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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 01 108 52239 Office: VERMONT SERVICE CENTER Date: APR 21 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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 nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is described as a tent and backpack sales and marketing business. It seeks to employ the beneficiary temporarily in the United States as the manager of operations of its new office. The director determined that the petitioner failed to establish that the beneficiary has been or will be primarily employed in a managerial or executive capacity.

On appeal, counsel submits a brief in opposition to the director's decision. Counsel states that the petitioner has submitted sufficient evidence to establish that the beneficiary has been and will continue to be primarily employed in a managerial or executive capacity.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

> *Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the Unite States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive or involves specialized knowledge.

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 (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 with 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 serves 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(1)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

> (A) Sufficient physical premises to house the new office have been secured;
>
> (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
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> (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
>
> > (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
> >
> > (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
> >
> > (3) The organizational structure of the foreign entity.

According to the documentary evidence contained in the record, the petitioner was incorporated in 2001 as a tent and backpack sales and marketing business. The petitioner declares two employees. The petitioner seeks the beneficiary's services as a manager of operations in order to open a new office for a period of one year, at a yearly salary of $36,000.00.

The issue in this proceeding is whether the petitioner has established that the beneficiary has been and will be employed in a primarily managerial or executive capacity, and whether the U.S. entity will be able to support a managerial or executive position within one year of operations as a "new office."

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means 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), provides:

> The term "executive capacity" means 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.

Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101 (a)(44)(C), provides:

> If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization component, or function in light of the overall purpose and stage of development of the organization, component or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

In a letter of support, dated February 8, 2001, the managing director of the foreign entity stated that in the United States the beneficiary would be responsible for marketing and supervision of import and distribution operations of the company's product to North America. In a letter, dated February 8, 2001, the chairman of the foreign entity stated that the beneficiary has been involved in all of the important matters pertaining to the foreign entity such as recruiting, material handling, production planning, and shipping. He continued by stating that the beneficiary has proved his efficiency handling personnel matters and internal problems.

In a letter of support, dated February 19, 2001, the petitioner described the beneficiary's job duties abroad as:

> [The beneficiary] was responsible for overseeing almost all of the important matters of the [foreign entity] including recruitment, hiring and firing, setting wages and work schedules, assigning general work tasks, and overseeing materials handling, production planning, shipping, expenditures and financial operations of the company. He established a manufacturing procedure and ensured that the company met production deadlines.

The petitioner continued in the letter by describing the beneficiary's proposed duties in the United States as:

> As manager of operations, [the beneficiary] will have overall responsibility for all operations of the company. This includes oversight of the sales, marketing and promotions managers. He will also supervise and have overall responsibility for the daily operations of the company. Although he will not supervise all personnel on a daily basis, he will be responsible for expanding, organizing, directing and developing the promotions, sales, and financial operations of the company. He will have responsibility for hiring and firing, setting wages and benefits, and establishing a budget and financial planning. He will have daily decision-making authority for all business decisions, including acquisition of resources, negotiation and signing of contracts, and [oversight] of all inter-company liaisons. He will be expected to report periodically to shareholders and to the corporation on the progress of the company. His primary focus at this time will be marketing and supervision of imports and distribution of [company] products in North America. He will initially also be busy with the establishment of our new office. He will do this by creating and implementing an overall marketing strategy and by the hiring and supervision of additional marketing, sales and business personnel.

The petitioner further stated that the U.S. entity has been established for the purpose of marketing and sales of the foreign entity's products directly to wholesalers and retailers in the United States. In addition, the petitioner speculated that with the subcontract and contract agreement with North Pole company and the Porceram company, the U.S. branch would make $10,000 per month; and by the end of the first year of operation, they anticipated the U.S. branch would generate at least $40,000-$50,000 per month. The petitioner continued by stating that the beneficiary has established business relations with the North Pole and Porceram companies in the United States and that the Porceram company will actually purchase products from the foreign entity, which, in turn, will supplement the U.S. entity's own marketing and sales efforts in the United States.

