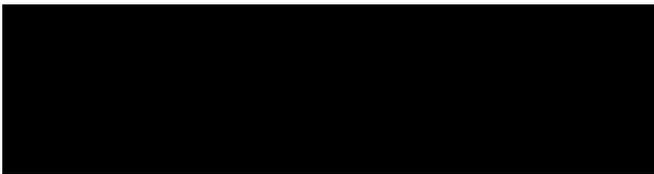




U.S. Citizenship
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Services

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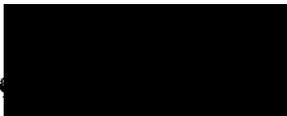


File: EAC-03-030-54049 Office: VERMONT SERVICE CENTER

Date: OCT 28 2004

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:

SELF-REPRESENTED

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

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prevent disclosure of unarranged
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DISCUSSION: The Director, Vermont 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.¹

The petitioner filed this nonimmigrant petition seeking to employ its 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 petitioner is a corporation organized in the State of New York that operates a store for the design, tailoring, and sale of bridal dresses. The petitioner claims that it is the subsidiary of Saten Moda Evi, located in Istanbul, Turkey. The petitioner seeks to employ the beneficiary for a period of one year to open a new office.

The director denied the petition concluding that the petitioner did not establish that: (1) the beneficiary had been employed abroad in a primarily managerial or executive capacity; and (2) the petitioner will reach the point of supporting the beneficiary in a primarily managerial or executive capacity within one year.

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, the petitioner asserts that the director misapplied the regulatory definition of managerial capacity, and exhibited prejudice against the small size of the petitioner. The petitioner further asserts that the director incorrectly stated that facts of the beneficiary's duties and the amount of time she will spend on non-managerial tasks. In support of the appeal, the petitioner submits a copy of a Federal District Court case and previously submitted evidence. Though the petitioner indicates that it submitted a brief with the appeal, as of the date of this decision, the AAO has not received a brief.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

¹ It is noted that the petition and the appeal were prepared by an immigration service provider. Although the petition is accompanied by a Form G-28, Notice of Entry of Appearance by an Attorney or Representative, the immigration service provider has not established that it is a licensed attorney or an accredited representative authorized to undertake representations on the petitioner's behalf. See 8 C.F.R. § 292.1. Accordingly, the assertions of the immigration service provider will not be considered in this proceeding.

- (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)(3)(v) provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or 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
- (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.

The first issue in the present matter is whether the beneficiary has been employed abroad for one year in a primarily managerial or executive capacity. Though not an expressed basis for the director's denial, the director noted that the petitioner did not clearly establish the nature of the beneficiary's duties abroad, such that CIS could determine whether she functions 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 filed on November 6, 2002, the petitioner stated that the beneficiary is the owner and manager of the foreign entity. The petitioner provided that the beneficiary "[s]upervises, directs and controls patternmakers and seamstresses in the design of bridal gowns. [She] [s]upervises and directs the activities of the retail establishment including salespersons and tailors. [She] hires and fires staff as required, [and] [n]egotiates supply prices with vendors. [The beneficiary] [d]evises and implements sales and marketing strategies, [and] [o]versees the work of professional consultants, including an Accountant."

On December 31, 2002, the director requested additional evidence. Regarding the beneficiary's employment capacity abroad, the director requested: (1) an organizational chart for the foreign entity; (2) the number of

subordinates under the beneficiary's management, including their job titles and duties; (3) a description of the executive and technical skills required to perform the beneficiary's job abroad; (4) an indication of the amount of time the beneficiary allots to managerial or executive duties and the amount of time she allots to non-managerial duties; (5) an assessment of the degree of discretionary authority the beneficiary has over the day-to-day operations of the foreign entity; and (6) an indication of who will operate the foreign entity in the beneficiary's absence.

