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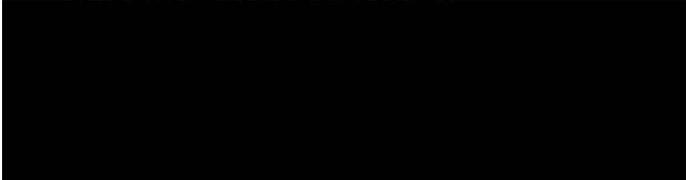
Date: FEB 28 2008

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:



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, Vermont 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 visa petition seeking to employ the beneficiary as its vice president of marketing and sales as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a limited liability company organized under the laws of the State of New York and is allegedly in the apparel business.

Treating the petitioner as fully formed entity, the director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. In the alternative, while the director determined that the petitioner did not establish that it is a "new office" as defined in the regulations, the director further determined that, even if it were a "new office," the petitioner failed to establish that the beneficiary will be employed in a managerial or executive capacity within one year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel to the petitioner asserts that the director erred, that the petitioner is a "new office," and that the beneficiary's duties will primarily be those of a manager within one year.

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(l)(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 (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(F) defines a "new office" as:

[A]n organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

Moreover, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as:

[T]he 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.

A threshold issue in this matter is whether the petitioner is a "new office" as defined by the regulations. 8 C.F.R. § 214.2(l)(1)(ii)(F).

The instant petition was filed on May 11, 2007. The petitioner asserts in the Form I-129 that it was

established in 2005 and that the beneficiary is *not* coming to the United States to open a "new office." In support of the petitioner, the petitioner submitted its 2005 United States tax return indicating that it had \$53,673.00 in revenue in that year. The petitioner also submitted a copy of correspondence indicating that it had opened a bank account in the United States in October 2005.

In response to the director's Request for Evidence, counsel submitted a letter dated July 5, 2007 in which it asserts that the petitioner should be considered to be a "new office" under the regulations. The petitioner describes its presence in the United States as follows:

The petitioner has been established in 2005 to engage in marketing, sales and distribution of the products of [the foreign employer] in the United States and Canada. Since its establishment, the petitioner has not hired any employees to engage in marketing, sales and distribution activities in the United States. Instead, the employer abroad has so far preferred to conduct the marketing, sales and distribution of its products in the United States through use of independent contractors on a commission basis.

* * *

Through the business strategy of conducting the United States operations through independent contractors, the petitioner has been able to make gross sales of \$233,594.00 in 2006.

The petitioner also submitted a copy of its 2006 United States tax return, which indicates that it had \$233,594.00 in gross receipts or sales in that year.

On July 17, 2007, the director denied the petition. The director concluded that, because the record establishes that the petitioner "has been operational for over a year as of the date of filing of the present petition," the petitioner is not a "new office" and, thus, the petitioner must establish that the beneficiary will be employed in a primarily managerial or executive position immediately upon petition approval.

On appeal, counsel argues that the petitioner meets the definition of a "new office" in the regulations. Counsel argues in the brief as follows:

Although, the petitioner has been established in 2005, it has never matured into a fully-functional office i.e., no full-time employees other than one independent contractor shareholder, no physical premises of its own, and not a U.S. corporate bank account. The petitioner has filed corporate (partnership) income tax returns because, although at insignificant levels, has had U.S. based trading activities as income [sic].

Upon review, counsel's assertions are not persuasive in establishing that the petitioner is a "new office" as defined in the regulations.

As noted above, a "new office" is an organization which has been "doing business" in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). "Doing

business" is, in turn, defined in part as "the regular, systematic, and continuous provision of goods and/or services." In this matter, the record establishes that the petitioner has been "doing business" in the United States since 2005, which is more than one year prior to the filing of instant petition on May 11, 2007. The petitioner has had substantial and continuous revenue since its establishment in the United States and has conducted its business through one or more independent contractors, which were compensated on a commission basis. Also, contrary to the assertions of counsel on appeal, the record indicates that the petitioner established a banking relationship with the New York branch of Dresdner Bank AG in October 2005. The fact that the petitioner did not have "employees" or a dedicated place of business will not allow a petitioner to be classified as a "new office" if the petitioner had otherwise conducted business in a regular, systematic, and continuous manner for at least one year. Furthermore, it does not appear that the petitioner's business activities amount to being a "mere presence of an agent or office" in the United States.

