U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 03 092 52015 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Washington that is operating as an importer and wholesaler of gift items. The petitioner claims that it is the subsidiary of the beneficiary's foreign employer, located in Richmond, British Columbia, Canada. The petitioner now seeks to employ the beneficiary as an executive for one year.

The director denied the petition concluding that the petitioner had failed to demonstrate the following: (1) that the beneficiary was employed by the foreign employer in a primarily managerial or executive capacity; and (2) that the U.S. entity would support the beneficiary in a primarily qualifying capacity within one year of approval of the petition.

Counsel subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded it to the AAO for review. On appeal, counsel contends that Citizenship and Immigration Services (CIS) improperly applied the regulations and failed to consider prior precedent in determining that the beneficiary did not qualify as a manager or executive. Counsel states that if not considered to be a manager or executive, CIS should conclude that the beneficiary is a functional manager. Counsel submits a lengthy brief on appeal discussing the legislative history and Congress' intent in establishing the L visa.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, 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. 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.
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> (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.
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> (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.
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> (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.

Moreover, pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(v), if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation;

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The AAO will first address the issue of whether the U.S. entity would support the beneficiary in a primarily managerial or executive capacity within one year of approval of the petition.

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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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;
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> (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.

On the nonimmigrant petition, filed January 28, 2003, the petitioner stated that the beneficiary's proposed job duties in the United States would include outsourcing the petitioner's product lines, setting up retail outlets, managing the warehouse, communicating with wholesale customers, and performing all office duties. In an accompanying letter from counsel, dated January 20, 2003, counsel stated that the beneficiary would also be responsible for the operation of the petitioning organization, including scheduling trade shows, performing the company's sales and marketing, managing imports, and overseeing shipping and receiving. Counsel also explained that "[w]hen employment requirements demand, [the beneficiary] will also be responsible for [the] hiring and firing of all employees." Counsel submitted an additional letter written by the manager of the beneficiary's foreign employer, which outlined the same proposed job responsibilities.

Counsel also submitted the petitioner's business plan which identified four trade shows in which the petitioner would participate during the year. The business plan also indicated that the petitioner would seek to employ and train individuals in the import, wholesale and retail industry, and further noted that the petitioner would "have access to both human and technological resources of the parent company in Canada to enable it to provide full and efficient service in its start up period."

The director issued a request for evidence, dated January 29, 2003, noting that the record did not demonstrate that the beneficiary would be employed in the United States as a manager or executive. The director outlined the regulatory requirements for both managerial capacity and executive capacity and requested that the petitioner submit a statement explaining how the beneficiary qualifies as either a manager or an executive, or both, if the petitioner is representing the beneficiary would be employed in both capacities. The director explained that the petitioner's response should specifically identify the following: (1) the beneficiary's proposed job duties; (2) the proportion of time the beneficiary would spend on each job duty; (3) the employees supervised; and (4) the petitioner's proposed organizational hierarchy. The director further identified the criteria related to nonimmigrant petitions involving a new office, and asked that the petitioner explain how the petitioner would support the beneficiary in a qualifying capacity within one year of approval of the petition.

Counsel responded in a letter dated March 24, 2003, stating that the beneficiary, as an executive, would be responsible for the entire U.S. operation. Counsel explained that the petitioner did not currently employ any

employees, but anticipate hiring employees to attend trade shows and perform sales duties. Counsel submitted two resumes that counsel explained belonged to possible candidates for employment by the petitioning organization. Counsel further explained that until appropriate staffing levels are achieved, the beneficiary would manage the U.S. office and would be in charge of the petitioner's "essential functions," such as the business' marketing and daily operations.

Counsel also provided a thorough explanation of the legislative history for L visas. As counsel's response is part of the record, it will not be entirely repeated herein. Specifically, counsel stated that CIS may not rely solely on the size of an organization when determining managerial or executive capacity, and noted that the concept of functional manager allows a beneficiary to be considered a manager even though the petitioner does not employ an extensive staff or have staffing tiers. Counsel also stated:

> We have shown [the beneficiary's] complex responsibilities are consistent with an executive or managerial position. The beneficiary functions at the most senior level within an organizational hierarchy and with respect to the international functions managed. The size of the company is not the sole determining factor as to whether an executive or managerial position is warranted. The proper time to demonstrate that the duties of the beneficiary will, after expansion or start up, be primarily managerial or executive in nature, as opposed to the performance of the day-to-day tasks necessary to produce the product or provide the services of the company is after the one year 'probation'.