In response, the petitioner submitted an organizational chart for the foreign entity and a statement further describing the beneficiary's job duties abroad as follows:

[T]here is only one subordinate supervisor under [the beneficiary's] management, the General Manager . . . The executive skills required [for the beneficiary's duties abroad] include budgeting and forecasting, strategic planning, and marketing skills. The technical skills required include dress design and construction capabilities. [The beneficiary] spend[s] 90% of [her] time at the overseas office engaged in executive duties and 10% of [her] time engaged in design modification and quality control activities. [She] is the ultimate authority at [the foreign entity] and therefore [has] full discretionary authority in day-to-day activities.

The statement describes the responsibilities of the foreign entity's additional employees as follows:

[The General Manager] is responsible for overseeing the day to day operations of [the foreign entity]. This includes supervising a staff of one Designer, one pattern maker, three seamstresses and one salesperson; negotiating with vendors and purchasing supplies and materials; working with the accountant to ensure the proper recording of revenues, expenses and taxes; ensuring quality of design and production; and working with the advertising agency to ensure that the [foreign entity's] brand is marketed throughout Istanbul and its suburbs.

The Designer is responsible for researching current bridal fashions and devising designs for bridal gowns and special occasion dresses. In addition, the Designer will use the research conducted in the United States to design dresses specifically for the U.S. market.

The Patternmaker is responsible for working with the designer to adapt the design and make patterns for the many different shapes and sizes of the population. From these patterns, the seamstress will cut and sew the dresses. The Seamstresses are also responsible for hand sewing beads, sequins and all types of trim.

The Salesperson is actually the face of [the foreign entity]. She works with the customer to find her the bridal dress of her dreams.

In the director's denial, dated May 12, 2003, he noted that the foreign entity is "a very small-scale operation." The director further stated that "[t]he extent to which the beneficiary is engaged in managerial level duties is unknown." The director further states that "it must be assumed that [the beneficiary] is greatly involved as a designer," and "[t]he level of her activity in this aspect of the business is never specified."

On appeal, the petitioner asserts that the director misapplied the regulatory definition of managerial capacity as defined in 8 C.F.R. § 214.2(I)(ii)(B)(2). The petitioner provided no additional documentation or information to further explain the beneficiary's duties abroad.

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(I)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In the instant case, the petitioner asserts that the beneficiary is engaged in executive tasks abroad, while it also claims that she manages a staff of seven employees. Thus, the petitioner represents that the beneficiary is primarily engaged in both managerial duties and executive duties. Therefore, the petitioner must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive duties under section 101(a)(44)(B) of the Act, and the statutory definition for managerial duties under section 101(a)(44)(A) of the Act.

The foreign job description submitted by the petitioner was brief and vague, providing little insight into the true nature of the tasks the beneficiary performs with her employer abroad. For example, the petitioner states that the beneficiary "[s]upervises and directs the activities of the retail establishment" and she "[d]evises and implements sales and marketing strategies." The petitioner indicates that the beneficiary's duties require "[t]he executive skills [of] . . . budgeting and forecasting, strategic planning, and marketing." However, these statements provide no understanding of the actual tasks the beneficiary performs on a day-to-day basis. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves reveal the true nature of the employment. *Id.* The provided job description does not allow the AAO to determine the actual tasks that the beneficiary performed, such that they can be classified as managerial or executive in nature.

The record contains unresolved inconsistencies regarding the subordinate employees under the beneficiary's supervision. On Form I-129, the petitioner states that the beneficiary "[s]upervises, directs and controls patternmakers and seamstresses . . . , [she] [s]upervises and directs the activities of the retail establishment including salespersons and tailors, [and she] [o]versees the work of professional consultants, including an Accountant." These statements reflect that the beneficiary directly supervises patternmakers, seamstresses, salespersons, tailors, and professional consultants. However, in response to the director's request for evidence, the petitioner submitted a statement that provides that "there is only one subordinate supervisor under [the beneficiary's] management, the General Manager." This statement continues by claiming that the general manager's duties include "supervising a staff of one Designer, one pattern maker, three seamstresses

and one salesperson.” The petitioner has offered no explanation to clarify this inconsistency. 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). Thus, in the instant matter, the petitioner has not established whether the beneficiary directly supervises the seven staff members of the foreign entity, or whether she accomplishes this by directing a subordinate supervisor.

