



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 04 2015**

PETITION RECEIPT #:

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner filed a Form I-129 Petition for a Nonimmigrant Worker seeking to extend the beneficiary's status as an L-1A 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 states that it is engaged in the sale of flexible packing materials and packing machinery. The petitioner states that it is a branch office of [REDACTED] located in South Korea. The beneficiary was previously granted one year as an L-1A intracompany transferee in order to open a "new office" in the United States as the petitioner's chief executive director. The petitioner now seeks to extend the beneficiary's status for one additional year.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary is employed in a qualifying managerial or executive capacity.

On appeal, the petitioner reiterates the beneficiary's duties, re-submits the evidence previously provided, and contends that the beneficiary acts in a qualifying managerial and executive capacity.

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, Petition for a Nonimmigrant Worker, 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 "new office" petition must submit the following:¹

- (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. ISSUE ON APPEAL

A. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

The sole issue addressed by the director is whether the petitioner has established that the beneficiary is employed in a qualifying managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

¹ The petitioner indicated "yes" on the Form I-129 where asked whether the beneficiary is coming to the United States in order to open a new office. The petitioner previously filed a new office petition on the beneficiary's behalf, which was approved for a one-year period commencing on August 1, 2013. The petitioner may not be granted a second "new office" L-1A visa approval. The regulations at 8 C.F.R. § 214.2(l)(3)(v) 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. 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).

- (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.

1. Facts and Procedural History

The petitioner filed the Form I-129 on May 19, 2014. The petitioner stated on the Form I-129 that it had one employee at the time the petition was filed.

In a letter submitted in support of the petition, the petitioner stated that it was established by the foreign entity as a branch office to "expand [the company's] market presence." The petitioner indicated that the foreign entity invested \$200,000 to establish offices in the United States in order to "improve customer service and technical support," more directly access U.S. customers, and "conduct extensive research and development." The petitioner explained that it envisioned "hiring qualified U.S. based designers to increase quality of the clients' packing designs." The petitioner stated that "projects have been underway briskly" and that it "has a good relationship with existing clients in South America." The petitioner provided a list of customers in South America.

The petitioner explained the beneficiary's employment capacity in the United States as follows:

The Beneficiary will perform the executive position of Chief Executive Director of the U.S. branch company. The Beneficiary is primarily responsible for the following duties: observing U.S. rules and regulations in operation of the U.S. branch company; the direction of activities and operation of the U.S. branch company; planning formulating, and implementing administrative and operational policies and procedures; acting as liaison and representative for the U.S. branch company; marketing the products of the Company; negotiating contracts for the Company; engaging in long-term planning and identifying business opportunities in the U.S. and international markets; directing the business activities; and supervising other subordinate managers and professionals, including the authority to hire, assign, and lay off employees. Further, the Beneficiary will exercise wide latitude of discretionary decision-making in implementing and executing the financial goals of the U.S. branch company as outlined in the annexed business plan. Ultimately, the Beneficiary is responsible for all the essential functions of the strategic operations of the U.S. branch company, which will directly impact the success of operations in the U.S.

The petitioner submitted a list of thirty "potential clients & partners" in the United States. The petitioner provided a business plan reflecting that it would "define a new market plan and new business plan to creating concrete marketing deliverables in US market in the future," including offering "marketing insights and ideas for how [the company's] business can discover and sustain its competitive advantage in the US market." The business plan included a hiring plan reflecting that the petitioner planned on hiring an additional employee beyond the beneficiary in 2014 and two other employees in 2015. The projected hiring plan did not indicate the roles or positions that these employees would fill. The business plan also provided financial projections, reflecting that the petitioner estimated that it would earn over \$255,000 in 2014 and over \$300,000 in 2015.

The petitioner also submitted a number of transactional documents, such as invoices and emails, reflecting that the foreign entity was selling its packaging materials to various clients in South America. The documentation did not clearly reflect the nature of these transactions as the majority of these documents were left untranslated. Further, the documents reflected that the foreign entity was directly conducting this business as all contact information on these documents set forth the address of the foreign entity. The petitioner provided emails in English indicating that the beneficiary was engaged in day-to-day sales and order fulfillment activities with clients in the United States.² In addition, the petitioner submitted a 2013 IRS Form 1120-F U.S. Income Tax Return of a Foreign Corporation which indicated that the petitioner reported no revenue during that fiscal year.

The director later issued a request for evidence (RFE) indicating that the petitioner had provided an insufficient description of the beneficiary's duties both during the last year and under the extended petition. The director noted that although the petitioner stated that the beneficiary supervised other managers and

² We note that the beneficiary is also referred to as [REDACTED] in many of the transactional documents submitted on the record.

professionals, it did not demonstrate with supporting evidence that it employed these subordinates. As such, the director requested that the petitioner submit an organizational chart including the names, titles, duties, education levels and salaries for each person on the petitioner's organizational chart. In addition, the director asked the petitioner to provide state quarterly wage reports and IRS Forms W-2, W-3, or 1099 to corroborate its employment of the beneficiary's subordinates. Further, the director requested that the petitioner submit a duty description for the beneficiary setting forth his typical managerial duties and the percentage of time he spends on each of his tasks.

