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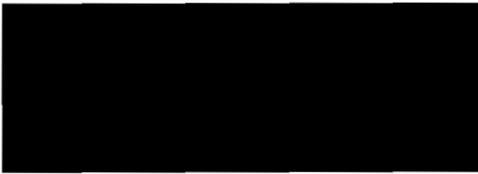
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U.S. Citizenship  
and Immigration  
Services

D-7



File: EAC 07 098 50455 Office: VERMONT SERVICE CENTER Date: **OCT 29 2008**

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

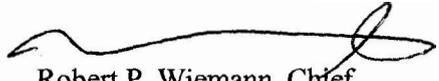
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



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 nonimmigrant visa petition. 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 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 California corporation, states that it intends to engage in the “bee industry.” The petitioner claims to be a subsidiary of [REDACTED], located in Hong Kong. The petitioner seeks to employ the beneficiary as the sales manager of its new office in the United States.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity; or (2) that the beneficiary would be employed by the U.S. company in a primarily 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 asserts that the petitioner submitted sufficient evidence to establish that the beneficiary has been and will be employed in a managerial or executive capacity. Counsel contends that the director failed to correctly evaluate the petitioner as a new office, and overlooked extensive documentation submitted in response to a request for evidence. Counsel 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.

- (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 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 in this matter is whether the petitioner established that the beneficiary has been employed by the foreign entity 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 filed the nonimmigrant petition on February 22, 2007. In a letter dated February 21, 2007, the petitioner stated that the beneficiary has been employed by the foreign entity as sales manager since 1990, and that he is "responsible for development, planning, organization and marketing of the sales department." The petitioner submitted an organizational chart for the foreign entity on which the beneficiary was identified as "sales and marketing executive," reporting to the company's managing director. The chart depicts a "sales and promotions supervisor" position which appears to be subordinate to the beneficiary's position. No other sales or marketing employees appear on the chart.

The director found the initial evidence insufficient to establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. Accordingly, on April 30, 2007, the director issued a request for evidence (RFE), in which he requested, *inter alia*, additional evidence regarding the management and personnel structure of the foreign entity. The director instructed the petitioner to indicate how many subordinate supervisors the beneficiary manages, the job titles and job duties of all employees under his supervision, the amount of time the beneficiary allocates to managerial or executive duties, and the degree of discretionary authority he exercises over the day-to-day operations of the foreign entity. The director also requested an organizational chart for the foreign entity and complete position descriptions for all of the foreign entity's employees.

In a response received on July 18, 2007, the petitioner submitted an organizational chart for the foreign entity, which shows that the beneficiary supervises an “assistant sales and promotion officer.” The chart does not clearly show that any employees report to the beneficiary’s subordinate. The petitioner also submitted a personnel list for the foreign entity, which included very brief descriptions of each employee’s duties. The petitioner indicated that the beneficiary is responsible for “all the contracting and market development, promotion works,” while the assistant sale and promotion officer is responsible for assisting with “all the sales and promotion works.” The personnel list, which includes a total of 23 positions, does not include any subordinate sales or marketing staff.

The director denied the petition on January 30, 2008, concluding that the petitioner failed to establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. The director observed that the petitioner failed to submit evidence addressing the beneficiary’s position with the foreign entity, and had failed to provide a sufficient description of duties performed by the beneficiary’s subordinate staff. The director found that without such evidence, it could not be determined that the beneficiary has been supervising subordinate managers, professionals or supervisors.

On appeal, counsel asserts that the director’s finding is erroneous and is contradicted by the documentation submitted in response to the RFE. In support of the appeal, the petitioner submits a letter from the foreign entity with the following information regarding the beneficiary’s duties:

[The beneficiary] has been the sales and marketing executive since [1990]. In this position [the beneficiary] has been generally responsible for the development of the distribution network for our products in Hong Kong and China, as well as the initial development of the U.S. market. [The beneficiary] has had the primary responsibilities to develop marketing plans and oversee implementation by the sales and promotion staff and employees. He has done this by working with the sales and promotion supervisor. [The beneficiary] is also directly involved with clients when necessary to resolve major problems or meet critical customer needs. [The beneficiary] also monitors the performance of packaging and shipping activities on a daily basis through the supervisor of that sub-department.

