



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAY 20 2013** Office: VERMONT SERVICE CENTER FILE: [Redacted]

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

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

ON BEHALF OF PETITIONER:

[Redacted]

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 in accordance with the instructions on 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, Vermont Service Center ("the director"), 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 to extend the beneficiary's employment as an intracompany transferee (L-1A) 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 Florida limited liability company established in 2010, is self-described as a wholesale and retail/e-commerce company. It claims to be a subsidiary of [REDACTED] located in Russia. The beneficiary was previously granted one year in L-1A classification in order to open the petitioner's new office as its vice president. The petitioner now seeks to extend his L-1A status for two additional years.

The director denied the petition concluding that the petitioner failed to establish that it will employ the beneficiary in a qualifying managerial or executive capacity. The director further observed that "it is not clear that the domestic entity is a bona fide business for immigration purposes."

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director erred in determining that the petitioner's operations are not substantial enough to support an executive position, and failed to take into consideration the petitioner's reasonable needs. Counsel contends that the director also erred in finding discrepancies regarding the number of employees working for the company, and by denying the petition, in part, based on the beneficiary's salary for 2010. Counsel submits a lengthy brief 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.

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.

II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The first issue to be addressed is whether the petitioner established that the beneficiary will be employed in a qualifying executive capacity under the extended petition. The AAO notes that the petitioner does not claim that the beneficiary will be employed in a managerial capacity.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it operates a wholesale and retail/e-commerce business with three employees and gross annual income of \$5,437.

On the L Classification Supplement to Form I-129 the petitioner described the beneficiary's duties as its vice president as follows:

- Establishing goals, policies and pricing strategies of the new company.
- Establishing accounting and taxation systems for the newly opened company.
- Establishing relationship with service providing companies.
- Hiring new employees, examining results of their day-to-day activities, control company's sales projects, making final decisions about the projects.
- Control and navigate e-commerce and web-site development.
- Examine opportunities for promotion of company's products on different segments of the market.
- Signing export contracts.
- Check and analyze semiannual and annual reports for the parent company.

(Bullets added.)

In a letter accompanying the petition, the petitioner reiterated these duties and added that the beneficiary also "instructs the head of IT Department [REDACTED] which categories of goods and products of our vendors will be displayed on the web-site, he also approves the amount of inventory that should be bought in stock, the pricing strategies and discounts." The petitioner further stated that the beneficiary "represents the company at the international exhibitions and expos," and "negotiates the terms and conditions of collaborations with potential vendors."

In a separate letter, the petitioner discussed its staffing, noting that the beneficiary hired two full-time employees "to perform export/import operations, customer service and e-commerce." In addition, the petitioner stated that the beneficiary "guided and controlled the creation of our new online gift store, located at [REDACTED]" which "allows us to offer a wide selection of gifts made in the US, Italy, Spain and Russia to the US customers." The petitioner noted that e-commerce has become the company's primary activity in 2011.

The petitioner stated that the world economic crisis limited the number of employees hired, but emphasized that it is planning to hire an employee for the "Chief of Customer Service Department" position in July 2011 and one additional person to perform assistant manager duties in September 2011.

As evidence of the company's staffing levels, the petitioner submitted: IRS Forms W-4, Employee's Withholding Allowance Certificate; IRS Forms 941, Employer's Quarterly Federal Tax Return; Florida Form

UCT-6 Employer's Quarterly Report, and recent paystubs. According to the Forms W-4, the petitioner hired [REDACTED] on February 1, 2011, and [REDACTED] on April 15, 2011. The submitted paystubs reflect that [REDACTED] works full-time at an hourly wage of \$6.30. The petitioner provided evidence that it paid [REDACTED] \$300 in February 2011 and \$300 in May 2011.

The director issued a Request for Evidence (RFE) on May 20, 2011, instructing the petitioner to provide: (1) documentation as evidence of the duties performed by the beneficiary in the past year and the duties he will perform under the extended petition; (2) evidence of the company's staffing, including the duties performed by each employee and the management and personnel structure of the company; and (3) if applicable, evidence of contractors used by the company, including copies of contract and other evidence of the number of contractors used and the duties they perform.

