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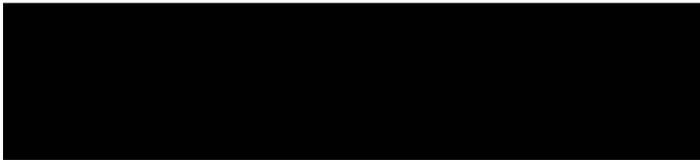
IN RE: Petitioner:  
Beneficiary:



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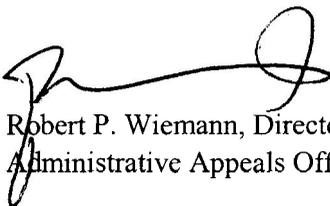
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

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

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a limited liability company organized in the State of Florida that states that it intends to operate “food and gift stores.” The petitioner claims that it is the subsidiary of [REDACTED] located in Istanbul, Turkey. The petitioner seeks to employ the beneficiary as the chief executive officer of its new office in the United States for a three-year period.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary had been employed by the foreign entity in a qualifying managerial or executive capacity; or (2) that the beneficiary would be employed in the United States in a managerial or executive capacity within one year.

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 disputes the director’s findings and asserts that the petitioner submitted sufficient evidence to establish that the beneficiary had been and would be employed in a qualifying managerial capacity. Counsel asserts that the director overlooked evidence submitted in response to a request for evidence, and denied the petition, in part, based on the petitioner’s failure to submit evidence that was not requested. Counsel submits a brief and additional evidence in support of the appeal.

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)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation;
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

The first issue in the present matter is whether the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as

promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

The petition was filed on December 22, 2004. In a December 15, 2004 letter, the petitioner indicated that the beneficiary has been employed by the foreign entity as a full-time finance manager since December 2002. The petitioner stated that in this role, he "was responsible for company finances, as well as long-term planning." The petitioner stated that the foreign entity operates fast food restaurants and exports gift items to the United States. The petitioner referenced an attached "personnel list" for the foreign entity, a translated document titled "Monthly Premium and Service Document," for the month of September 2004. The document lists a total of six employees, four of whom appeared to be employed on a full-time basis. The petitioner also provided a "Signature Declaration" for the foreign entity, which states that the beneficiary and the foreign entity's other 50 percent shareholder have been elected as "Company Managers" with authority to represent the company and "bind it with liabilities in the widest degree by their individual signatures."

On January 5, 2005, the director issued a request for evidence, in part, instructing the petitioner to provide a definitive statement describing the beneficiary's foreign employment. Specifically, the director requested the petitioner to submit: a list of all duties performed by the beneficiary; the percentage of time spent on each duty; and the number of subordinate managers/supervisors or other employees who report directly to the beneficiary and their job titles, duties and educational background. The director also requested that the petitioner specify the level of authority held by the beneficiary, and indicate whether he is employed at a senior level within the foreign entity's organizational hierarchy. Finally, the director instructed the petitioner to submit an organizational chart depicting the structure of the foreign entity.

In a response dated January 11, 2005, counsel for the petitioner provided the following information regarding the beneficiary's foreign employment:

[The beneficiary] has been responsible for company finances, determination of company salaries, investments, new projects, and general accounting and taxation matters. The percentage of time spent on each duty depends on circumstances; for instance last year, [the beneficiary] spent 2-3 months in the United States to pursue the purchase of a restaurant . . . .

[The beneficiary] has authority to sign any statement, contract, or other official document binding on the company regarding any and all financial institutions, government agencies, purchase/sale of company assets, personnel matters. [The beneficiary] functions at a senior level within our company, the other person who has the same level of authority and functions is Mr. [REDACTED] who supervises the retail operations.

As the Finance Manager, [the beneficiary] mostly deals with independent professionals, not employees of the company, such as accountants and lawyers. [The beneficiary] conducts all the company relationships with such professionals and has authority to act in his sole discretion on behalf of the company. In addition, two full-time employees directly report to [the beneficiary] as well: 1) [REDACTED] inventory manager, highschool [sic] graduate, experienced in the field; and 2) [REDACTED], working as food preparation manager, graduate of a two-year culinary school.

The petitioner indicated that the foreign entity has four additional full-time employees, but did not provide the requested organizational chart or any other information regarding the foreign entity's other employees.

The director denied the petition on January 27, 2005, concluding that the petitioner had not established that the foreign entity employed the beneficiary in a primarily managerial or executive capacity. The director noted that the petitioner had failed to provide the requested information regarding the organizational structure of the foreign entity, including job titles and job descriptions for its employees.

