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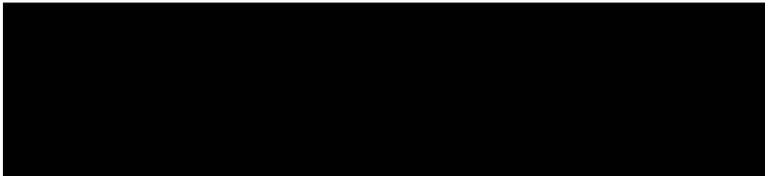
FILE: WAC 05 146 50844 Office: CALIFORNIA SERVICE CENTER Date: NOV 28 2006

IN RE: Petitioner:
Beneficiary:



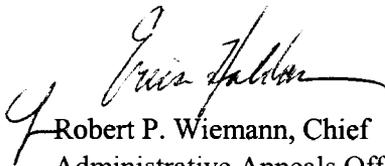
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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, Chief
Administrative Appeals Office

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

The petitioner, a California corporation, claims to be in the wholesale and imports business. The petitioner states that it is a subsidiary of [REDACTED] located in China. Accordingly, the United States entity petitioned U.S. Immigration and Citizenship Services (USCIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The beneficiary was initially granted L-1A classification for a period of one-year to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay in order to continue to fill the position of vice president/business manager for a two-year period.

The director denied the petition concluding that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a managerial or executive capacity. The director specifically noted several discrepancies between the organizational chart of the U.S. company submitted by the petitioner with the original petition and the U.S. company's chart submitted in response to the director's request for evidence. In addition, the director stated that it appears the beneficiary will not supervise a subordinate staff of professionals or managers.

On appeal, the petitioner states that the beneficiary is employed in a managerial and executive capacity as demonstrated in the detailed job description previously submitted. In addition, the petitioner states that the beneficiary will supervise managers and professionals since the job duties his subordinates perform are sufficiently complex, and since the managers will in turn supervise other employees. The petitioner further asserts that the beneficiary's position is in an executive capacity since "the beneficiary's position does in fact involve significant authority over generalized policy of an organization or major subdivision of an organization." Finally, the petitioner clarifies the discrepancies listed by the director in the decision by stating that the positions listed in the original U.S. organizational chart are the same positions listed in the U.S. chart submitted in response to the director's request for evidence. The petitioner submits a brief and supporting documentation in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further 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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

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.

The nonimmigrant petition was filed on April 25, 2005. The Form I-129 indicates that the beneficiary will be employed in the position of vice president/business manager for the petitioner, and the petitioner has five employees in the United States. In a support letter dated April 1, 2005, the beneficiary's proposed duties are described as the following:

1. To assist President in subsidiary's day-to-day overall business management and operations such as business policy and strategy formulation, budget planning, employment hiring (20% of her total time);
2. To act as President to be responsible for the Petitioner's overall business management and operations in the absence of President (5-10%) of her total time);
3. Organize and attend major business talks with other companies, including wholesalers and retailers and agents, and sign contracts (20% of her total time);
4. [F]ormulate and administrate sales strategies such as studying and establishing sales territories, quotes, and goals; review sales reports to adjust sales programs in connection with market needs, volume potential, price schedules and discount rates, and develop sales

campaigns to accommodate goals of company; and direct staffing and training to develop and control sales programs... and tap new market areas (30% of her total time);

5. Formulate and administrate sales strategies such as studying and establishing sales territories, quotas and goals (15% of her total time), and
6. Direct staffing and training to develop and control sales programs (5-10% of her total time).

In addition, the petitioner submitted an organizational chart for the U.S. entity indicating the beneficiary supervises the business department, warehouse department, administrative department and finance department. According to the submitted chart, the beneficiary will supervise one manager in the administrative department, one manager and one assistant manager in the warehouse department, and one manager in the finance department. The same individual is employed in the positions of administrative department manager and finance department manager. In addition, the beneficiary will also function as the business department manager and will supervise an assistant. The organizational chart also indicates that the U.S. entity has commissioned salespersons and assistants. The petitioner also submitted its California Form DE-6, Quarterly Wage Report and Withholding Report, for the first quarter of 2005, which confirms the employment of the individuals named on the organizational chart.

