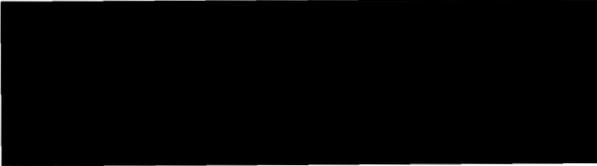




U.S. Citizenship  
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Services

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D7

FILE: SRC 06 008 53342 OFFICE: TEXAS SERVICE CENTER Date: JAN 29 2007

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

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

ON BEHALF OF PETITIONER:

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 nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president 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, a Florida corporation, states that it is engaged in the installation of windows, doors and conservatory imports. It claims to be a subsidiary of [REDACTED] located in the United Kingdom. The beneficiary was initially granted a one-year period in L-1A classification 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 not established: (1) that the beneficiary would be employed by the U.S. entity in a managerial or executive capacity; or (2) that the U.S. entity had been doing business for the previous year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner disputes the director's decision and offers additional information regarding the U.S. company's employees and business operations. The petitioner submits a letter from its parent company 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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate in a managerial, executive or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended

services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The first issue in this proceeding is whether the petitioner established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), 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 October 12, 2005. In a letter dated September 16, 2005, the foreign entity explained that during his first six months in the United States, the beneficiary: applied for and received his social security number along with business licenses; sourced a new office premises, as the premises leased prior to the beneficiary's arrival in the United States were destroyed in a hurricane; purchased office equipment and furniture for the new premises; interviewed staff; researched Florida state hurricane window standards; sourced flat glass suppliers and negotiated terms and pricing; researched advertising and marketing strategies; and sourced a logo designer and an accountant for the company. The petitioner noted that it was able to commence operations in March 2005 after experiencing difficulties in locating a suitable new location and reliable glass suppliers. The foreign entity indicated that the beneficiary's current responsibilities and duties as president of the company include:

- Recruiting and hiring 3 personnel and is in the process of monitoring [REDACTED] performance to promote him to General Manager in early 2006.
- Training personnel on company policies and procedures.
- Continuing to contact new resources.
- Implementing advertising in local publications and yellow pages.
- Liaising with customers and networking to increase customer base.
- Control of company's daily activities.
- Formation of the company's policies and goals.
- Development and revision of business objectives.
- Evaluation of future development projects.
- Financial stability and profitability of the company.

- Long term development planning.
- **Achievement and successful completion** of all contracts.
- Customer relations and satisfaction.

In an attached job description, the petitioner provided an overview of the beneficiary's general responsibilities, and indicated that his specific duties include the following:

Corporate:

- **Establishment** of corporation mission, goals and policies
- Strategic guidance
- Coordination of contract of negotiations, development implementation and total operation
- Overseeing corporate finances
- **Signing of all legal documents** on behalf of corporation
- Ensuring corporation complies with all Government, State, County and City legal requirements.
- Organization of corporate insurances
- **All ultimate decision making on behalf** of the corporation

Staff:

- Preparing recruitment for all positions required
- Interviewing all applications and determining suitable employees
- Recruitment of managers
- **Ensuring all staff are qualified** for positions
- Setting of all pay levels and vacations/holidays
- Training manager in company policies, operational procedures and standards
- Setting of standards and goals to be achieved by management and staff
- Hiring, firing and promotion of staff

Financial:

- **Discussion and ratification** of annual accounts and tax returns with corporate C.P.A.
- Control of bank account, signing checks and banking of funds
- Preparation of annual budgets and financial forecasts
- Setting of gross profit margins
- Review of monthly sales figures and comparisons to budget
- Monitoring of finances
- **Coordination and direction** of all capital required for Corporate development
- Sales Tax returns and payments

Sales Development:

- **Review of competitors**, their services and pricing
- Preparation of marketing materials
- Preparation of advertising campaigns
- **Sourcing** of suppliers and negotiation of terms

- Determining of products for inventor  
Determining of profitability and demand of product  
Research into importing conservatories and setting up new division  
Research into import and export procedures and legalities
- Costing of export and profit margins.

The petitioner also provided a description of its current and proposed subordinate positions. The petitioner noted that its current staff includes: (1) a part-time administration manager who is responsible for answering telephones, assisting customers, handling customer complaints, handling all filing and paperwork, generating invoices and collecting payments, and collecting bad debt; (2) a glazier, who custom builds aluminum windows and doors to client specifications, supervises the assembler at worksites, and ensures that all projects are completed in compliance with county and state regulations; and (3) a part-time assembler who assists the glazier in building windows and ensures that all projects are completed in accordance with state and county regulations. The petitioner indicated that in 2006, it intends to promote its current glazier to the position of general manager, make its administration manager a full-time position, replace its current glazier and hire a second employee for the position, hire another part-time assembler, and hire installation subcontractors to install projects according to client and company specifications. The petitioner also submitted an organizational chart, which showed additional proposed positions for store and warehouse staff in 2006.

