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U.S. Department of Homeland Security
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U.S. Citizenship
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Services



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File: EAC 07 117 52613 Office: VERMONT SERVICE CENTER Date: JUN 04 2009

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)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting 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 employ the beneficiary as an L-1A 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 was incorporated in the State of California in January 2007 and intends to operate a restaurant and retail store. It claims to be an affiliate of K&P Craft, located in Kathmandu, Nepal. The petitioner seeks to employ the beneficiary as the president of its new office in the United States for a period of ten (10) months commencing on June 1, 2007.¹

The director denied the petition on two separate and alternative grounds, concluding that the petitioner did not establish (1) that the beneficiary will be employed by the United States entity in a managerial or executive capacity within one year of the approval of the petition; or (2) that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary's present and proposed duties are executive in nature, and the director's conclusions to the contrary were legally and factually in error. Counsel submits a brief and additional evidence in support of the appeal.

Upon review and for the reasons discussed herein, counsel's assertions are not persuasive. 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.

¹ The petitioner stated on the L classification supplement to Form I-129 that the beneficiary is coming to the United States to open a new office. The beneficiary was previously granted L-1A status in order to open a new office for K&P Craft, with validity dates from February 2, 2004 until February 1, 2005 (WAC 04 077 52196). K&P Craft subsequently filed a petition to extend the beneficiary's L-1A status (WAC 05 079 50578). The petition was denied and the AAO dismissed the petitioner's subsequent appeal in February 2007. The instant petition was filed on March 23, 2007. As discussed herein, the instant petitioner cannot be considered a "new office," as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

- (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.

According to 8 C.F.R. § 214.2(l)(1)(ii)(F), a "new office" is defined as "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year." Doing business is defined as "the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii)(H).

Preliminarily, the AAO will address whether the instant petitioner should be considered a "new office." The petitioner indicated on Form I-129 that the beneficiary is coming to the United States to open a new office, notwithstanding the fact that he was previously granted a one-year period in L-1A status for this purpose, albeit with a different U.S. petitioner. The petitioner that previously filed a new office petition on behalf of the beneficiary, K&P Craft USA, is an affiliate of both the foreign entity and the U.S. company established in 2004 and incorporated in California in 2005. The petitioner indicates that this company remains active. Therefore, the petitioner is part of an organization which has been doing business in the United States through an affiliate for more than one year and it does not fall within the regulatory definition of a "new office."

Accordingly, the director should not have applied the regulations at 8 C.F.R. § 214.2(l)(3)(v). The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business, or businesses. The regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. By allowing multiple petitions under the more lenient standard, USCIS would in effect allow foreign entities to create under-funded, under-staffed or even inactive companies in the United States, with the expectation that they could receive multiple extensions of their L-1 status without primarily engaging in managerial or executive duties. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii). As noted above, the petitioner's request for an extension of its new office petition was denied in 2005. The petitioner cannot circumvent the regulations by incorporating another new U.S. entity two years later.

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). The AAO will herein address the petitioner's evidence and eligibility pursuant to the regulation at 8 C.F.R. § 214.2(1)(3).

The first issue addressed by the director is whether the petitioner established that the beneficiary will be employed by the petitioner 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 Form I-129, Petition for a Nonimmigrant Worker, on March 23, 2007. In a letter dated March 21, 2007, the petitioner stated that the beneficiary will perform the following duties as its president and chief executive officer:

In this executive capacity, he will be in control of the direction, policy, philosophy, major decisions, goals and strategy of our business operations. *He will oversee and direct the General Managers of the Himalayan Collection store and Himalayan Restaurant, who will be responsible for managing the day-to-day functions of the retail store and the restaurant. He will be solely responsible for hiring, firing and evaluating all management positions in the company. He will direct and control the design and development of the retail store and restaurant. He will exercise wide and exclusive latitude over all start-up operations of the new U.S. business.*

The petitioner indicated that it has leased adjacent units in which it will operate a retail store and restaurant, and stated that it has all necessary permits, equipment and inventory to support the new business. It described its staffing as follows:

We currently employ a General Manager, [REDACTED] and a sales clerk for the Himalayan Collection store. We expect to hire additional sales staff for the store by the end of this calendar year. The General Manager is responsible for managing all day-to-day functions of the retail store and will report directly to the President of [the petitioner]. The store is fully operational and during the last several weeks, the business has successfully increased its operations.