In response to the RFE, the petitioner submitted the following description of the beneficiary's duties performed during the first year of operations:

- Establish goals, policies and pricing strategies for company's products;
- establish goals and marketing strategies for U.S. operations;
- exercise discretionary authority over all decision-making involving U.S. operations;
- establish and [sic] accounting system to monitor company's sales, expenses, and financial projections;
- responsible for developing and overseeing company's sales projects and making final decisions about the projects;
- responsible for hiring new employees and supervise their day-to-day activities;
- collaboration with potential vendors of quality control equipment;
- negotiation of terms and conditions of collaboration and executing contracts with vendors;
- examining opportunities for promotion of company's products on different segments of the U.S. market;
- review contracts and sign contracts on behalf of the company;
- creation and development of company's e-commerce venture (this included the development of the company's website), and
- establish and maintain client relationships[.]

The petitioner stated that the beneficiary will continue to perform these duties and further stated:

For the next two years, [the beneficiary] will be responsible for managing and directing the primary activity of our company, the sale and distribution of quality control equipment. This includes non-destructive control equipment, such as; ultrasound thickness gages, probes, ultrasound flaw detectors, portable x-ray machines, holes detectors, etc., or testing machines. . . . We expect him to continue to represent our company at all relevant industry-themed exhibitions and seminars. He will continue to oversee and be responsible for the supervision of the update and maintenance of our e-commerce division through our online gift store. Under his direction, we expect to add additional staff to our U.S. operations and he will direct

the search for individuals to fill the positions of Search Engine Optimization Specialist, Web-Designer, and an accountant/bookkeeper. As he did during the start-up operations, [the beneficiary] will continue to make decisions concerning search and selection of new vendors of art products in the U.S., as well as maintaining relationships with current vendors of art products and manufacturers of quality control equipment.

The petitioner provided an organizational chart which included the names, job titles, start dates and brief descriptions of job duties for the company's employees. According to the chart, [REDACTED] is the Chief Information Officer and performs the following duties:

- Maintain stable operations of the website [REDACTED]
- Add new products on the website
- Check website for errors, correct if needed
- Edit web pages according to manager's direction and industry standards
- Collaborate with the hosting company and merchant account service

The petitioner indicated that [REDACTED] commenced employment as its Customer Service Representative on April 11, 2011 and performs the following duties:

- Answer phone calls and respond to customer requests
- Provide customers with the full and accurate information about the products on the website, order status, terms and policies of the company, delivery time, etc.
- Identify, research and resolve customer issues using the computer system.
- Upsell products and services.

The director ultimately denied the petition, concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. In denying the petition, the director observed that there appeared to be a discrepancy regarding the petitioner's staffing level when comparing the number of employees stated on the Form I-129, the number of employees reported on the company's latest IRS Form 941, and the number of employees depicted in the organizational chart. The director further observed that regardless of the actual number of employees, the beneficiary appears to be a first-line supervisor of non-professional employees. In addition, in reviewing the beneficiary's stated job duties, the director emphasized that the position description provided was too general and failed to identify what the beneficiary actually does on a day-to-day basis. Further, the director observed that the petitioner did not establish that it actually employed any sales employees as of the date of filing, and concluded that the beneficiary himself was more likely than not performing non-qualifying duties necessary to sell the petitioner's products.

On appeal, counsel asserts that the director erred in finding that the beneficiary will not be working as a bona fide executive. Counsel further states that "[t]he Director's cited discrepancies relating to the number of employees working for the petitioning company and the beneficiary's salary do not reflect a correct review and analysis of the evidence presented and constitutes an abuse of discretion."

Specifically, counsel asserts that the beneficiary's position is in an executive capacity as he "primarily directs the company's U.S. operations, exercises discretionary authority, establishes goals and policies and receives minimal supervision from higher level executives in the Russian parent-company." Counsel emphasizes that the petitioner's operations "are dependent upon the beneficiary's guidance and executive direction." In addition, counsel suggests that the director failed to review the petitioner's letter submitted in response to RFE, which "demonstrates that [the beneficiary] directs the company and the work of subordinate employees rather than [*sic*] perform the routine day-to-day operations of the petitioning company," and performs duties which "fall directly under traditional executive duties."

