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U.S. Citizenship
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Services

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File: EAC 05 188 53278 Office: VERMONT SERVICE CENTER Date: JAN 31 2007

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

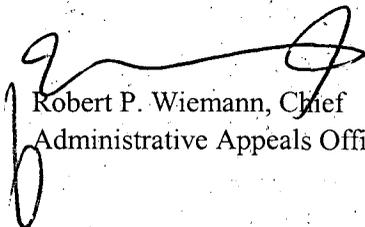
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Chief
Administrative Appeals Office

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.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president and technical development 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, a Virginia corporation, states that it was established to supply U.S. customers with its parent company's aluminum brazing products, to investigate new markets, to obtain feedback on customer requirements, and to provide technical support and service to U.S. customers. The petitioner states that it is a subsidiary of Sun [REDACTED] located in Korea. 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 employ the beneficiary for three additional years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director also referenced the regulatory definition of "doing business," but did not issue a determination as to whether the U.S. entity has been doing business for the previous year, as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a qualifying managerial capacity under the extended petition, specifically, as the manager of an essential function. Counsel further contends that the evidence submitted, considered with additional documentation submitted on appeal, establishes that the petitioner has been doing business in the United States as defined in the regulations. Finally, counsel contends that the beneficiary's knowledge and expertise qualify him as a specialized knowledge employee as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D). Counsel requests that the denial of the L-1A classification petition be reconsidered, or, alternatively, that the beneficiary be granted L-1B status for a period of two years.

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.

- (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, after one year, 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 first issue in the present matter is whether the petitioner established that the beneficiary will be employed by the United States entity in a primarily managerial capacity. The petitioner does not claim that the beneficiary will be employed in an 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.

The nonimmigrant petition was filed on June 22, 2005. The petitioner indicated on Form I-129 that it had one employee and noted that the beneficiary, as president and technical development manager, would perform the following duties:

Responsible for establishment of other new customers supply systems; Investigation of New Market for our advanced products; Technical support and service; particularly in the area of Aluminum brazing filler metals, low-temperature brazing filler metals and high-intense Aluminum alloys; Investigation of the feasibility of technical licensing agreements with U.S. brazing.

In a letter submitted in support of the petition, the petitioner stated that the beneficiary's role will combine "administrative and project management functions." The petitioner further described the beneficiary's job duties as follows:

[The beneficiary] has established the U.S. office.... He will continue to manage all of its affairs. He will be responsible for building customer relationships based upon his technical knowledge of our company's proprietary and patented products, several of which were personally developed by [the beneficiary]. He will set the sales goals for the organization. In short, the essential component of our organization that he will managing will be our U.S. Office.

He will also be responsible for hiring of additional employees as we grow the office to support additional products and sales. See accompanying organization chart, which shows our plans for adding General Affairs and Procurement, Production and Marketing Divisions.

There are three primary reasons why this new office will support [the beneficiary's] position as President and Technical Development Manager. First, the parent company enjoys over \$2 million in annual sales, employs 23 persons, and will pay [the beneficiary's] salary....

Second, the parent company already sells over \$200,000 a year in products to U.S. customers. It will build upon existing sales and existing sales relationship. Logically, by moving technical know-how and eventually production to the USA, those sales will increase, as U.S. customers now must rely upon imports from Korea to fill needs, which they can now source from the United States. . . . Third, [the petitioner's] brazing products include a number of patent processes and products, which gives it a proprietary edge when competing for U.S. business.

In short, [the beneficiary] will exercise discretion on a daily basis in managing the affairs of the new office. He qualifies as a manager because he will manage the only U.S. office (an essential component of the organization), [and] will function at a senior level within the organization. Further, within two years, the organization plans to handle a number of subordinates who will receive direction from [the beneficiary] in the areas of product development, marketing, production and procurement.

