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File: LIN 06 119 52275 Office: NEBRASKA SERVICE CENTER Date: OCT 03 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)

IN 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, Nebraska 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 in the position of vice president to open a new office in the United States 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 corporation organized under the laws of the State of Ohio, claims to be a designer, importer, and dealer of jewelry.

The director denied the petition concluding that the petitioner failed to establish (1) that the beneficiary had been employed abroad in a primarily managerial or executive capacity; (2) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position; or (3) that the petitioner has secured sufficient physical premises to house the new office.

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, the petitioner asserts that the beneficiary had been employed as a manager or executive abroad; that the United States operation will support an executive or managerial employee within one year; and that the secured premises are sufficient to house the new office. In support of the appeal, the petitioner submits a brief and additional evidence.

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.

In addition, the regulation at 8 C.F.R. § 214.2(1)(3)(v) states 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, 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; and
- (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 (1)(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 this proceeding is whether the petitioner established that the beneficiary had been employed abroad 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 petitioner does not clarify whether the beneficiary is claiming to have been primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to have been employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

The beneficiary's job duties abroad were described in an undated 23-page letter signed by an unauthorized foreign attorney with offices in New Jersey. As this letter is in the record, this job description will not be repeated here. Generally, the beneficiary is described in broad terms as having been in control of the foreign entity's corporate planning, administration, finances, marketing and sales, business development, contract administration, and personnel matters.

The petitioner also submitted an organizational chart describing the beneficiary as "managing partner" and showing the beneficiary at the top of the foreign organization purportedly managing the business along with his "partner." The beneficiary is portrayed as supervising a manager, an accountant, and a sales/exports manager, who appears to be the same person as the beneficiary's "partner." The sales/exports manager is, in turn, portrayed as supervising a designer. However, the organizational chart fails to describe the job duties of

the subordinate employees or of the beneficiary's partner. Furthermore, the chart shows the beneficiary being in charge of "corporate matters" and "purchases" without the aid of any subordinate employees.

On April 4, 2006, the director requested additional evidence. The director requested, *inter alia*, that the petitioner submit an "organizational chart [for the foreign entity] that identifies all employees by name, job title, and job duties." The director also requested documentary evidence of all of the foreign employees' education credentials.

In response, the petitioner submitted a letter dated June 15, 2006 in which the beneficiary's foreign job duties were summarized as follows:

[The beneficiary] controls administration, government matters, exports, sales, business development, contracts for purchases & personnel. He also oversees operations of finance and corporate planning with his partner.

The petitioner also submitted a materially different organizational chart for the foreign entity. The new chart shows the beneficiary alone at the top of the foreign organization. The "partner" has been eliminated from the chart although he is still identified as the "export/import sales executive." Also, the individual originally described as the "manager" is now described as a "secretary" subordinate to a different individual also described as "manager." Finally, despite the director's request, the record is devoid of any job descriptions for the subordinate employees.

On August 3, 2006, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary had been employed abroad in a primarily managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary had been employed as a manager or executive abroad. The petitioner argues, *inter alia*, that, because the director only requested that it "identify" the foreign subordinate employees' job duties, it was under no obligation to "describe" the job duties. The petitioner attempts to supplement the record on appeal with job descriptions for the foreign subordinate employees.

Upon review, the petitioner's assertions are not persuasive.

As a threshold matter, the petitioner's attempt to supplement the record on appeal with job descriptions for the foreign subordinate employees was inappropriate, and the AAO will not consider these job descriptions. The director clearly requested in the Request for Evidence that the petitioner identify the job titles and job duties of all subordinate employees. The petitioner failed to identify these job duties and now seeks to supplement the record on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

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 performed by the beneficiary and indicate whether such duties were

either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary was primarily employed in a managerial or executive capacity. As explained above, a petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary acted in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary did on a day-to-day basis abroad. For example, the petitioner states that the beneficiary coordinated "corporate planning" and analyzed "operating procedures." However, the petitioner does not specifically define what planning was being coordinated or what operating procedures were being analyzed. The entire job description is equally vague and repeatedly uses broad, undefined terms and inflated job duties in an attempt to classify the beneficiary as an executive or managerial employee. However, the fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary was actually performing managerial duties. 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). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).¹

Likewise, the petitioner did not provide a breakdown of how much time the beneficiary devoted to the many duties ascribed to him. This is particularly important in this matter because many of the duties listed by the petitioner appear to be non-qualifying administrative or operational tasks which would not rise to the level of being managerial or executive in nature. For example, the original organizational chart for the foreign entity indicates that the beneficiary was in charge of "corporate matters" and "purchases" without the aid of any subordinate employees. Also, the beneficiary's job description indicates that he was engaged in business development, advertising, marketing, pricing, and market research. However, such duties constitute administrative or operational tasks when the tasks inherent to these duties are performed by the beneficiary. As the record fails to specifically describe any subordinate employees who relieved the beneficiary of the need to perform the non-qualifying tasks inherent to many of the duties ascribed to him, it must be concluded that he performed many, if not all, of these tasks. As the petitioner has not established how much time the beneficiary devoted to such non-qualifying tasks, it cannot be found that he was "primarily" employed as a manager or executive. An employee who "primarily" performs the tasks necessary to produce a product or to