In response, the petitioner resubmitted the duty description provided at the time of filing. Further, the petitioner again indicated that the beneficiary has been engaged in business transactions with clients in South America, and submitted the same untranslated invoices and translated emails previously provided. The petitioner stated that "the Beneficiary hired administrative staff for [the] U.S. company," and that "the Beneficiary is currently looking for the employee for the manager position." The petitioner indicated that it "is doing its business according to the Business Plan initially submitted to USCIS." The petitioner explained that the beneficiary will "focus to accomplish the contracts with new client found [during] the prior year in the U.S. market" and that "his duties will include completing the takeover to [a] new manager in the U.S. market."

The petitioner provided an "Organizational Chart as of 2016" reflecting that it intends to employ a "chief manager" who will oversee a "supervisor," who in turn will supervise two "administrative staff." The petitioner submitted an "Employment Agreement" indicating that it had hired an office clerk who commenced employment on May 1, 2014. The petitioner also provided a copy of a company check in the amount of \$960 issued to this employee on May 16, 2014.

In denying the petition, the director concluded that the evidence did not demonstrate that the beneficiary primarily performs qualifying executive or managerial duties. The director stated that the evidence indicates that the beneficiary acts as an agent of the foreign entity selling products to customers in South America and that he is primarily engaged in non-qualifying operational duties. The director indicated that the petitioner did not establish that it employs any managers or professionals subordinate to the beneficiary as asserted.

On appeal, the petitioner largely reiterates the same assertions it set forth in response to the director's RFE, including an identical duty description for the beneficiary. For instance, it indicates that the beneficiary manages various clients in South America and that he is working on garnering new clients in the United States. The petitioner states that the beneficiary has hired administrative staff and that it is currently seeking a manager. The petitioner indicates that "although the size of the company is small, the beneficiary is the executive/president of the petitioner and his duties are definitely those of managerial/executive position."

2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition.

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). 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).

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The duties offered for the beneficiary in his capacity in the United States, such as observing U.S. rules and regulations, directing the activities and operation of the petitioner, planning, formulating, and implementing administrative and operational policies and procedures, acting as a liaison and representative for the company, and engaging in long-term planning are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. The evidence of record includes no specific examples or documentation to substantiate the beneficiary's proposed duties. For instance, the petitioner provides no specific examples of laws or regulations the beneficiary is responsible for observing, activities he directs in the United States, plans he has formulated or operational policies he has implemented, or long term plans he has set. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In fact, to the extent the petitioner has provided evidence detailing the beneficiary's duties, this evidence indicates that he is likely primarily performing non-qualifying operational tasks associated with the marketing and sales of the company's products. For instance, the petitioner submits emails reflecting that the beneficiary solicits customers and is directly involved in day-to-day customer interactions. Despite providing evidence that the beneficiary performs these non-managerial duties, the petitioner did not document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. This failure of documentation is important because some of the beneficiary's daily tasks, as noted above, do not fall directly under traditional managerial duties as defined in the statute. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. For this reason, we cannot determine whether the beneficiary is primarily performing the duties of a qualifying manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Beyond the required description of the job duties, United States Citizenship and Immigration Service (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company'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 business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

In the RFE, the director requested that the petitioner corroborate its assertions that the beneficiary supervises other managers and professionals by submitting a detailed organizational chart including the names, titles, duties, education levels and salaries for each member of the petitioner's organization. In addition, the director asked the petitioner to provide state quarterly wage reports and IRS Forms W-2, W-3, or 1099 to corroborate its employment of the beneficiary's subordinates. Further, the director requested that the petitioner submit a duty description for the beneficiary setting forth his typical managerial duties and the percentage of time he spends on each of his tasks. However, the petitioner did not respond to the director's evidentiary requests. 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).

As noted, the petitioner asserts that the beneficiary oversees managers and professionals, thereby suggesting that he qualifies as a personnel manager. The statutory definition of "managerial capacity" allows for both "personnel managers" and a "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The petitioner has provided no evidence to support a conclusion that the beneficiary oversees subordinate managers or professionals. As noted, the petitioner was asked to submit detailed evidence to substantiate this assertion, including a detailed organizational chart and tax documentation, but it failed to provide this evidence. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Indeed, the petitioner acknowledged in response to the RFE, and now does so again on appeal, that it has yet to hire any managers subordinate to the beneficiary, indicating that it is currently "looking for the employee for the manager position." We further note that the petitioner's hiring projections are not sufficient to establish that the beneficiary is currently acting in a qualifying managerial capacity. For instance, the petitioner's hiring projections indicate reflect that it only planned to hire one additional employee in 2014. 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 addition, the petitioner has submitted evidence indicating that it employs only one other employee, the office clerk. Therefore, the evidence directly reflects that the beneficiary is acting as a first-line supervisor. A "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). The petitioner provides no evidence that its lone administrative employee acts in a professional capacity requiring a prolonged course of specialized instruction and study of at least baccalaureate level. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). In fact, the

preponderance evidence indicates that the beneficiary is acting as a first-line sales manager primarily engaged in the non-qualifying operational aspects of the business.