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary managed professional employees, the AAO must evaluate whether the subordinate positions required a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that “[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” The term “profession” contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). The petitioner provided job descriptions for the foreign entity’s employees. However, the petitioner has not indicated the education or experience required to perform the duties of each position, such that the AAO can determine whether the foreign entity’s employees are professionals. It appears self-evident that the patternmaker, seamstresses, and salesperson are not professionals. Without further explanation, the AAO cannot assess whether the designer or general manager are professionals. The petitioner states that the beneficiary “[o]versees the work of professional consultants, including an Accountant,” yet the record contains no documentation to support that the foreign entity hires outside contractors. 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).

As discussed above, the petitioner has provided inconsistent statements regarding the scope of the general manager’s supervisory responsibility. The AAO is unable to determine whether he is truly a supervisory employee, such that the beneficiary manages a supervisor. Accordingly, the petitioner has not established that the beneficiary manages subordinates that are supervisory, professional, or managerial as contemplated by section 101(a)(44)(A)(ii) of the Act.

Thus, the petitioner has not established that the beneficiary has been employed abroad for one year in a primarily managerial or executive capacity as required by the regulation at 8 C.F.R. § 214.2(l)(3)(iii) and (iv). For this reason, the appeal will be dismissed.

The second issue in the present matter is whether the petitioner will reach the point of supporting the beneficiary in a primarily managerial or executive capacity within one year.

In the initial petition, the petitioner describes its prospective operations as follows:

[The petitioner] will operate as the exclusive retailer for [the foreign entity's] bridal gowns. . . . [The petitioner] has secured a lease for a storefront [in New York, New York] and has purchased the assets of a tailoring business located at the site The assets of this business include sewing machines, racks, mannequins, a press and a customer list. In tailoring business alone, the store has annual revenues of approximately \$900 per week. . . .

[The petitioner] plans to turn this store into the first U.S. retail outlet for [the foreign entity's] bridal gowns and special occasion dresses. Customers will select from [the foreign entity's] bridal gowns displayed in [the petitioner's] store, the dress will be imported from [the foreign entity] and custom fitted by [the petitioner's] tailors. [The petitioner] plans on initially continuing with the alteration and tailoring business, as well, because it will provide a steady stream of income while the bridal shop becomes established.

As the Manager of [the petitioner], [the beneficiary] will be responsible for a critical function of [the petitioner's] operation – the establishment of the first retail outlet for [the foreign entity's] bridal gowns. [The beneficiary] will be responsible for all operations relating to [the petitioner] including hiring and firing, training and supervision of salespeople and tailors. Within the first year, [the petitioner] anticipates hiring one tailor and one salesperson. She will conduct research on other bridal shops operating in the local market and will develop competitive pricing and policies. Through her research she will also establish the styles of gowns that are popular with American women and will direct the staff at [the foreign entity] to create bridal gown styles that will appeal to American tastes. In addition, [the beneficiary] will supervise and direct, one professional consultant, an Accountant, who will be responsible for the general ledger and for tax filings.

The petitioner submitted evidence to show that, on September 18, 2002, it purchased an existing tailoring shop with a purported revenue stream of \$45,000 per year. The petitioner provided an unaudited balance sheet for the foreign entity, as well as evidence of tax payments for 1999, 2000, and 2001.