The petitioner further indicated that the U.S. subsidiary was formed for the following purposes:

- Establishment of a supply system for U.S. customers. . . ;
- Investigation of New Markets for our advanced products;
- Technical support and service, particularly in areas involving aluminum brazing filler metals, low temperature brazing filler metals, and high tensile aluminum alloys;
- Investigation of customer requirements to advise our factory in Korea on how best to serve the demands of U.S. customers; and
- Investigation of the feasibility of technical licensing agreements with U.S. brazing filler manufacturers and eventual joint venture agreements, as appropriate.

The director issued a request for evidence on July 5, 2005, advising the petitioner that it must demonstrate that the new office in the United States has grown to a point where the beneficiary is primarily engaged in a managerial or executive capacity. The director instructed the petitioner to submit: (1) evidence of the staffing of the U.S. company, including the number of employees, the duties performed by each employee, and the management and personnel structures of the firm; (2) if applicable, evidence documenting the number of contractors utilized and the duties they perform; and (3) evidence to establish the duties performed by the beneficiary in the past year, and the duties he will perform if the petition is extended.

In a letter dated September 6, 2005, the petitioner further described the beneficiary's U.S. position as follows:

[T]he Beneficiary makes all personnel decisions, reviews budgets, sets sales goals, decides on which products to pursue, and oversees important Research and Development efforts. The Beneficiary will continue to manage all of [the U.S. company's] affairs. While he does not presently have any direct employees in the United States, he is supported by a team of five technical and project managers with the parent company in Korea. Please see the attached chart for the list of these essential personnel. They provide critical research and development

of brazing through the actual test and application of products for customers in the United States.

The Beneficiary is also responsible for negotiating and carrying joint projects with [the petitioner's] customers and business partners in the United States. . . . [T]he beneficiary serves an integral part in the delivery of our technology and manufacturing of brazing fillers to our partners in the United States.

The petitioner provided a list of six employees of the foreign entity identified as the beneficiary's "support team," and a list of employees of U.S. companies who are stated to be involved in joint projects with the petitioner. The petitioner submitted a letter from Delphi Harrison Thermal Systems, which confirms that the petitioner's group supplies parts for its products. Delphi's representative notes that the beneficiary has visited Delphi's facilities to "answer questions and provide technical support with regards to the use of their braze ring parts," and notes that Delphi is working with the beneficiary on new applications for the petitioner's products. The petitioner also submitted a letter from the President of [REDACTED], who confirms that his company has agreed to market the petitioner's products to its customers in North America.

The director denied the petition on October 12, 2005, concluding that the petitioner had failed to establish that the beneficiary will be employed in a primarily managerial capacity under the extended petition. The director observed that the U.S. entity had not hired any employees in the previous year to relieve the beneficiary from performing the non-managerial, day-to-day operations involved in producing a product or providing a service. The director further noted that the stated activities of the petitioning company, including establishing a supply system, investigating new markets, investigating customer requirements, and providing technical support and service, would necessarily be performed by the beneficiary himself, as the petitioner's sole employee.

On appeal, counsel for the petitioner disputes the director's decision and contends that the beneficiary will serve in a managerial capacity as a manager of an essential function of the petitioning company. Counsel further states:

The Beneficiary is personally responsible for developing new business ventures and negotiating contracts of substantial value as evidenced by the invoices and orders. He is not someone who routinely signs contracts within established corporate guidelines. The Service concluded that the Beneficiary's duties are akin to functioning as a sales or customer service representative (i.e., performing the function).

Although the Petitioner does not have any employees on its payroll other than the Beneficiary, it has sales agents working as independent contractors under the Beneficiary's direction and supervision. The Petitioner intends to hire two United States employees in the next 12 months to meet the demand of the growing business in the United States. Meanwhile, the Beneficiary appoints these sales agents to specific sales territories and monitors the sales performance. He also supervises, informs, supports, and trains the network agents. Although these sales agents initiate the client contact and introduce the equipment, the Beneficiary supervises preparation of quotations, follow-up on quotations and, wherein necessary,

negotiates orders either through the agents or directly with the customer. . . . Thereafter, the Beneficiary liaises closely with the Petitioner's technicians to ensure successful execution of the orders. The Beneficiary is involved in a great deal of discretion and high profit/loss potential.

