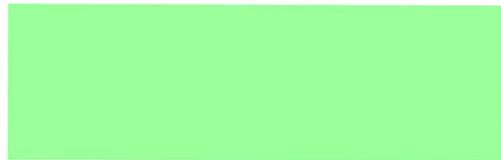


(b)(6)

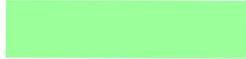
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

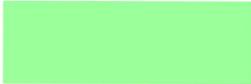


U.S. Citizenship
and Immigration
Services



DATE: **DEC 22 2014** OFFICE: VERMONT SERVICE CENTER

FILE: 

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)

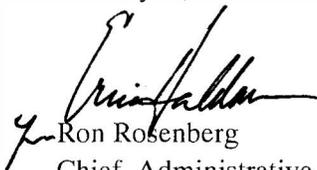
ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a New York corporation, states that it is a subsidiary of [REDACTED], located in China. The petitioner further states on the Form I-129 Petition for a Nonimmigrant Worker that it is an import and export company. The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's employment and status as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The beneficiary was previously granted one year in L-1A status in order to open a new office in the United States and the petitioner now seeks to extend the beneficiary's status for two additional years.

The director denied the petition, concluding that the petitioner had failed to establish that the beneficiary would be employed in a managerial or an executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to our office for review.

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(i)(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 (i)(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)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

II. Facts and Procedural History

In support of the instant Form I-129 filed on July 31, 2013, the petitioner provided a letter dated July 26, 2012. In its letter, the petitioner indicated that it was engaged in the import and export of [REDACTED] products. Regarding the proffered position, the petitioner claimed that it would continue to employ the beneficiary in the position of general manager, and provided the following description of the beneficiary's position:

As General Manager of [the petitioner], [the beneficiary] will be responsible for further developing our relationship with American and North American customers. The beneficiary of our petition will direct the daily activities of the corporation with the staff. She will have discretion over the daily operations and in doing so; she will hire other managers and employees. She will report to the Board of Directors and our parent company in China. [The beneficiary's] duties will also include being responsible for the flowing profitability of American Subsidiary:

1. To carry out the resolution of the board of directors, implement the annual operation plan and objectives approved by the board of directors;
2. To conduct the daily business and management work of the company to ensure the company's objectives are met;
3. To investigate the manufacturers and suppliers of the target products, and finish the value of import and export of the products;
4. To take part in the discussion of cooperative agreements; and sign the related agreements and contracts on behalf of the company;
5. To hire the staffs, to ensure the company's management team; to make employees performances management system;
6. To check and implement the investment plan of the company;
7. To submit the report about the company's business to the board of directors regularly;
8. To formulate the basic management system of the company.

The petitioner also submitted an organizational chart, indicating that the beneficiary, as general manager, would oversee a General Manager's Assistant and Translator. The chart also indicated that the beneficiary would oversee two departments: (1) a Business Department, consisting of three persons; and (2) a Financial Department, consisting of one person. No names or additional information for these claimed employees was provided. The petitioner noted that the business department is responsible for the sales business, collects

potential customers' information, brings in potential products and projects, and is responsible for "customer reception" and project negotiation. The petitioner stated on the Form I-129 that it had six employees as of the date of filing.

In addition, the petitioner submitted a business plan, which provided an overview of the plans for the company during its first year of business, and provided the proposed staffing levels contemplated by the organizational chart discussed above. In addition, the plan indicated that the petitioner was expected to achieve sales in the amount of \$1.5 million in the first year, \$2 million in the second year, and \$2.5 million by the third year of operations. Finally, the plan indicated that the foreign parent company would make an initial investment of \$250,000 in two phases.

The petitioner submitted a copy of its New York Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return (NYS-45) for the second quarter of 2013. The Form NYS-45 indicates that the petitioner had no employees in April, three employees in May and four employees as of June 2013. A total of six employees, including the beneficiary, were listed on the attachment to the Form NYS-45. The petitioner identified three employees on its Form NYS-45 for the first quarter of 2013.

The director issued a request for additional evidence ("RFE") on August 13, 2013, in which he informed the petitioner that the record lacked sufficient evidence to establish eligibility for the benefit sought. Among the list of deficiencies, the director addressed the beneficiary's proposed position with the U.S. entity and well as the company's business operations. The director noted that the evidence submitted regarding the duties of the beneficiary, the petitioner, and the petitioner's organizational structure appeared to relate to the previous year, and not the time period anticipated in the extension request. The director asked the petitioner to submit additional evidence regarding the beneficiary's claimed managerial and executive duties, as well as more information regarding the staffing of the company and evidence that the company was doing business as required by the regulations.

The record also contained a copy of a contract between the petitioner and the foreign parent company, evidencing the petitioner's purchase of \$200,160 in commodities from the foreign entity, to be sold according to the terms and conditions "stipulated below." We note, however, that such terms were not included with the copy of the contract.