As evidence of record, the petitioner submitted a payroll slip dated January 2001 from the foreign entity, identifying the beneficiary as Deputy General Manager and evidencing payment of his salary for 25 days. The petitioner submitted an organizational chart depicting the foreign entity's hierarchy. It depicted the beneficiary as Deputy General Manager, with an accountant, production manager and administration and personnel manager under his direction. The petitioner also submitted a copy of a service certificate from Peramuna Builders indicating the beneficiary's employment history from October 20, 1997 to September 14, 1999. The petitioner submitted a copy of a Bachelor of Science degree from University of Peradeniya, a certificate of completion from the Technical College – Kurunegala, a Certificate of Practical Training Draughtsman Apprentices, a Certificate in Garment Industry Management, a certificate from Industrial Services Bureau of NWP indicating completion of an eight day training course in Basic AutoCAD, and a business card identifying the beneficiary as Deputy General Manager of the foreign entity.

In a Notice letter, dated June 3, 2001, the director determined that insufficient evidence had initially been submitted to establish eligibility for a change in status from B1 to L1, and thereafter requested additional evidence be submitted by the petitioner. The director specifically requested in reference to the beneficiary's current and proposed employment capacity:

> Submit additional evidence to establish that the beneficiary has been employed abroad, by a qualifying organization, in a(n) Managerial capacity for one continuous year of full-time employment within the three years prior to February 20, 2001, the filing date of the petition.
>
> The documents to submit should include, but are not limited to:
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> a) The beneficiary's last annual tax return, and, if applicable, tax withholding statement reflecting the employer.
> b) Copies of payroll documents of the business entity reflecting the beneficiary's period of employment and salary.
> c) Other unequivocal evidence establishing the foreign employment by the beneficiary.
>
> Submit a breakdown of the number of hours devoted to each of the beneficiary's proposed job duties on a weekly basis.
>
> Submit evidence that establishes the size of the United States investment and the financial ability of the foreign organization to remunerate the beneficiary and commerce doing business in the United States.
>
> Please be advised that a "new" office is given, no more than <u>one year</u> to meet their business plan, and be fully operational as a business.

In response to the director's request for a breakdown of hours regarding the beneficiary's proposed duties, the petitioner stated, "this of course is, an impossible task, as his efforts on behalf of the company **vary daily, and are dictated as needed.**" The petitioner further provided a breakdown of the number of hours to be devoted to the beneficiary's proposed duties on a weekly rather than daily basis. The breakdown includes:

1. 10 hours per week creating and implementing a sales strategy for the U.S. company, including computing sales figures, researching data, market prices and trends to determine weekly and monthly sales potential, and utilizing his business experience and knowledge of the foreign entity's products to create sales models;
2. 15-20 hours per week attempting to implement sales strategies by searching for wholesale buyers of products using the world wide web, local phone directories and business contacts; searching for potential buyers by attending trade shows; spending some time on correspondence and follow-up with potential buyers, sending letters, making phone calls and pitching proposals to them;
3. 5 hours per week searching for new material suppliers from the United States and other countries in an effort to improve quality and cut costs;
4. 7-8 hours per week creating and sending or communicating progress reports, shipping schedules and production estimates to the parent company and its board; and

5. Additional time will be spent on hiring and staff requirements, general office needs, and setting up a retail website for selling products in the future; including business tasks such as bank deposits, transfers, payment of bills, etc.

The petitioner also stated in response to the director's initial request for additional evidence that the evidence established that all necessary funds for the successful operation of the U.S. entity will be made. The petitioner initially submitted copies of the foreign entity's bank statements, copies of contracts made between Jinwoong Lanka and Supreme Pack for the production of goods, a copy of the letter from the foreign entity indicating its intent to wire transfer $10,000 to the U.S. entity, and a bank statement from CitiBank, N.A. depicting a $10,980 balance as of February 16, 2001. The petitioner further stated that based upon the foreign entity's gross annuals of $850,000, its wire transfer of $10,000 to the U.S. entity, and existing contracts for the production of goods with Jinwoong Lanka, the petitioner had reasonably established the size of the U.S. investment, and the financial ability of the foreign corporation to remunerate the beneficiary and commence doing business in the United States.