In his decision, dated April 7, 2003, the director stated that the "vague and general" job descriptions submitted by the petitioner do not demonstrate that the beneficiary would be employed as a manager or executive, as the petitioner failed to explain what the beneficiary would be doing on a daily basis. The director further stated that the beneficiary's responsibilities of handling shipments and performing the business' sales and marketing functions are not characteristic of managerial or executive job duties. Additionally, the director challenged counsel's claim that the beneficiary's knowledge and expertise in starting companies qualifies him as a manager or executive. The director explained that the issue is not whether the beneficiary can successfully start a company, but rather, how the beneficiary's skills contribute to his employment in a managerial or executive capacity. The director also noted that the petitioner did not submit a requested organizational chart, and stated that it was therefore impossible to speculate how the petitioning organization would be structured.

In addition, the director concluded that the petitioner had not established the foreign entity's ability to remunerate the beneficiary and commence doing business in the United States. The director noted that the foreign entity's December 2002 annual report "was void of any dollar amount," and that a statement from a bank in Hong Kong indicated that the beneficiary's account balance was $227.49. The director concluded that the U.S. entity would not support the beneficiary in a qualifying capacity within one year of approval of the petition. Accordingly, the director denied the petition.

In an appeal filed January 28, 2003, counsel states that CIS erroneously concluded that the beneficiary was not eligible for L-1A classification. Counsel claims that "[t]he record shows assets, employees, sub-contractors and international commercial decisions that all require the executive and managerial functions of the beneficiary which are clearly performed in a qualifying capacity."

Counsel submits a lengthy brief on appeal that addresses the legislative history of L visas and discusses case law and AAO decisions, which counsel claims CIS misapplied or failed to consider. As counsel's brief is part of the record, it will not be entirely repeated herein. Specifically, counsel, citing case law and the Operation Instructions, asserts the following:

> There is no simple litmus test that can be used to distinguish among these executive or managerial L categories. Occupations and job titles alone do not qualify an individual for a particular category. Instead, [CIS] looks beyond the stated job title and considers the actual day-to-day duties the individual performs, as well as the overall size and scope of the business operation. *Boyang, Ltd. v. BCIS,* 67 F.3d 305 (9th Cir. 1995).
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> The basic test is whether the majority of the individual's duties relate to operational or policy management, not merely to supervision of low level employees, direct performance of a function, or other participation in the operational activities of the company, such as selling products or operating equipment. Inspectors Field Manual OI 214.2(l)(5)(i)(A)(2).
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> * * *
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> The number and nature of employees supervised is not determinative, but is considered a factor reflecting managerial or executive authority. In determining whether an individual supervises others, "leased or outsourced employees" and independent contractors can be considered in addition to individuals employed directly by the petitioner, provided that the beneficiary has the authority to control how these leased employees and independent contractors perform their job duties.

Counsel also refers to an unpublished AAO matter, *Irish Dairy Board*, in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel claims that this matter "is directly on point," as the present beneficiary is not involved in performing the business' daily functions, but instead, is "solely responsible for the direction of the petitioning entity." Counsel contends that "[the daily functions] are performed by other managers, professionals and sub-contractors, supervisors and trades and crafts persons abroad." Counsel claims that the use of these "contract workers" was "substantially documented" in the record.

Counsel further asserts the following:

> The petitioner has clearly established that the beneficiary is *personally* responsible for developing new business ventures and negotiating contracts worth hundreds of thousands of dollars. These projects are complex and must use a veritable corps of professionals in complicated negotiations and productions relations. We have documented that the petitioner has reached a stage of organization and development and is of such complexity that it can realistically be concluded that the beneficiary is primarily engaged in executive functions, *Irish Dairy Board.*
>
> Should [the beneficiary] manage 'in-house' employees, there would be no question that the beneficiary is an executive or manager. The mere fact that these professionals are in the

