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U.S. Citizenship  
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Services

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File: SRC 06 102 50246 Office: TEXAS SERVICE CENTER Date: JUN 03 2008

IN RE: Petitioner:  
Beneficiary:



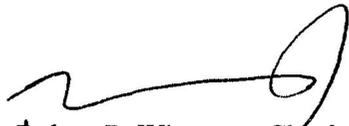
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Texas 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, a Georgia limited liability company, states that it is engaged in sales, installation and service of electronics and satellite radio and television equipment and service. The petitioner claims that it is a subsidiary of Card Board Box Manufacturing Company, located in Calcutta, India. The beneficiary was granted a one-year period of stay in L-1A classification in order to open a new office in the United States and the petitioner now seeks to extend his status for three additional years.

The director initially denied the petition on April 17, 2006, concluding that the petitioner did not establish that the U.S. entity was doing business for the previous year. On May 1, 2007, the AAO withdrew the director's decision and remanded the petition to the director for further action and entry of a new decision. The AAO determined that the petitioner had established that it was doing business during the previous year, but found insufficient evidence to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director re-opened the matter and issued a request for additional evidence, to which the petitioner submitted a timely response.

The director denied the petition on December 4, 2007, concluding that the petitioner had failed to demonstrate that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director found that the evidence submitted in response to the request for evidence, particularly with respect to the petitioner's staffing levels as of the date the petition was filed, was inconsistent with the petitioner's previous claims.

On appeal, counsel for the petitioner asserts that the director erroneously concluded that the beneficiary would not be employed in a primarily managerial or executive capacity. Counsel states that the beneficiary will be performing executive functions in that he will "direct the management of the company, establish the goals and policies of the company, and exercise discretion in making decisions that affect the company." Counsel indicated that he would file a brief and additional evidence in support of the appeal within 30 days. The appeal was filed on January 2, 2008. The AAO contacted counsel by facsimile on April 21, 2008 to determine whether he had submitted a brief or evidence, and to allow counsel the opportunity to re-submit any timely filed documents. Counsel responded on April 23, 2008, and confirmed that he had not filed a brief or evidence in support of the appeal as indicated on Form I-290B. Accordingly, the record will be considered complete.

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 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 in this matter is whether the petitioner established that the beneficiary would be employed by the United States entity in a managerial or executive capacity under the extended petition.

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.

The nonimmigrant petition was filed on February 10, 2006. The petitioner stated on Form I-129 that it employed five workers. In a letter dated January 27, 2006, the petitioner described the beneficiary's duties as its president as follows:

[The beneficiary] has been overseeing all financial, business, marketing and development aspects of the U.S. company's operations. . . .

While in the U.S., [the beneficiary] will continue planning business objectives and developing organization policies; reviewing activity reports and financial statements to determine progress; directing and coordinating the formulation of financial programs to provide funding for new or continuing operations. [the beneficiary] has handled start-up of

the new company and continues to direct that operation through marketing; developing and growing a customer base and maintaining existing customers. As President, [the beneficiary] will continue to enhance the development and marketing aspects of the U.S. operations. He will continue to service as CFO.

The petitioner submitted an organizational chart depicting the following employees reporting directly to the beneficiary: A [REDACTED] a (sales); [REDACTED] (sales); [REDACTED] (technician); [REDACTED] (technician); and [REDACTED] (technician). The petitioner also submitted a chart that included a list of its current and projected employment through 2008. The chart showed that one of its current employees, [REDACTED] was employed on a contract basis. The petitioner indicated that it anticipated hiring one additional technician and one administration employee by the end of 2006.

The director denied the petition on April 17, 2006 based on a finding that the petitioner did not establish that the U.S. company had been doing business for the previous year. The director did not address whether the beneficiary would be employed in a managerial or executive capacity.

The petitioner subsequently appealed the director's decision to the AAO. In a decision dated May 1, 2007, the director withdrew the director's decision, but found that there was insufficient evidence in the record to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The petition was remanded to the director, who was requested to issue a request for additional evidence and enter a new decision.

On August 22, 2007, the director issued a request for evidence in accordance with the AAO's instructions. The director instructed the petitioner to submit the following: (1) a list of the beneficiary's specific day-to-day duties as President of the U.S. entity as of the date the petition was filed; (2) a list of the job titles and specific day-to-day job titles for each employee as of the date of filing; (3) information regarding the number of hours each employee worked, their job requirements, and their educational backgrounds; (4) payroll statements for each employee for the months of January and February 2006; (5) copies of the company's state quarterly wage reports for the first quarter of 2006; (6) copies of IRS Forms 1099 indicating the reporting of any contract employees who worked for the company at the time of filing; (7) job descriptions for any contract employees; and (8) copies of contracts between the U.S. entity and its contract employees, if applicable.