The petitioner submitted copies of two payroll records issued by the foreign entity for the beneficiary, covering the pay periods of December 2000 and January 2001.

The director determined that the evidence provided by the petitioner was insufficient to show that the beneficiary's duties were primarily managerial in nature. The director subsequently requested additional evidence to show that the management structure and personnel structure of the foreign entity, to assist in determining whether the beneficiary was employed in a qualifying managerial or executive capacity abroad. The director specifically requested:

a) How many subordinate supervisors are under the beneficiary's management?
b) What are the job titles and job duties of the employees managed?
c) What executive and technical skills are required to perform the overseas duties?
d) How much of the time spent by the beneficiary is allotted to executive duties, and how much to other non-executive functions?
e) What degree of discretionary authority in day-to-day operations does the beneficiary have in the overseas job?

Please submit a breakdown of all duties performed by the beneficiary in the foreign company.

Please submit your business plan for one year, which shows, in detail how your new business will be fully operational, with employees in place and doing business by providing your product and service.

Submit evidence of the total [number of] employees you have currently hired for the U.S. entity, their titles and duties. Also indicate whether these [sic] are contract employees.

In response to the director's second request for additional evidence, the petitioner submitted a letter of explanation. The petitioner stated that it employed two individuals, a secretary and a marketing manager, in addition to the proposed employment of the beneficiary. The petitioner reiterated a listing of the beneficiary's proposed job duties and asserted that the beneficiary, in opening a new business, will perform essential functions of the U.S. organization as well as executive or managerial functions. The petitioner stated that as a new office,

the beneficiary is expected to perform essential functions in addition to his managerial or executive functions for the first year of operation. The petitioner further stated it "hoped that by next year the business will grow to a point where the [beneficiary] can hire managers in sales, marketing promotions, and possibly finance and accounting (controller)."

In addressing the issue of the beneficiary's employment abroad, the petitioner stated that the beneficiary as Deputy General Manager of the foreign entity is the third highest executive of the company, subordinate only to the Chairman and the Managing Director; that the Chairman was not involved in the daily activities of the company; and that therefore, the beneficiary was responsible for running the daily operations of the entire corporation. The petitioner further stated in addressing the five questions ('a' through 'e') asked by the director that there were eight subordinate supervisors under the beneficiary's management at the foreign entity. The petitioner also stated that the supervisor's titles were Production Manager, Administration and Personnel Manager, Comptroller, Store Manager, and Production Assistant one, two and three. The petitioner provided a brief description of the supervisor's duties at the foreign entity and stated that each of the managerial positions, except production assistants, requires at least a Bachelor's degree. The petitioner also stated that the Production Assistants all have certifications including Garment certification.

The petitioner further stated that the beneficiary's position as Deputy General Manager requires managerial experience, familiarity with corporate structure and procedures, as well as a background in civil engineering, with production management, personnel management and some system analysis and information management systems background. In addition, the petitioner stated that the beneficiary's position abroad required experience and use of production efficiency calculation, time management, production performance enhancement, employee motivation and the like. The petitioner also stated that 100 percent of the beneficiary's time is spent performing the previously described executive duties. The petitioner continued by stating that the beneficiary made approximately 80 percent of the company's decisions generally, and 85 percent on a daily basis. Next, the petitioner listed the following duties performed by the beneficiary abroad:

- Coordination of finished product exports with K-Mart, Wal-Mart and Sears via NorthPole (Lanka) Ltd.;
- Created a production plan and consulted with management on its implementation;
- Coordinates communications between commercial and technical staff, and designers and factory as well as factory and importers in order to ensure compliance with needs of each and smooth coordination of needs and production;
- Ensuring implementation of designs into actual production;
- Optimizing production process and overseeing cost effectiveness and overall production efficiency;
- Implementation of 5S International Service Standards (established as production model by the Japanese, and standard to modern industry);
- Studies functional statements, organizational charts and project information to determine functions and responsibilities for each project;
- Identifies areas of management and overlap in duties and responsibilities for each project;
- Establishes work measurement program and makes sample observations of workers to develop standards of manpower utilization and efficiency;
- Analyzes use of machines and manpower in unison to develop work simplification programs in areas such as work distribution, work count, process flow, economy of worker motions and layout of units;
- Attempt to attain objectives of work measurement and simplification studies; [and]

- Prepare recommendations for organization of units and job duties to increase efficiency and eliminate excess processing steps and labor costs, and present recommendations to senior board members.