The Beneficiary has been and will continue to be responsible for the overall development of the company's United States operations, including hiring and managing sales representatives and marketing staff, negotiating contracts with contractors and engineers, preparing and reviewing budgets, preparing monthly business and sales reports, and acting as a liaison with [the parent company]. Although he is the sole employee of the Petitioner at the moment, the Petitioner plans to hire two employees in the United States. So far, the Beneficiary has been directing, negotiating contracts, and marketing the company's products. Specifically, the Beneficiary devises and coordinates the implementation of strategies and plans to pursue market opportunities.

The petitioner cites several unpublished AAO decisions to stand for the proposition that the nature and level of sophistication of a petitioner's business and the scope of the beneficiary's authority are key factors in analyzing which petitions are approvable.

Alternatively, counsel contends that the beneficiary's experience and expertise qualify him as a specialized knowledge employee, and requests that the beneficiary be granted L-1B classification for a two-year period.

In support of the appeal, the petitioner re-submits a copy of the Consignment Sales Agreement between Delphi and the petitioner, through which the petitioner became a registered supplier for Delphi, and evidence of a sales agreement, signed on October 31, 2005, that authorizes another U.S. company, [REDACTED] (REDACTED), to represent the petitioner's products to three specific customers in the North American heat exchange industry.

Counsel's assertions are not persuasive. As a preliminary matter, counsel's request to amend the petition on appeal and adjudicate the petition as a request for L-1B classification is not properly before the AAO. The regulations at 8 C.F.R. § 214.2(l)(7)(i)(C) state:

The petitioner shall file an amended petition, with fee, at the service center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e. from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

The request to reconsider the original petition on appeal as a petition for L-1B specialized knowledge classification is, therefore, rejected.

Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a primarily managerial 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.*

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). 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 position description that describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

The position description submitted with the initial petition suggested that the beneficiary would perform primarily non-managerial tasks necessary to achieve the petitioner's objectives in the United States. The petitioner indicated that the beneficiary would establish "new customers supply systems," investigate new markets for the company's products, provide technical support and services, and "build customer relationships." The petitioner also submitted correspondence between the beneficiary and the petitioner's U.S. business associates, which indicate that the beneficiary is engaged in gathering customer requirements, providing technical information regarding the company's products, and quoting prices. The petitioner's business partners also emphasize their need for the beneficiary to be available to provide technical support for the petitioner's products. If the primary purpose of the U.S. office is to investigate the U.S. market and U.S. customer requirements, to provide technical support for products, and to develop new supply channels for the foreign entity's projects, and if the beneficiary is the only employee of the U.S. company, it is reasonable to conclude that he is primarily engaged in marketing, sales, requirements gathering and technical support duties that do not fall under the statutory definition of managerial capacity. An employee who "primarily" performs the tasks necessary to produce a product or to provide services 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Although the petitioner stated that the beneficiary will "exercise discretion on a daily basis in managing the affairs of the new office," manage an essential component of the organization, and function at a senior level within the organization, the petitioner did not specify what qualifying managerial duties the beneficiary would

perform on a day-to-day basis. The fact that the beneficiary is the sole employee of the U.S. office and has been given a managerial job title is insufficient to establish that the beneficiary's actual duties are primarily managerial in nature. 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 his daily routine. The actual duties themselves will 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).

Furthermore, the petitioner emphasized the petitioner's plans to hire additional employees in the areas of procurement, product development, production and marketing within two years, the ability of the foreign entity to continue to support the beneficiary's position, and the U.S. company's anticipated growth to support its assertion that the beneficiary would be employed in a qualifying managerial capacity under the extended petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner is no longer a "new office" and must establish that it has grown to the point where it is able to support the beneficiary in a primarily managerial capacity. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period.