On appeal, counsel asserts that the petitioner provided a complete response to the director's request for evidence and submitted sufficient evidence to establish that the beneficiary is employed in a qualifying managerial or executive capacity. Counsel refers specifically to the aforementioned "Signature Declaration" of the foreign entity as sufficient evidence to establish that the beneficiary has the requisite level of authority to be deemed a manager or executive. Counsel contends that the director disregarded the petitioner's documentation and information. In support of these assertions, counsel resubmits the foreign entity's "Signature Declaration."

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary has been employed in a managerial or executive capacity with the foreign entity. 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.*

In the instant matter, the petitioner has provided only a vague description of the beneficiary's job duties that fails to identify what tasks he performs on a day-to-day basis. For example, the petitioner indicated that the beneficiary is responsible for "company finances, determination of salaries, investments, new projects and

general accounting and taxation matters.” The petitioner has not provided details regarding the foreign entity’s “investments” or “new projects,” nor did it identify specific managerial or executive duties the beneficiary would perform within these broad responsibilities. The petitioner indicated that the beneficiary is responsible for “company finances” but did not identify whether the beneficiary would perform all routine operational and administrative aspects of the foreign entity’s finance, accounting and taxation matters, or whether he would direct others to do so. Reciting the beneficiary’s vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary’s daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990). The provided job descriptions do not allow the AAO to determine the actual tasks that the beneficiary has performed, such that they can be classified as managerial or executive in nature. The AAO will not accept a vague job description and speculate as to what qualifying duties the beneficiary may perform.

On appeal, counsel emphasizes the beneficiary’s level of authority within the foreign entity as evidenced by the “Signature Declaration,” granted him authority to bind the company in contracts. The AAO does not doubt that the beneficiary exercises a certain amount of oversight over the company’s operations. The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties related to operational or policy management, not to the supervision of lower level employees, performance of the duties of another type of position, or other involvement in the operational activities of the company. Neither the title of a position nor ownership of the business are, by themselves, indicators of managerial or executive capacity. Therefore, while the beneficiary in this matter evidently exercises some discretion over the foreign entity’s business, the petitioner must still establish that he is not primarily involved in performing the company’s day-to-day operations.

When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary’s duties and those of his or her subordinate employees, the nature of the petitioner’s business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary’s actual role in a business. The limited evidence and job description submitted with the initial petition offered very little understanding of the nature of the foreign entity’s business, its organizational structure, or the beneficiary’s role within it. Accordingly, the director issued a very specific request for additional evidence to establish the beneficiary’s actual duties, the percentage of time the beneficiary devotes to each of his duties, the number of employees he supervises and their job duties, and the foreign entity’s overall organizational structure. As noted by the director, the petitioner failed to respond to the majority of the director’s specific requests. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12).

For example, in response to the director's request for a list of all the beneficiary's duties and the amount of time he allocates to each duty, the petitioner provided the vague description of duties referenced above and indicated that the amount of time he devotes to his duties "depends on circumstances." While this may be true of virtually any position within any company, the petitioner's failure to provide at least an estimate or some explanation as to how the beneficiary typically allocates his time will not be excused. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

In addition, the director specifically requested information regarding the job titles and job duties of employees who are directly supervised by the beneficiary, as well as an organizational chart depicting all of the foreign entity's employees. The petitioner failed to provide the requested organizational chart in response to the director's request, and neglected to provide job descriptions for the beneficiary's claimed subordinates, an "inventory manager" and a "food preparation manager." Again, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Further, the petitioner indicated that the beneficiary spends little time dealing with employees of the company, while another employee "supervises the retail operations." Based on the evidence of record, it appears that the foreign entity operates a fast food restaurant in a shopping center food court, and it also claims to operate an export business. The petitioner's statement that the beneficiary directly supervises two employees who can be assumed to work in the restaurant is inconsistent with its statement that another employee directly supervises the restaurant, and makes it impossible to even speculate as to the beneficiary's actual role within the business. The uncertainty caused by this inconsistency is compounded by the petitioner's failure to provide information regarding the duties of the beneficiary's claimed subordinates, or the positions held by other employees within the company. 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)).

Although the petitioner has stated that the beneficiary "mostly deals with independent professionals" including accountants and lawyers, the petitioner has neither presented evidence to document the existence of these "independent professionals" nor identified the type and scope of services these individuals provide. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

Based on the foregoing discussion, the petitioner has not submitted sufficient evidence to establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

The second issue in this matter is whether the beneficiary will be employed by the United States entity in a qualifying managerial or executive capacity within one year.

