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U.S. Citizenship
and Immigration
Services

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File: EAC 07 249 53178 Office: VERMONT SERVICE CENTER Date: JUL 07 2008

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

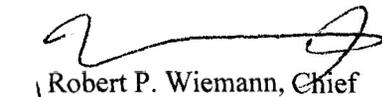
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to temporarily employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Louisiana corporation, states that it is engaged in textile and clothing manufacturing and trading. It claims to be a subsidiary of Dalian Huaxin Textile & Technology Development Co., Ltd, located in Dalian, China. The petitioner seeks to employ the beneficiary as president of its new office in the United States for a three-year period.¹

The director denied the petition concluding that the petitioner failed to establish: (1) that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity within one year; or (2) that the petitioner had secured adequate 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 will be employed in a managerial position that will involve direct supervision of four department managers. With respect to the U.S. company's physical premises, the petitioner states that the company does not yet require significant warehouse space but will in fact lease large warehouses in two cities once the beneficiary arrives in the United States. The petitioner submits a brief and additional evidence in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

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

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

¹ Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) also provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involves 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 first issue addressed by the director is whether, within one year, the petitioner will employ the beneficiary in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

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 one-year "new office" provision is an accommodation for newly established enterprises, provided for by CIS regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first 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 low-level 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 that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Accordingly, 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. 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

The petitioner filed the nonimmigrant petition on August 31, 2007, and indicated on Form I-129 that it has three employees in the United States. In a letter dated August 16, 2007, the petitioner stated that the U.S. company was established in August 2007 for the purpose of handling and developing the foreign company's textile import and export business in the United States. The petitioner noted that the beneficiary is being transferred to the United States "in order to directly operate and develop all business happened [sic] between

our Company and US customers.” The petitioner further stated that the beneficiary’s duties would include the following:

[The beneficiary] has full responsibility for the direction and coordination of activities and operation of the Company, responsible for planning, formulating, and implementing administrative and operational policies and procedures, supervise hiring or firing of employees.

He will spends [sic] approximately 85% of his time exercising his discretionary authority in managing and directing all development activities of [the petitioner], [and] spends [sic] approximately 15% of his time conducting information seminars and marketing development.

The petitioner also submitted a business plan prepared by the foreign entity in May 2007, which discusses the American market and the creation of the U.S. subsidiary. According to the business plan, the petitioner plans to operate initially in Brooklyn, New York, and in New Orleans, Louisiana. The business plan anticipates that 12 employees will be needed to staff the company during the 2007-2008 year. The proposed staff were identified by job title only and included a president, a vice president, an office manager, a sales manager, a driver, a secretary, a consultant, two “workers,” two salesmen, and two part-time salesmen. The petitioner indicated that it would employ one person in its warehouse, four people in its proposed store, and four people in its New York offices.

The petitioner also submitted a staffing chart for the U.S. company, which provided the following information regarding the company’s current employees:

[The beneficiary], President (full-time) - Full responsibility for the direction and coordination of activities and operation of the company, including planning, formulating and implementing administrative, polices [sic] and procedures. (Salary: \$30,000 annually, plus \$10,000 for travel)

Vice President (full-time) – Assist president all management [sic] of company. Charge of market Analysis including negotiation, hiring sales people[,] operating for complete projects (Salary \$28,000 annually, plus bonus; hired in August 2007)

[REDACTED], Office Manager (full-time) – Assisting president and vice president in daily management of company, include arrange meetings, make budget, prepare documents, contact and answer customers. As well as hire part-time office staff. (Salary \$25,000 annually; hired in August 2007)

Direct/Consultant (10 hours per week) – Research and provide all commercial and financial information required by the company as well as his professional opinions[.] Assisting the president in negotiation, legal documents, planning and polices [sic] decision. (\$10,000/year plus commission; hired in September 2007).

