

Identifying data deleted to  
prevent disclosure of  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

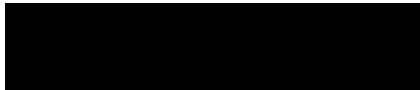
PUBLIC COPY



MAY 20 2005

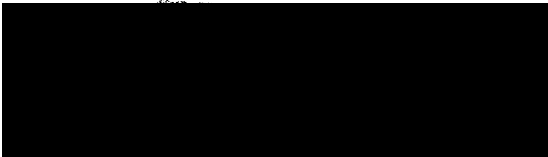
File: WAC 04 043 51571 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



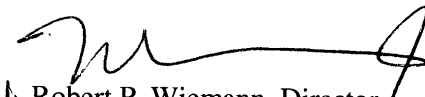
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to extend the employment of its U.S. affiliate's general manager 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 United States entity is a California limited liability company that claims to be engaged in the marketing and sale of Russian river cruises. The petitioner, a company organized in Russia, claims that the United States entity is its affiliate. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and the petitioner now seeks to extend the beneficiary's stay.

The director denied the petition concluding that (1) the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity, and (2) the petitioner did not establish that it is a qualifying organization doing business in the United States.

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 director mischaracterized the nature of the United States entity's business and contends that Citizenship and Immigration Services (CIS) policy has long held that a representative office of a foreign entity can sponsor an L-1A nonimmigrant petition. Counsel further asserts that the beneficiary serves as an executive or manager based on the fact that he manages a function, and that the beneficiary utilizes independent contractors to perform non-managerial tasks. In support of these assertions, counsel submits a brief and a request for oral argument.

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(1)(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 (1)(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 management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In the initial petition, the petitioner indicated that the beneficiary would be responsible for “managing the representative to sell river cruise packages in Russia, including establishing sales strategy, organizing market research, managing advertising, and selling vacation packages directly and through travel agencies.”

In a November 22, 2003 letter appended to the petition, the petitioner provided the following description of the beneficiary's duties as general manager of the United States entity:

**MARKETING . . .**

**(1) Conducted market research that helped establish long term target market and products:**

- Gathering and analyzing feedback from clients returning from trips.
- Test marketing – [the U.S. entity] experimented by introducing services on a limited scale. . .
- Conducting market segmentation research via direct mail questionnaires sent to tour operators primarily. . . .
- Meetings with travel counselors in the Bay area and with travel professionals in the Western U.S. with the purpose of identifying destinations in Russia and length of trips in demand. . . .
- Attending classes, seminars and conferences. . .

- Meets with Russian Consulate officials to learn more about Russia Visa Issuance . . .
- (2) **Established target market . . .**
- (3) **Designed vacation packages to appeal to U.S. customers (product):**
- [The beneficiary] has defined two types of product by way of experimenting with sales and negotiating terms with industry professionals. River cruises and land tours were selected.
  - Liaising with parent company in Moscow to coordinate arrivals/departures, buses, meals, hotel accommodations, sightseeing, costs, wire transfers, complaints, if any.
  - Liaising with U.S. tour operators (wholesalers of our tours) and our parent company office in Moscow. . . .
  - Evaluating profitability of our various products – Segmental Analysis
- (4) **Managed an advertising campaign:**
- Creating and supervising the design and printing of our latest Russian tours brochure.
  - Supervising direct mail advertising – sending brochures to tour agencies and certain tour operators that maintain large network of their own agents.
  - Advertising/Listings in Yellow Pages.
  - Sales promotions/discounts as part of advertising campaign.
  - Sponsoring an event held by Russian Community in the Bay Area.
- (5) **Defined distribution channels and managed sales:**
- Managing dual distribution. Supervising an attempt to sell directly to public and indirectly, through travel operators and travel agencies.
  - Experimenting with individual sales.
  - Managing online sales (not a popular choice by travelers).
  - Establishing relations with tour operators (indirect sales) who would advertise our tours in their promotional material under their name and add their airfare. This has proven to be the most efficient distribution channel.
  - Meetings and negotiations with individual travel agencies.
- (6) **Establishing pricing strategy:**
- Defining pricing and services in a way that meets the needs of market segment. . . .Passed such data on to ground services providers in Russia (e.g. Need for tour escort, hotels of certain star ratings, etc.)
  - Negotiating with travel companies services to be included in the package . . .
  - Analyzing pricing of competitors and provided best value for money.
  - Negotiating best prices for our ground services (e.g. buses) to lower overall package price.

## **OFFICE MANAGEMENT**

[The beneficiary] managed the overall office administration of [the United States entity], which includes:

- Overseeing purchase of office supplies
- Receiving and/or renewing certifications and licenses . . .
- Managing office telephone, DSL, cell phone, web hosting, banking and other subscriptions.
- Maintaining office rent and utilities in good standing.