In its December 15, 2004 letter, the petitioner indicated that the beneficiary would perform the following duties as the petitioner's chief executive officer:

- 1) Managing company finances;
- 2) Establishing new contacts for the company;
- 3) Establishing long-term policies for development;
- 4) Hiring and firing personnel;
- 5) Supervising day-to-day operations.

The petitioner stated that it intended to operate "food and gift stores," and indicated that its new office would hire four to six full-time employees within the first year of operations, with projected revenues of \$800,000 to \$900,000. The petitioner submitted a letter from its bank indicating that it had an account balance of \$25,014.30 as of December 17, 2004. The petitioner did not submit a business plan or further describe its intended operations or organizational structure in the United States.

In her January 5, 2005 request for evidence, the director instructed the petitioner to submit: (1) a proposed organizational chart for the United States entity; (2) the proposed duties of the beneficiary in the United States, including the percentage of time he will allocate to performing these duties; and (3) the petitioner's proposed staffing levels for the first year of operations, including position titles and proposed duties for all employees to be hired. The director also requested evidence of the funding or capitalization of the U.S. company, including copies of wire transfers or other documents showing the transfer of funds from the foreign entity.

In response, counsel for the petitioner provided the following information regarding the petitioner's proposed staffing levels:

The projected staffing level for [the petitioner] by the end of the first 12-months of operation is as follows: two chefs, responsible for preparing menus, recipes and directing others; two-three line cooks; three-four servers, cashiers. Naturally, the company will hire more personnel if it acquires more than one location. However, that is more likely to happen in the second year of operations. [The petitioner] will also import and wholesale hand-made gift items from Turkey. That department will be directed by Kerim Saatci, the brother of the beneficiary. . . . The level of staffing for the gift-item business will be determined at a later time after detailed study of the U.S. market outside of Florida.

The petitioner did not provide a description of the beneficiary's duties, the percentage of time he would devote to his duties, or a proposed organizational chart for the United States entity in response to the director's request for evidence. In lieu of evidence of monies transferred from the foreign entity, the petitioner submitted a letter from its bank providing the company's account balance as of January 17, 2005.

The director denied the petition on January 25, 2005, concluding that the petitioner had not established that the beneficiary would be employed by the United States entity in a qualifying managerial or executive capacity within one year. Specifically, the director observed that the petitioner had failed to respond to the director's specific requests for additional evidence regarding the U.S. entity and the beneficiary's proposed position, and found that the petitioner had therefore failed to support its assertions that the beneficiary would

be employed in a managerial or executive capacity. The director noted: “It is not sufficient for the petitioner to merely assert that the beneficiary is or will be a manager [or] executive.”

On appeal, counsel for the petitioner asserts: “The proposed duties of the Beneficiary are explained in the Petitioner’s original letter. Beneficiary’s duties comply with the requirements of the Federal Regulations; they are managerial in nature. We never stated that the Beneficiary will work to produce a product or to provide a service, or as a first-line supervisor.”

Counsel’s unsupported assertions are not persuasive. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Upon review of the petition and the meager supporting evidence submitted for the record, the petitioner has not established that the beneficiary will be employed by the U.S. entity in a qualifying managerial or executive capacity within one year.

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.*

In the instant matter, the petitioner has provided only a vague description of the beneficiary’s job duties that fails to identify what his tasks will be on a day-to-day basis. For example, the petitioner indicates that the beneficiary will be responsible for “overseeing company finances,” “establishing new contacts for the company” and “supervising day-to-day operations.” None of these broad responsibilities, without further explanation, would necessarily require the beneficiary to perform primarily managerial or executive duties. The petitioner did not indicate with whom or for what purpose the beneficiary would “establish new contacts,” identify who would perform routine financial duties such as bookkeeping, banking or paying bills, or provide sufficient information regarding its proposed “operations” to enable the AAO to determine whether “supervising” such operations would elevate the beneficiary’s duties to that of a manager or executive. The petitioner also indicated that the beneficiary would be responsible for “hiring and firing personnel” and “establishing long-term policies.” These duties merely paraphrase portions of the statutory definitions of managerial and executive capacity. See sections 101(a)(44)(A)(iii) and 101(a)(44)(B)(ii) of the Act. 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). The actual duties themselves reveal the true nature of the employment. *Id.*

The director requested a detailed description of the beneficiary’s proposed duties and the percentage of time he would devote to each of these duties, as well as an organizational chart depicting the petitioner’s proposed staffing levels after the first year of operations. As noted above, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8

C.F.R. § 103.2(b)(14). The petitioner did not acknowledge, much less respond to the director's request for a detailed description of the beneficiary's proposed duties. For this reason, the petition cannot be approved.

