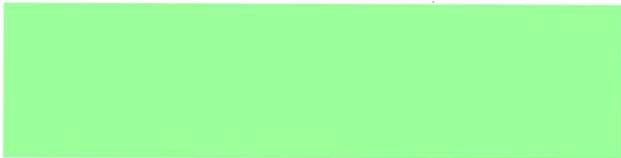
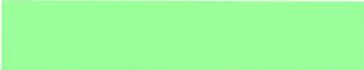


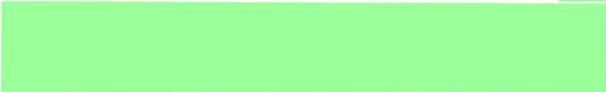


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 26 2013** Office: CALIFORNIA SERVICE CENTER 

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner filed this petition to classify the beneficiary, its president, as an 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 Missouri limited liability company, states that it operates an agricultural import and export business. It claims to be a subsidiary of [REDACTED] located in Beijing, China. The beneficiary was granted one year 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 denied the petition, concluding that the petitioner failed to establish that it will employ the beneficiary in the United States in a managerial or executive capacity.

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. In a statement submitted in support of the appeal, the beneficiary describes the actions the U.S. company has taken during its first year of operations. He explains that the company has signed preliminary agreements with the State of Kentucky and a local fishery which will enable the petitioner to harvest, process and export 10 million pounds of Asian carp from the Mississippi River. The beneficiary requests that he be given an extension of six months or one year in order to start up a processing facility and joint venture with the State of Kentucky, and to hire personnel for this operation. Finally, the beneficiary asserts that he is in fact "an executive manager for an international company." The petitioner submits additional evidence related to the company's fish export plans and other documentation in support of the appeal.

I. The Law

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.

II. The Issue on Appeal

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in a primarily 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;
- (ii) 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.

A. Facts and Procedural History

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the U.S. company was established in 2009, has three employees, and had a gross annual income of \$151,000 in 2009. The petitioner stated that the beneficiary's duties as president are to initiate and organize the branch office, draft work plans for the company, analyze the market, recruit personnel, set up customer relations and start the import and export of goods.

In a letter submitted in support of the petition, counsel stated that the company started to do business in 2009, but noted that the business is "still at the beginning stage." Counsel stated that "it is anticipated that the business will be greatly enhanced next year and more employees will be hired." Specifically, counsel indicated that the petitioner "has cooperated with Illinois State government to export the fish in Mississippi River to China in large quantity." Counsel further noted that the petitioner's trading business was "greatly frustrated" in 2009 due to the trade war between the United States and China.

The petitioner provided copies of Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, documenting payments to two employees in 2009, as well as evidence of business transactions that occurred during the first year of operations.

The director subsequently issued a request for additional evidence. The director instructed the petitioner to submit: (1) a detailed description of the beneficiary's duties including the percentage of time he allocates to each of the specific duties listed; (2) a copy of the U.S. company's state quarterly wage report for the first quarter of 2010; (3) a detailed organizational chart along with the names, job titles, position descriptions, educational qualifications, and source of remuneration for each employee the beneficiary supervises; and (4), if the petitioner claims that the beneficiary will be employed in an executive capacity, a list of the specific day-to-day duties he has performed over the previous six months, including explanations regarding any discretionary decisions he has made and any policies and goals he has established.

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

- Direct and supervise the overall operation of the US entity; 35% of time
- Modify and refine Petitioner's United States business plan; 10% of time
- Review market research reports and sales figures; 10% of time
- Meet with purchasing manager and operation manager of US entity with respect to oversight of corporate procedures; 15% of time
- Analyze and make final decision respecting marketing and sales policies and plans for company products to be exported to China; 15% of time
- Analyze and make final decisions respecting US entity's financial issues; 5% of time
- Hire new managers and other key employees; 5% of time or based on needs
- Retain and oversee outside professionals including lawyers, accountants and general contractors; 5% of time or based on needs.

In addition, the petitioner described the beneficiary's day-to-day duties over the previous six months as the following:

- Meetings with sales manager and operation manager to discuss the on-going projects
- Review the reports from the operation manager and sales manager for updates on the purchase operation of duck and chicken products.
- Meetings with officials from State of Missouri for finalizing projects to catch the river fish and export to China.
- Tele-conference with Chinese government officials and executives of the overseas entity to track progress of the permit situations which should be granted by the Chinese government.

The petitioner stated that in 2009, the company exported chicken, duck and pork to China. In addition, the petitioner stated that it planned to export wild Mississippi River fish to China during 2010, and that it had started working with relevant government agencies in the State of Missouri for this purpose.

