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U.S. Citizenship  
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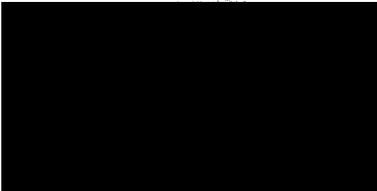
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FILE: LIN 04 151 51730 Office: NEBRASKA SERVICE CENTER Date: AUG 18 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

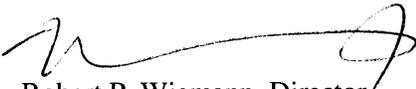
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president 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 Illinois that claims to be engaged in the export and distribution of products to China, and the import of goods from China to be used in interior and exterior design and architectural planning. The petitioner claims that it is a subsidiary of [REDACTED] located in Beijing, China. The beneficiary was initially granted L-1A classification for a one-year period in order 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 the petitioner did not establish that (1) the petitioner is a qualifying organization doing business in the United States, or (2) the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner emphasizes that the beneficiary experienced delays in obtaining his new visa and therefore did not have a full year in order to establish the new office in United States. Counsel argues that the beneficiary serves in an executive capacity, even if he does perform certain day-to-day activities of the company. Counsel also contends that the U.S. entity is not merely an agent or office of the petitioner's parent company, and that the activities conducted by the petitioner to date, including "planning, researching, and initiating business ventures" fall under the definition of "doing business" as defined by the regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H).

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)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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 this matter is whether the petitioner is a qualifying organization doing business in the United States. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G) defines "qualifying organization" as 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 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.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as "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."

On the I-129 Petition submitted April 29, 2004, the petitioner indicated that it is an “engineering, design and décor company” with gross annual income of \$612,000. The petitioner’s April 19, 2004 letter indicated that the company “has already begun business with La-Z-Boy Incorporated to export some of its furniture to China.” The petitioner submitted an audited financial statement for the two months ended December 31, 2004, noting that “[t]he company did not actually began [sic] business until the beneficiary arrived in the USA.” The statement reflects no gross sales or profit for the two-month period. The petitioner also provided: (1) A notarized letter from the U.S. entity’s bank indicating that the company’s checking account was opened on January 8, 2004 and had a balance of \$612,603.58 on April 14, 2004; (2) evidence that the petitioner had purchased a vehicle “for the purpose of transporting goods and surveying the market;” and, (3) an invoice and packing list dated April 19, 2004 for \$93,156.72 in goods sent to a Chinese company in care of the petitioner’s parent company. Finally, the petitioner submitted a document entitled “Mermax Retail Store Business Plan and Feasibility Study,” which outlines the foreign entity and petitioner’s plans to open a retail furniture store and indicates that the petitioner is negotiating for a retail property located in Naperville, Illinois. The petitioner indicated that the new business plan was revised from the initial business plan submitted for the initial L-1 petition, but did not elaborate on how the company’s business model or objectives had changed.

The director issued a request for additional evidence on May 1, 2004 instructing the petitioner to provide, in part, evidence that the United States entity has been doing business for the previous year, including documentation to establish that the entity has conducted a regular, systematic, and continuous provision of goods and/or services. The director observed that the initial evidence did not establish that the company was doing business in a regular, systematic and continuous manner. The director further requested that the petitioner clarify what goods and/or services the company provides and submit supporting evidence to substantiate its statements.

In a May 17, 2004 response, the petitioner submitted the following documents: (1) price quotes from various manufacturers for paint and related supplies, all dated April 2004; (2) invoices showing the purchase of goods from various companies, all but one dated from April 2004; (3) electronic mail correspondence between the petitioner’s employees and various companies, dated February and March 2004, discussing product pricing, purchasing, and possible distributorship agreements; and, (4) evidence that the petitioner and the foreign entity had purchased a truck, trailer and related equipment “for transporting the goods.” The petitioner explained: “The company is in the business of supplying and importing goods that [are] to be used for architectural planning, constructions, large and not-so-large scales of decoration includ[ing], industrial, commercial, and residential decoration. Toward that end, [the petitioner] has bought or searched the best quality products to be used or supplied to the parent company’s use.”

The director denied the petition on June 7, 2004 determining that the petitioner is not a qualifying organization because it is not “doing business” as defined by 8 C.F.R. § 214.2(l)(1)(ii)(H). Specifically, the director noted:

Although the petitioning organization may initiate a variety of contracts and/or negotiations which involve the purchase and exportation of goods to the overseas parent, the petitioner appears to be just an agent or an office existing in the United States to provide a mere presence in order to facilitate transactions for the parent. The petitioner does not provide a

regular, systematic, and continuous provision of goods and/or services, as required by the regulations.