The director issued a request for additional evidence on September 13, 2007. The director requested the following additional evidence: (1) a business plan for commencing the start-up company which includes specific dates for each proposed action for the first year of operations; (2) evidence to show how the company

will grow to be of sufficient size to support a managerial or executive position, and showing how the beneficiary will be relieved from performing the non-managerial, day-to-day operations of the company within one year; and (3) a description of the proposed staff of the new U.S. office, including the number of employees, their job titles and education levels, duties to be performed, and salaries.

In a response dated September 17, 2007, the petitioner indicated that it currently has two employees working in the U.S. office, and noted that the beneficiary would hire a sales manager and a warehouse manager upon his arrival in the United States. The petitioner provided a revised business plan in which it stated that it would initially operate one "wholesale center" in New Orleans, Louisiana in 2007-2008, and open a second wholesale center in New York between 2008 and 2009. The petitioner stated that for the 2007-2008 year, it would require a total of 12 staff, including four people in the wholesale center, two people in the warehouse, and four people in the company's New York offices.

The petitioner also provided a revised staffing chart which indicated that the petitioner would be hiring a sales manager and two sales people in October 2007, as well as a "warehouse keeper" who would "manage the products and deliver by the orders." The petitioner stated that the consultant and sales manager would both possess college degrees. The petitioner referenced another three to four employees to be hired by the beneficiary, but did not specify their proposed job titles, job duties, or anticipated dates of hire.

The director denied the petition on September 26, 2007, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive position within one year of the approval of the petition. In denying the petition, the director noted that the beneficiary would be supervising a staff comprised primarily of non-professional employees. The director also found that the beneficiary's proffered salary of \$30,000 is "incongruous with that of an employee who is actually managing other bona fide managers of professionals." The director concluded that there was insufficient evidence to establish that the beneficiary would perform primarily qualifying duties within one year. Rather, the director concluded that the beneficiary would be engaged in the non-managerial, day-to-day operations of the U.S. company.

On appeal, the petitioner asserts that the beneficiary will be employed in a high-level management position in the United States. The petitioner emphasizes the beneficiary's long tenure with the foreign entity in progressive management positions, and notes that he will perform the following duties in the United States:

As president of [the petitioning company], he will be full[y] responsible for the operating daily management and full power to commend all employees[.] He will directly supervise 4 department managers including an office manager, a Sales manager, a project manager and a market [a]nalysis.

Because our subsidiary is very new, we just start our business in the United States[,] the president of it is still waiting for his L1A visa application approved and coming to take his new job. After [the beneficiary] arrives, he will manage the subsidiary step by step:

- To hire a sales manager and a project manager.
- To make a decision where the department store will be set.
- To set up a managerial system in the textile business.
- To command his employees do effort for a successful goal.

In support of the appeal, the petitioner submits a letter dated October 12, 2007 from the foreign entity's president, who states that the beneficiary will "supervise and directed [sic] 12 employees" and hold authorization to "operate day-to-day management" with "full power to establish the goals and policies, hire, discipline or discharge employees."

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary will be employed by the United States entity in a managerial or executive capacity within one year. However, upon review of the director's decision, the AAO finds that the reasons given for the denial are conclusory with few specific references to the evidence entered into the record. The AAO also notes that the director's conclusion that the beneficiary's proffered salary is not commensurate with employment in a managerial or executive capacity is not supported by the statute and regulations, which contain no salary requirements for L-1 beneficiaries. Accordingly, the director's comment in this regard is withdrawn.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Therefore, the AAO will address the petitioner's evidence and eligibility herein.

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.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner's 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

In the instant matter, the petitioner has repeatedly described the beneficiary's proposed position in broad and general terms, noting that his responsibilities would include: "full responsibility for the direction and coordination of activities" of the U.S. company; "responsibility for planning, formulating and implementing administrative and operational policies and procedures"; supervising the hiring and firing of employees; and "exercising his discretionary authority in managing and directing all development activities" of the U.S. company. These duties merely paraphrase portions of the statutory definitions of managerial and executive capacity at section 101(a)(44) of the Act. 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 proposed 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).

Absent a detailed description of the beneficiary's proposed duties, it is impossible to determine that he will perform primarily managerial or executive tasks within one year.