In a response to the director's request, the petitioner provided the following description of the beneficiary's duties:

- Conceptualize, identify and develop new strategic business relationships, business partnering and collaboration opportunities;
- Direct and implement policies and objectives of the company to ensure continuing operations, maximize returns on investments, and increase productivity;
- Analyze operations to evaluate the performance of the company and staff in meeting objectives, and to determine areas of potential cost reduction, improvement or change
- Provide strategic guidance and leadership in coordinating sales initiatives;

- Review financial data on sourcing alternatives;
- Develop business/marketing strategy for targeting potential commercial opportunities;
- Oversee negotiation and management of contracts and ongoing performance review of suppliers.
- Develop, approve and manage budgets, product pricing, product stewardship, procurement contracts and capital expenditures involved in the acquisition and deployment of materials required for satellite installation.
- Develop and manage commercial strategies and plans to optimize business performance in areas such as cash flow, risk management, supplier relationships and performance, and customer satisfaction;
- Manage external relationships important to the success of our company, working with executive level management of suppliers, competitors and/or third parties.
- Influence decisions on organizational structure and selection of personnel;
- Single-point accountability for establishing long-term relationships with appropriate business partners, vendors and clients within the region;
- Provide focal point and leadership on the development of key sourcing and sales performance processes and performance indicators to achieve business improvements and assure sales and performance objectives are met;
- Organize working and fixed capital from business profits with parent company. . .

The petitioner stated that under the beneficiary's leadership the petitioner has grown from five satellite television subscribers in April 2005, to 100 subscribers per month in August 2006, to over 5,000 subscribers as of August 2007. The petitioner further explained the beneficiary's role in the company and delegation of duties as follows:

[The beneficiary] was engaged to a limited extent in day-to-day activities during the early stages of the business. Today, [the petitioner] employs 14 workers: four employees (W-2) and ten independent contractors (1099). With the growth of the company, day-to-day activities such as taking sales call, resolving technical customer issues, dealing with technicians, purchasing and inventory control have been assumed by other personnel, thereby freeing [the beneficiary] to develop new business opportunities, establish new strategic business relationships and develop additional markets.

The petitioner submitted an organizational chart for the U.S. company which shows that the beneficiary supervises a vice president (██████████) and a technical supervisor (██████████). The chart depicts two sales employees, (██████████) and (██████████) under the supervision of the vice president, and a total of nine technicians and two installation companies under the supervision of the technical supervisor. The petitioner also provided the requested detailed job descriptions for the vice president, sales employees and technical supervisor. It is noted that (██████████) and (██████████) all had different job titles on the organizational chart submitted at the time of filing.

The petitioner submitted a copy of its Georgia Form DOL-4N, Employer's Quarterly Tax and Wage Report, for the first quarter of 2006, which confirmed that the petitioner had five employees at the time the petition

was filed. The petitioner reported only four payroll employees during the second quarter of 2006. The petitioner also provided copies of IRS Forms 1099, Miscellaneous Income, issued to a total of 11 contracted technicians in 2006. These employees received payments ranging from \$800 to \$32,845.88.

Finally, the petitioner submitted copies of independent contractor agreements between the company and the contractors named on the organizational chart. Nine of the eleven contracts are dated prior to the filing of the petition on February 10, 2006.

The director denied the petition on December 4, 2007, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director acknowledged the newly submitted organizational chart and independent contractor agreements. However, the director observed that the petitioner claimed to have only one contract employee at the time the petition was filed. The director further observed that the petitioner assigned different job titles to three of its employees, when comparing the new organizational chart to the chart submitted at the time the petition was filed. The director found that the petitioner made material changes to its staffing structure in an effort to make an apparently deficient petition conform to CIS requirements, and noted that such changes are not acceptable. The director concluded that the evidence submitted with the initial petition was not persuasive in demonstrating that the beneficiary would be employed in a primarily managerial or executive capacity, as the evidence suggested that the beneficiary would be engaged in the performance of tasks necessary to promote the petitioner's product.

On appeal, counsel for the petitioner contends that the director erroneously concluded that the beneficiary would be primarily engaged in non-qualifying duties. Counsel provides the following statement on Form I-290B:

The documentary evidence submitted in support of the L-1A petition establishes that the beneficiary is eligible for L-1A classification under Section 101(a)(15)(L) of the Immigration and Nationality Act. The petitioner is seeking to continue its employment of the beneficiary in the position of President. As President, the beneficiary will primarily be engaged in performing executive functions in that he will direct the management of the company, establish the goals and policies of the company, and exercise discretion in making decisions that affect the company.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. It is emphasized that 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). The AAO will only consider evidence relevant to the beneficiary's eligibility as of the date the petition was filed in February 2006.

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.*

At the time of filing, the petitioner submitted a vague description of the beneficiary's duties that provided little insight into the true nature of the tasks he would perform under the extended petition. General statements such as the beneficiary will "oversee all financial, business, marketing and development" of the business, plan business objectives, and develop organizational policies are insufficient to establish that the beneficiary's day-to-day duties are primarily managerial or executive 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).

The petitioner also indicated that the beneficiary would be "developing and growing a customer base and maintaining existing customers," which suggesting that he was directly involved in marketing and promoting the petitioning company and its products, tasks which are not typically considered managerial or executive in nature. 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).