The AAO acknowledges that the petitioner did attempt to describe its intended staffing levels, although it opted not to provide a proposed organizational chart. In the initial supporting letter, the petitioner stated that it anticipated hiring four to six staff in its first twelve months of operations. In response to the director's request for information regarding the job titles and job duties of the beneficiary's proposed subordinates, the petitioner indicated that the petitioner would employ a total of seven to nine employees, including chefs, cooks, cashiers and servers. The petitioner provided no explanation or evidence, such as a business plan, to clarify the inconsistency with respect to the proposed number of employees or otherwise document how it intended to support its proposed staffing level. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Regardless of how many employees the petitioner actually intends to hire, the AAO notes that, based on the job titles provided, the beneficiary's subordinates will all be engaged in preparing and serving food and handling sales transactions in the petitioner's restaurant. The petitioner has not identified any employees who would perform other routine operational and administrative tasks associated with operating a restaurant, such as purchasing food, equipment and supplies, ensuring compliance with industry regulations, scheduling and supervising kitchen and dining room staff, reconciling daily cash register receipts, performing sales and marketing tasks, bookkeeping, and daily banking transactions. Since the petitioner indicates that its other managerial employee will be responsible for the petitioner's "import and wholesale" department, and the beneficiary will not supervise any administrative or tier of supervisory personnel, it is reasonable to conclude that the beneficiary would be required to devote a substantial portion of his time to performing non-qualifying administrative and first-line supervisory tasks. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. The word "primarily" is defined as "at first," principally,' or "chiefly." *Webster's II New College Dictionary* 877 (2001). Where an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, that individual cannot also be "principally" or "chiefly" performing managerial or executive duties. To make such a determination it is necessary to require a detailed description of the beneficiary's duties and the time the beneficiary devotes to these duties. It is especially relevant when, as in this case, it is apparent that several of the beneficiary's daily tasks do not fall directly under traditional managerial or executive duties as defined in the statute. *See e.g. IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). As discussed above, the petitioner opted not to provide a detailed description of the beneficiary's duties or the amount of time he would devote to such duties. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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

The petitioner's "business plan" in this matter consists of the petitioner's statement that it intends to operate "food and gift stores," hire either four to six or seven to nine employees, and achieve revenues of \$800,000 to \$900,000 in its first year of operations. The petitioner's statements are not supported by any financial projections, market research, or other supporting documentation. Thus, the petitioner has not provided sufficient evidence to establish the proposed nature of the office describing the scope of the entity, its organizational structure and its financial goals. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(1). The petitioner intends to operate a restaurant and an import business and thus reasonably requires a lease for a restaurant as well as office and warehouse space for its proposed import and wholesale business. The petitioner has submitted a lease for an undetermined amount of office space. There is no evidence that the petitioner had located, much less purchased or rented, a location from which to operate a restaurant or warehouse space. 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. at 165.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(2) requires the petitioner to disclose the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States. In this matter, petitioner provided evidence that the U.S. company had opened a bank account with a balance of approximately \$25,000. As noted above, the petitioner did not provide a copy of its business plan, therefore, it is impossible to determine whether a \$25,000 investment would be sufficient for it to commence operations in the United States. In addition, although specifically requested by the director, the petitioner failed to submit documentary evidence to establish the source of these funds, evidence of financial resources committed by the foreign entity, or other documentation, such as bank statements, profit and loss reports or accountants' reports, to show the financial status of the foreign entity. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). On appeal, the petitioner submits evidence that the foreign entity transferred \$30,000 to the petitioner's U.S. bank account on February 18, 2005. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, here, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The petitioner has not provided sufficient evidence regarding the size of the United States investment or the financial ability of the foreign entity to commence doing business in the United States.

Collectively, the vague job description, the petitioner's failure to describe its proposed organizational structure, the lack of a business plan, the lack of a lease agreement for the proposed type of business, and the insufficient evidence of the petitioner's funding do not demonstrate a realistic expectation that the enterprise will succeed and rapidly expand to the point where it would require a manager or executive to perform primarily qualifying duties within one year. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that a qualifying relationship exists between the U.S. and foreign entities as required by 8 C.F.R. § 214.2(l)(3)(i). The petitioner claims to be a wholly-owned subsidiary of the foreign entity and has provided its articles of organization, identifying the foreign entity as a member of the U.S. limited liability company. The petitioner did not submit copies of its membership certificates or documentation of monies, property or other consideration furnished to the petitioning entity in exchange for its membership in the company. As discussed above, the director specifically requested documentary evidence to establish that the foreign entity had actually transferred funds to the petitioner, and the petitioner failed to respond to this request. Accordingly, the AAO finds no evidence that the foreign entity has paid for its purported interest in the U.S. entity. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.