The director further observed that the petitioner submitted invoices for goods purchased and price quotes for future purchases of goods to be transported to the parent company, but that the transactions occurred over only a two- to three-month time period. The director concluded that the petitioner had therefore not demonstrated a pattern of conducting regular systematic and continuous provision of goods and/or services.

On appeal, counsel for the petitioner asserts that the petitioner has had only a limited period of time in which to begin conducting business, and “has begun conducting regular business in recent months.” Counsel contends that the petitioner provided extensive documentation of items and equipment purchased and of ongoing contractual negotiations for distributorship arrangements, and had previously explained that the beneficiary “would soon begin searching for a suitable location on which the petitioner plans to establish a factory, in which the petitioner will be able to undertake large-scale remodeling and design projects.” Counsel asserts that “planning, researching, initiating business ventures are all part of conducting regular systematic business.”

Counsel’s assertions are not persuasive. However, the AAO disagrees, in part, with the director’s determination that the petitioning company appears to be “just an agent or an office existing in the United States to provide a mere presence in order to facilitate transactions for the parent.” Whether the petitioner is an “agent” or “representative office” should not be the determinative factor in deciding whether the company is doing business. A representative office is not specifically excluded by the definition of “doing business,” provided that it shows that it is engaged in the provision of goods or services, albeit on behalf of a related foreign entity. The petitioner, to date, has been engaged in purchasing products and negotiating distributorship agreements with United States companies in order to export U.S.-manufactured goods to China, to be distributed by its parent company. Although the parent company will actually distribute the goods, the U.S. entity is engaged in the provision services by facilitating the export of goods to the Chinese market. Thus, under the business model adopted by the petitioner and its Chinese parent company, 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*. Since the approval of a new office petition is granted for no more than one year, the regulations implicitly require that the new office be operational, i.e., engaged in the provision of good and/or services, as soon as it is granted authorization to employ an intracompany transferee in the new office. 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.

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 in June 2003, nor does it appear to have progressed beyond the developmental stage. The AAO acknowledges the petitioner's claim that the beneficiary did not obtain a visa and enter the United States until September 2003. However, the petitioner should still be able to demonstrate that it has been doing business since the beneficiary's arrival in the United States. However, the petitioner has not submitted any evidence of business activities dated prior to February 2004, five months after the beneficiary was admitted in L-1A status. Further, the majority of the company's activities to date are prospective in nature, and the petitioner has failed to submit evidence that it had generated any income prior to the date of filing. The petitioner has also indicated that it is still searching for warehouse space, a factory, or property on which to build a factory, and has alternately provided a business plan indicating that it plans to locate a property in order to operate a retail furniture store. Accordingly, it is evident that, nine months after the beneficiary's arrival in the United States, the petitioner was still engaging in preliminary planning and developmental activities that would normally be completed prior to filing a petition for a new office. The petitioner has not met the requirements set forth at 8 C.F.R. § 214.2(l)(1)(14)(ii)(B). For this reason, the petition may not be approved.

The second issue in this proceeding is whether the beneficiary will be employed by the United States entity in a 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 an April 19, 2004 letter submitted with the initial petition, the petitioner provided the following description of the beneficiary's duties as president of the U.S. entity:

- Plan, develop and direct the US company's business and to set policies and objectives of the company in the direction that the subsidiary will follow.
- Establish procedures and guidelines for the other managerial positions.
- Set and review financial statement, activities reports, and budget statements to set financial goals for the company to ensure maximization of the profit.
- Formulate programs to expand the US business to carry out systematic and continuation of the parent company's business.
- Plan and develop public relation programs to improve and project company's image.
- Periodic evaluations of the U.S. company's progress.
- Act as liaison between the US Company and the parent company.

The petitioner also stated, "the alien beneficiary spend [sic] a great deal of his time traveling all over the US to survey, market and procure suitable items for the purpose of expanding the US business. He has taken numerous photos to be sent to the parent company for references." The petitioner submitted internal payroll records confirming the employment of the beneficiary and two other individuals, but did not identify the job titles or duties of the other employees.

On May 1, 2004, the director requested additional evidence, in part instructing the petitioner to provide: (1) a statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition; and (2) a statement describing the petitioner's staffing, including the number of employees, their job titles, their specific job duties, and their position within the company hierarchy. The director noted that the initial job description provided for the beneficiary was general, vague, and failed to provide examples of specific accomplishments achieved by the beneficiary since the opening of the new office.

In response to the director's request, the petitioner submitted a letter dated May 17, 2004, which provided the following description of the beneficiary's duties:

- Plans, develops, directs and coordinates policies and objectives of the newly established the [sic] US company. . . . He has spent enormous amount of time traveling. . . and surveying the United States market, sources of goods that can be obtained, talking to

vendors, attending shows, and seeking a land to purchase for setting up warehouse for the company. He researched market trend, price and to get the best price and quality of goods yet the most economical goods to be obtained. Purchase or purchased all types of equipment needed to conduct the business in the US or to ship to the parent company for its use since the quality manufactured in the US are far superior to the equipment manufactured in China. He coordinates, directs and assigns staff to their duties to achieve the objectives and developing the US company.