The petitioner indicated that it intends to open its Himalayan restaurant in June of 2007, at which time it will hire a restaurant manager, a cook, a kitchen helper, a waiter and a dishwasher. The petitioner indicated that the restaurant manager will report to the beneficiary.

The director issued a request for additional evidence (RFE) on May 10, 2007. The director requested a description of the proposed staff, including the number of employees, their job titles, the duties to be performed by each employee, and the salary or wages to be paid to each employee. The director also requested evidence to establish that the beneficiary will be relieved from performing the non-managerial, day-to-day operations of the business.

In a letter dated August 2, 2007, the petitioner reiterated that it has hired [REDACTED] to be the general manager for both the retail store and restaurant operations, as well as a sales clerk. The petitioner indicated that it intended to hire a store manager and two additional clerks within six months.

The petitioner further stated that that the proposed restaurant is the "more substantial" part of its business and that [REDACTED] began the process of securing the necessary health permits as of May 2007. The petitioner indicated that it has hired contractors to renovate the restaurant site, and expects the restaurant will open in September 2007. The petitioner noted that [REDACTED] is responsible for obtaining permits, overseeing contracts and will also be responsible for hiring restaurant staff to include a manager, two cooks, three waiters, two dishwashers, and two kitchen helpers.

The petitioner further described the beneficiary's proposed duties as follows:

[The beneficiary] will . . . be responsible for directing and controlling the successful growth of our new business and implementing our expansion plans to Los Angeles, Atlanta, and

Grass Valley, CA. [The beneficiary] will assume the position of President and CEO for our company upon approval of his L-1A Petition. In this executive capacity, he will be in control of the direction, philosophy, major decisions, and strategy of the business start-up and operations for the company's first year of operation. In the first full year of operations, [the beneficiary] will be responsible for carrying out the short-term goals and direction of the company, and he will develop a better vision of our long-term goals and direction. In order to carry out our expansion plans, [the beneficiary] will be responsible for developing marketing strategies, financial goals, and company policy consistent with the opening of new businesses in Los Angeles, Atlanta, and Grass Valley, CA after the successfully [sic] getting our new company off its feet.

[The beneficiary] will also oversee the general manager. The general manager is responsible for day-to-day operations of the retail store and restaurant. The general manager will answer directly to [the beneficiary] in the performance of all duties. [The beneficiary] has the sole authority to hire, fire, and evaluate all management positions in the company. He will exercise wide latitude over the goals and direction of the company and will report to no one in the carrying out of his duties as he is the 100% owner of all shares of the company.

The petitioner named and provided position descriptions for the general manager and part-time sales clerk and provided descriptions for all other proposed store and restaurant positions. The petitioner indicated that the same positions would be replicated at the petitioner's future operations in Los Angeles, Atlanta and Grass Valley, California. The petitioner's proposed organizational chart depicted a total of 13 positions at the Big Bear Lake, California location, two of which were filled as of August 2007.

Finally, the petitioner provided evidence of wages paid to its general manager and part-times sales clerk during the second quarter of 2007.

The director denied the petition on December 10, 2007, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. In denying the petition, the director observed that the statements made regarding the beneficiary's duties merely identify general managerial functions and fail to specify exactly what duties he would be performing in a qualifying capacity. The director further found that the petitioner failed to establish that the beneficiary would be managing a subordinate staff of professional, managerial or supervisory personnel who would relieve him from performing non-qualifying duties.

On appeal, counsel for the petitioner asserts that the beneficiary will be performing solely executive duties in the United States. Counsel asserts that the beneficiary has modified the business plan and goals of the U.S. company and, under the modified plan, he will direct and control the company's retail sales, wholesale/distributor sales, marketing and restaurant divisions. Counsel indicates that the beneficiary has also initiated the acquisition and merger of K&P Craft Inc., the petitioner's affiliate, in order to expand the petitioner's business into the areas of wholesale distribution and to increase its existing retail sales division. Counsel further states that the beneficiary has initiated negotiations to acquire a similar business in Atlanta and to start up a retail and restaurant sales franchise in Grass Valley, California. Counsel notes that the

petitioner continues to operate its retail store in Big Bear Lake, California and seeks to launch its restaurant division after securing the requisite health permits.