In response to the RFE, the petitioner an additional description of the proffered position in a letter dated October 25, 2013. Specifically, the petitioner stated:

As General Manager of [the petitioner], the beneficiary was responsible for developing our relationship with American customers. The beneficiary of our petition was direct [*sic*] the daily activities of the corporation with the staff. She had discretion over the daily operations and in doing so; she hired other managers and employees and reported to the Board of Directors and our parent company in China. [The beneficiary's] duties also include being responsible for the flowing profitability of our company;

Designed and developed strategy to generate sizable business in various verticals and maximizing profits through optimum utilization of available resources in Great China Region and USA regions; Marketing various services and solutions pertaining to the customers;

Establish benchmarking of service standards and formulate proper mechanism to ensure consistency in service; Develop and maintain VIP customer base through relationship marketing by utilizing professional contracts and retaining on high value list of customers and expand the base on continuous basis; Keep out standing within controllable limits an[d] approved guidelines; Succession planning – identification of critical position and grooming successors for the same; Mapping detailed requirements in terms of jobs and persons and their future responsibilities against anticipated positions; Responsible for implementation of all company policies, finance guidelines, SOPs effectively.

She acted as an irreplaceable link between the management of American Subsidiary and China Company; reported the sale situation, financial status of the American subsidiary to China Company; performing various administrative functions essential for efficient functioning of the system and providing support for fulfillment of the company plans and targets. [The beneficiary] played a key role in a company because she keeps in contact with existing market. Some vital matters purely depend on her ability to determine, communicate, organize and supervise the managers' sales proposals, agreements, sales reports and presentations based on sales analysis; supervised updating the database regularly, monitored the trends and evaluated the sales goals; worked closely with and within the departments and helped in co-ordination for sound functioning of the subsidiary company; keeping the company a peaceful and efficient work environment. As Vice General Manager of the foreign company, she is one of the only people that have the ability to accomplish the above tasks, as she knows all the VIP clients, is proficient in the international networking, deeply understands business policies, and corporate governing. As a growing company and one just bought, [the petitioner] needs such vital ability and connection from [the beneficiary] to integrate different resources to grow the business.

The Beneficiary's main responsibility was to lead the Petitioner into a professional and profitable operation. She was not required to provide the services of the company, since the manager and their respective employees and contractors performed those duties. They will solicit local businesses, contact customers, fill out the necessary customers/purchase/order forms, invoices, arrange for shipping, etc. The Beneficiary was therefore be serving [*sic*] in an executive and temporary managerial capacity as defined in the regulations.

The petitioner also submitted an updated organizational chart, which listed the names of employees and their corresponding positions. Specifically, the chart indicated that the beneficiary, as general manager, would oversee [REDACTED] the General Manager Assistant. [REDACTED] in turn would oversee [REDACTED] Director of the Financial Department and Office, as well as [REDACTED] Director of the Business Department. [REDACTED] in turn would oversee [REDACTED] (Sales) and [REDACTED] Clerk (Clerk/Customer Service). A brief description of their associated duties and educational backgrounds was also provided.

Finally, the petitioner also submitted updated financial statements through July 31, 2013 and bank statements as requested by the director.

In a decision denying the petition, the director concluded that based on the totality of the record, the petitioner had not grown to the point in its first year where the beneficiary will be involved in activities that are primarily managerial or executive in nature.

On appeal, the petitioner disputes the director's finding, asserting that the petitioner provided sufficient evidence to establish that the beneficiary would be employed in either a managerial or an executive capacity. The petitioner submits a letter accompanied by additional documentary evidence in support of these assertions.

Upon review, and for the reasons stated below, we find that the petitioner has failed to establish that the beneficiary will be employed in a primarily managerial or an executive capacity.

III. The Issue on Appeal

The primary issue to be addressed in this decision is whether the petitioner established that the beneficiary would be employed in a managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, we 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 in either an executive or a managerial capacity. *Id.* 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). 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 petitioning entity'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 may contribute to a complete understanding of a beneficiary's actual duties and role in a business.

In order to allow the petitioner the opportunity to establish its statutory eligibility, we consider the beneficiary's proposed employment under the statutory definitions of managerial capacity and executive capacity. Both definitions have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary owns or manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. See 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). 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).

Although the beneficiary is not required to supervise personnel, if the petitioner claims that the beneficiary's duties are managerial because the beneficiary will be supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See Section 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, we look to see whether 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).

The petitioner has not established that the beneficiary would be employed in a managerial capacity. In reviewing the petitioner's job description, we find that the petitioner described the beneficiary's proposed employment using vague terminology that paraphrases statutory criteria and fails to convey a meaningful understanding of the job duties the beneficiary would carry out on a daily basis within the scope of the petitioner's service-based business activities and the staffing that was in place at the time of filing. For instance, the beneficiary stated that she would focus, in part, on conducting the daily business and management work of the company and hire staff and supervise staff. While these tasks are generally considered types of managerial duties, it is unclear exactly how these duties will be executed and what type of daily business and management work the beneficiary will perform. Likewise, there is insufficient evidence in the record describing the role that the subordinate employees would play in the business. Finally, and most importantly, all descriptions of the duties of the beneficiary appear to be in the past tense, and seem to focus on what duties she performed in the previous year while opening the new office. The issue before us, however, is what the beneficiary's role will be going forward under the extended petition.