Our business is based on the continuing satisfaction of our customers in a very competitive industry. It is necessary to be aware of customer trends, pricing issues, product innovation developments, and similar factors on a daily basis. [The beneficiary] is responsible for developing and overseeing the implementation of a system to collect necessary information and be responsive to customers. He accomplishes this by monitoring the activities of department heads and interacting with operational employees to make sure that they are also aware of their responsibilities.

Upon review, the petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner’s description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job

duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner has failed to provide a description of the beneficiary's duties sufficient to establish that he was employed by the foreign entity in a primarily managerial or executive capacity. The job descriptions submitted by the petitioner prior to the adjudication of the petition consisted of two sentences. Specifically, the petitioner stated that the beneficiary is "responsible for development, planning, organization and marketing of the sales department," and that he is responsible for "all the contracting and market development, promotion works." Contrary to counsel's assertions otherwise, these general statements are not sufficient to establish that the beneficiary has been employed in a primarily managerial or executive position, as they offer no insight into what the actual tasks he performs with respect to the foreign entity's sales, marketing and promotion activities. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, the director specifically requested that the petitioner provide a "complete position description for all of the foreign entity's employees," which reasonably would include a complete position description for the beneficiary. In addition, the director requested information regarding how much of the beneficiary's time is allotted to managerial or executive duties versus non-managerial duties, and information regarding the degree of discretionary authority the beneficiary has over day-to-day operations in his foreign position. Given these specific requests, the petitioner's response that the beneficiary is responsible for "all the contracting and market development, promotion works," was not responsive to the director's inquiries. Any 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 now submits a lengthier description of the beneficiary's duties on appeal. However, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it 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.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

As noted above, based on the organizational charts submitted by the petitioner, it appears that the beneficiary has one direct subordinate. This position was identified as "Sales and Promotion Supervisor" on the initial organizational chart, and as "Assistant Sales and Promotions Officer" on the subsequent organizational chart and employee list. Although requested to provide specific information regarding the number of subordinate managers and supervisors the beneficiary supervises and detailed descriptions of their duties, the petitioner provided the following job description for the beneficiary's subordinate: "Assistant all the sale and promotion works." The petitioner has not established that this position requires a bachelor's degree, such that the beneficiary's subordinate could be classified as a professional.<sup>1</sup> Nor has the petitioner shown that this the assistant sales and promotions officer supervises subordinate staff members or manage a clearly defined department or function of the petitioner, such that she could be classified as a manager or supervisor. The personnel list submitted for the foreign entity does not include any sales employees other than the beneficiary and his subordinate. Thus, the petitioner has not shown that the beneficiary supervises a subordinate staff of supervisors, managers, or professionals, as required by section 101(a)(44)(A)(ii) of the Act. Moreover, the petitioner has not stated that the beneficiary has the authority to hire or fire employees, or to recommend these personnel actions. *See* section 101(a)(44)(A)(iii) of the Act.

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, 8 U.S.C. § 1101(a)(44)(A)(ii). 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 detailed description of the duties 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 manages an essential function. 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). It is the petitioner's obligation to establish that the day-to-day non-managerial tasks of the function managed are performed by someone other than the beneficiary.

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<sup>1</sup> In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee.

In this matter, the petitioner has not submitted a description of the beneficiary's duties sufficient to establish what duties he performs on a day-to-day basis, and therefore it is impossible to conclude that he primarily performs duties related to the management of a function. In addition, based on the lack of evidence in the record regarding the foreign entity's staffing levels in general, it is not clear that there is anyone to perform the day-to-day duties of the sales function, other than the beneficiary and one assistant sales and promotion officer. Accordingly, the petitioner has not established that the foreign entity employs the beneficiary as a qualifying function manager.

Overall, based on the limited evidence in the record, it cannot be concluded that the beneficiary has been performing primarily managerial or executive duties for the foreign entity. Accordingly, the appeal will be dismissed.

The second issue in this matter is whether the petitioner established that the U.S. company will employ the beneficiary in a primarily managerial or executive capacity within one year of commencing operations.

In its letter dated February 21, 2007, the petitioner stated that the beneficiary will serve as sales manager of the new office, and that he will be "responsible for warehousing, distribution, marketing and sales." The petitioner further stated that the beneficiary will work with the company's board of directors to establish corporate goals and policies. The petitioner indicated on Form I-129, Petition for Nonimmigrant Worker, that the U.S. company has three employees and anticipates gross annual income of \$250,000. The petitioner did not submit a business plan or other information regarding the anticipated size, nature and scope of the organization, nor did it submit evidence of the size of the U.S. investment, as required by 8 C.F.R. §§ 214.2(l)(3)(v)(C)(1) and (2).