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's initial job description does not allow the AAO to determine the actual tasks that the beneficiary will perform, such that they can be classified as managerial or executive in nature, nor does it adequately indicate what proportion of the beneficiary's time will be devoted to qualifying duties.

While the petitioner provided a lengthier description of the beneficiary's duties in response to the request for evidence, it is evident that the petitioner has either materially changed or inflated the job titles or duties of all of its employees in order to conform to CIS requirements, or the petitioner simply neglected to adhere to the director's request for a description of the beneficiary's duties as of February 2006. For example, the petitioner stated that it *currently* employs 14 workers and that, as of November 2007, the beneficiary is no longer involved in day-to-day activities such as taking sales calls, resolving technical customer issues, dealing with technicians, and purchasing and inventory control tasks. However, the petitioner has not presented persuasive evidence to establish that the beneficiary was relieved of performing such non-managerial duties at the time the petition was filed. When responding to a request for evidence, the petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. Similarly, the petitioner cannot change the job titles, duties and level of authority of the beneficiary's subordinates. The petitioner must establish that the position offered

to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business.

At the time the petition was filed, the petitioner claimed to employ the beneficiary as president, two sales employees, two technicians, and one independent contractor who was also a technician. In response to the director's request for documentary evidence of the company's staffing and organizational structure as of February 2006, the petitioner claims to employ the beneficiary as president, a vice president, two sales employees, a technical supervisor, and 11 subordinate technicians and installation companies. The petitioner also presents new evidence in the form of independent contractor agreements in an attempt to establish that the majority of these contractors were working for the company at the time the petition was filed.

The petitioner has not explained why it initially claimed to employ only one independent contractor, and provided no explanation for the changes in the other employees' job titles and job functions, particularly the addition of a "vice president" and a "technical supervisor." 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). Although all of the independent contractors listed on the new organizational chart did receive payments from the petitioning company in 2006, the petitioner has not demonstrated that any of them, other than [REDACTED], were in fact working for the company as of February 2006. [REDACTED]'s name is the only name that appears on customer installation agreements dated on or before the date of filing. Furthermore, given the petitioner's statement that it had only 100 satellite television customers as of August 2006, its new claim that it employed 11 installation technicians as of February 2006 is simply not credible. 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. at 591.

In light of these unexplained discrepancies and the petitioner's attempts to make material changes to the petition, the director properly excluded or gave minimal weight to the majority of the evidence submitted in response to the request for evidence in making his determination.

Furthermore, the evidence submitted with the initial petition falls significantly short of establishing that the beneficiary would be employed in a primarily managerial or executive capacity. As discussed, the petitioner failed to provide a detailed description of the beneficiary's duties sufficient to establish that he would be employed in a managerial or executive capacity. The fact that the beneficiary manages a business 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, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of “manager” or “executive”). While the AAO does not doubt that the beneficiary exercises discretion over the petitioner's day-to-day operations and has the appropriate level of authority, the petitioner has failed to demonstrate that his duties would be in a primarily managerial or executive capacity as of the date of filing.

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, USCIS 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 USCIS 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 USCIS 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.

At the time of filing, the petitioner was a one-year-old company engaged in selling Dish Network satellite television services. The petitioner operates from a retail location, and, based on the photographs provided, also sells cellular telephones and services. In February 2006 when the petition was filed, the petitioner indicated that it employed the beneficiary as president, two sales employees, and three technicians. Although the director requested a detailed position description for all employees, the petitioner's response did not reflect the actual duties of the beneficiary's subordinate employees as of the date the petition was filed. As discussed above, the petitioner changed the job titles and duties of three of its payroll employees. Due to the petitioner's failure to specify the actual duties performed by its employees as of February 2006, the AAO cannot determine to what extent these employees relieved the beneficiary from performing non-managerial and non-executive tasks. 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)). Furthermore, given the lack of evidence regarding the duties performed by the beneficiary's subordinates at the time of filing, the petitioner has not established that the subordinate employees hold positions that are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

The petitioner reasonably requires employees to market and advertise the business, sell products and services to retail customers, coordinate with customers and technicians to schedule customer installations, respond to customer inquiries and technical questions, maintain relationships with suppliers, provide technical support, purchase and monitor inventory for its store, maintain the company's day-to-day finances, and perform routine clerical and administrative tasks associated with operating a business. The petitioner has not established that two sales employees and three technicians would relieve the beneficiary from actively participating in the day-to-day operations of the company.

Collectively, the lack of a subordinate staff brings into question how much of the beneficiary's time could actually be devoted to the claimed managerial or executive duties. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Furthermore, 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. The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium size businesses. However, the AAO has also long required the petitioner to establish that the beneficiary's position consists of primarily managerial and executive duties. As discussed above, the petitioner has not established this essential element of eligibility.

Although the petitioner appears to have hired additional staff subsequent to the filing of the petition and achieved significant growth with respect to its annual income and customer base, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. As noted above, 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).

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

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.