In the request for additional evidence on December 31, 2002, the director instructed the petitioner to submit: (1) a copy of the petitioner's business plan for commencing its start-up, beginning with the date of filing the initial petition and providing specific dates for each proposed action over the following two years; (2) evidence that the petitioner will grow to be of sufficient size to support a managerial or executive position, such that the beneficiary will be relieved of performing non-managerial, day-to-day operations within one year; (3) photographs of the interior and exterior premise that have been secured for the petitioner; (4) a statement from the chief executive officer of the foreign entity that describes each parent, subsidiary, or affiliate company, including the principle business activity, the number of employees, and gross revenues; and (5) evidence of the size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and commence doing business in the United States.

In response, the petitioner submitted: (1) photographs of the petitioner's and the foreign entity's premises; (2) a letter from the beneficiary discussing the foreign entity and the petitioner; (3) business registration for the foreign entity; (4) documents to show the size of the U.S. investment, such as evidence of wire transfers and bank statements; and (5) a two-year business plan for the petitioner. The business plan is presented in a chronological format, and it reflects the petitioner's intentions for growth from August 2002 to November 2004. The plan indicates that the beneficiary will be the petitioner's sole employee until December 2003, when the petitioner anticipates hiring a salesperson and a tailor. The relevant portion that covers the one-year period requested for opening the new office states:

December 2002	Purchase materials needed to renovate retail rental. Negotiate with contractors and oversee renovation.
December 2002	Transfer sample bridal gowns from [the foreign entity] to [the petitioner].
March 2003	Operation on hold awaiting approval of L-1A visa petition.
April 2003 –	
November 2003	Open retail operation. Work towards building a client base. Research business practices of other bridal shops, including pricing and sales methodology. Meet with owners of other bridal shops to offer services as a subcontractor of tailoring services on bridal gowns. Through media research and site visits, determine U.S. styles and trends in bridal gowns and bridesmaid gowns. Supervise the Designer at [the foreign entity] to produce a U.S. line of bridal gowns.

The submitted statement from the beneficiary regarding the two entities' operations provides:

[The foreign entity] was established on July 10, 1995. This company is 100% owned and controlled by [the beneficiary]. [The foreign entity's] principal business activity is bridal gown and special occasion dress design and retail. [The foreign entity] currently employs six and has annual revenues of approximately \$110,000 U.S.

* * *

[The petitioner] currently has no employees, but anticipates hiring one salesperson and one tailor seamstresses [sic] within the next year and utilizing the services of both a business development consultant and an accountant. Estimated revenues for [the petitioner's] first year of operation are \$150,000.

In the director's denial, dated May 12, 2003, he concluded that the petitioner did not establish that it will reach the point of supporting the beneficiary in a primarily managerial or executive capacity within one year. The director stated that the small size of the foreign entity would make it "very difficult for it to support a new office in the United States capable of any significant growth, especially within one year." The director noted that the petitioner intends to open a second store some time after the initial one-year period. The

director concluded that, even with an additional store, “the beneficiary would only be managing five or so non-professional employees.” The director further noted that the beneficiary will be involved in the gown design process to an unknown degree.

On appeal, the petitioner asserts that the director misapplied the regulatory definition of managerial capacity as defined in 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). The petitioner claims that the director exhibited prejudice against the small size of the petitioner, and incorrectly stated that facts of the beneficiary’s duties and the amount of time she will spend on non-managerial tasks such as bridal gown design. The petitioner provided no additional documentation or information to further explain its potential to support a manager or executive within one year.

The petitioner’s assertions on this issue are not persuasive. 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.

The evidence submitted by the petitioner contains an unresolved inconsistency regarding when the petitioner intends to hire additional staff for the United States office. During the initial start-up of the operation, the beneficiary will be the sole employee of the petitioner. In the business plan provided by the petitioner, it represents that it will not hire additional employees until December 2003, at such time that it anticipates hiring a salesperson and a tailor. As the initial one-year period ends in November 2003, the business plan reflects that the beneficiary will be the sole employee of the petitioner for the entire start-up period. However, the letter submitted from the beneficiary that describes the petitioner’s operations indicates that the petitioner “anticipates hiring one salesperson and one tailor seamstresses [sic] within the next year.” Again, 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). The petitioner has not clarified this inconsistency, thus the AAO is unable to determine whether the petitioner will hire additional staff within one year that would relieve the beneficiary from performing the day-to-day non-managerial tasks of the business.