In the request for evidence issued on April 30, 2007, the director requested, *inter alia*, the following: (1) a clear description of the type of business to be conducted in the United States, including information regarding any U.S. clients and the products or services to be sold; (2) a copy of the petitioner's business plan, giving specific dates for each proposed action for the next two years; (3) evidence to establish the size of the United States investment and the financial ability of the foreign entity to commence doing business in the United States; (4) evidence to establish the financial status of the U.S. organization; and (5) evidence to establish how the new company will grow to be of sufficient size to support a managerial or executive position.

In response, the petitioner submitted a document titled "Responsibility and Duty of Job" which states that the beneficiary will serve as "Executive Director" and perform the following duties:

1. Establish our "Brand-name" products in foreign countries;
2. Office Set-Up;
3. Seeking an Executive Distributor for both "Brand-Name" label products;
4. Distributions and Sales;
5. Promotions;
6. New private Label Development;
7. Honey Resources;
8. Manufacturing;

9. Importation and Exportation.

The petitioner also submitted an organizational chart for the U.S. entity indicating that the beneficiary will supervise the following employees: [REDACTED] marketing expert; [REDACTED] assistant; [REDACTED] bookkeeper; and [REDACTED], accountant. The organizational chart also identifies two exclusive distributors. The petitioner attached an employee list which provided the following information for each position:

Executive Director – All authorities for any kinds of business transaction and day to day managerial operations.

Marketing Expert – arrangement for all kind of promotion event and marketing activity

Accountant – all kinds of accounting and tax taxation works

Bookkeeper – preparation works for all kinds of invoice and billing

Assistant – day to day operation works

The petitioner stated that the primary purpose of the U.S. organization would be to seek exclusive distributors for the foreign entity's traditional label; laboratory analysis and testing for importation of honey products; distribution and sales; promotion; private label development; development of relationships with local bee keepers; establishing a production line and packing system; and exportation of honey products.

The petitioner indicated that it already as an exclusive U.S. distributor for its "traditional label" honey products since 2006. The petitioner also submitted a business plan briefly outlining its proposed actions for 2007 and 2008. Finally, the petitioner outlined the capital investment required to fund the U.S. entity, and submitted evidence that the company has \$150,000 in its bank accounts. The petitioner also submitted documentary evidence to establish that it has begun importing "traditional label" products from Hong Kong, developing its private label, and distributing products to retailers in the United States through its exclusive distributor.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year of the petition approval. The director observed that the petitioner had not adequately described the duties to be performed by the beneficiary or the subordinates within the context of the petitioner's business, and therefore it was not possible to conclude that the beneficiary would be relieved from performing the non-qualifying duties of the business within one year.

On appeal, counsel asserts that the director incorrectly stated that the petitioner did not submit a sufficient description of the beneficiary's duties or evidence to establish how the petitioner would grow to be of a sufficient size to support a managerial or executive position within one year of approval. Counsel contends that the director failed to acknowledge the substantial evidence submitted in response to the RFE and apparently failed to consider such evidence. Counsel further asserts that the evidence shows that the petitioner "has a reasonable plan" for meeting the regulatory requirements.

In addition, counsel asserts that the director "confuses the petitioner's burden of proof which is to establish ability to support an executive or managerial position in one year, not to show that the beneficiary is currently

functioning as a manager directing an in-place staff of supervisory or professional personnel.” Counsel contends that the evidence already submitted demonstrates that the company “will have the necessary level of supervisory personnel within one year.

In support of the appeal, the petitioner submits a letter dated February 27, 2008 in which it further describes the beneficiary’s proposed role as follows:

[The beneficiary] has identified and begun negotiations with distribution outlets in the Southern and Northern California regions, health food distributors, ethnic [sic] supermarket chains and the like. He has been lining-up distribution points for future sales when our operation is set-up. He has also been negotiating with local beekeepers to establish supply sources.

While developing sales and supply sources, [the beneficiary] has also been locating the administrative office and the production and distribution facility. As part of this activity, he has been locating necessary equipment for bottling, labeling, and packaging and trained and experienced operations employees.

