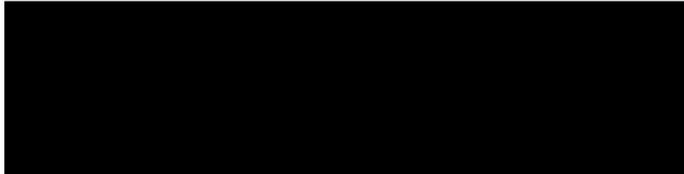


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FILE: SRC 05 150 51292 Office: TEXAS SERVICE CENTER

Date: FEB 22 2007

IN RE: Petitioner:
Beneficiary:



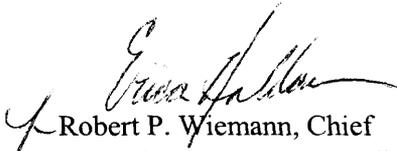
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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, Chief
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 appeal will be dismissed.

The petitioner, a Florida corporation, claims to be a subsidiary of [REDACTED], located in Venezuela. The petitioner states that the United States entity is engaged in the property management, construction, and land developing business. Accordingly, the United States entity petitioned U.S. Immigration and Citizenship Services (USCIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The beneficiary was initially granted a one-year period of stay, and the petitioner now seeks to extend the beneficiary's stay in order to continue to fill the position of administrative office manager.

On September 22, 2005, the director denied the petition concluding that the record contains insufficient evidence to demonstrate: (1) that the beneficiary will be employed in a managerial or executive capacity; (2) that the beneficiary was employed by the foreign company in a primarily executive or managerial capacity; (3) that the foreign parent company is doing business; and (4) that the United States company is doing business as required by the regulations.

The petitioner timely submitted Form I-290B and appealed the decision of the director. On appeal, the petitioner submits numerous documentation to establish that the beneficiary will be employed in a managerial or executive capacity; that the beneficiary was employed by the foreign company in a primarily executive or managerial capacity; and that both the foreign company and the U.S. company are doing business as required by the regulations. The petitioner did not submit a brief in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further 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.

The first issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity by the U.S. entity. Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) 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), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (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 nonimmigrant petition was filed on April 4, 2005. The Form I-129 indicates that the beneficiary will be employed in the position of administrative office manager and the job duties will include the following:

Conducting all office operations; marketing activities; new investments. Managing, hiring training personnel. Banking transactions, preparing budget, executive representative for the US office.

On May 16, 2005, the director requested additional evidence to establish that the beneficiary will be performing the duties of a manager or executive with the U.S. company. Specifically, the director requested: (1) evidence of the staffing level of the United States company, including all position titles, duties performed, and documentary evidence of the employees' educational background; (2) the petitioner's Forms 941, Employer Quarterly Report, for 2004 and 2005; and, (3) an organizational chart of the U.S. company, clearly indicating which employees report directly to the beneficiary.

In its response, the petitioner submitted a description of the duties performed by the beneficiary at the U.S. company during the past year as the following:

General functions:

-Strategic and Operational Planning: She sets the goals for the company and defines objectives of the business, organizing in the best way to achieve them.

-Assigning Responsibilities: She is assigning all responsibilities to the personnel under her supervision in order to achieve the objectives planned. Specifically into Sales Department,

financial department and projects department. –She develops individual standards of performance, evaluating of what will occur when a subordinate fulfills his or her responsibilities well in order to take specific actions to improve the business management.

-Controlling: The beneficiary is performing the daily management control of the [U.S. company], making sure that the objective had been reached.

Specific functions:

- 1-Carrying out any decisions made by the Board of Directors
- 2-Chairing the meetings of the Board of Directors and the General Meeting.
- 3-Drafting and signing the reports made by the Board of Directors
- 4-Representing the company in any court actions.
- 5- Coordinating the banking business for the company.
- 6- Carrying out any operations involving real or personal property.
- 7-Entering into any real or personal property leases.
- 8-Entering into commitments, lifting guarantees, attachments, oppositions or other rights.
- 9-Designing and carrying out the policies and strategies of the business
- 10-Setting the marketing policies in order to expand the company's clientele.
- 11-Training departmental managers on any new products, promotions, events and technologies.
- 12-Deciding along with the Advertising and Marketing Department on any new promotions.
- 13-Reviewing the financial statements of the company
- 14-Drafting the income and expense budget of the corporation
- 15- Coordinating the hiring of any new services.
- 16-Hiring and terminate personnel
- 17-Reviewing and authorizing the corporate payroll

In addition, the petitioner listed the individuals currently employed by the U.S. company, which are a project manager, a sales manager and an administrative assistant. According to the brief job description provided for the project manager, it appears that this position will oversee and manage the construction projects, including scheduling, and the design and construction process. It appears that the sales manager will coordinate the marketing and sales operations for the company, and the administrative assistant will oversee the administrative tasks for the office.