The petitioner states a number of times on the record that the petitioner is operating in accordance with its business plan. However, it provides no evidence to indicate that it is operating sufficiently to support the beneficiary in a qualifying managerial or executive capacity. The regulation at 8 C.F.R. § 214.2(l)(14)(ii) requires a petitioner seeking the extension of a new office petition to provide evidence of the financial status of the United States operation. Here, the petitioner has not provided evidence to establish the current financial status of the company, its revenues, and to substantiate its assertion that it is operating in accordance with its business plan. For example, the business plan showed projected sales revenues of \$178,469 for 2013, while the petitioner's 2013 tax return shows that the company's actual 2013 revenues were \$0.

Further, the petitioner does not articulate or sufficiently support that its business plan would, if executed, lead to the beneficiary acting in qualifying managerial or executive capacity as of the date of the petition. In fact, the business plan reflects that the petitioner projected that it would hire only one employee other than the beneficiary, as it apparently has, which is not sufficient to demonstrate that it can support the beneficiary in a qualifying managerial or executive capacity. Again, 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)).

Indeed, the petitioner originally stated in support of the petition that it was going to be heavily involved in research and development and hire designers in the United States. However, this is not mentioned elsewhere in the record, particularly in the aforementioned business plan and its hiring projections. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the petitioner suggests that the beneficiary qualifies as an executive, asserting that he is the "executive/president" of the petitioner. 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. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The petitioner has not demonstrated with sufficient evidence that the beneficiary acts in a qualifying executive capacity. As previously discussed, the petitioner has provided a non-specific description of the beneficiary's duties and has failed to detail the beneficiary's claimed qualifying duties. The petitioner has not submitted examples or evidence of goals or policies formulated or implemented by the beneficiary. In fact, the evidence provided indicates that the beneficiary is primarily assisting with non-qualifying operational tasks directly related to the acquisition of customers and the transaction of goods with customers in South America.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D).³ 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 submitted no evidence to substantiate that the beneficiary is engaged in executive level duties. In fact, the evidence provided indicates that the petitioner does not currently have sufficient operational employees to relieve the beneficiary from non-qualifying tasks and has not grown to the point where it can support the beneficiary in a qualifying managerial or executive position.

Again, 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).

Based on the foregoing, the petitioner has not established that the beneficiary is employed in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

B. DOING BUSINESS AND FINANCIAL STATUS

Beyond the decision of the director, the petitioner has not submitted sufficient evidence that it has been doing business in the United States for the previous year, as required by 8 C.F.R. § 214.2(l)(14)(ii)(B), or sufficient evidence of the financial status of the U.S. company, as required by 8 C.F.R. § 214.2(l)(14)(ii)(E).

³ Following the enactment of section 101(a)(44)(C) of the Act in 1990, the former Immigration and Naturalization Service (INS) recognized that that managerial capacity could not be determined based on staffing size alone and deleted reference to "size and staffing levels" at 8 C.F.R. § 214.2(l)(3)(v)(C)(3) (1990), setting out the evidentiary requirements for initial new office petitions. *See* 56 Fed. Reg. 61111, 61114 (Dec. 2, 1991). However, the INS chose to maintain the review of the new office's staffing, among other criteria, at the time that the new office seeks an extension of the visa petition. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D).

"Doing business, " is defined as the regular, systematic, and continuous provision of goods 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. See 8 C.F.R. § 214.2(l)(1)(ii)(H).

The petitioner submits little evidence to demonstrate that it is providing goods and services in the United States in a regular, systematic, and continuous manner. The petitioner reported no income on its 2013 tax return and has not submitted any more recent evidence of its financial status at the end of its initial year of operations. As noted above, the petitioner had originally projected revenues near \$180,000 for 2013 and \$225,000 in 2014 but has not provided evidence of any incoming receipts. Although it has submitted substantial documentation reflecting the beneficiary and the foreign entity coordinating business with South American clients, it is not clear how this evidence relates to the branch office's operations in the United States. The transactional documents did not indicate that any of this business was conducted by the petitioner. In fact, the petitioner states that the beneficiary is still working on securing customers in the United States, thereby leaving question as to whether it is doing business in the United States as defined by the regulations. For these additional reasons, the petition cannot be approved.

III. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by this office 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).

The appeal will be dismissed and the petition will remain denied 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.