Once operations reach a normal level, and revenue approaches expected levels [the beneficiary] will hire permanent employees and the operation will assume the same organizational structure as the parent company, with [the beneficiary] assuming the same types of duties as he had with the parent company. It is planned that [the beneficiary] will have several managers working at his direction as in the parent company with operational employees at a lower level. It is expected, as indicated in the documents previously submitted to you, that this will occur sometime this summer.

Upon review, the petitioner's assertions and additional evidence are not persuasive in establishing that the beneficiary will be employed in a primarily managerial or executive capacity within one year.

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. The petitioner must also establish that the beneficiary will have managerial or executive authority over the new operation. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

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.*

While the petitioner has submitted evidence to establish the size of the U.S. investment and demonstrated that the beneficiary is already taking undertaking efforts to commence operations in the United States, the director correctly concluded that the petitioner did not adequately describe the beneficiary's proposed duties, or the proposed organizational structure of the U.S. company after the first year of operations.

First, the petitioner has failed to establish that the beneficiary will be performing primarily "managerial" or "executive" duties after the petitioner's first year in operation. When examining the proposed executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the proposed 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 that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.*

In this matter, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis after one year in operation. For example, the petitioner initially stated that the beneficiary will "be responsible for warehousing, distribution, marketing and sales," and "establish corporate goals and policies." Essentially, the petitioner simply stated that the beneficiary would be "responsible for" the company's major functions, without indicating what specific managerial or executive duties he would perform. 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).

While the AAO acknowledges the petitioner's voluminous response to the director's request for additional evidence, the petitioner offered no additional information to elaborate upon the beneficiary's actual duties in

the United States. Rather, the list of duties and responsibilities provided is almost identical to the petitioner's description of the nature and purpose of the U.S. office in general and includes such duties as "distributions and sales," "promotions," "honey resources," "manufacturing," and "importation and exportation." Based on the petitioner's business plan, the company does not anticipate undertaking its production-line and packing operations until November 2008 or later, while import and export activities are expected commence in 2009, so it cannot be found that the beneficiary would be responsible for managing these activities within one year. The only other description of the beneficiary's duties included in the petitioner's response was that he will have authority for "any kinds of business transaction and day to day managerial operations." 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. Again, the actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. at 1108.

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). While it appears that the beneficiary would exercise the requisite authority over the U.S. company as its senior employee, the brief position descriptions provided fall significantly short of establishing that the beneficiary's primary duties would be managerial or executive in nature.

On appeal, the petitioner states that, once the company begins operating at a normal level, the beneficiary will assume "the same types of duties as he had with the parent company," with "several managers working under his direction." This assertion is not persuasive. As discussed, *infra*, the petitioner has not provided a detailed description of the beneficiary's duties with the foreign entity and therefore has not established that he was employed in a primarily managerial or executive capacity. Furthermore, the petitioner has not, in fact, established that the beneficiary supervised "several managers" while employed by the foreign entity. Finally, the petitioner indicated that the business would assume "normal" operations and employ the requisite staff by the summer of 2008; however, the record does not contain a hiring plan to corroborate this statement. 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)).

Likewise, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to perform the non-qualifying tasks inherent to his duties and to the operation of the business in general. The petitioner failed to specifically describe its staffing plan, and the brief business plan submitted contains no indication as to how many and what types of staff would be hired during the first year of operations. At the time the petition was filed, the petitioner claimed to employ three staff. In response to the request for evidence, the petitioner claimed to employ a marketing expert, an accountant, a bookkeeper and an assistant. On appeal, the petitioner simply states that the beneficiary "will hire permanent employees and the operation will assume the same organizational structure as the parent company," and that such structure

would be in place by the summer of 2008. However, the petitioner has still not adequately outlined the proposed structure of the U.S. entity as of one year from the date the petition was filed, nor has it sufficiently indicated when employees will be hired or the duties to be performed. In addition, although the petitioner claimed in response to the request for evidence that four employees had already been hired, it offered no documentary evidence of payments to the claimed employees, and on appeal, seems to indicate that employees have not yet been hired. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

As the petitioner fails to explain what tasks the beneficiary and his subordinate staff will perform after the petitioner's first year in operation or to explain how much time the beneficiary will devote to performing non-qualifying tasks, it cannot be confirmed that he will be "primarily" employed as a manager or executive within one year. Accordingly, 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.