Additionally, if the petitioner had established that it intends to hire a tailor and a seamstress within the one-year start-up period, the petitioner has not established that these employees would be supervisory, professional, or managerial as contemplated by section 101(a)(44)(A)(ii) of the Act. Thus, the petitioner has not established that the beneficiary will manage supervisory, professional, or managerial subordinates. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii).

The petitioner alleges that the director erroneously based his decision in part on the petitioner's and the foreign entity's small size. A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See section 101(a)(44)(C), 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

As required by section 101(a)(44)(C) of the Act, 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. To establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development.

In the present matter, the petitioner has not explained how the reasonable needs of the petitioning enterprise will be met by a single employee who is employed in a primarily managerial or executive capacity. The petitioner will operate a bridal gown design and sales retail store. Tasks associated with such an operation include greeting customers, answering questions about merchandise, taking measurements, operating a cash register, conducting the routine business of the store such as paying bills and managing a checking account, and providing custodial services. As the petitioner has indicated that it intends to continue to operate the tailoring business it purchased, it is also evident that the petitioner will require an individual to sew and tailor clothing. As the record is unclear on whether the petitioner will hire additional employees within one year who will perform these tasks, it appears that the reasonable needs of the operation will require the beneficiary to assume these duties. These tasks are necessary to produce the petitioner's products and provide the petitioner's services. 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. 593, 604 (Comm. 1988). Though the petitioner states that it anticipates utilizing the services of a business development consultant and an accountant, the petitioner has not established that these outside contractors will relieve the beneficiary from performing the day-to-day non-managerial tasks described above. Thus, evidence suggests that the petitioner's small size, in light of the reasonable needs of the business, will require the beneficiary to primarily perform non-managerial and non-executive duties throughout the initial one-year period. The actual duties themselves 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).

The director noted that it does not appear that the foreign entity could support the petitioner "to the extent necessary." The AAO concurs. Based on the foregoing, the record does not show that the foreign entity will sufficiently grow the new office in the United States within one year, such that the beneficiary will be employed in a primarily managerial or executive capacity. See 8 C.F.R. § 214.2(l)(3)(v)(C). For this additional reason, the appeal will be dismissed.

The petitioner refers to a decision issued by the United States District Court for the Northern District of Georgia, *Mars Jewelers, Inc. v. I.N.S.*, 702 F. Supp. 1570 (N.D. Ga. 1988). Yet, the petitioner has offered no explanation or evidence to establish that the facts of the instant petition are analogous to those in the referenced case. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Beyond the decision of the director, the petitioner has not submitted any evidence to establish that the foreign sole proprietorship will continue to do business, as required at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2), or that the stay of the beneficiary is temporary. The Commercial Registry entry and tax payment documents submitted for the foreign entity suggest that the foreign company is actually a sole proprietorship belonging to the beneficiary. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual proprietor. See *Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984). As the beneficiary claims to be the owner and sole proprietor of the foreign business, the presence of the beneficiary in the United States raises the question of whether the foreign business will continue to do business abroad. In addition, it is questionable whether the employment offered to the beneficiary is temporary. Generally, the petitioner for an L-1 nonimmigrant classification need submit only a simple statement of facts and a listing of dates to demonstrate the intent to employ the beneficiary in the United States temporarily. However, where the beneficiary is claimed to be the owner or a major stockholder of the petitioning company, a greater degree of proof is required. *Matter of Isovich*, 18 I&N Dec. 361 (Comm. 1982); see also 8 C.F.R. § 214.2(l)(3)(vii). For this additional reason, the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.