Further, while some duties described by the petitioner would generally fall under the definitions of managerial or executive capacity, the minimal supporting evidence submitted in support of the petition, and in response to the request for evidence, raises questions as to how long it would realistically take the U.S. company to develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature. The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Here, while the AAO does not doubt that the beneficiary would exercise decision-making authority and overall oversight over the petitioning company as its president, the petitioner has not met its burden to show that the beneficiary would primarily perform managerial or executive duties within one year. The AAO cannot accept a managerial or executive job title and broad, conclusory assertions regarding the beneficiary's responsibilities in lieu of the required detailed description of the beneficiary's duties. The petitioner has not adequately described the beneficiary's actual proposed duties, such that they could be classified as managerial or executive in nature. Nor has the petitioner submitted a more detailed description of the beneficiary's duties for consideration on appeal.

Furthermore, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. Upon review, the supporting evidence does not provide a clear or consistent explanation of the petitioner's proposed hiring plan. The petitioner initially claimed that it already employs three employees, but later stated that it currently has a staff of only two employees, while identifying four different employees by name. Regardless, the petitioner has offered no evidence to document any payments to any existing employees. Furthermore, the petitioner's business plan and other information provided by the petitioner provides an unclear picture of the extent to which the U.S. company is likely to expand by the end of its first year of operations.

For example, the petitioner initially identified 12 proposed positions and indicated that for the first year of operations, it would employ one person in its warehouse, four in its store and four in its offices in New York. The proposed positions included a president, vice president, office manager, sales manager, driver, secretary, consultant, two workers, and four full-time and part-time sales people. In response to the request for evidence, the petitioner submitted a revised business plan indicating that the company would be operating a single "wholesale center" located in New Orleans during the 2007-2008 year. The petitioner stated that four people would work in the wholesale center, two people would work in the warehouse and four people would work in the company's New York office. The petitioner provided no explanation for these changes. The petitioner also provided a chart identifying its proposed staff which included only five full-time and three part-time staff. The petitioner did not identify what positions would be filled by the other "three to four" staff to be hired, and, again, no evidence was provided to document the existence of the workers that the petitioner claimed to have already hired. Neither business plan includes specific dates for proposed activities, income projections, information regarding start-up costs and available funds, or other data that would assist in establishing what staffing levels the petitioner anticipates and whether such proposed staffing levels are feasible during the first year of operations.

On appeal, rather than clarifying the petitioner's business plans and hiring plans, the petitioner states for the first time that the beneficiary would supervise four department managers, including an office manager, a sales manager, a project manager and a "market analysis." The petitioner did not mention proposed positions for a project manager or a marketing analyst employee prior to the adjudication of the petition, nor does it offer position descriptions or proposed hiring dates for these newly-proposed positions on appeal.

Overall, the record is fraught with inconsistencies with respect to the petitioner's business plans and hiring plans for the first year of operations. 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).

It should be noted that the AAO's review of this issue is severely restricted by the petitioner's failure to submit evidence or information regarding the proposed nature of the office, the anticipated scope of the entity, and its financial goals, as required by 8 C.F.R. § 214.2(l)(3)(v)(2). 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 therefore. Most importantly, the business plan must be credible.

Id.

Based on the petitioner's representations, the U.S. company intends to operate a textile import business that will eventually include "wholesale centers," retail department stores and domestic manufacturing operations. At the time of filing, the petitioner had a sublease agreement for two office rooms and one conference room, which were to be used as offices only, and the petitioner claims to have an initial investment of \$150,000 from its parent company. No other information or evidence has been provided to establish how the petitioner will grow to a size where it will require the services of a qualifying managerial or executive employee within one year. While the petitioner has provided two different business plans, it has not adequately articulated the intended scope of the organization or its financial goals, nor consistently identified the specific positions to be filled or the timeline for hiring additional employees. It has also provided insufficient evidence of the size of the investment required for start-up operations, and no financial objectives or projections for the company's start-up operations. Going on record without supporting documentary evidence is not sufficient for purposes

of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO cannot speculate as to when the proposed employees might be hired or otherwise determine how many employees the company would support at the end of the first year of operations, or who would be performing the day-to-day, non-managerial functions of the petitioner's business. There is insufficient evidence to support the petitioner's claim that the beneficiary would supervise subordinate managers and professionals within one year.