The petitioner also submitted the United States company's Form 941, Employer's Quarterly Federal Tax Return, for the quarters ended March 2005, December 2004, and September 2004. According to the Form 941 for the quarter ended in March 2005, the quarter immediately preceding the quarter in which the instant petition was filed, the U.S. company employed three employees, the beneficiary, the project manager and a third individual who is not identified in the U.S. entity's organizational chart or in any documentation in the record. The employees identified as sales manager and administrative assistant appeared on the petitioner's 2004 quarterly reports, but appear to have left the company prior to the filing of the instant petition.

The director denied the petition on September 22, 2005 concluding that the petitioner did not submit sufficient evidence to establish that the beneficiary will be employed in a primarily executive or managerial

capacity. The director further suggested that the petitioner did not provide evidence of subordinate employees who would relieve the beneficiary from performing the tasks necessary to produce a product or to provide services.

On appeal, the petitioner submits a breakdown of the duties performed by the beneficiary in the United States as follows:

To open, develop a corporation and set up company policies.....	15%
Supervise, organize and has direct control over the company investment and design objectives and goals to the company.....	25%
Manage all banking design and budget.....	5%
Supervise market research on city and state.....	10%
Supervise, direct and control of contracts for sale, buy and rental contract.....	25%
Responsible for improving the services, hiring and firing employees.....	10%
Define marketing objectives to increase business.....	10%

In addition, the petitioner stated that the beneficiary supervises the project manager and the sales and marketing manager. The petitioner re-submitted the brief job descriptions for these two positions as noted above. On appeal, the petitioner does not indicate that the beneficiary will supervise an administrative assistant as stated in the petitioner's response to the director's request for evidence as mentioned above.

Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity. 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.*

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 prove 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).

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include "set the goals for the company and defines objectives of the business, organizing in the best way to achieve"; and "coordinating the banking business for the company"; "designing and carrying out the policies and strategies of the business." The petitioner did not, however, define the petitioner's goals and policies, or clarify the beneficiary's role in performing the company's banking and other routine financial tasks. Reciting the beneficiary's vague job responsibilities or broadcast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of her daily routine. 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).

In addition, the job duties required of the beneficiary include non-qualifying duties such as the beneficiary will be "carrying out any operations involving real or personal property"; "entering into any real or personal property leases"; "setting the marketing policies in order to expand the company's clientele"; and "drafting the income and expense budget of the corporation." In addition, the petitioner indicated that the beneficiary is "assigning all responsibilities to the personnel under her supervision in order to achieve the objectives planned. Specifically into Sales Department, financial department and project department." Since the petitioner has not confirmed that the beneficiary will supervise a support staff in the sales and financial department who are in charge of accounting, negotiations, marketing, sales and and/or financial development, it appears that the beneficiary will be providing the services of accounting, sales and market operations and preparing financial statements and budgets, rather than directing such activities through subordinate employees. 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. 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 the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary will spend on various duties. While the petitioner has provided a breakdown of the percentage of time the beneficiary will spend on various duties, the petitioner has not articulated whether each duty is managerial or executive. Thus, the AAO must attempt to glean the nature of the beneficiary's proposed duties from the vague descriptions submitted.

On appeal, the petitioner indicated that the beneficiary will spend 25 percent of her time to "supervise, organize and has direct control over the company investment and design objectives and goals." As noted above, the U.S. company's employer's quarterly wage reports confirm that the U.S. company employed the beneficiary, one project manager, and one individual whose role within the company has not been established. Since the U.S. company employs the beneficiary, one project manager and one employee who is unidentified in the record, it can be reasonably assumed that the beneficiary will perform several non-qualifying duties such as negotiating contracts, contacting new clients, researching the potential market, preparing the budget, and performing other routine operational, administrative and financial tasks. In addition, without additional clarification from the petitioner regarding the managerial or executive duties involved, the AAO cannot distinguish this vague responsibility from routine administrative tasks. These duties have not been shown to be managerial or executive in nature. 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)).