In addressing the director's request for the U.S. entity's business plan, the petitioner stated that the U.S. entity has a relationship with the Porceram distribution company, and that the distribution company has negotiated a contract with Costco to provide them with approximately 4, 000 tents per month for the next six months resulting in revenue of approximately $1.2 million dollars. The petitioner stated that the deal was primarily due to the efforts of the beneficiary. The petitioner further stated that once the deal is made, additional staff can be hired, and additional resources placed on continued growth in the U.S. market. The petitioner continued by stating that the U.S. entity's overall goal was to gross over five million dollars in revenue and have ten employees within five years from the start of the business. The petitioner stated that the entity would continue to seek out and contract with US retailers, while simultaneously continuing to seek out more raw materials and more finished products from other manufactures. The petitioner also stated that the U.S. entity has considered expanding into the backpack market and other related outdoors items and creating a direct marketing campaign via the Internet. The petitioner concludes by stating that the U.S. entity will need additional staff to man the company's website and take orders once it is in place.

The director determined that the petitioner had submitted insufficient evidence to establish that the beneficiary was employed by the foreign entity or would be employed by the U.S. entity in a primarily managerial or executive capacity. The director stated that the petitioner had not fully complied with his requests for additional evidence to establish the beneficiary's qualifying employment. The director noted that having discretionary authority and a managerial or executive title, does not in and of it self, mean that the beneficiary has been or will be employed in a qualifying capacity. The director also stated that the evidence established that the beneficiary has been and would continue to be performing all functions of the foreign and U.S. entities in the absence of employees to relieve him from the day-to-day responsibilities.

On appeal, the petitioner states that the beneficiary has already established a relationship with North Pole and Porceram, and has recently begun negotiations with K-Mart to provide tents, sleeping bags, and backpacks. The petitioner further contends that the business relationships were documented with letters from Porceram and North Pole. The petitioner states that the beneficiary has been and will continue to perform his duties in an executive capacity. The petitioner provides a description, in summary, of the beneficiary's current and proposed job duties in an effort to substantiate its claim. The petitioner further states that the beneficiary qualifies for both entities as performing duties in a managerial capacity. In support of this contention, the petitioner specifically states:

> [The petitioner] manages the organization, supervises and controls the work of other supervisory, professional and managerial employees and manages an essential function within the organizations. He has the authority to hire and fire and make all personnel decisions. And, he exercises full discretion in the day-to-day functions of the U.S. entity, as he did in the parent corporation.

While the petitioner has presented additional clarifications and explanations, the record does not support a finding that the beneficiary has been employed abroad in a primarily managerial or executive capacity for at least one year within the three years preceding the submission of the petition. The petitioner contends that the beneficiary began employment as a Deputy General Manager with the foreign entity on September 15, 1999. However, the payroll records submitted by the petitioner demonstrate that the beneficiary has been employed by the foreign