### **NETWORKING**

[The beneficiary] has met and discussed with representatives from over 70 travel agencies and tour operators . . . This has proven to be the most efficient distribution channel.

\* \* \*

[The beneficiary's] networking will ultimately be narrowed down to finding the larger American travel companies . . . that will commit to a long-term partnership with our head company in Moscow.

The petitioner indicated on Form I-129 that the U.S. company had two permanent employees "plus indirect seasonal employees."

On December 16, 2003, the director issued a notice of intent to deny the petition, requesting, in part: (1) the number of employees the beneficiary will manage, and their position titles; (2) a complete description of the beneficiary's duties; (3) an explanation regarding the extent of the beneficiary's decision-making authority; (4) a complete organizational chart specifically showing the beneficiary and all U.S. employees by name and job title; and (5) the name and position title of the beneficiary's supervisor. The director also requested the petitioner's California State Certified Forms DE-6 for the last four quarters.

In response, the petitioner submitted a letter dated January 9, 2004 and the requested organizational chart. The job description submitted in response to the request for evidence is very similar to that submitted with the initial petition and will not be repeated herein. The petitioner indicated that the beneficiary is the senior member of a two-employee office, which includes a secretary who is described as performing "menial and secretarial tasks." The petitioner noted "the reasonable needs of . . . the California office require only a single manager to manage the function of the office through outside contractors" and further explained that the beneficiary has two independent contractors identified as "tour professionals" who promote and distribute the Russian company's tours in the Mid-West and East coast under the beneficiary's direction and supervision. In addition, the petitioner stated that the beneficiary "is the senior and definitive decision maker" for all business operations in the United States and that his managerial responsibilities, including total oversight of business operations, developing marketing strategy, office management and networking, occupy 90 percent of his time.

In response to the director's request for additional information regarding the beneficiary's decision-making authority, the petitioner provided the following information:

[The beneficiary's] primary executive function is to plan, organize, direct and control the petitioner's functions through others (the independent contractors working out of Boston and Chicago), whether they are employees or not. He is responsible for managing all Russia-inbound tours originating from the United States, i.e. he is responsible for all logistical functions in his area of responsibility. He approves and schedules all Russia-inbound tours from the United States. . . . [The beneficiary] also oversees all operations from the United States to Russia, which involves liaising with the parent company in Moscow to coordinate arrivals/departures, buses, meals, hotel accommodations, sightseeing, costs, wire transfers complaints, if any. Further, [the beneficiary] oversees all special arrangements to meet various customer special needs. . . .

On the Russia side, [the beneficiary] is in direct contact with his tour professionals in Russia who also operate under his command. They need to know first-hand what the arriving groups are, such as number of people, where they come from, personal requests and special needs, etc. . . .

On the United States side, [the beneficiary] has the authority to control how these independent contractors (working out of Boston and Chicago) perform their job duties. The petitioner's management retains control over how the services are provided. . . . The petitioner asserts that the ability to initiate and terminate contracts is the equivalent of placing such contractors in a subordinate position. . . . [The beneficiary] is supervising professionals through the contracts he manages.

The Service ought to recognize that in determining whether an individual supervises others, leased employees and independent contractors can be considered in addition to individuals employed directly by the petitioner, as the beneficiary in this case has the authority to control how these leased employees and independent contractors perform their job duties.

\* \* \*

Further, [the beneficiary's] one secretary in [the United States entity], is not the appropriate focus of who is being supervised. Rather it is the tour company and advertising company executives and managers that [the beneficiary] supervises, who are professionals in their relevant tasks assigned by [the beneficiary].

[The beneficiary] is not involved in the performance of routine operational duties of the petitioner but, in fact, directs and manages the function of [the petitioner].

The U.S. entity's organizational chart indicates that the beneficiary supervises an unnamed secretary, a Chicago-based travel counselor, and a Boston-based travel counselor, who are purportedly responsible for

marketing and sales. The chart also indicates that the beneficiary supervises "personnel for coach rail and cruise packages sold in America." The petitioner also submitted copies of two independent contractor agreements, dated July 2002 and February 2003, signed by the beneficiary and its two claimed marketing and sales contractors, indicating that they are each entitled to a 25 percent sales commission. The petitioner did not provide the requested Forms DE-6, Quarterly Wage Reports.