The petitioner also indicated that the beneficiary will spend 10 percent of her time to "supervise market research on city and state;" and 10 percent of her time to "define marketing objectives to increase business." According to the U.S. entity's organizational chart, it appears that the U.S. company employs one sales and marketing manager. However, in reviewing the company's Form 941, Employer's Quarterly Federal

Tax Return, for the quarter ended in March 2005, the individual listed as sales and marketing manager on the organizational chart is not listed on the Form 941. Thus, the petitioner has not submitted evidence to establish that the sales and marketing manager is in fact employed by the U.S. company. Thus, it appears that the beneficiary will be directly performing the sales functions, rather than supervising the work prepared by subordinate employees. The lack of employees for the beneficiary to direct and coordinate raises questions as to whether the beneficiary will be managing these activities or actually performing the petitioner's sales and marketing duties. Thus, it appears the beneficiary will spend a majority of his time performing non-managerial duties associated with sales and marketing functions. 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Finally, the petitioner indicated that the beneficiary will spend 25 percent of her time to "supervise, direct and control of contracts for sale, buy and rental contracts." According to the job description submitted for the project manager, it appears that he will manage the projects once the contract is signed rather than managing the process of obtaining the contract. Thus, it can be reasonably assumed that the beneficiary will perform several non-qualifying duties such as negotiating contracts, contacting new clients, researching the potential market, and preparing the budget. These duties have not been shown to be managerial or executive in nature. Again, 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 petitioner indicated on the Form I-129 that the company has three employees. In addition, the petitioner submitted in its response to the director's request for evidence a list of the current employees at the U.S. company which indicates one project manager, one sales manager, and one administrative assistant. As noted by the director, according to the company's quarterly tax return, Form 941, Employer's Quarterly Federal Tax Return, for the quarter ended in March 2005, the quarter right before filing the instant petition, the company employed three individuals. The individuals listed on the return are the beneficiary, the project manager, and a third employee who does not appear in any of the documentation submitted by the petitioner. In response to the director's request for evidence, the petitioner stated that the U.S. company employs one sales and marketing manager, and one administrative assistant, however, these individuals are not listed on the employer's quarterly wage report for the first quarter of 2005, the quarter before the instant petition was filed. In addition, the petitioner did not submit Form 941, Employer's Federal Tax Return, for the quarter in which the instant petition was filed. Moreover, the petitioner has not explained the job title and job duties for one of the employees listed on the Form 941. 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). In addition, the petitioner did not submit any documentation to establish that the sales manager and the administrative assistant are actually hired by the company. The petitioner did not submit pay stubs, or the company's subsequent Employer's Quarterly Reports to establish that the U.S. entity has hired the two additional employees listed as current employees of the U.S. 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. at 165.

On appeal, the petitioner acknowledges the inconsistencies found in the evidence regarding the U.S. company's employees. The petitioner asserts that inconsistencies were found in the record because the U.S. company is a "new company in the process of organizing a multinational company and have difficulties with some of the new employees and was necessary to make changes." However, the petitioner did not explain who are the current individuals employed by the U.S. company and their job titles and duties. Again, 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 record only confirms the employment of the beneficiary, the project manager, and an unidentified third employee at the U.S. company. A critical analysis of the nature of the petitioner's business undermines the petitioner's assertion that the beneficiary supervises subordinate employees who would relieve her from performing non-qualifying duties. Rather, it appears from the record that the only individual performing any marketing and sales functions, finance operations and business development activities is the beneficiary herself. As the United States company has only a project manager and an unidentified employee, it can be reasonably assumed, and has not been proven otherwise, that the beneficiary is performing all other sales and marketing functions and financial development, and all of the various operational tasks inherent in operating a business on a daily basis, such as negotiating contracts, researching the market, and handling client relations. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude her from functioning in a primarily managerial or executive role.

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate 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. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the administrative and operational tasks of the project manager, who is the beneficiary's subordinate employee. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner has not demonstrated that the U.S. company has hired additional employees who would relieve the beneficiary from performing primarily non-qualifying duties associated with operating a business. 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. Accordingly, the appeal will be dismissed.

The second issue to be addressed is whether the beneficiary has been employed in a primarily managerial or executive capacity for the foreign entity.

The nonimmigrant petition was filed on April 4, 2005. On May 16, 2005, the director issued a notice requesting additional information of the beneficiary's employment abroad with the parent company. Specifically, the director requested a definitive statement describing the beneficiary's foreign employment including her position title; all duties performed; the number of subordinate employees who reported to the beneficiary, including job title, job duties, and their educational levels; an indication of the qualifications required for the position occupied by the beneficiary; and documentary evidence of the beneficiary's qualifications. In addition, the director requested an organizational chart of the foreign company.

In the response, the petitioner indicated that the beneficiary's foreign position was as Administrative and Marketing Manager and her duties were the following:

Supervising, controlling and developing the company goals, identifying new business for the company in foreign markets, the financial and administrative control. Conducting all office operation in connections [sic] with marketing activities, new investments, managing, hiring and training personnel.

In addition, the petitioner indicated that the beneficiary supervised the departments of Public Relationship and Advertising and Marketing.

The director denied the petition and stated that the petitioner had not established that the beneficiary was employed in a managerial or executive capacity with the foreign company. The director also noted that the petitioner did not submit the requested documentation of the beneficiary's job duties, and the job duties of her subordinates.