entity for the months of December 2000 and January 2001. The regulation at 8 C.F.R.§ 204.5(j)(3)(ii) states that the director may request additional evidence in appropriate cases. Although specifically and clearly requested by the director, the petitioner declined to provide copies of tax returns, payroll records, and other unequivocal evidence to establish the beneficiary's salary and period of employment abroad as a Deputy General Manager. The petitioner's failure to submit the tax returns and other corporate documents specifically requested by the director cannot be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Neither the business cards submitted nor the foreign entity's organizational chart demonstrate dates in which the beneficiary was employed abroad as a Deputy General Manager for the required period. 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). Collectively, the evidence does not establish that the beneficiary has been employed by the foreign entity for one continuous year, as required by the regulations. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the petitioner has failed to submit sufficient evidence to establish that the beneficiary's foreign employment was in a managerial or executive capacity. The information provided by the petitioner describes the beneficiary's past duties only in broad and general terms. The following duties are without sufficient detail in which to make a determination that such duties are managerial or executive in nature: coordinate finished product exports, create production plans and consult with management, coordinate communications between commercial and technical staff, establish work measurement program, analyze use of machines and man power, and prepare recommendations for organization of units and job duties. Although specifically requested by the director, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties are managerial in nature, and what proportion are actually non-managerial. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties are managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS,* 93 F.2d 175, 177 (D.C.Cir. 1991). The vague position description is insufficient to establish that the beneficiary's past job duties are managerial or executive in nature. Furthermore, the petitioner has not provided persuasive evidence to establish that the beneficiary has been managing the organization, or managing a department, subdivision, function, or component of the company, at a senior level of the organization hierarchy. The petitioner stated that the beneficiary's duties abroad "vary daily, and are dictated as needed." The beneficiary's title alone is not sufficient to establish that the actual duties performed have been managerial or executive in nature.

The record also fails to support a finding that the beneficiary's proposed job duties with the U.S. entity will be in a managerial or executive capacity. The record contains a description of the beneficiary's job duties that essentially paraphrase the essential elements of the statutory definitions of manager or executive. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner,* 1997 WL 188942 at *5 (S.D.N.Y.). The record does not contain a comprehensive description of the beneficiary's day-to-day activities. The beneficiary's position title cannot be used to substitute for a concrete description of the beneficiary's actual duties. There is no evidence to show that the beneficiary will be

supervising a subordinate staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties. Contrary to the director's request, the petitioner has failed to submit a detailed business plan, which would explain how many employees the U.S. entity plans to hire; how soon they will be hired; what their titles will be; or how their positions will be directed or managed by the beneficiary. Accordingly, the petitioner has not satisfied the requirements set out at 8 C.F.R. § 214.2(l)(3)(ii)(C)(1). 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).

Furthermore, the petitioner's evidence is not sufficient in establishing that the beneficiary will be directing the management of the organization or a major component or function of the organization; establishing the goals and policies of the organization; exercising wide latitude in discretionary decision-making; and receiving only general supervision or direction from higher level executives. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title.

The petitioner contends that the beneficiary is not expected to perform only managerial or executive duties where he will be establishing a new office. When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. Contrary to the petitioner's contentions, even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. Based upon the evidence furnished, it cannot be found that the beneficiary has been or will be employed in a primarily managerial or executive capacity.

The petitioner has also failed to establish that the new entity, within one year of the approval of the petition, would be in a position to support a managerial or executive position. The petitioner has failed to submit sufficient documentary evidence to establish compliance with the regulatory requirements for a "new office" pursuant to 8 C.F.R. § 214.2(1)(3)(v). The record does not demonstrate that the U.S. entity contains the organizational complexity or financial backing to support the proposed managerial or executive staff position. In addition, the petitioner failed to adequately respond to the director's specific request for a business plan for one year, which shows, in detail how the new business will be fully operational, with employees in place and doing business by providing a product or service. There has been no evidence presented that details the nature of the U.S. entity's business, the scope of the entity, its organizational structure, its financial goals, or size estimates sufficient to comply with the regulations. There is no evidence in the record to substantiate the petitioner's assertions regarding contractual agreements entered into by the U.S. entity to distribute company products. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California, supra.* There has been no business plan or independent documentary evidence submitted to demonstrate that the approximations given by the petitioner is sufficient to accommodate the petitioner's start up and expansion needs. Although the record reflects an initial wire transfer to the U.S. entity from the foreign entity, there is

no corroborating evidence from the foreign entity indicating the continued financial support for the start up project in the United States. There has been no business plan submitted which describes in detail, the proposed establishment and growth plans for the U.S. entity. Although the letter of support written by the U.S. organization mentions plans for the U.S. entity, it fails to provide detailed information regarding what the plans actually entail. Contrary to the petitioner's assertions, a generic forecasted report does not suffice to explain how the new office plans to organize, finance, build and maintain its business in the United States.

On review of the complete record, it cannot be found that the beneficiary has been or will be employed in a managerial or executive capacity.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.