Counsel addresses the perceived inconsistencies in the petitioner's staffing levels by emphasizing that two additional employees have been hired since the petitioner filed its IRS Form 941 for the first quarter of 2011. Counsel states that the total number of employees is reflected in the submitted organizational chart, and asserts that "[o]nce the petitioner files Form 941 for the third quarter of 2011, which is not yet due, the Form 941 will contain the actual number of employees for petitioner."

In addition, counsel asserts that the director's "erroneous reliance on the size of the business leads to the absurd decision that a small growing business does not require the leadership of an executive," and "shows a failure to take into account the needs, purpose, and stage of development of the petitioning company," as required by section 101(a)(44)(C) of the Act. Finally, counsel maintains that the director placed undue emphasis on the fact that the petitioner's employees do not have college degrees, emphasizing that "nothing in the regulations requires the employees of a petitioning company to be professionals with college degrees." Counsel states that the beneficiary is working as an executive rather than as a manager, and thus there is no requirement that the beneficiary supervise professionals.

Upon review, the petitioner has not established that it would employ the beneficiary in a qualifying executive capacity under the extended petition.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

Here, the petitioner described many of the beneficiary's proposed duties in overly broad terms that fail to identify what specific tasks the beneficiary actually performs as the vice president of a three-person company engaged in two different lines of business. As observed by the director, portions of the beneficiary's position description simply paraphrase the statutory definition of executive capacity. *See* sections 101(a)(44)(B) of the Act. For example, the petitioner has repeatedly stated that the beneficiary will direct the overall operation of the company, establish its goals and policies, exercise discretionary authority over all decision-making, and receive minimal supervision in carrying out his duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Many of the remaining duties described by the petitioner do not clearly fall under the statutory definition of executive capacity. For example, the petitioner states that the beneficiary will continue to be responsible for establishing and maintaining client relationships, reviewing and signing contracts, "examining opportunities for promotion of the company's products on different segments of the U.S. market," collaborating with potential vendors, developing "sales projects," determining which goods to sell on the company's web site, and representing the company at industry exhibitions. Without additional detail as to the nature of the beneficiary's day-to-day tasks, the AAO cannot determine to what extent these duties may be qualifying in nature, and to what extent the beneficiary is directly involving in the sourcing, marketing, and promotion of the company's products. 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. at 1108.

Overall, the beneficiary's job description alone is insufficient to support the petitioner's claim that the beneficiary will be employed in a qualifying executive capacity under the extended petition. When examining the managerial or executive capacity of a beneficiary, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record, including descriptions of a beneficiary's duties and 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. The regulation at 8 C.F.R. § 214.2(l)(14)(ii)(D) requires the petitioner to submit 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.

At the time of filing the petition on May 12, 2011, the petitioner indicated that the company had three employees. In its supporting letter, the petitioner indicated that the beneficiary had hired two full-time employees, and expected to hire a chief for its customer service department in July 2011 and an assistant manager in September 2011. The evidence of record supported that the petitioner had hired one full-time employee, later identified as the chief information officer, in February 2011, and a second employee, identified as a customer service representative. Despite indicating that it hired the customer service representative on a full-time basis in April 2011, the petitioner provided evidence that it paid this employee \$300 in February 2011 and \$300 in May 2011, and total wages of \$600 in 2011. Based on this evidence, the petitioner has not provided evidence that this employee was working for the company on a full-time basis.

In response to the RFE, the petitioner indicated that it had hired a "Sales Manager/Operational Manager" on May 15, 2011, three days after the petition was filed, and indicated that it intends to hire a Search Engine Optimization Specialist, a Web-Designer and an account/bookkeeper, with no further mention of the assistant manager or chief of customer service positions. The petitioner's response did not include evidence of wages paid to the individual identified as the sales manager/operational manager. 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'r 1998) (citing *Matter of Treasure Craft of*

California, 14 I&N Dec. 190 (Reg. Comm'r 1972)). On appeal, counsel explains that "once the petitioner files Form 941 for the third quarter of 2011, which is not yet due, the Form 941 will contain the actual number of employees working for the petitioner." However, the petitioner does not submit a copy of its IRS Form 941 for the second quarter of 2011, which, based on the claimed hire date, should also include wages paid to the sales manager. Given the regulatory requirement that the petitioner provide evidence of wages paid to employees hired during the first year of operations, the AAO agrees with the director's determination that the organizational chart alone cannot be accepted as evidence of the petitioner's actual staffing levels.