With respect to the director's inquiries regarding the company's staffing, the petitioner stated that the beneficiary supervises a purchasing manager and an operations manager. The petitioner indicated that the purchasing manager is responsible for: researching the U.S. market for various grain and meat products; identifying the best suppliers and negotiating terms of purchase and payment; placing purchase orders; and tracking payment for purchase orders. The petitioner stated that the operations manager is responsible for quality control of purchases, product warehousing, refrigeration facility, shipping, warehousing, and customs clearance. The petitioner indicated that both employees have Bachelor's degrees. In addition, the petitioner stated that it outsources its warehousing and shipping operations with an outside service provider, and indicated an open position for "quality control" on its organizational chart.

The petitioner provided evidence of wages paid to these employees, including a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, and Missouri Quarterly Contribution and Wage Report for the first quarter of 2010, as well as its 2010 IRS Forms W-2.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. In denying the petition, the director found that the petitioner's description of the beneficiary's duties was vague and failed to establish what he actually does on a daily basis to qualify as a manager or executive. The director acknowledged that the beneficiary would supervise two employees, but found that the evidence did not support a finding that either employee is a manager or a professional, notwithstanding their job titles. Finally, the director determined that the petitioner failed to submit corroborating evidence related to its use of outsourced warehousing or logistics services.

On appeal, the beneficiary submits a statement explaining the obstacles the U.S. company faced during its first year of operations, noting that the company initially intended to focus primarily on the export of U.S. beef, but had to change its plans when trade talks between the U.S. government and China collapsed. The beneficiary explained that it changed its business plan and started exporting chicken and duck products, as well as waste paper, and noted that the contracts were small and the company was making little profit, particularly after China banned the import of chicken products.

The beneficiary noted since the company was new to the United States market and "not familiar with different laws and regulations," the two locally hired employees "had to assist me with legal issues, leasing office space, purchasing vehicles, etc." The beneficiary explains that he traveled between Missouri and China four times during the first four months of 2010 in order to obtain permits and authorization for the Chinese government to import fish from the United States.

The beneficiary states that, after meeting with various government departments in China to obtain the necessary permissions, the company has agreed with the State of Kentucky upon an investment to build a fish processing facility. The beneficiary explains that a physical building and the required resources are in place to commence the project and that the company has signed a preliminary agreement to export 10 million

pounds of Asian Carp from the Mississippi River to China. He emphasizes that the project is expected to create 300 fishing jobs and 40 jobs at the processing plant. The beneficiary requests that he be granted one year or another six months to start up the new processing facility and joint venture with the local fishery and local government.

In support of the appeal, the petitioner submits: (1) a letter from [REDACTED] Economic Development Director of the [REDACTED] supporting the beneficiary's extension of stay request so that he may continue to work on the project to harvest, process, and export Asian carp; (2) an undated letter of intent from [REDACTED] Illinois, which states that this company has agreed to produce and sell 10 million pounds of wild caught fish from the Mississippi River and its tributaries to the petitioning company; (3) an undated letter from [REDACTED] who states that he has 45 employees and \$500,000 invested in the cooperative arrangement with the petitioning company to process the fish; (4) sales agreements indicating that the petitioner agreed to purchase containers of mixed species fish from Schafer Farms; and (5) photographs of meetings held with local wildlife agencies, fishermen, and processors.

The beneficiary subsequently submitted a supplementary statement in support of the appeal, in which he emphasizes his efforts on behalf of the company and notes that "this type of work is impossible to be done in the time frame of a year or two," due to all of the regulatory requirements applicable to the industry.

A. Discussion

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a primarily managerial or executive capacity under the extended petition or that the U.S. company has grown to the point where it can support a qualifying managerial or executive position.

When examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner 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 petitioner failed to provide the required detailed description of the beneficiary's duties at the time of filing, and instead submitted only a brief statement on the Form I-129. Specifically, where asked to describe the beneficiary's proposed duties, the petitioner stated that the beneficiary would initiate and organize a U.S. branch office, draft work plans for the company, analyze the market, recruit personnel, set up customer relations and start export and import of goods. Many of these are duties that would normally be performed prior to the filing of a "new office" petition or during the first year of operations, and, as such, the petitioner's statement provided no insight into what responsibilities the beneficiary would hold under the extended petition. *See* 8 C.F.R. § 214.2(l)(14)(ii)(C).

