statute, the INS amended the final regulations to allow for L classification of persons who are coming to the United States to open a new office as long as "it can be expected . . . that the new office will, within one year, support a managerial or executive position." *Id.*

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the

petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.* After one year, USCIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner "for the previous year" as necessary to support the beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(14)(ii)(B).

Upon review of the current petition, it is apparent that the petitioner has not developed sufficiently during the first year of operations as necessary to support the beneficiary in her asserted executive position. In fact, the petitioner admits that the business is not operational and that the beneficiary is not primarily performing executive duties. As noted by counsel, the beneficiary is acting as an agent of the petitioner negotiating contracts necessary to launch the petitioner's operations in the United States. Also, the petitioner asserts on the record that the petitioner has yet to accrue any revenue or incur any expenses. The petitioner further noted in support of the I-129 Petition for a Nonimmigrant Worker that it did not project operations to begin until November 2012, approximately four months after the filing of the petition. As noted above, a petitioner cannot be afforded an additional year as a new office, but must establish after one year as a new office that it is doing business as necessary to support the executive or managerial role of the beneficiary. Except in the case of a new office petition, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Although the asserted delays of the beneficiary due to a project in Hong Kong are unfortunate, there is no provision for allowing a second year of development as a new office under the regulations.

Further, a beneficiary cannot be established as an executive exclusively on the assignment of an executive title as asserted by counsel. 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, 8 U.S.C. § 1101(a)(44)(B). 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 managerial 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. In the present matter, the petitioner is shown to have no operations through its own admission. Therefore, the beneficiary cannot be acting in an elevated position within a complex organizational hierarchy. Without any operations, there are no goals and policies or managers for the beneficiary to direct, and the petitioner has not established on the record that the beneficiary has performed, or will perform, duties relevant to an executive. Further, the beneficiary is asserted as having one subordinate, [REDACTED] an independent contractor from [REDACTED] retained to assist the beneficiary in establishing partnerships in the electronic banking and payment network industry in the United States. However, the petitioner provides no specifics as to the extent of [REDACTED] involvement with the petitioner, including contracts with [REDACTED] or other supporting evidence to confirm the frequency of [REDACTED] work. As such, the petitioner has not established with sufficient evidence that the beneficiary has any subordinates or managers to direct. As

noted above, 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.

In conclusion, the petitioner has fulfilled few of the evidentiary requirements for the extension of a new office petition pursuant to 8 C.F.R. § 214.2(l)(14)(ii), which are relevant to establishing that a beneficiary is acting primarily in an executive or managerial capacity after a one year new office period. The petitioner has submitted no evidence that the petitioner has been doing business as defined by regulation for the previous year. *See* 8 C.F.R. § 214.2(l)(14)(ii)(B). The petitioner has not provided a statement of duties performed by the beneficiary for the previous year. *See* 8 C.F.R. § 214.2(l)(14)(ii)(C). The petitioner does not establish staff for the new operation, or evidence of wages paid to such staff, necessary to employ the beneficiary in an executive capacity. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). Lastly, the petitioner has not provided evidence of its financial status or other financial support for the company. Indeed, the petitioner states it has accrued no revenue to date. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). As such, the petitioner has not established that the beneficiary has been and will be employed in the United States in a primarily executive or managerial capacity. For this reason, the petition must be dismissed.

B. Qualifying Relationship between the petitioner and foreign employer:

The next issue to be addressed is whether the petitioner established a qualifying relationship between the petitioner and the foreign employer.

As noted, the director found that the petitioner did not establish that a qualifying relationship existed between the petitioner and the foreign employer. More specifically, the director concluded that the petitioner had not established that the petitioner was a wholly owned subsidiary of the foreign employer as asserted on the record. The director reasoned that the petitioner had failed to submit sufficient evidence of ownership that was requested by the director in the RFE, including federal income tax documentation for the petitioner and proof of initial contributions by the foreign employer to establish its asserted ownership interest.

On appeal, counsel asserts that record evidences the asserted parent-subsidary relationship between the petitioner and the foreign employer. Specifically, counsel points to the operating agreement submitted in response to the director's RFE which designates the foreign employer's exclusive control over the petitioner. Additionally, counsel states that the petitioner submitted evidence of a wire transfer thereby demonstrating the foreign employer's initial contribution, and sole membership interest, in the petitioner.

The AAO does not find counsel's arguments persuasive. The petitioner did not adequately respond to the director's RFE with sufficient evidence to establish a parent-subsidary relationship between the petitioner and the foreign employer.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (I)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

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

* * *

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

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These

membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the identification of a member of an LLC into the means by which this membership interest was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for the membership interest. Additional supporting evidence would include an operating agreement, minutes of relevant membership or management meetings, or other legal documents governing the acquisition of the ownership interest.

The director found the evidence submitted with the I-129 Petition for a Nonimmigrant Worker insufficient to establish the asserted parent-subsidiary relationship between the petitioner and the foreign employer and requested that the petitioner submit: (1) federal income tax documentation relevant to the petitioner, (2) proof of a capital contribution on the part of the foreign employer in exchange for ownership, and (3) a copy of the petitioner's articles of organization including the names of members and percentages of membership interest issued in the company. The petitioner did not submit federal income tax documentation for the petitioner noting that its operations had been suspended since 2006. However, the petitioner did submit articles of organization listing the petitioner as the sole member of the company and an operating agreement relevant to the petitioner stating the following in Article 2.01:

2.01 Initial Capital Contribution. All of the Interests of the Company are held by [REDACTED] in consideration for [REDACTED] Capital Contribution consisting of operating capital to the Company.

Despite counsel's assertion that the petitioner has submitted evidence of an initial capital contribution in response to the director's request, evidence of a contribution is not apparent on the record. Evidence of the initial capital contribution is especially material since the operating agreement submitted by the petitioner notes that the foreign employer made such a contribution in consideration for its ownership interest in the petitioner, and the lack of such a contribution casts doubt on whether the foreign employer holds a sole membership interest in the petitioner. 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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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)). Therefore, the petitioner has not submitted sufficient evidence that a parent-subsidiary relationship exists between the petitioner and the foreign employer.

In conclusion, the petitioner has not established that a qualifying relationship exists between the petitioner and the foreign employer. For this additional reason, the appeal must be dismissed.

C. Petitioner as a qualifying organization:

Beyond the decision of the director, the petitioner has also not established that the petitioner is a qualifying organization as required to qualify it as an importing employer. The regulations also define a qualifying organization as one doing business as an employer in the United States. See 8 C.F.R. § 214.2(l)(1)(ii)(2). "Doing business," is defined as the regular, systematic, and continuous provision of goods or services. See 8 C.F.R. § 214.2(l)(14)(ii)(A) and 8 C.F.R. § 214.2(l)(1)(ii)(H). However, through the petitioner's own admission, it is not doing business. As previously mentioned, the petitioner notes that it has not accrued any revenue or incurred any expenses, and therefore cannot be defined as an entity regularly, systematically and continuously providing goods and services. Further, a petitioner is not absolved of the requirement to maintain sufficient physical premises simply because it has been in existence for more than one year. Inherent to the requirement of doing business, the petitioner must possess sufficient physical premises to conduct business. In this case, the petitioner also fails to submit any evidence of sufficient premises to conduct business. Since the petitioner is no longer a new office consistent with the regulations afforded an opportunity to start-up its operations, it cannot be considered a qualifying organization as it is not doing business in accordance with the regulations.

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 *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

III. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.