The director issued a request for evidence on October 22, 2005, in which she instructed the petitioner to submit: (1) a job description and evidence of educational credentials for all current employees; (2) evidence that the beneficiary will primarily be engaged in executive duties or evidence that the beneficiary is managing other managers and professionals; (3) copies of the company's state quarterly wage reports for the past two quarters; and (4) a copy of the petitioner's IRS Form 940 EZ Employer's Annual Federal Unemployment Tax Return.

In a response received on November 22, 2005, the petitioner provided the following description of the beneficiary's responsibilities:

Overseeing daily operations including:

1. Responding to any customer comments and complaints
  2. Reviewing the daily route and visiting sites as need be
  3. Contacting vendors and negotiating prices
  4. Meeting with new suppliers and potential clients
- Weekly meeting with ( [REDACTED] ) to refine the weeks schedule and discuss any problems
  - Delegation of duties to [REDACTED]
  - Training [REDACTED] in management duties to prepare him for promotion in January 2006 – training included
    1. daily operation of business;
    2. an overview of the financial operations of the corporation, with an understanding of invoices and collection of monies

3. understanding of company policies and procedures and how to fulfill them in daily activities
4. having a full understanding of the customer relation policy and how to handle customer complaints;
5. learning how to handle employee issues and conflicts
6. knowledge of how to negotiate with suppliers
7. implementation of advertising and marketing strategies and understanding how they will assist the business

Delegate duties to Administration manager. . . including handling all sales calls, data base upkeep, scheduling appointments, and training in [REDACTED] work for better customer service

- Handling all advertising plans and marketing plans and liaising with companies
- Researching development plans to expand the business and increase clientele
- Contacting local Real Estate Agents and Home Inspection companies to build contacts

With respect to the beneficiary's subordinate staff, the petitioner noted that its glazier, and proposed manager, had "recently quit," and noted that that the company was in the process of recruiting a qualified glazier to serve as its "glazier manager." The petitioner stated that its assembler would report to the glazier for daily duties and work schedule and perform all window assembly work, while the administration manager is responsible for: daily operation of the office, customer calls and sales, setting the weekly work route schedule, handling payroll, vacation requests and benefits, weekly banking and collection of monies, database up keeping and filing, preparation of invoices and payment to suppliers, and ordering of supplies. Finally, the petitioner noted that its presently vacant glazier position involves performing initial consultations with clients as to needs and requirements, performing glazier work, including cutting glass to specifications and installing windows and frames, accompanying the beneficiary on work site tours, delegating work to the assembler and overseeing her work, training the administration manager in glazier work, reviewing weekly schedules, and providing supply lists to the administration manager.

The director denied the petition on December 5, 2005, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director observed that the record did not demonstrate that the beneficiary will be supervising a subordinate staff of professionals or managers, or that, based on current staffing levels, the beneficiary would reasonably be able to perform primarily managerial or executive duties.

On appeal, the petitioner submits a letter from the foreign entity's managing director, who states that the petitioner previously omitted "information that would have aided in our extension being granted." The foreign entity states that the petitioner has leased a 1,750 square foot warehouse space since October 1, 2005, which "will enable us to provide a service from our workshop." The foreign entity further asserts that the petitioner's part-time administration manager "has also recently taken on the telesales and marketing side of the business," while the part-time assembler "also is a general warehouse hand." The foreign entity states that both positions are scheduled to become full-time in 2006.

The foreign entity acknowledges that its "manager," [REDACTED], left the petitioner's employment in September 2005, and notes that Mr. [REDACTED] has returned to the petitioner as a subcontractor since December 2005, and agreed to "resume his role as General Manager as of January 3, 2006."

Upon review of the record and for reasons discussed herein, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a 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 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 (9<sup>th</sup> 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 relate to operational or policy management, not to the supervision of lower-level employees, or other non-managerial and non-executive duties. In the instant matter, the petitioner has failed to show that non-qualifying duties will not constitute the majority of the beneficiary's time.