The director specifically requested that the petitioner clarify the beneficiary's duties, and requested a description of the duties performed in the past year, and the duties to be performed under the extended petition. The petitioner's response to the director's request did not assist in establishing that the beneficiary will perform primarily managerial duties. The petitioner stated that the beneficiary "makes all the personnel decisions, reviews budgets, sets sales goals, decides on which products to pursue and oversees important Research and Development efforts." While these duties may potentially have managerial components, the petitioner does not actually have any personnel, any subordinate employees to prepare budgets for the beneficiary's review or to perform the company's routine day-to-day financial tasks, a sales staff to achieve the beneficiary's goals, a market research staff to assist the beneficiary in deciding which products to pursue, or a research and development staff. Considered in the context of the petitioner's business at the time of filing, these duties have not been shown to be primarily managerial in nature.

The AAO acknowledges the petitioner's assertions that the beneficiary oversees or works with a research and development team based in Korea, which is involved in developing and testing products for U.S.-based customers. However, based on the evidence submitted, it is evident that the beneficiary himself is responsible for gathering the customers' technical requirements and providing on-going support for the products sold in the United States. The petitioner has not explained how the Korea-based research and development staff relieves the beneficiary from the above-referenced market research, requirements gathering, technical support, and other non-qualifying tasks. The petitioner has also submitted evidence to establish that the petitioner has partnered with U.S. companies who will market the foreign entity's and petitioner's products to their own customers. However, there is no evidence to suggest that these sales agency agreements would relieve the beneficiary from performing the majority of the company's sales and marketing tasks. In addition, the petitioner's business partners have stated that the beneficiary has been providing and will continue to provide

technical support for the petitioner's products. On appeal, counsel notes that the beneficiary "supervises preparation of quotations, follow-up on quotations, and, wherein necessary, negotiates orders either through the agents or directly with the customer." Overall the evidence suggests that the beneficiary's role in the sales process requires his performance of duties that do not rise to the level of managerial capacity.

Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In the case of a function manager, where no subordinates are directly supervised, these other factors may include the beneficiary's position within the organizational hierarchy, the depth of the petitioner's organizational structure, the scope of the beneficiary's authority and its impact on the petitioner's operations, the indirect supervision of employees within the scope of the function managed, and the value of the budgets, products, or services that the beneficiary manages.

Although the petitioner emphasizes the sophistication of the petitioner's business, the beneficiary's discretion to operate the U.S. office with only general guidance, the high profit/loss potential of the U.S. operations, and the importance of the U.S. subsidiary as an essential component of the foreign entity, the totality of the record does not support a conclusion that he will perform primarily managerial duties. 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 test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower-level employees or the performance of the duties of a non-managerial or non-executive position.

The AAO acknowledges that the beneficiary's duties relating to the interaction between the petitioner and the parent company, establishing budgets and business plans, and playing a key role in decision-making and major business negotiations could be considered managerial or executive duties. The record suggests that the petitioner's stage of development could require the beneficiary's involvement in these activities in a managerial or executive capacity intermittently, if not on a daily basis. It is reasonable to find that the beneficiary, as the only employee of the company, does exercise managerial-level authority over the U.S. company's operations. However, it is evident that the majority of the beneficiary's time, as dictated by the petitioner's numerous operational and administrative requirements and objectives, is spent on non-qualifying duties associated with market and product research, requirements gathering, marketing, developing customer relationships and sales channels, providing technical assistance and support to customers and business partners, and routine administrative, clerical and financial tasks inherent in operating any business. There is no evidence in the record to suggest that every aspect of the petitioner's business is so critical or so complex that it requires the personal attention of a managerial employee.

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. Whether the beneficiary is a "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial. The record does not establish that a majority of the beneficiary's duties will be primarily managing an essential function of the petitioning organization. While the market investigation, customer requirement gathering and relationship-building, marketing, sales and technical support activities undertaken by the U.S. company may be critical to the foreign organization, the record indicates that a preponderance of the beneficiary's duties will continue to be personally providing these services, rather than primarily managing the U.S. marketing, sales, or technical support activities.

While it is true that a beneficiary employed by a small company or even as the sole employee of a company can qualify for L-1A classification, such petitioning companies are not exempt from establishing that the beneficiary will perform primarily managerial or executive duties. The fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). The AAO does not dispute that small companies require leaders or individuals who plan, formulate, direct, manage, oversee and coordinate activities; however the petitioner must establish with specificity that the beneficiary's duties comprise primarily managerial or executive responsibilities and not routine operational or administrative tasks.