Finally, and importantly, the petitioner in this matter did not claim that it was a "new office" until responding to the director's Request for Evidence. As noted above, the petitioner specifically averred in the Form I-129 that the beneficiary was *not* coming to the United States to open a new office. The regulation at 8 C.F.R. § 103.2(b)(8) defines the scope of a response to a request for evidence. If a director requests additional evidence, as the director did in this case, the petitioner may either submit all the requested evidence, submit some or none of the evidence and ask for a decision on the record, or withdraw the petition. *See* 8 C.F.R. § 103.2(b)(8)(i)-(iii). In this case, the petitioner essentially sought to materially amend the Form I-129 by claiming that the beneficiary will open a "new office" in the United States. Such an attempted amendment is improper and is not permitted by the regulations. If the petitioner had concluded that its petition was defective, it should have withdrawn the petition and filed a new petition which it felt was conforming to the "new office" regulations.

Accordingly, as the director correctly determined that the petitioner is not a "new office" as defined by the regulations, the primary issue in the present matter is whether the petitioner has established that the beneficiary will be employed in the United States 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 in the initial petition whether the beneficiary will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act, although counsel on appeal appears to limit the beneficiary to the managerial classification. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary will be employed as either a manager *or* an executive and will consider both classifications.

The petitioner describes the beneficiary's proposed duties in a letter dated April 24, 2007 as follows:

[The beneficiary] will fill the position of Vice President of Marketing and Sales at the US employer in its New York office located in Levittown, NY. This position is a key managerial/executive one within the company, because it is the Vice President of Marketing and Sales who brings together the marketing and sales team to develop and work on each account, supervises subordinates' work, sets standards for the work and general guidelines for each customer account, which must be followed and executed by their account representatives. The Vice President will control and supervise that customers' orders on each account is serviced adequately and on schedule. He will coordinate the work of outside contractors who are engaged to perform marketing and sales related services on existing accounts.

The Vice President of Marketing and Sales will be responsible for account representatives, sales persons and support staff to service the US employer's customers. He will have day-to-day discretionary authority in coordinating and directing the work of the marketing department and is responsible for proper administration of internal operations. He will evaluate the performance of marketing and sales department personnel and will be authorized

to hire and fire of personnel. As the person responsible for marketing, and sales, he will spend majority of his time coordinating the work of each professional reviewing quality of work performed for conformity to the standards of the employer abroad. Strong managerial skills, understanding of the textile markets, marketing and sales are essential skills needed for the important marketing and functions all of which will be performed by the Vice President of Marketing and Sales.

The beneficiary's responsibilities within the US employer will also include the following:

- Planning, directing and coordinating company activities in relation to operations, services, and business organization;
- Developing long-term company goals and objectives;
- Conducting reviews of company activities to analyze and determine costs, future activities, profits and losses, expenditures, and progress;
- Managing the current employees and/or hiring new employees.

The petitioner claims in the Form I-129 to have one employee.

On May 25, 2007, the director requested additional evidence. The director requested, *inter alia*, job descriptions for all of the employees of the United States operation; an organizational chart for the United States operation; copies of all Forms W-2 issued to employees in 2006; copies of quarterly tax returns ending in March 2007; and duty descriptions for any independent contractors employed by the petitioner.

In response, counsel submitted a letter dated July 5, 2007 in which counsel explains that the petitioner does not have, and never had, any employees. The foreign employer has instead employed an independent contractor, a business entity located in California, to sell products on a commission basis. Counsel asserts that:

As soon as the beneficiary obtains the L-1A visa and starts his employment at the petitioner, he will develop his own marketing and sales team. For this purpose, he will initially hire two employees to engage in marketing and sales activities for the petitioner.

The petitioner also submitted a proposed organizational chart indicating that, eventually, the beneficiary will supervise both office staff and sales associates.