On January 29, 2004, the director denied the petition concluding that the beneficiary would not be employed in a primarily managerial or executive capacity under the extended petition. The director noted that the petitioner has only two employees and, while the beneficiary will perform some managerial duties, the record indicates that the beneficiary will be primarily non-qualifying tasks such as market research, sales, and designing vacation packages. Finally, the director noted that even if the petitioner's claimed independent contractors were permanent employees, the beneficiary would be, "at best, a first-line supervisor, performing the day-to-day duties necessary to maintain the petitioning entity."

On appeal, counsel for the petitioner asserts that the beneficiary "clearly manages a function; namely marketing cruise packages in the United States" and that he must "engage in or provide market research, marketing activities and business negotiations. Virtually all of these functions are contracted out to independent contracts such as market research firms, advertising agencies, and the like." Counsel further states that the director "ignores the fact that the beneficiary makes personnel decisions with respect to both permanent and seasonal employees in Russia." Counsel concludes that the beneficiary "neither operates the tours (which are done in Russia) or (except in rare instances) sells berths at the retail level. This is clearly an executive or managerial function."

Upon review, counsel's assertions are not persuasive. 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.* A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing that the beneficiary is both an executive and a manager.

In this case, the petitioner has provided a lengthy description of the beneficiary's duties and indicates that he will serve as the manager or executive of a function. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job description that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. An employee who primarily performs the tasks



necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)).

Accordingly, 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. Here, the petitioner fails to document what proportion of the beneficiary’s duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary’s duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because many of the beneficiary’s daily tasks, such as conducting market research, attending classes and seminars, coordinating travel arrangements, distributing brochures, attending sales meetings, and routine administrative office duties, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Furthermore, the petitioner has failed to establish any clear distinctions between the proposed qualifying and non-qualifying duties of the beneficiary. Specifically, the petitioner submitted no information to establish the percentage of time the beneficiary actually performs or will perform the claimed managerial or executive duties. While the petitioner claims that the beneficiary “manages advertising campaigns,” “manages sales” and “develops marketing strategy,” the petitioner has not established that it has any permanent or contracted staff to actually perform routine marketing, advertising and sales duties. Collectively, this brings into question how much of the beneficiary’s time can actually be devoted to the beneficiary’s claimed managerial or executive duties. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Furthermore, the petitioner bears the burden of documenting what portion of the beneficiary’s duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Given the lack of these percentages, the record does not demonstrate that the beneficiary will function primarily as a manager or executive.

The petitioner correctly stated in response to the director’s notice of intent to deny that as a function manager, the beneficiary need not supervise a subordinate staff of managerial, professional or supervisory employees. The petitioner nevertheless claimed that the beneficiary does supervise such employees on a “leased” or contract basis. Upon review, the petitioner has failed to provide a clear and consistent explanation or probative supporting evidence with respect to its staffing, which further raises doubts about who is responsible for performing the routine, day-to-day operations of the U.S. entity, if not the beneficiary. The petitioner states that the U.S. entity’s “reasonable needs” only demand the services of one manager, and that most of the company’s functions are performed on a contract basis.

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, CIS 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 provide strict evidentiary

requirements for the extension of a "new office" petition and require CIS 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 CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

In the initial petition, the petitioner indicated that the U.S. entity had two permanent employees. In response to the notice of intent to deny, the petitioner indicated that the U.S. company employed the beneficiary, a secretary, and two "independent contractors," and on its organizational chart indicated that the beneficiary had some indirect supervision over Russian tour operators. Upon review of the evidence on record, none of these statements have been substantiated by probative evidence documenting that the U.S. entity actually employs the secretary or utilizes the services of the claimed independent contractors. The petitioner has provided no information regarding the U.S. entity's claimed secretary, although it was asked to name all employees and submit its quarterly wage reports for 2003. The U.S. entity's financial statement for 2003, which provides a detailed breakdown of all company expenses, reflects no salary paid to anyone but the beneficiary. With respect to its two independently contracted "travel counselors," the petitioner has provided copies of the signed agreements. No evidence of payments to these claimed employees has been provided, nor do the U.S. company's audited financial statements for 2003 reflect any payments to these individuals. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, 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 (BIA 1988).

Regardless, even if the petitioner did establish through evidence that the U.S. entity utilizes the services of the independent contractors, the petitioner has clearly indicated that these two individuals are responsible for sales and marketing of the petitioner's services in the mid-western and eastern portions of the United States. Since the U.S. company clearly intends to target the west coast of the United States, it can be assumed, and it has not been proven otherwise, that the beneficiary performs all sales and marketing functions for the west coast region. Again, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604.