Regardless, the record as currently constituted does not explain what the beneficiary's specific role would be with regard to the petitioner's daily operations, and the extent to which she is involved in the direction and supervision of personnel. Specifically, while the record demonstrates that she will oversee five subordinate employees, three of whom appear to have some supervisory authority, there is insufficient evidence regarding the nature of the subordinate employees' duties and the extent of interaction they will have with the beneficiary. Although the job descriptions of these employees indicate, for example, that the assistant general manager will provide "ongoing face to face customer contact" and that the director of business development will develop a "local sales force team" and apparently handle those duties, the beneficiary's supervisory role with regard to these critical functions, or the employees performing them, is unclear. While the beneficiary's

intent was to establish that she holds a position of seniority, which entails discretionary authority over the petitioner's daily functions, the petitioner failed to sufficiently clarify which of the beneficiary's daily tasks exemplify how she would assume a primarily managerial role in the operations of the company.

Furthermore, while the petitioner indicated that all of the petitioner's employees would report directly to the beneficiary, the petitioner failed to establish that any of her direct subordinates are managerial, professional, or supervisory employees, aside from what their respective position titles may suggest. Namely, while the position of assistant general manager is apparently intended to be distinguished from the two director positions, there is insufficient evidence as to distinctions between these positions within the scope of the petitioner's organization. Although the petitioner is not confined to a specific management structure, any claims made by the petitioner must be supported through the submission of evidence. The record as currently constituted does not establish that the petitioner's organizational hierarchy includes mid-level managers, who would relieve the beneficiary from directly supervising non-professional employees. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, although the record contains evidence of the subordinate employees' respective educational credentials, the nature of the beneficiary's claimed supervision here is questionable. Moreover, though requested by the director, the petitioner did not provide the level of education required to perform the duties of its claimed managerial employees, thereby precluding us from finding that these employees are truly professionals.

Moreover, while supervision of employees is not an express component of the statutory criteria for executive capacity, it is inherent to the definition that 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. That being said, the petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. Rather, the beneficiary claims, as noted above, to perform a hybrid of the duties of these two capacities by including personnel management aspects inherent to the managerial capacity and the policy-making component of the definition of executive capacity.

However, a beneficiary may not be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, the record must contain evidence establishing that the beneficiary meets each of the four criteria set forth in each of the two statutory definitions. As previously stated, providing a detailed job description complete with the beneficiary's daily tasks is critical to meeting the burden of proof, as the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

As previously discussed, the beneficiary's job description in the present matter offers only a vague understanding of the beneficiary's proposed position and does not delineate the actual daily tasks that would explain how the beneficiary will determine the petitioner's goals, oversee its finances and administration, and

direct the formulation of a financial program. Without a detailed statement of the beneficiary's job duties, we cannot overlook the possibility that the job duties involved in these broadly stated functions would be outside the realm of what would be deemed as being within a qualifying managerial or executive capacity. While we acknowledge that no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to the proposed position. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

With respect to the company's level of business activities as of the date of filing, we note that the petitioner's profit and loss statement from July of 2013 listed sales in the amount of \$279,318.02; however, as noted by the director, the record contains no evidence such as invoices, receipts, or purchase orders to corroborate this figure. The petitioner's bank statements at the time of filing showed a transferred deposit of \$227,160.15 on June 26, 2013, but no explanation regarding the nature or origin of those funds was provided. Moreover, while the record contains documentation of the foreign entity's business activity, the record is devoid of similar evidence for the U.S. petitioner. Finally, as noted above, the only evidence of business transactions in the first year of operations is represented by the contract for the purchase of \$200,160 in commodities from the foreign parent company in June of 2013, approximately eleven months after the new office petition was granted. It is clear based on the record at the time of filing that the petitioner had not achieved its forecasted sales goal of \$1.5 million during its first year of operations, and the petitioner did not explain the company's significant departure from this goal.

We note the petitioner's submission of new evidence on appeal, including current bank statements and numerous new contracts and "packing lists." This documentation, however, will not establish eligibility here. 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. Furthermore, after one year, USCIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B).

The majority of contracts submitted on appeal were executed after the filing of the extension request in this matter. Although we note that several contracts were executed in May of 2013, the petitioner failed to submit these documents when afforded the opportunity in response to the RFE. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, we will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. In the instant matter, we find that, in accordance with the findings of the director, that the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Despite the submission of newly executed contracts and documentation establishing that it is currently doing business, the petitioner was required to establish this viability at the time of filing. 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).

As the record reflects that the petitioner had limited business activities during the previous year, we concur with the director's determination that the petitioner failed to establish that it will employ the beneficiary in a primarily managerial or executive capacity under the extended petition. Moreover, the petitioner failed to disclose the beneficiary's specific job duties or establish that its staffing was adequate to relieve the beneficiary from having to allocate her time primarily to the performance of non-qualifying operational tasks. The vague description of the beneficiary's duties further precludes approval in this matter. Accordingly, the appeal will be dismissed.

IV. Conclusion

The petition will be denied for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.