On July 17, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, in the context of also arguing that the petitioner is a "new office," counsel asserts that the beneficiary's duties will primarily be those of a manager.

Upon review, counsel's assertions are not persuasive in establishing that the beneficiary will perform qualifying duties immediately upon petition approval.

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.* A petitioner cannot claim that some of the duties of the position entail executive responsibilities, while other duties are managerial. As explained above, a petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

As a threshold issue, it must be noted that the petitioner, as a fully formed business entity since 2005, must establish that the beneficiary will perform qualifying duties immediately upon petition approval. Future hiring plans and employees hired after the filing of the instant petition are not relevant to the instant analysis. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 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). If the petitioner cannot establish that the beneficiary will be relieved from the need to perform primarily non-qualifying administrative or operational tasks by a subordinate staff immediately upon petition approval, the petitioner will not be eligible for the benefit sought.

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will plan, direct, and coordinate "company activities in relation to operations, services, and business organization" and will develop "long-term company goals and objectives." The petitioner also asserts that the beneficiary will spend a "majority" of his time coordinating the work of each "professional" under his supervision. However, the petitioner does not specifically define any of these company activities, goals, or objectives. Furthermore, the petitioner does not explain what, exactly, the beneficiary will do in "coordinating" the work of each subordinate "professional" when the record indicates that the petitioner does not yet employ any subordinate workers for the beneficiary to supervise and control. Finally, general managerial-sounding duties such as being "responsible for proper administration of internal operations" are not probative of the beneficiary actually performing qualifying duties. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform primarily managerial or executive 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).

Likewise, many of the duties ascribed to the beneficiary appear to be non-qualifying administrative or operational tasks which will not rise to the level of being managerial or executive in nature, especially in view of the petitioner's lack of a subordinate staff. For example, the petitioner asserts that the beneficiary will be primarily engaged in performing marketing and sales related duties. However, the record does not establish that the beneficiary will be relieved from performing the non-qualifying tasks inherent to these duties by a

subordinate staff. Sales and marketing tasks are non-qualifying administrative or operational tasks. Moreover, even assuming the employment of the proposed clerical, sales, and marketing employees described in the record, the petitioner has failed to establish that these employees will be supervisory, managerial, or professional (*see infra*) and that the beneficiary's first-line supervisory functions pertaining to these prospective employees will be non-qualifying as well. As the petitioner has indicated that the beneficiary will devote most of his time to these non-qualifying tasks, it has not been established that he will be "primarily" employed as a manager or an executive. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. First, as noted above, the beneficiary will be the petitioner's first and only employee. For this reason alone, the petitioner has failed to establish that the beneficiary will be employed in a managerial capacity. Second, even assuming the employment of the prospective clerical, sales, and marketing employees described in the record, these employees have not been described as having supervisory or managerial responsibilities. To the contrary, these employees are described as performing sales, marketing, and clerical tasks. In view of the above, it appears that the beneficiary will be primarily a first-line supervisor of non-professional workers, the provider of actual services, or a combination of both. 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, as the petitioner failed to establish the skills required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.¹ Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.²

¹In evaluating whether the beneficiary will manage 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).

²While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. 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 or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written

Similarly, the petitioner has failed to establish that the beneficiary will act 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 will act primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary will be primarily employed as a first-line supervisor and will perform the tasks necessary to produce a product or to provide a service. Finally, given that the beneficiary will report directly to the petitioner's primary owner and company president, it appears that any realistic authority to direct the organization will be vested in this individual and not in the beneficiary. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that Citizenship and Immigration Services (CIS) "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for 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

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 will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, the record establishes that the beneficiary will primarily perform non-qualifying administrative or operational tasks and, assuming the employment of the proposed subordinate workers, he will be 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 will be managerial, nor can it deduce whether the beneficiary will primarily perform 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).

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).

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.³

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed abroad for at least one continuous year in a position that was managerial or executive in nature. 8 C.F.R. §§ 214.2(l)(3)(iii)-(iv).