¹It must also be noted that the beneficiary's vague job description found in the 23-page letter signed by the unauthorized foreign attorney practicing in New Jersey is of questionable evidentiary value. Even if the foreign attorney had been an authorized representative, 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 Obaigbena*, 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).

provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary supervised and controlled the work of other supervisory or managerial employees. As explained in the organizational chart, the beneficiary appears to have supervised directly or indirectly a staff of four or five workers. However, as the record is devoid of any job descriptions for these workers, it cannot be confirmed that any of these workers had supervisory or managerial functions. Inflated job titles alone and artificial tiers of subordinate employees are not probative and will not establish that an organization is sufficiently complex to support a managerial position. In view of the above, the beneficiary would appear to have been primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Moreover, the petitioner has not established that the beneficiary managed professional employees. 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 degrees held by the subordinate employees. The possession of a foreign bachelor's degree by a subordinate employee does not automatically lead to the conclusion that this employee was 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 was actually necessary to perform the duties of any of the beneficiary's subordinate employees or that these employees even possessed degrees equivalent to United States bachelor's degrees. Therefore, the petitioner has not established that the beneficiary was employed abroad primarily in a managerial capacity.²

²The petitioner has also not established that the beneficiary managed an essential function of the organization. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute

Similarly, the petitioner has failed to establish that the beneficiary was acting in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary was acting primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary did on a day-to-day basis. Moreover, as explained above, the beneficiary appears to have been primarily employed as a first-line supervisor. Therefore, the petitioner has not established that the beneficiary was employed primarily in an executive capacity.

It is appropriate for Citizenship and Immigration Services (CIS) to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g., Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.* In this matter, the petitioner has submitted two materially different organizational charts which contain unexplained, and questionable, inconsistencies. For example, the second organizational chart submitted in response to the Request for Evidence describes one worker as a "secretary" even though this same worker was described as a

or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary managed an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties were managerial functions, if any, and what proportion were non-managerial. Also, as explained above, the record indicates that the beneficiary was primarily a first-line supervisor of non-professional employees. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties were managerial, nor can it deduce whether the beneficiary was primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

"manager" in the first organizational chart. Such fundamental inconsistencies undermine the credibility of the entire petition. 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). 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. *Id.* at 591.

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary was performing primarily managerial or executive duties abroad, and the petition may not be approved for that reason.

The second issue in this proceeding is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

In support of its petition, the petitioner submitted a "business plan" in which the intended United States operation is described as "[d]esigners, importers and dealers of diamonds & custom designed jewelry." The plan also states the following:

[The beneficiary] will commence business activities dealing in the products already being handled by him for the overseas principals in India and to develop the same. Initially, he will contact potential buyers of the services and products. [The beneficiary] will first focus his attention and use his energies in establishing the company's business to ensure that the company in USA operates as a self supporting Unit and as a profit center.

The plan further states that the beneficiary will market the petitioner's products and will "look for additional products and opportunities to diversify in other related business activities." The plan, however, does not identify any of the potential buyers and does not describe any marketing strategies. It also does not describe any of the "additional products" or "other related business activities."

Finally, the plan projects gross income of \$500,000.00 and describes the petitioner's proposed staffing as follows:

Initially, the activities will be carried on by [the beneficiary] with the help of a secretarial/commercial staff. [The beneficiary] will undertake employment exercise and employ an Accountant to assist him in Finance Department, a Marketing Manager to look after sales and other additional support staff to assist him for the operations of the company.

The business plan did not include any objective evidence or analysis corroborating the projections and did not describe with any specificity the proposed duties of the subordinate staff.

The petitioner also submitted an undated letter from Charter One indicating that the petitioner opened a bank account on June 16, 2005 with an initial deposit of \$25,000.00.

Finally, the petitioner submitted tax and financial data for the foreign employer which indicates that, in 2004-2005, the foreign entity earned approximately \$2,190.47 in profit. A bank statement for the foreign entity also shows a balance of less than \$1,000.00.

On April 4, 2006, the director requested additional evidence. The director requested, *inter alia*, clarification regarding the foreign entity's ability to commence doing business in the United States, copies of current foreign bank statements, and bank statements pertaining to the petitioner's account with Charter One.