Regardless, the record shows that, as of the date of filing the petition, the petitioner employed the beneficiary as vice president, one full-time chief information officer, and a customer service representative who appears to be employed on a part-time or intermittent basis. The petitioner did not indicate any intent to hire a sales manager at that time or any evidence that it had already filled this position. 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'r 1978).

The petitioner stated in its initial letter that the beneficiary's subordinates perform "import/export operations, customer service and e-commerce." A review of the petitioner's position descriptions for its employees, however, indicates that the chief information officer's duties are limited to maintaining, editing and updating the petitioner's web site with new products, and dealing with the petitioner's hosting company and merchant account service provider. The petitioner indicated that the customer service representative resolves customer requests and inquiries related to the petitioner's e-commerce 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 managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-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 managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The AAO does not doubt that the beneficiary has the appropriate level of authority to make decisions for and on behalf of the U.S. company. The petitioner has not, however, shown that the company has developed to the point where it requires him to spend the majority of his time performing the claimed executive duties. Specifically, the petitioner has failed to establish that it had employees to perform the day-to-day operations of its e-commerce and industrial equipment import-export business, such that the beneficiary could allocate the majority of his time to focusing on the broad goals and policies of the organization.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). It is appropriate, however, for USCIS to consider

the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Furthermore, 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.

The petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. The two employees hired as of the date of filing were responsible for responding to customer inquiries regarding the products for sale on the petitioner's e-commerce website and maintaining and updating the website. The job descriptions provided for these employees do not establish that either one performed any duties associated with the petitioner's industrial equipment import-export business (described in response to the RFE as the petitioner's "primary" business), sourcing or purchasing any products for either the e-commerce or import-export business, receiving, packaging or shipping the products, or performing day-to-day bookkeeping, clerical and administrative tasks associated with operating any business. While the petitioner attributed some of these duties to the sales manager in response to the RFE, the record is devoid of evidence of wages paid to this employee and the petitioner did not claim to have the position filled as of the date of filing the petition.

Based on a review of the totality of the evidence, the petitioner has not established that it had a reasonable need for the beneficiary to perform primarily executive duties at the time the petition was filed. The critical facts to be examined are those that were in existence at the actual time of filing the petition. It is well-established in visa petition proceedings that a petitioner must establish eligibility as of the time of filing the petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

USCIS has long interpreted the statute to prohibit discrimination against small or medium-size businesses. USCIS has also consistently required the petitioner to establish that the beneficiary's position consists of "primarily" managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks.

Reading section 101(a)(44) of the Act in its entirety, 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 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 Brazil Quality Stones v. Chertoff*, 531 F.3d 1063, 1070 n.10 (9th Cir., 2008).

For the foregoing reasons, the petitioner has not established that the beneficiary would be employed in a qualifying executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

III. BONA FIDE U.S. BUSINESS

The remaining issue addressed by the director is whether the petitioner "is a bona fide business for immigration purposes."

In the request for evidence, the petitioner was asked to provide clear and detailed color photographs of the interior and exterior of all premises secured for the U.S. entity. The petitioner's response included signed lease agreements for premises located at [REDACTED] in Miami, Florida (signed in June 2011), and for premises located at [REDACTED] Miami Lakes, Florida (signed in June 2010). The petitioner submitted clearly labeled color photographs of two different office locations in response to the RFE.

The director's adverse determination was based on a determination that "the building number and inside office room number" depicted on one set of photographs "do not correspond to the number or address that is claimed for the domestic entity on the instant petition." Upon review, the building and office numbers do in fact coincide with the office premises secured by the petitioner's more recent lease agreement. The director further found that the petitioner had not identified the employees or any customers in the photographs. However, the petitioner was not asked to specifically identify the employees, and there is no reason to believe that the petitioner, which operates an import-export company and an e-commerce website, would have customers in its offices. As the director cited no other deficiencies, the AAO will withdraw the director's determination that the petitioner is not a "bona fide" business entity for immigration purposes. The record shows that the petitioner exists and is doing business as defined in the regulations.

IV. CONCLUSION

The petition will be denied and the appeal will be dismissed based on the petitioner's failure to establish that it would employ the beneficiary in an executive capacity under the extended petition. 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.