In response to the director's request for a detailed description of the beneficiary's duties, the petitioner stated that the beneficiary allocates 35 percent of his time to "direct and supervise the overall operation of the US entity," a responsibility that indicates his level of authority over the company, but fails to provide any further insight into the nature of his day-to-day tasks. 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. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Several other duties included in the petitioner's response to the RFE were similarly vague. For example, the petitioner stated that the beneficiary allocates 25% of his time to reviewing market research reports and sales figures and analyzing marketing and sales policies. The petitioner has not adequately defined the beneficiary's duties related to sales and marketing functions, and established that the beneficiary is relieved from performing non-qualifying duties associated with this function. Similarly, the petitioner indicates that the beneficiary will "analyze and make final decisions respecting U.S. entity's financial issues" but, again, it is unclear who performs routine duties associated with the company's financial issues on a day-to-day basis. The petitioner has not established that either of the beneficiary's subordinates is responsible for sales, marketing, or financial issues based on the descriptions provided.

Thus, while several of the stated responsibilities would generally fall under the definitions of managerial or executive capacity, due to the lack of specificity, the petitioner has offered little insight into what the beneficiary will primarily do on a day-to-day basis. 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 job duties. The petitioner has failed to provide sufficient 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. at 1108.

Furthermore, 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.

The petitioner indicated that the beneficiary spends approximately 15 percent of his time meeting with and overseeing the petitioner's two employees, a purchasing manager and an operations manager. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See sections 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

While both of the beneficiary's employees have managerial job titles, the petitioner has not shown that either of these employees supervise subordinate staff members or perform managerial duties, such that they could be classified as managers or supervisors. In evaluating whether the beneficiary manages professional employees,

USCIS must evaluate whether the petitioner has established that the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, USCIS must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. The petitioner indicates that both of the beneficiary's subordinates have bachelor's degrees, but it did not specify the field of study or specify that a particular degree is required for either position. Upon review of the brief position descriptions, the petitioner has not established that either the purchasing manager or the operations manager occupies a professional position. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position, which is primarily supervisory in nature, does not qualify as a personnel manager position under the statutory definition.

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 position description that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 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. The petitioner has not claimed that the beneficiary will be managing an essential function. As discussed above, the petitioner has not provided a detailed description of the beneficiary's duties sufficient to establish that he performs primarily managerial duties and thus the petitioner has not established that he primarily manages an essential function of the business.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole supervisory employee. The beneficiary must also exercise "wide latitude in

discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

In this case, while the petitioner's general description indicates that the beneficiary has the appropriate level of authority over the organization, the petitioner has not established how would spend the majority of his time focused on the broad goals of the organization. Specifically, the petitioner has not established that it has subordinate staff in place to relieve the beneficiary from day-to-day non-managerial tasks associated with operating the business. 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 section 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").

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 reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)).

Furthermore, in the present matter, 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 is not sufficiently operational or does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational, administrative or other non-qualifying tasks, the petitioner is ineligible by regulation for an extension.

At the end of the first year of operations, counsel stated that the "company's business is still at the beginning stage," but that it expects to hire more employees and expand considerably during the second year of operations. As of the date of filing, the beneficiary was the president of a wholesale export company consisting of a president, an operations manager, and a purchasing manager. As discussed, the petitioner has not demonstrated that the beneficiary, as a personnel manager, will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. *See* section 101(a)(44)(A)(ii) of the Act. Furthermore, the petitioner has not established that the current two-person staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial or executive duties. Further, regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will function at a senior level within an organizational hierarchy. Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory

requirements. Based on the limited documentation furnished, the petitioner has not established that the beneficiary will be employed primarily in a qualifying managerial or executive capacity.

The evidence provided on appeal indicates that the petitioner has begun to finalize negotiations and arrangements that will allow it to export freshwater fish from the Mississippi River to China. The petitioner previously indicated that the company was negotiating with officials in Illinois and Missouri, but now indicates that it has come to an agreement with officials in Kentucky, which supports a finding that this aspect of the business remained in a start-up phase at the time the petition was filed. The petitioner has not objected to the director's specific findings that the evidence available at the end of the first year of operations failed to establish the beneficiary's eligibility as a manager or executive. Instead the petitioner generally objects to the denial, emphasizes that it clearly takes longer than one year to establish the type of fish processing and export operation the company envisions, and presents new evidence, most of which post-dates the filing of the petition. 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'l Comm'r 1978).

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 establish the new office. There is no provision in USCIS regulations that allows for an extension of the new office period. The petitioner has not established that it has grown to the point where it can support a primarily managerial or executive position. Accordingly, the appeal will be dismissed.

IV. Conclusion

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.