On appeal, the petitioner indicates that the beneficiary's foreign position was as investment manager and she supervised the administrative manager and the marketing manager. The petitioner also submits the following job description of the beneficiary's duties at the foreign company:

- Organize and has direct control over the company any [sic] investments and design objectives and goals to the company
- Supervise contracts for sale, buy and rental
- Decision of the company change of budget
- Decision marketing objective
- Conduct market analysis [sic]
- Implement strategies with respect to market penetration

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(1)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed and indicate whether such duties are in a managerial or executive capacity. *Id.*

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 prove 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).

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 petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. In the request for evidence, the director requested that the petitioner submit a definitive statement describing the foreign employment of the beneficiary. The petitioner provided a very vague statement in its response. This evidence is critical, as it would have established if the beneficiary held a position of managerial or executive capacity by the foreign company. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). 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). In the instant matter, the petitioner did not submit a detailed job description of the duties performed by the beneficiary at the foreign company and thus AAO cannot determine if the beneficiary was employed by the foreign entity in a managerial or executive capacity. 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.

Based upon the lack of a comprehensive job description, the lack of evidence of the foreign company's staffing levels, and the minimal evidence submitted regarding the business activities of the foreign entity,

it cannot be concluded that the beneficiary was employed by the foreign entity in a managerial or executive capacity. For this additional reason, the appeal will be dismissed.

The third issue in this proceeding is whether the United States entity is doing business as defined in the regulations.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

Qualifying organization means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

Doing business means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The nonimmigrant petition was filed on April 4, 2005. In support of its initial claim that the United States entity has been doing business in 2004, the petitioner did not submit any supporting documentation. On May 16, 2005, the director requested additional evidence to demonstrate that the U.S. company was doing business during the past year. In particular, the director requested copies of bills of sale, invoices, contracts and the like.

In the petitioner's response, the petitioner submitted the U.S. company's IRS Form 1120, U.S. Corporation Income Tax Return, for 2004; the U.S. company's financial statement as of December 31, 2004 to April 28, 2005; bank statements in the U.S. company's name from April 2004 through March 2005; a document entitled "proposal/contract" from Escon Construction to the U.S. company for a proposed project for constructing a warehouse; bills issued to the U.S. company; one bill of sale for which the U.S. company purchased a trailer; and several invoices issued to the U.S. company.

The director denied the petition asserting that the petitioner did not submit sufficient evidence demonstrating that the U.S. entity has been or is engaged in the regular, systematic, and continuous provision of goods and/or services as a qualifying organization.

On appeal, the petitioner resubmits several of the above-referenced documents. In addition, the petitioner submits additional invoices issued to the U.S. company, and three business lease agreements.

On review, the evidence submitted is insufficient to establish that the U.S. entity has been or is engaged in the regular, systematic, and continuous provision of goods and/or services as a qualifying organization. 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)).

The petitioner submitted the company's IRS Form 1120, U.S. Corporation Income Tax Return for 2004 which indicated gross sales in the amount of \$81,000 and no inventory. It is unclear how the U.S. entity accomplished selling the merchandise indicated in the invoice receipts with no inventory and a gross sales of \$81,000 for the year of 2004.

The petitioner submitted several invoices billed to the U.S. company for purchases they made in the past year but has not presented any evidence of selling a product or service. On appeal, the petitioner submitted several lease agreements between the U.S. company and other companies who agreed to lease space from the petitioner. However, it appears that all the lease agreements are for the same property and they all overlap in the dates of leasing this property. The petitioner has not explained how several tenants may lease the same property. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. Furthermore, at the time the petitioner seeks an extension of the new office petition, the regulations at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. Accordingly, the appeal will be dismissed.

The fourth issue to be addressed in this proceeding is whether the foreign company is a qualifying organization abroad doing business as required by 8 C.F.R. § 214.2(l)(14)(ii)(A).

The director in the decision dated September 22, 2005, stated that the petitioner failed to submit evidence of the foreign entity doing business. The director explained why the documentation submitted by the petitioner in response to the director's request for evidence was not sufficient.

On appeal, counsel resubmitted several of the documents previously filed with the instant petition. Upon review of the documents submitted in response to the director's request for evidence and on appeal, the petitioner has established that the foreign company is doing business. The petitioner submitted recent bank statements, income tax receipts, invoices, tax reports, an organizational chart for the foreign company, photographs of the foreign company, and financial statements for 2004 and 2005. All of the submitted documents establish that the foreign company was doing business at the time the instant

petition was filed. Therefore, the petitioner has established that the foreign entity is a qualifying organization doing business abroad as required by 8 C.F.R. § 214.2(l)(1)(14)(ii)(A). The director's decision with respect to this issue only will be withdrawn.

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

ORDER: The appeal is dismissed.