On May 12, 2005, the director requested that the petitioner submit additional evidence in support of its petition. In part, the director requested the following: a copy of the U.S. organizational chart including the names of all executives managers and supervisors, and number of employees within each department; a job description, educational level and annual salaries for all employees under the beneficiary's supervision; copies of the U.S. company's payroll summary, Form W-2 and W-3 evidencing wages paid to employees for 2003 and 2004; a list of the specific goals and policies the beneficiary has established over the last six months; a list of the specific discretionary decisions the beneficiary has exercised in the last six months; evidence that the higher level executives, the board of directors, or stockholders of the organization required only general supervision of the beneficiary; and, a specific day-to-day description of the duties the beneficiary has performed over the last six months.

In response to the director's request, the petitioner submitted a letter dated May 30, 2005, indicating that the beneficiary's position is vice president/business manager and the petitioner reiterated the job duties previously submitted with the original petition. In addition, the petitioner indicated that the position of President at the U.S. company is not currently filled by any individual, thus the beneficiary will also perform the following duties as acting president:

1. Plan and develop company policies and implement goals through subordinate administrative personnel;
2. Coordinate activities of department to effect operational efficiency and economy; design and develop new products to meet market needs;
3. Approve and allocate company budget, analyze department budget requests to identify areas in which reduction can be made;
4. Confer with administrative personnel, review activity, operation, and sales reports to determine changes in operations required;
5. Direct preparation of directives to departmental administrators outlining policies, programs, or operations improvements;
6. Coordinate the relationship between the Petitioner and the Parent Company; and

7. Hire, fire, and train managerial employees.

In addition, the petitioner submitted a specific day-to-day description of the duties the beneficiary has performed over the last six months as requested by the director. The duties are described as the following:

Because the beneficiary is principally responsible for the overall management of the petitioner, her duties in a "typical day" will focus on monitoring the fully achievements of the goals of [sic], and coordinating the smooth operations of the departments of the Petitioner. Since the most important normal daily business of the Petitioner will come from the activities of the Marketing Department and the Financial Department, the Beneficiary will direct management and operations of the above two departments through their managers. Typically, she will make final decisions regarding contract negotiations and sign the contracts on behalf of the Petitioner and sometimes participate in the negotiations involving big contracts; solve the managerial and executive problems arising among the departments by summoning meetings of all department managers; coordinating the business operations of the departments for daily business; evaluating the business reports of all departments especially the Marketing Department and adjust the business goals according to the market tendency with the department manager; contacts personally [sic] to find new client and new markets in the US and in South American countries; coordinating the business between the Petitioner and its parent company in China in respect of financial strategy and business goals of the Petitioner so that the parent company can provide necessary business assistance and vice versa.

The petitioner also re-submitted an organizational chart of the U.S. company, and a brief job description and the educational level of all the beneficiary's subordinates. The organizational chart for the U.S. company is the same as the previously filed organizational chart and it indicates that the beneficiary will supervise the business department, warehouse department, administrative department and finance department. Thus, the chart indicates that the beneficiary will supervise one manager in the administrative department, one manager and one assistant manager in the warehouse department and one manager in the finance department. The same individual is employed in the positions of administrative department manager and finance department manager. In addition, the chart shows that the beneficiary will also function as the business department manager and will supervise an assistant.

The petitioner also submitted job descriptions for the four employees supervised by the beneficiary. The job titles stated in the petitioner's letter dated May 30, 2005 are slightly different from the job titles stated in the U.S. organizational chart. The job title of assistant warehouse manager on the U.S. organizational chart is stated as warehouse manager in the petitioner's support letter. In addition, the U.S. organizational chart indicates one assistant for the business department, but the petitioner states the job title as sales and business person in its response to the director's request for evidence.

The director denied the petition on August 5, 2005 on the ground that the petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director also noted that the evidence does not support a finding that the petitioner will be supervising a subordinate staff of professionals or managers. In addition, the director noted that two job titles listed on the

organizational chart were listed differently in the petitioner's response to the director's request for evidence.

On appeal, the petitioner asserts that the petitioner submitted a detailed job description for the position of vice president/business manager, which establishes that the beneficiary will be primarily engaged in managerial and executive duties. In addition, the petitioner states that the beneficiary will supervise professional employees and lower-level managers. Finally, the petitioner states that there are no discrepancies in the job titles listed in the U.S. organizational chart, and it submitted both the organizational chart submitted with the original petition and the organizational chart submitted in response to the director's request for evidence.

The petitioner's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity. 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.*

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Here, while the beneficiary evidently exercises discretion over the day-to-day operations of the business, the petitioner's description of her proposed duties suggest that the beneficiary's actual duties include a number of non-managerial and non-executive duties.