> foreign affiliates or 'out-sourced' in Asian countries that produce raw materials is not a valid consideration in denying the petition.
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> * * *
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> [The beneficiary] has meet [sic] all eligibility requirements for L-1A classification as a manager or executive, including those relating to a qualifying relationship between the entities for which the person has been and would be employed. The [response to the request for evidence] explained he is not primarily performing the front line services to provide the company services or otherwise disqualified as a bona fide executive or manager. The supplemental evidence provided also shows the first local hire who will undertake these basic responsibilities. The petitioner requires a key person with materially different knowledge and expertise which are critical for performance of these executive and managerial job duties. They are critical to, and relate exclusively to, the petitioner's products of which the beneficiary has been overseeing the marketing and sales in Canada and Europe. The knowledge gained by [the beneficiary] in founding [sic] and managing the two affiliates in the UK and Canada make him one of very few people able to organize the start up activities. The marketing of these products from remote Asian outsourced providers and farm co-operatives require a thorough knowledge of the product and the ability to communicate to the retail sales network the firm uses. The petitioner has established that skills relating exclusively to its business are necessary for [the beneficiary] to perform his proposed duties of establishing the US affiliate and the start up operations to being marketing [sic] these products. His knowledge of the pattern he developed in founding his other companies is not related to common practices and is not readily available in the United States labor market. On the contrary, [the beneficiary's] knowledge of the contract negotiations, sourcing, shipment, importation, sale and marketing of these products in the North American market is an advanced level of expertise which is materially different from that of others in similar positions.

(Emphasis in original). Lastly, counsel states that in the event the beneficiary is not considered to be an executive or manager, the AAO should conclude that the beneficiary is a functional manager.

On review, the AAO acknowledges counsel's extensive explanation of the legislative history and case law related to L visas. Despite this thorough recitation, the record does not conclusively establish that the U.S. entity would support the beneficiary in a primarily managerial or executive capacity within one year of approval of the petition.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans, organizational structure, and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed

and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

In the present matter, despite counsel's claims otherwise, the petitioner did not submit sufficient documentation that its business plans and proposed personnel structure would support the beneficiary in a qualifying capacity within one year of approval of the petition. Although the director specifically requested an organizational chart and a detailed description of the proposed employment structure, counsel neglected to provide any additional information other than the brief business plan that had been previously submitted with the nonimmigrant petition. With regard to proposed employment, the business plan indicates only that "[the petitioning organization] seeks to employ, train and offer through employment the opportunity for selected individuals to gain experience in the professional import, wholesale and retail industry." Counsel's March 2003 response to the director's request for evidence includes an additional brief explanation that "the firm anticipates hiring new employees to attend trade shows, perform sales duties, and other positions if the company grows according to the projected goals." These descriptions in no way identify the personnel that the petitioner anticipates hiring to support the beneficiary in a primarily managerial or executive position. Additionally, counsel's inclusion of two resumes, which counsel claims are "short listed candidate[s]" for employment with the petitioner, do not provide a clear description of the planned personnel structure. In fact, counsel has not even identified for which positions the candidates are being considered. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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 AAO also rejects counsel's claims on appeal that the record contains "[s]ufficient documentary evidence" of contractual agreements between professionals or independent contractors, and that "[the petitioner's non-qualifying duties] are performed by other managers, professionals, sub-contractors, supervisors and trades and crafts persons abroad." Counsel has not furnished any contractual agreements reflecting a business relationship between the petitioner and independent contractors. This information is not only essential to identifying individuals who would perform the non-qualifying functions of the U.S. business, but would also indicate whether the beneficiary has the authority to control how these individuals perform their job duties. *See* 9 FAM 41.54 N8.2-1. "The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight." *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Furthermore, counsel's claim on appeal that "a new hire" is performing the day-to-day duties of the U.S. organization will not be considered. 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 also notes that the petitioner's financial projections in its business plan reflect an increase of only 10% in the wages and benefits category after the first year, thereby allocating $33,000 in year two for salaries. Assuming the beneficiary's annual salary of $24,000, as noted on the nonimmigrant petition, will also increase in year two, it does not seem probable from the financial projections that the petitioner intends to hire additional employees to support the beneficiary within the first year of approval of the petition. 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).