The petitioner initially provided a vague and nonspecific description of the beneficiary's duties that failed to demonstrate that he would be employed in a primarily managerial or executive capacity. For example, the petitioner indicated that the beneficiary would be responsible for "control of company's daily activities," "formation of the company's policies and goals," "evaluation of future development projects," "long term development planning," and "financial stability and profitability of the company." While these statements suggest that the beneficiary exercises discretionary authority over the business, the petitioner failed to explain what specific managerial or executive duties the beneficiary performs on a day-to-day basis. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, the petitioner's initial description of the beneficiary's duties suggested that he performs a number of non-managerial duties associated with the company's product sourcing, sales, marketing and promotional activities. For example, the petitioner stated that the beneficiary is responsible for implementing advertising in local publications, "continuing to contact new resources," and "liaising with customers and networking to increase customer base." In addition, the petitioner indicated that the beneficiary is responsible for such non-qualifying duties as reviewing competitors' services and pricing, preparing marketing and advertising materials, sourcing suppliers and negotiating terms, determining profitability and product demand, and researching import and export procedures. The petitioner did not explain how any of these tasks fall under the definition of managerial or executive capacity.

Accordingly, since the initial evidence suggested that the beneficiary performs both qualifying and non-qualifying duties, the director requested that the petitioner explain how the beneficiary will be engaged in primarily managerial or executive duties.

The evidence submitted in response to the request for evidence did not assist in establishing that the beneficiary would be employed in a primarily managerial or executive capacity. The petitioner noted that the beneficiary's responsibility for "overseeing daily operations" includes responding to customer comments and complaints, reviewing the daily route and reviewing job sites, contacting vendors, and meeting with new suppliers and potential clients. None of these duties rise to the high-level duties contemplated under the statutory definitions of managerial or executive capacity. The job description also references the beneficiary's responsibility for "liaising with companies," advertising and marketing, "researching development plans," and building contacts with local real estate agents and home inspection companies, further confirming that the beneficiary devotes some portion of his time to market research, promotion and sales activities. Finally, much of the beneficiary's job description submitted in response to the director's request for evidence involved his responsibility for training and delegating duties to an individual who was no longer employed by the company as of September 2005. Accordingly, the job description cannot be accepted as a credible or complete representation of the beneficiary's duties as of the date the petition was filed on October 12, 2005. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 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. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, as discussed above, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine that the beneficiary is primarily performing duties in a managerial or executive capacity. *See, e.g., IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The petitioner claims that the beneficiary will have responsibility for supervising three employees. Although the beneficiary is not required to supervise personnel, if it is claimed that he is employed in a managerial capacity based on his supervision of employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. The record reveals that the only employees working under the beneficiary's supervision as of the date of filing were an "assembler" and an "administration manager." The petitioner has not established that either of these employees possess or require a bachelors degree, such that they could be classified as professionals. Furthermore, notwithstanding the administration manager's job title, the petitioner has not shown that either of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. 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. Although the petitioner states that it anticipates filling the position of "general manager" in the

future, 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).

When examining the managerial or executive capacity of a beneficiary, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record, including descriptions of a beneficiary's duties and 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. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

At the time of filing, the petitioner was a one-year-old company engaged in the installation of doors and windows. The petitioner initially claimed to employ the beneficiary as president, a glazier, an administrative manager and an assembler. As noted above, the petitioner has since clarified that the glazier left the company in September 2005, prior to the filing of the petition. The petitioner does not explain why it initially represented this individual as a full-time employee of the company as of October 12, 2005. Although the petitioner states on appeal that the employee was re-hired as a subcontractor in December 2005, and would be promoted to the position of general manager in 2006, the petitioner has failed to establish who was performing the glazier's duties at the time of filing, nor has it offered documentary evidence that it did in fact subsequently re-hire the claimed employee. 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)). Furthermore, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner indicated that its part-time assembler is responsible for assembling windows and assisting the glazier with installation. On appeal, the petitioner reveals for the first time that the petitioner also leases a 1,750 square foot warehouse space, and indicates that the assembler is also responsible for warehouse duties. The petitioner also employs a part-time administration manager, but has provided inconsistent information regarding the nature of her duties. A staffing overview submitted with the initial petition indicated that this employee is responsible for answering telephones, handling customer complaints, handling all paperwork, issuing invoices, and collecting payments. In response to the request for evidence, the petitioner added that this employee is responsible for "daily operation of the office," handling all customer calls and sales, setting work route schedules, handling payroll, vacation requests and benefits, weekly banking duties, database

administration, and ordering supplies. On appeal, the petitioner further augments the administration manager's job description, noting that she is responsible for "telesales and marketing side of the business." 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). 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). The record does not provide a clear or consistent demonstration of the duties performed by the beneficiary's subordinate employees.