The beneficiary's proposed job description includes vague duties such as the beneficiary will "assist President in subsidiary's day-to-day overall business management and operations such as business policy and strategy formulation, budget planning, employment hiring," and will be "responsible for the Petitioner's overall business management and operations in the absence of President." The petitioner does not explain how the beneficiary will perform these requirements and what exactly are the goals and policies of the petitioner. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The petitioner's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature.

In addition, the job duties required of the beneficiary include non-qualifying duties such as the beneficiary will "organize and attend major business talks with other companies, including wholesalers and retailers and agents, and sign contracts," "formulate and administrate sales strategies such as studying and establishing sales territories, quotes, and goals," "develop sales campaigns to accommodate goals of company," and

“formulate and administrate sales strategies such as studying and establishing sales territories, quotas and goals.” It appears that the beneficiary will be directly performing the sales and marketing activities of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I & N Dec. 593, 604 (Comm. 1988).

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary will spend on various duties. While the petitioner has provided a breakdown of the percentage of time the beneficiary will spend on various duties, the petitioner has not articulated whether each duty is managerial or executive. Thus, the AAO must attempt to glean the nature of the beneficiary's proposed duties from the vague descriptions submitted.

The petitioner indicated that the beneficiary will spend 20 percent of her time to “attend major business talks with other companies, including wholesalers and retailers and agents, and sign contracts.” Without additional clarification from the petitioner regarding the managerial or executive duties involved, the AAO cannot distinguish this vague responsibility from routine sales tasks. It is not clear what is the purpose of the business talks and what the beneficiary achieves from the meetings. These duties have not been shown to be managerial or executive in nature. 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)). The lack of managers or subordinate employees for the beneficiary to direct in the negotiating tasks for the U.S. company, and the job description indicating that the beneficiary is directly in charge of negotiating and meeting with clients, raises questions as to whether the beneficiary is managing these activities or actually performing duties related to sales and client relations.

The petitioner further states that the beneficiary will spend 45 percent of her time in sales operations such as developing and implementing sales strategies and sales campaigns; research the market; review sales reports to adjust sales programs in connection with market needs, volume potential, price schedules and discount rates; and direct the training of staff of the sales program. The record does not resolve whether the beneficiary will perform the day-to-day tasks to develop and implement the sales and marketing programs and policies, or whether she will direct others to do so. According to the evidence submitted by the petitioner, it does not appear that the U.S. company has hired any employees to develop and implement the sales and marketing program for the company. Since the U.S. company lacks employees to handle the sales and marketing functions, and for the beneficiary to direct and coordinate, the record raises questions as to whether the beneficiary is managing these activities or actually performing the petitioner's sales and marketing duties. Instead, it appears that the beneficiary is performing the tasks necessary to produce a product or to provide services rather than managing others to produce the product or provide a service. An employee who "primarily" performs the tasks necessary to produce a product or provide a service is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I & N Dec. 593, 604 (Comm. 1988).

According to the first U.S. organizational chart submitted by the petitioner, the chart indicates that the U.S. company hired commissioned salespersons and assistants. However, in the second U.S. organizational chart submitted by the petitioner in response to the director's request for evidence, the chart does not indicate the commissioned salespersons or assistants. 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). Furthermore, even if the petitioner utilizes contractual employees in the areas of sales and marketing, the petitioner has neither presented evidence to document the existence of these employees nor identified the services these individuals provide. Additionally, the petitioner has not explained how the services of the contracted employees obviate the need for the beneficiary to primarily conduct the petitioner's business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

According to the petitioner, in addition to the beneficiary, the company has four additional employees at the time the petition was filed. As vice president of the U.S. company, it appears the beneficiary will supervise one manager in the administrative department, one manager and one assistant manager in the warehouse department and one manager in the finance department. The beneficiary will also function as the business department manager and will supervise an assistant. The same individual is employed in the positions of administrative department manager and finance department manager. The petitioner also submitted job descriptions for the four employees supervised by the beneficiary. As noted above, the job titles stated in the petitioner's letter dated May 30, 2005 are slightly different from the job titles stated in the U.S. organizational chart. The job title of assistant warehouse manager on the U.S. organizational chart is stated as warehouse manager in the petitioner's support letter. However, AAO reviewed the job description for this employee, and the job description states that this individual will assist the warehouse manager, thus it appears that the position is in fact an assistant position. In addition, the U.S. organizational chart indicates one employee as an assistant for the business department, however, the petitioner states the job title as sales and business person.