The foreign employer described the beneficiary's duties abroad in a letter dated April 24, 2007 as follows:

The beneficiary has been working with the employer abroad as the Director of Sales since May 2004 without any interruptions. In this position, the beneficiary is/has been responsible for marketing and international sales of men's and women's sportswear lines Claudio Campione and Lisa Campione. The beneficiary is/has been responsible for the coordination and supervision of the marketing and sales departments of the employer abroad operations

³It is noted that the director concluded in the alternative that, even if the petitioner had established that it met the definition of a "new office" under the regulations, the petitioner failed to establish that the beneficiary will be employed in a managerial or executive capacity within one year. 8 C.F.R. § 214.2(l)(3)(v)(C). The director concluded that, even if the proposed workers were eventually hired by the petitioner, the record is still not persuasive in establishing that the beneficiary would perform qualifying duties within one year. Upon review, the AAO concurs with this alternative determination. Given the beneficiary's vague job description and the petitioner's failure to specifically describe the proposed duties of the prospective subordinate workers, the record is not persuasive in establishing that the beneficiary will be relieved of the need to perform primarily non-qualifying tasks within one year of petition approval. Furthermore, as discussed *supra*, the record is not persuasive in establishing that the prospective clerical, sales, and marketing employees will be supervisory, managerial, or professional employees. Therefore, at most, the beneficiary will be a first-line supervisor one year after petition approval. As noted above, a managerial or executive employee must generally have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. *See Matter of Church Scientology International*, 19 I&N Dec. at 604.

In addition, the record is not persuasive in establishing that the United States operation will rapidly expand to the point where, within one year, there would be an actual need for a manager or executive who will primarily perform qualifying duties. 8 C.F.R. § 214.2(l)(3)(v). For example, as evidence that the petitioner has secured sufficient premises to house the claimed "new office," the petitioner submitted a residential lease dated April 27, 2007 which clearly states in paragraph 7 that "[t]he demised premises shall be used and occupied by Lessee exclusively as a private single family residence, and neither the premises nor any part thereof shall be used at any time during the term of this lease by Lessee for the purpose of carrying on any business, profession, or trade of any kind." It is not credible that an apartment lease which specifically prohibits the petitioner from carrying on its business would permit the United States enterprise to grow to the point where, within one year, there would be an actual need for a manager or executive who will primarily perform qualifying duties. 8 C.F.R. § 214.2(l)(3)(v)(A).

from Istanbul, Turkey. The beneficiary has supervisory control over the recruitment and training of marketing and sales staff, over which he exercised hiring and firing authority. He has been the driving force within the organization expanding the employer abroad's worldwide marketing and sales activities. In this current position as Director of Sales, the beneficiary coordinates, directs and supervises the employer abroad's overseas marketing and sales operations. He exercises complete day-to-day discretionary authority over the work of the marketing and sales divisions of the employer abroad.

The beneficiary's job duties at the employer abroad also include the following:

- Directing the marketing and sales operations;
- Managing administrative affairs;
- Negotiating contracts and entering into agreements on behalf of the company;
- Developing and implementing long-term goals and plans;
- Overseeing the company's policies and strategies; and,
- Coordinating, interviewing, training, and managing managerial and support staff.

Upon review, the record is not persuasive in establishing that the beneficiary was employed abroad in a managerial or executive capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary did on a day-to-day basis. General managerial-sounding duties such as "directing the marketing and sales operations" and "managing administrative affairs" are not probative of the beneficiary actually performing qualifying duties. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary actually performed managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties were 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, *aff'd*, 905 F.2d 41.

Furthermore, the petitioner failed to describe the duties of the beneficiary's purported subordinates abroad, if any. Absent detailed descriptions of the duties of both the beneficiary and his purported subordinates, it is impossible for CIS to discern whether the beneficiary was "primarily" engaged in performing managerial or executive duties abroad. *See* sections 101(a)(44)(A) and (B) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). It is also impossible to discern whether the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As noted above, a managerial or executive employee must generally have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. *See Matter of Church Scientology International*, 19 I&N Dec. at 604.

Accordingly, the petitioner has not established that the beneficiary was employed abroad in a primarily managerial or executive capacity for one continuous year in the three years preceding the filing of the petition, and the petition may not be approved for this reason.