In response, the petitioner submitted a letter from [REDACTED] of Ohio dated June 15, 2006 indicating that the foreign entity has accounts receivable of \$40,502.00, that the "president" of the petitioner is able to lend additional money to the United States operation, and that \$45,000.00 had already been transferred to the petitioner. The petitioner also submitted a letter dated June 15, 2006 which indicates that the beneficiary has a substantial net worth. However, the petitioner did not address the director's request regarding the operation of the foreign entity or its current financial status.

The petitioner also submitted the petitioner's bank statements. While these statements confirm that \$25,000.00 was deposited into the Charter One account on June 16, 2005, \$24,000.00 was withdrawn 14 days later on June 30, 2005. The statements also confirm that the petitioner's bank account remained below \$1,000.00 until the account was closed in January 2006. At that time, the petitioner apparently opened a new "no minimum balance" account which had a balance of approximately \$1,000.00 at the time the instant petition was filed.

On August 3, 2006, the director denied the petition. The director determined that the petitioner failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

On appeal, the petitioner asserts that the director erred and that the record establishes that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

Upon review, the petitioner's assertions are not persuasive.

As a threshold issue, it must be noted that, in response to the Request for Evidence, the petitioner submitted bank statements dated after the day the instant petition was filed in an attempt to establish that sufficient funds are available to support the new office. However, this evidence is irrelevant, and these bank statements will not be considered by the AAO. 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 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 the 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.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Id.

The petitioner has failed to present evidence sufficient to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position. The petitioner has failed to credibly describe the proposed nature of the new office, its scope, or its financial goals. While the petitioner has submitted a vague business plan projecting substantial revenues and growth, the plan fails to support these projections with any objective evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Moreover, the business plan fails to provide any details regarding customers, markets, products, and competitors. The plan also fails to give a timetable for hiring additional personnel or to describe how, exactly, these employees will relieve the beneficiary of the need to perform non-qualifying administrative or operational tasks after the petitioner's first year in operation. Overall, the record fails to demonstrate that the United States operation 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.

Furthermore, the petitioner has failed to establish that a sufficient investment has been made in the United States operation or that the foreign entity is able to commence doing business in the United States. As explained above, the record indicates that, at the time the instant petition was filed, the petitioner had approximately \$1,000.00 in a United States bank account. The foreign entity also appears to have less than \$1,000.00 in liquid assets and has historically earned less than [REDACTED]. While the petitioner asserted that the foreign entity owns rights in accounts receivable and that principals in the business have assets available for investment, the petitioner failed to provide any details regarding these assets and failed to establish that these assets have been committed to the United States operation. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

Accordingly, the petitioner has failed to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and for this reason the petition may not be approved.

The third issue in this matter is whether the petitioner established that sufficient physical premises to house the new office have been secured as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

In the initial petition, the petitioner provided a copy of a "commercial lease" for 4330 Sir Richard Avenue, North Royalton, Ohio. The petitioner also submitted three photos of a desk in a room with a filing cabinet.

On April 4, 2006, the director requested additional evidence. The director requested a statement from the lessor verifying the square footage of the leased space, a floor plan, and photos of the outside of the leased premises, including the address of the facility.

In response, the petitioner submitted a letter allegedly written by the lessor dated June 9, 2006 indicating that the leased space is 1,100 square feet. The letter is not on the lessor's letterhead. The petitioner also submitted a single photo of a door. The address of the facility does not appear in the photograph.

On August 3, 2006, the director denied the petition. The director concluded that the petitioner failed to establish that sufficient physical premises to house the new office have been secured as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

On appeal, the petitioner asserts that it has established that sufficient physical premises to house the new office have been secured. In support, the petitioner submits a photograph which includes the address of the facility and a letter from the lessor on letterhead.

Upon review, the petitioner's assertions are not persuasive.

As a threshold matter, the petitioner's attempt to supplement the record on appeal with a photograph and a letter from the lessor was inappropriate, and the AAO will not consider this evidence. The director clearly requested in the Request for Evidence that the petitioner provide a statement verifying the square footage of the leased space, a floor plan, and a photograph of the exterior of the premises, including the address. The

petitioner failed to provide this evidence and now seeks to supplement the record on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Based on the evidence presented, the petitioner has failed to establish that sufficient physical premises to house the new office have been secured as required by 8 C.F.R. § 214.2(l)(3)(v)(A). As correctly determined by the director, the photographs and other evidence fails to adequately describe the leased premises. The petitioner failed to properly document the address and the interior and exterior characteristics of the leased premises. The petitioner also failed to provide a floor plan for the leased premises. 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 also does not provide any information regarding the zoning of the neighborhood, the current use of the property, or the availability of a private entrance or parking for clients. Finally, as the lessor's letter provided on appeal indicates that her address is the same as the leased premises, this further calls into question the sufficiency of the leased premises. Overall, the record does not establish that the leased premises will be sufficient to house a jewelry business as described in the business plan, and for this additional reason the petition may not be approved.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.