An analysis of the reasonable needs of the corporation in conjunction with its overall purpose and stage of development undermines the petitioner's claim that the beneficiary would be employed in a primarily managerial or executive capacity. The petitioner has a reasonable need for employees to meet with clients to discuss their requirements, provide estimates, take measurements for contracted projects, produce and install windows and doors, order supplies, perform warehouse duties, market, advertise and sell the petitioner's services, perform market research duties, develop relationships with suppliers, manage the company's day-to-day finances, including banking and bookkeeping, and perform administrative and clerical duties associated with operating any small business. The petitioner has not established that a part-time assembler and a part-time administration manager, each of whom works only twenty-five hours per week, are able to relieve the beneficiary from performing primarily non-qualifying duties, particularly those associated with the company's sales and marketing tasks. Further, as discussed above, it is also not clear who was performing the glazier's duties at the time of filing, and a review of the beneficiary's resume suggests that he is in fact trained in window manufacturing and installation. A review of the totality of the record fails to establish that the petitioner has a reasonable need for the beneficiary to perform primarily managerial or executive duties at its current stage of development. 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).

As stated above, 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 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. Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. For this reason, the appeal will be dismissed.

The second issue in this matter is whether the petitioner established that it has been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) states: "*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 beneficiary was initially granted one year in L-1A classification in order to open the new office in the United States, from October 11, 2004 until October 10, 2005, and was first admitted to the United States in L-1A status on October 27, 2004. The petitioner stated on Form I-129 that it achieved gross sales of \$55,503 for "six months trading." The foreign entity stated in its letter dated September 16, 2005 that the company began trading in March 2005, due to the need to find new premises for the office, a shortage of window glass in Florida following the hurricane season, and difficulties in locating qualified and reliable personnel. The petitioner noted that the beneficiary spent his first six months in the United States applying for licenses to operate the business, sourcing new office premises, recruiting staff, researching Florida State hurricane window standards, sourcing suppliers, and researching advertising and marketing strategies. The petitioner submitted a total of fourteen invoices issued to customers, dated between March and August 2005, for services valued between \$95 and \$1,530. The petitioner also submitted two purchase invoices, copies of advertisements, and copies of IRS Forms W-4, Employees' Withholding Allowance Certificate, all of which were executed in July 2005.

In the request for evidence dated October 22, 2005, the director instructed the petitioner to submit a copy of its 2004 U.S. corporate federal tax return. In response, the petitioner stated that the company "did not begin officially trading until March 2005," and therefore did not file a federal tax return for 2004.

The director concluded in her December 5, 2005 decision that the petitioner failed to establish that the U.S. company is doing business as defined by the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H). The director noted that "the petitioner . . . estimated \$9546 in gross revenue," but did not further comment on the issue.

On appeal, the petitioner asserts that the figure quoted by the director was in fact the petitioner's net income for the period from March 2005 through August 2005, and emphasizes that the company achieved gross income of \$55,303.47 during the same time period. The petitioner submits a profit and loss statement for the period of March through August 2005 showing gross income of \$55,300.22, as well as a statement for January through November 2005, which shows income of \$83,260.51. The petitioner emphasizes that the beneficiary arrived in the United States on October 27, 2004 and required six weeks to set up bank accounts and obtain social security and IRS employer identification numbers. The petitioner states that the beneficiary spent this time building a reputation with surrounding communities and volunteering with hurricane relief efforts in Kissimmee, Florida. Finally, the petitioner states that the beneficiary has obtained eight contracts from local companies and anticipates that the company's yearly turnover will increase to over \$160,000.

Upon review, the petitioner has not established that the U.S. company has been doing business for the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B). If a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). Upon review of the current petition, it is apparent that the petitioner was not prepared to commence doing business upon approval of its initial new office petition.

While the AAO acknowledges the petitioner's claims regarding the affect of the Florida hurricane season on its operations, the petitioner's assertions are not supported by documentary evidence that would corroborate the company's inability to move into the office premises secured prior to the beneficiary's arrival. 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. Many of the duties undertaken by the beneficiary during the first six months of operations, such as sourcing suppliers, studying hurricane window standards, researching advertising and marketing strategies, and obtaining occupational licenses, could have reasonably been completed prior to the approval of the initial petition. Furthermore, on appeal, the petitioner appears to suggest that it took the company only six weeks to commence operations in the United States, while it previously indicated that the company began trading in March 2005. 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.

While it appears that the company commenced limited operations in March 2005, the petitioner has not submitted sufficient documentary evidence to compel USCIS to excuse a five-month delay in doing business in the United States. The petitioner has not submitted sufficient evidence on appeal to overcome the director's determination. For this additional reason, the appeal will be dismissed.

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

**ORDER:** The appeal is dismissed.