- Coordinate with the parent company and its Board of Directors to inform them of the US market and products that can be bought to improve the work to be performed for the parent company. He has surveyed most profitable goods, equipments, machines that needed for the parent company and as a matter of fact, he either purchased or entered into contract [to] have joint business deals. He has reported his findings to the parent company. . . .
- Establish responsibilities and procedures for US personnel. . . . He has written, implemented guidelines and procedures for the employees to follow.
- He strives to foster US company's harmony and encourage individual achievement
- Review financial statement, activities reports, budget statements, branch offices progress reports, activity reports, and profit and loss statement to determine progress and status of the overall company. . . .
- Review and coordinate formulation of financial programs to provide funding and to maximize returns on investment. . . .
- Plan and develop industrial, labor, government and public relations to improve company image and relationship with clients, and public. . . .
- Evaluate performance of personnel in the USA to make sure compliance with established policies, standards of the company to attain objectives. . . .
- Conduct regular meetings with employees to see the progress of the company. . . .

With respect to the beneficiary's proposed duties under the extended petition, the petitioner indicated that he would continue to perform the same duties, with the following additional responsibilities:

- [The beneficiary] is in the process of purchasing a factory or a land to build factory or a warehouse so that the US company can fully function and manage its own projects....[H]e has searched extensively the project site. . . .
- He will oversee day-to-day activities of the company as to the management decision, hire or terminate personnel as he sees fit. The policies and objective he sets must be realistic and achievable, and consistent with the parent company's policies, goals and objectives. (30%)
- Establish procedures and guidelines for the employees and future employees....
- Set and review financial statement, activities reports, budget statements to set financial goals for the company to ensure maximization of the profit.... He will evaluate each item bought, imported, exported to evaluate its return. . . .
- Formulate programs to expand the US business to expand the US business to carry out systematic and continuation of the parent company's business. He is to actively procure advertisement, survey of customer preference, and needs. Attend meetings and conduct

shows. He is to first set show rooms and present artistic products of the company and attract clients . . . .

- Employ key personnel to assist in expanding of business as he sees fit. In addition to the accountant, he is planning to hire an American educated architect....
- Periodic evaluations of the US company's progress. He will evaluate daily, weekly, and monthly all reports, including but not limited to, financial reports, sales report, personnel progress reports, market reports and so forth to ensure the company is headed in the right direction....
- Continue to act as liaison between the US company and the parent company. Report periodically to the parent company to communicate the US Company's progress. Inform the parent company of items needed or to eliminate and convey the customer's preference and company's progress. As far as the imported items inform the parent company to the quality of the items and modifications needed. Coordinate with the parent company production department to smoothly transport the items and effectively serve clients.

The petitioner indicated that it also employs a "manager" who coordinates the day-to-day operations of the company, contacts distributors and vendors, performs marketing, sales, and pricing duties, contacts associates of pertinent industries to evaluate goods to be procured, reviews cost and product quality, checks inventories, monitors budgets, reinforces policies and objectives, and oversees the work of the administrative assistant. The petitioner stated that the administrative assistant devises record keeping systems and keeps detailed records, prepares business correspondence, evaluates and improves workflow and office procedures, adheres to budgetary requirements, prepares reports for management, and handles accounts receivable and payable.

On June 14, 2004, the director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in a managerial or executive capacity. In reaching this conclusion, the director observed: (1) the petitioner's description of the beneficiary's duties indicates that he will spend a majority of his time performing non-qualifying duties such as gathering price quotes, entering into purchase agreements and service contracts, and performing public relations duties; (2) that the job descriptions provided for the beneficiary's subordinates are vague and do not define their specific duties; (3) the petitioner had not specified who performs the tasks necessary for the company to provide goods or services; and (4) given the lack of personnel employed by the petitioner and the absence of salespeople, financial and public relations personnel, and other individuals to perform day-to-day operational tasks, the record is not persuasive in establishing that the beneficiary's actual duties are primarily those of an executive or manager.

On appeal, counsel for the petitioner emphasizes that the beneficiary did not have a full year to develop the United States business due to a delay in obtaining an L-1 visa from the U.S. Consulate in Beijing. Counsel asserts that the beneficiary has nevertheless been serving the petitioner in an executive capacity as he "established procedures and guidelines for the managerial positions, and goals and policies of the company," has "wide latitude in discretionary decision-making," and only receives guidance from the foreign entity. Counsel further contends that the director gave undue weight to the petitioner's staffing levels and the beneficiary's involvement in certain day-to-day activities of the company, without considering that the office is still in the early stages of development.