Generally, 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* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). 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 is not fully operational and does not have sufficient staffing after one year to relieve the beneficiary from performing primarily operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

While the petitioner has explained that it always anticipated that it would need approximately two years to lay the foundation for its U.S. business, and that it is actually ahead of schedule in that it intends to hire employees within the next few months, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties at the end of the first year of operations.

Based on the foregoing discussion, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity under the extended petition. For this reason, the appeal will be dismissed.

On appeal, the petitioner also addresses the issue of whether the U.S. company has been doing business in the United States for the previous year, as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). The AAO notes that the director referenced the regulatory definition of "doing business" but did not specifically render a determination on this issue. The initial L-1A new office approval was granted from July 19, 2004 until July 18, 2005.

If a petition indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). If approved, the beneficiary is granted a one-year period of stay to open the "new office." 8 C.F.R. § 214.2(l)(7)(i)(A)(3). At the end of the one-year period, when the petitioner seeks an extension of the "new office" petition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business "for the previous year" through the regular, systematic, and continuous provision of goods or services. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H) (defining the term "doing business").

The petitioner indicated on Form I-129 that the company's gross and net annual income is "N/A." In a letter submitted in support of the petition on June 22, 2005, the petitioner indicated that it anticipated sales of \$210,000 "through the rest of 2004," and sales of \$1 million in 2005. The petitioner submitted: its bank statements for the months of December 2004 through April 2005; a consignment sales agreement entered into by the petitioner on February 23, 2005; and three commercial invoices issued by the petitioner in April 2005. The petitioner also submitted several purchase orders issued by U.S. companies to the foreign entity, dating back to December 2003.

Although the director issued a request for evidence on July 5, 2005, he did not specifically request additional evidence to establish that the U.S. company had been doing business for the previous year. As noted above, the director did not issue a determination on this issue.

On appeal, counsel nevertheless argues that the petitioner is a qualifying organization that has been doing business in the United States. Counsel contends that "L-1 petitions that do not adequately demonstrate 12 months of business activity for the United States office may be adjudicated under the new office standard set forth in Section 214.2(l)(1)(ii)(H)." Counsel further asserts: "the Petitioner has sufficiently demonstrated both the financial strength of the overseas parent company and a business plan projecting its future growth in the United States." Counsel relies on the parent company's December 31, 2002 financial report, the total cost of goods manufactured in Korea in 2002, and evidence of purchase orders and invoices from clients in the United States showing that the foreign entity's products have been exported to the U.S.

The petitioner also submits new evidence in the form of the foreign entity's 2004 financial statements and export list; a letter, dated November 2, 2005, from the Vice President of [REDACTED], who confirms that his company has been conducting business with the petitioner; a sales agency agreement between the petitioner and [REDACTED], dated October 31, 2005; and copies of previously submitted documents.

Upon review, the AAO finds insufficient evidence to establish that the petitioner has been doing business for the previous year as defined by the regulations. Contrary to counsel's assertions, the petitioner will not be held to the "new office" standard simply because it cannot not provide evidence of its business activities for its first twelve months of operations. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii). The petitioner cannot rely on its parent company's 2002 financial statements and its business plan to meet the requirement that the U.S. entity was in fact doing business for the required time period.

While it appears that the petitioner's parent company has been selling its products directly to U.S. customers prior to the formation of the U.S. company, there is no documentation linking the U.S. company to any sales transactions prior to February 2005. The petitioner has not adequately explained how the foreign entity's financial statements and documentation establish that the U.S. company has been actively doing business since July 2004. Further, the petitioner has not provided any evidence of the financial status of the U.S. company, as required by 8 C.F.R. 214.2(l)(14)(ii)(E). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The minimal evidence of the U.S. entity's business activities leads the AAO to conclude that the U.S. company has not been doing business for the previous year. 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).

The petition will be denied and the appeal dismissed 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.

ORDER: The appeal is dismissed.