On appeal, counsel attributes additional management responsibilities to the beneficiary. Specifically, counsel indicates that the beneficiary is actually responsible for hiring and firing permanent and seasonal employees of the Russian company, and further states that the petitioner's market research and advertising functions are performed by outside companies. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1

(BIA 1983); *Matter of* [REDACTED] 17 I&N Dec. 503, 506 (BIA 1980). The petitioner's detailed, audited financial statements reflect no payments made to outside providers for market research or advertising. Counsel also claims that the beneficiary "works through" tour operators and travel agents who sell the cruise packages at the retail level, and the petitioner previously suggested that the beneficiary can be deemed to oversee the management of these tour operators and travel agents. The petitioner has not submitted copies of any agreements between the U.S. entity and the tour operators or travel agents which would confirm that the beneficiary actually "manages" activities undertaken by outside service providers.

In response to the director's notice of intent to deny the petition, the petitioner referred to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Neither the petitioner nor counsel has furnished evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The record is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The fact that an individual manages a small business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. While the beneficiary clearly performs some management-level duties, the record does not establish that a majority of the beneficiary's duties have been or will be primarily directing the management of the organization or a function or component of the organization. The record indicates that a preponderance of the beneficiary's duties have been and will be directly providing the services of the business. As stated above, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Furthermore, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, 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. Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily or managerial capacity, as required by 8 C.F.R. § 214.2(l)(3).

The second issue in this proceeding is whether the petitioner has established that the United States entity is qualifying organization. Pursuant to the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(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 (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.

Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H), "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.

The director noted in his January 29, 2004 decision that the petitioner referred to the United States entity as a "representative office," and specifically quoted the following statements made by the petitioner's general director: "Representative Offices do not directly engage in operational activities, but are established to serve as a conduit between U.S. clients and the parent company"; and the "purpose of [the United States entity] is to market the [foreign entity's] Russian river cruises and land tours through U.S. travel agencies." The director also noted that the petitioner repeatedly states that the U.S. entity is a "conduit" between the clients and the foreign entity. Based on the foregoing, the director concluded that the petitioning entity "can not meet the requirements as a qualifying organization." Although no further explanation was provided, the AAO assumes the director deemed the United States entity to be a mere agent or office of the foreign entity and therefore not doing business in the United States pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H).

On appeal, counsel disputes the director's decision and states:

[The U.S. entity] was characterized as being in the nature of a representative office. The denial is based to a substantial degree on the notion that representative offices do not do business. Representative offices have long been recognized as appropriate business entities to support L-1A executives and managers and EB-1-3 immigrants. . . . This company markets cruise packages at the wholesale level . . . to tour operators and travel agents. The goods or services that are made available for sale to the public are the tours themselves.

Upon review, the AAO concurs, in part, with counsel's arguments with respect to this issue. The fact that the petitioner referred to the U.S. entity as a "representative office" or as a "conduit" should not be the determinative factor in deciding whether the company is doing business. It appears the director misconstrued the petitioner's statement that the U.S. entity "does not engage in operational activities." The petitioner is engaged in the marketing and wholesale of river tours and related travel packages to United States-based travel agencies and tour operators. Although the foreign entity actually operates the Russian tours and cruises, the U.S. entity is engaged in the provision of goods and services by making the foreign entity's product available in the U.S. market, and is compensated for the services it provides. Thus, under the business model adopted by the petitioner and its U.S. affiliate, the U.S. company would be deemed to be "doing business" pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(H). The director's comments with respect to this issue will therefore be withdrawn.

However, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(C) provides that a petition to extend a visa petition that involved the opening of a new office be accompanied by 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*. Upon review of the evidence submitted by the petitioner, it has not established that the U.S. entity has been doing business since the initial new office petition was approved on February 21, 2003. The petitioner submitted an audited financial statement showing that it achieved gross revenues of \$100,000 in 2003, however, there is no supporting documentation, such as invoices, signed contracts with travel agencies and tour operators or other evidence that the company has been operational throughout the beneficiary's first year in L-1A status. The petitioner submitted the U.S. entity's list of potential clients, mainly travel agencies and tour providers. This document establishes that the beneficiary had researched, contacted and/or attempted to contact these organizations. However, it does not establish that the U.S. company actually did business with any of these organizations. Most of the entries indicate that the beneficiary will send a brochure to the agency or organization or that the potential client "will do business in 2004."

Accordingly, the petitioner has provided insufficient evidence that the United States entity has been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(C). For this additional reason, the petition may not be approved.

Finally, the AAO acknowledges counsel's request for oral argument. However, the regulations at 8 § C.F.R. 103.3(b) provide that the requesting party must explain in writing why oral argument is necessary. CIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. In this instance, counsel identified no unique factor or issues of law to be resolved. Counsel merely makes a vague allegation of a "lack of fidelity in adjudication" and asserts that CIS has ignored the facts in the record, the regulations and standard interpretations of regulations. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.