Additionally, as properly noted by the director, the beneficiary's vague job description fails to specifically identify how the beneficiary would be employed in a primarily managerial or executive capacity within one year of approval of the 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). As required in the regulations, the petitioner must submit a detailed description of the executive or managerial services to be performed by the beneficiary. *Id.* Counsel's brief description in his January 2003 letter of the beneficiary's proposed job duties, including managing the U.S. office, and performing all sales, marketing, shipping and receiving, fails to specifically describe the true nature of the beneficiary's proposed employment. *See 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). Despite the director's request for a specific explanation as to the beneficiary's qualification as a manager, executive, or both, counsel provided the same vague job description: "[The beneficiary] will to [sic] manage the office and be in charge of the essential functions of the U.S. operation, i.e. the marketing and day-to-day operations of the U.S. enterprise until appropriate staffing levels can be attained." Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Counsel also claimed that the beneficiary's "senior level" responsibilities are consistent with those of a managerial or executive position. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. As noted by the director in his request for evidence, the petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing that the beneficiary is both an executive and a manager. Counsel has failed to establish that the beneficiary's employment meets the definition of managerial under section 101(a)(44)(A) of the Act, and executive under section 101(a)(44)(B) of the Act.

Moreover, the beneficiary does not qualify as a functional manager. 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). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Here, although requested by the director, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. Counsel claims that the beneficiary's duties are both managerial and executive, but it fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as performing the business' sales, marketing, shipping, and receiving do not fall directly under traditional managerial duties as defined in the statute. Furthermore, as noted previously, counsel has not accounted for the performance of these non-qualifying job duties by subordinate employees. For this reason, the AAO

cannot determine whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The AAO challenges counsel's claim on appeal that CIS departed from precedent case law and Congress' intent for the L visa. Again, the AAO acknowledges that counsel provides on appeal and in his response to the director's request for evidence a comprehensive explanation of the regulations, case law and legislative history as they relate to L visas. However, it is counsel's responsibility to specifically explain and identify how the facts in the instant matter are analogous to the referenced case law. For instance, on appeal, counsel refers to an unpublished decision involving an employee of the Irish Dairy Board. Although counsel contends otherwise, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the Irish Dairy Board matter. It is simply insufficient for counsel to assert that as in Irish Dairy Board, "[w]e have documented that the petitioner has reached a stage of organization and development and is of such complexity that it can realistically be concluded that the beneficiary is primarily engaged in performing executive functions, Irish Dairy Board." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel also incorrectly claims on appeal that the appropriate time to determine the nature of the beneficiary's job duties is after the petitioner's one-year "probation" period as a new office. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) clearly provides that at the time of filing a petition involving a new office the petitioner shall submit evidence that within one year of approval of the petition the U.S. operation will support a primarily managerial or executive position. Under counsel's interpretation, any beneficiary could be admitted to work for a new U.S. office for one year without the burden of demonstrating future employment in a managerial or executive capacity. The regulations clearly state otherwise. 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. at 249.

The director properly noted in his decision that the foreign entity did not have the financial ability to remunerate the beneficiary and commence doing business in the United States. Counsel states on appeal that "the [director] misunderstood the financial evidence presented." Counsel submits a letter from the beneficiary, in which the beneficiary states that the director misread the submitted account balance as 227.49 Hong Kong Dollars (HKD), rather than the 748,604.17 HKD net balance. It appears that the 227.49 HKD represents the available liquid portion of the referenced savings account. Regardless, the account statements identify the owner of the account as the beneficiary, not the foreign entity. There is no evidence in the record that these funds are available for the foreign entity's use. 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. at 591-92.

The regulations clearly outline the requirements for establishing employment in a primarily managerial or executive capacity when the nonimmigrant petition involves the opening of a new office. As discussed above, the director properly considered the regulatory requirements and precedent case law when concluding

that the petitioner had failed to demonstrate its ability to support the beneficiary in a primarily managerial or executive capacity within one year of approval of the petition. For this reason, the appeal will be dismissed.

The AAO will next consider whether the beneficiary has been employed abroad in a primarily managerial or executive capacity for one year within the three years preceding the filing of the petition.

The director noted in his decision that although requested, the petitioner had failed to describe the beneficiary's job responsibilities during his employment abroad. Counsel did not specifically address this issue on appeal. Counsel states that the beneficiary has performed the "complex duties" of contract negotiations, sourcing, shipment, importation, sales and marketing for the UK and Canadian affiliates. Counsel further claims that "[the beneficiary's] past activities were well documented in the record." Simply outlining "complex duties" performed by the beneficiary abroad, without additional documentation describing the beneficiary's past employment, does not qualify as independent and objective evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 193.

Moreover, the brief description of job duties provided by counsel on appeal indicates that the beneficiary was performing the non-managerial and non-executive job duties of the foreign entity. The petitioner did not provide an organizational chart identifying other employees who relieved the beneficiary from performing the company's shipping, importing, sales, and marketing. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604. For this additional reason, 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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.