Counsel's statements are not persuasive. Upon review of the petition and the evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity under the extended petition. 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.* In addition, the definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The petitioner claims that the beneficiary qualifies as an executive because he occupies the highest-level position within the company, manages its employees, and is responsible for expansion of the business. However, the fact that an individual has an executive job title and exercises discretion over a company's operations 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. 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).

Although counsel claims on appeal that the beneficiary is employed in an executive capacity, the record does not establish that a majority of the beneficiary's time has been or will be primarily directing the management of the organization. The petitioner failed to provide a breakdown of the time the beneficiary devotes to his various responsibilities, however, the petitioner's statements emphasize that the beneficiary devotes "an enormous amount of time traveling . . . and surveying the United States market, sources of goods that can to be obtained, talking to vendors, attending shows, and seeking a land to purchase," as well as researching market trends and pricing, and purchasing equipment." The petitioner states that he will continue to perform these types of duties under the extended petition, in addition to surveying customers, advertising the products, setting up show rooms and presenting products to customers. These tasks, which appear to require a preponderance of the beneficiary's time, are operational duties necessary for the petitioner to produce a product or provide a service. 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).

Although the petitioner has provided a lengthy description of the beneficiary's duties, portions of the description merely paraphrase the statutory definition of executive capacity, while other portions are too vague to convey an understanding of what duties the beneficiary will perform on a day-to-day basis. General, over-broad statements such as "oversee day-to-day activities of the company," "establish procedures and guidelines for employees," "formulate programs to expand the business," "evaluat[e] the US company's progress" do not assist the AAO in assessing the beneficiary's actual tasks. 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. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

Further, given the petitioner's current stage of development, as discussed above, some of the beneficiary's described duties are clearly prospective. For example, the petitioner states that the beneficiary will "inform the parent company [as] to the quality of [imported] items," and "[c]oordinate with the parent company production department to smoothly transport the items." There is no evidence that the petitioner was importing items, or equipped to import items, from the parent company at the time the petition was filed, as the beneficiary was still trying to locate a factory, warehouse or retail space. Other portions of the job description refer to setting goals and objectives for employees who have yet to be hired for a new area of business that has yet to commence. However, the relevant inquiry is whether the beneficiary will be employed in a primarily managerial or executive capacity in the future, commencing on the filing date. While the beneficiary in this matter clearly performs some executive duties and exercises the appropriate level of authority, the evidence of record indicates that he is still primarily occupied with the day-to-day activities of the business. The beneficiary's ongoing responsibility for guiding the start-up company in the early stages of its development, including setting up the organizations' structure, workflow, chain of authority, and internal procedures, do not constitute managing or directing the management of the company in this instance. 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.

Counsel argues on appeal that the director placed too much emphasis on the petitioner's limited number of employees at the time the petition was filed. 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 extension cannot be approved. Although the petitioner employs a "manager" and an administrative assistant who perform some of the day-to-day administrative and operational tasks of the business, based on the petitioner's representations, the beneficiary is clearly not relieved from spending an "enormous amount of time" performing non-qualifying tasks such as meeting with vendors, performing market and product research, taking photographs of potential future locations, and purchasing products and equipment.

The petitioner's claim on appeal that the beneficiary manages a function of the U.S. company is not persuasive. 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 detailed 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. While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. As discussed above, the petitioner has not met this burden. Furthermore, the petitioner did not identify the "essential function" managed by the beneficiary; managing an organization in its entirety does not constitute managing an essential function. The petitioner has not provided evidence that the beneficiary manages an essential function.

The AAO recognizes the petitioner's claim that the beneficiary had significantly less than one year to establish the business, due to a delay in the issuance of his visa at the U.S. Consulate in Beijing. The petitioner did not, however, provide documentation to establish the stated length of the delay and the reasons therefore. 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)). Regardless, any request for an extension of a petition that was originally approved as a new office must be evaluated under the criteria set forth at 8 C.F.R. § 214.2(l)(14)(ii) and establish the beneficiary's eligibility as of the date of filing. Again, 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.

The AAO acknowledges that the record contains numerous references to the future objectives of the U.S. operation, outlining at least two different prospective business ventures. However, business activity that occurs after the date of filing is not probative of the petitioner's eligibility as of the filing date. The AAO is not required to consider evidence of speculative future activity. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). While the beneficiary may have achieved significant accomplishments toward establishing the petitioner's operations in the United States, the petitioner has not shown that it has reached the point that he will be employed in a primarily managerial or executive capacity as of the date this petition was filed.

Based on the foregoing, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(ii). For this reason, the petition will not be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

**ORDER:** The appeal is dismissed.