In summary, the vague job description provided for the beneficiary, the lack of consistency and detail regarding the petitioner's business plan and hiring plan for the first year of operations, considered with the lack of evidence of the size of the U.S. investment as discussed further below, prohibits a determination that the petitioner could realistically support a managerial or executive position within one year. For this reason, the appeal will be dismissed.

The second and final issue addressed by the director is whether the petitioner established that it had secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A).

The petitioner indicated on Form I-129 that the beneficiary would work at 2463 E. 22nd Street, Suite 2R, in Brooklyn, New York. The petitioner stated in its business plan that it would operate locations in both Brooklyn, New York and New Orleans, Louisiana during the first year of operations. At the time of filing, the petitioner submitted a sub-lease agreement for "two office rooms and one conference room" located at 2700 Fenelon Street in Chalmette, Louisiana. Although the lease is dated July 15, 2007, it has a commencement date of November 1, 2007. The petitioner sought to employ the beneficiary at its New York location beginning on October 1, 2007 and has consistently maintained that it intends to employ four people in its New York office. However, the record did not contain evidence that the petitioner has secured any physical premises in New York.

In the request for evidence issued on September 13, 2007, the director instructed the petitioner to submit evidence that it has acquired premises of sufficient size to conduct international trade. The director observed that the petitioner had not shown that it had secured warehouse, shipping, and receiving facilities. The director requested original lease agreements, a statement from the petitioner's lessor identifying the square footage of the leased premises, and telephone numbers for the petitioner's lessors.

In response, the petitioner submitted the following documents:

- A letter from [REDACTED] and [REDACTED] who stated that the petitioning company signed a lease agreement to rent one office room with 460 square feet of space to be used as a warehouse. Ms. [REDACTED] stated that the lease had a one-year term commencing on November 1, 2007.
- A lease agreement dated August 30, 2007 between [REDACTED] and the petitioning company. The lease is for the premises located at 2700 Fenelon Street, Suite 1R in Chalmette, Louisiana, and is for a term commencing October 1, 2007 and ending on September 30, 2009. According to the agreement, the leased premises include 620 square feet of space and are to be used for the warehousing of textile products.

In denying the petition on September 26, 2007, the director determined that the petitioner had failed to establish that a warehouse space of 460 or 620 square feet would be sufficient to support the petitioner's business.

On appeal, the petitioner acknowledges that it has rented a small warehouse for the beginning stages of its business. The petitioner asserts that such space is sufficient as the company does not anticipate receiving large shipments prior to December 2007, or until after the beneficiary's arrival in the United States. The petitioner states that it intends to rent "two big warehouses for the wholesale center in New Orleans, LA and Brooklyn, New York after [the beneficiary] arrive[s] here."

The petitioner submits a sub-lease agreement executed between the petitioner and American Chamber of Commerce for Overseas Chinese, Inc. for premises located at 600 E. Judge Perez Drive in Chalmette, Louisiana. According to the lease agreement, the premises consist of 1,850 square feet of space and are to be used for the warehousing of textile products. The lease has a one-year term commencing on December 1, 2007. The petitioner has submitted four photographs which allegedly depict the interior of the newly-leased premises.

Upon review, the petitioner's assertions are not persuasive. The lease agreements and photographs submitted do not clearly establish that the petitioner has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A). The petitioner has not described its anticipated space requirements for its proposed business. Moreover, the petitioner clearly indicated on Form I-129 that the beneficiary would work in Brooklyn, New York, yet the record is devoid of evidence that the petitioner has leased or purchased any premises in New York. 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)). Moreover, the petitioner must establish that it has secured premises as of the date the petition was filed. Although the petitioner claimed at the time of filing that it already had three employees, none of the lease agreements submitted have a term that commenced prior to October 1, 2007. 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). For this additional reason, the appeal will be dismissed.

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

ORDER: The appeal is dismissed.