In the denial decision, the director noted the discrepancies in certain position in the U.S. company as mentioned above. The director stated "one employee, [REDACTED], identified as an Assistant to the Warehouse Manager in the first organizational chart, becomes a Warehouse Manager in the second chart. Another one, identified as Assistant to the Manager of the Business Department, becomes a Sales and Businessperson in the second one." On appeal, the petitioner re-submits two organizational charts for the U.S. entity filed with the petition and indicated that the job titles were consistent in both charts. The AAO reviewed the record and it appears that the discrepancies noted by the director were not listed on the organizational chart as the director asserted, but instead the discrepancies in the job titles were found in the petitioner's letter dated May 30, 2005, in response to the director's request for additional evidence. 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).

As noted above, in the request for evidence, the director requested that the petitioner submit a specific day-to-day description of the duties the beneficiary has performed over the last six months. The

petitioner failed to submit this document in its response. Instead, the petitioner provided a vague description that mirrored the previously submitted description of the beneficiary's proposed duties. Further, the submitted job description contains several references to the petitioner's "Marketing Department," which does not appear on any of the submitted organizational charts. This evidence is critical as it would have established if the beneficiary held a position of managerial or executive capacity by the U.S. company. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The 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). The petitioner's response to the director's request for evidence did not assist in establishing if the beneficiary was employed by the U.S. entity in a managerial or executive capacity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, although the petitioner asserts that the beneficiary is managing a subordinate staff, the record does not establish that the subordinate staff is composed of supervisory, professional, or managerial employees. See section 101(a)(44)(A)(ii) of the Act. A first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. The petitioner submitted an organizational chart indicating that the beneficiary will supervise one manager in the administrative department, one manager and one assistant manager in the warehouse department, one manager in the finance department and one assistant in the business department. The petitioner has not submitted evidence that the beneficiary's subordinates are supervisory, professional or managerial employees. It appears that these subordinates will be in charge of clerical, administrative, warehouse and basic finance functions. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the import and export and sales functions of the subordinates supervised by the beneficiary. Rather, based on the type of business operated by the petitioner and its staffing levels, the department "managers" would necessarily be involved in the routine tasks associated with operating a business, which can not be considered professional in nature. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. Thus, the petitioner does not establish that the subordinate staff is composed of supervisory, professional or managerial employees.

Furthermore, if the position offered to the beneficiary is executive in capacity, the statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-operations of the enterprise. An individual will not be

deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* According to the organizational chart for the United States entity, it appears that the president will supervise the beneficiary. Although the petitioner has been identified as acting president of the company, the AAO notes that the petitioner's administrative and finance department manager has signed tax returns, leases and other documents as the company's chief executive officer. This employee, who is also a 25% shareholder of the U.S. company, also received a higher salary than the beneficiary. Collectively, the evidence in the record raises doubts regarding the petitioner's claim that the beneficiary operates at a senior level within the company's organizational hierarchy. 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). It is unclear if the beneficiary will have wide latitude in discretionary decision-making, nor has the petitioner indicated that the beneficiary will establish the goals and policies of the organization. Thus, the petitioner has not established that the position is in an executive capacity.

As discussed above, the beneficiary's job description included primarily non-qualifying duties associated with the petitioner's day-to-day functions, and the petitioner has not identified sufficient employees within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to operating the business, particularly with respect to sales and marketing activities. The fact that the beneficiary has been given a managerial job title and general oversight authority over the business or a department is insufficient to elevate her position to that of an executive or manager as contemplated by the governing statute and regulations.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

At the time of filing, the petitioner was only operational for one month and realized a gross sales of \$500,000. The firm employed the beneficiary as vice president/business manager, plus one employee who filled the positions of administrative department manager and finance department manager, one warehouse department manager, one assistant warehouse department manager and one assistant for the business department. The AAO notes that most of the employees have managerial or executive titles. The petitioner did not submit evidence that it employed any subordinate staff members who would

perform the actual day-to-day, non-managerial operations of the company. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president and three managerial employees. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

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 her visa at the U.S. Consulate in Guangzhou. The petitioner did not, however, provide documentation to establish the stated length of the delay and the reasons therefore. In addition, the petitioner did not explain why the beneficiary entered the United States on February 11, 2005 when she obtained her visa on November 11, 2004. 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.

Based upon evidence submitted, it appears that the beneficiary has been and will be performing the services of the U.S. entity rather than performing primarily managerial or executive duties as its vice president. The petitioner has not demonstrated that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title. Accordingly, the petitioner has failed to demonstrate that the beneficiary has been or will be employed primarily in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

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

ORDER: The appeal is dismissed.