Counsel contends that the director's conclusions regarding the nature of the beneficiary's duties and the duties to be performed by his subordinates are "legally and factually in error based upon the company's modified business plan and organizational structure." Counsel asserts that there is no evidence in the record that the beneficiary will perform non-qualifying duties, and states that the company will be adequately staffed with employees to perform the everyday services of the business. Counsel indicates that additional employees to be hired based on the revised business plan include a marketing manager, a wholesale/distributor division manager and a restaurant division manager.

In support of the appeal, the petitioner submits an affidavit from the beneficiary, who requests approval of the petition "in light of the changes in our company's business plan and organizational structure that have taken place in our first year of business which clearly support the need to hire [the beneficiary] in an executive capacity." The beneficiary discusses the delays the company has faced in obtaining the required restaurant permits and indicates that the petitioner is now in the process of acquiring several companies which are in the business of import/export, wholesale and retail sale of Nepali products, in an effort to expand its retail operations and develop a wholesale distribution division.

In support of the appeal, the petitioner submits a new proposed organizational chart depicting approximately 30 positions and four divisions. The petitioner also submits its payroll journal report for the third quarter of 2007, which shows that [REDACTED] was the only employee paid during that quarter.

Upon review of the petition and evidence, the petitioner has not established that the beneficiary will be employed in the United States 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(1)(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 evidence submitted in support of the initial petition provided no insight into what the beneficiary will actually do on a day-to-day basis as president of the U.S. company. For example, the petitioner indicated that the beneficiary "will be in control of the direction, policy, philosophy, major decisions, goals and strategy of our business operations"; "will direct and control the design and development of the retail store and restaurant"; and "will exercise wide and exclusive latitude over all start-up operations." These general statements fall significantly short of meeting the petitioner's burden of establishing that the beneficiary would be performing primarily managerial or executive duties and would not be considered clear or detailed by any standard. 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 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).

The position description submitted in response to the RFE was similarly vague. The petitioner reiterated much of the initial position description and added that the beneficiary will "carry out the short-term goals and direction of the company," develop "long term goals and direction," and "develop marketing strategies, financial goals and company policy." Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Accordingly, the record before the director contained no concrete description of what the beneficiary will do on a day-to-day basis as the president of the petitioning company. The definitions of executive and managerial capacity have two specific requirements. 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 and owner, the petitioner has not met its burden to show that the beneficiary will primarily perform managerial or executive duties. 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 described the beneficiary's actual duties, such that they could be classified as managerial or executive in nature.

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 organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, 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 argument that the beneficiary will be employed in a primarily managerial or executive capacity is largely dependent upon the petitioner's hiring of proposed staff to carry out the company's day-to-day functions, and its reliance on the "new office" regulations.

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by USCIS 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.

In creating the "new office" accommodation, the legacy Immigration and Naturalization Service (INS) recognized that the proposed definitions of manager and executive created an "anomaly" with respect to the

opening of new offices in the United States since "foreign companies will be unable to transfer key personnel to start-up operations if the transferees cannot qualify under the managerial or executive definition." 52 Fed. Reg. at 5740. The INS recognized that "small investors frequently find it necessary to become involved in operational activities" during a company's startup and that "business entities just starting up seldom have a large staff." *Id.* Despite the fact that an alien engaged in the start up of a new office may not be "primarily" employed in a managerial or executive capacity, as then required by regulation and later by statute, the INS amended the final regulations to allow for L classification of persons who are coming to the United States to open a new office as long as "it can be expected . . . that the new office will, within one year, support a managerial or executive position." *Id.*

As discussed above, the beneficiary was previously granted one year in L-1 classification in which to open a United States affiliate of the foreign entity. The petitioner asserts that the initial U.S. affiliate, K & P Craft, Inc., is still doing business in the United States, and the evidence of record corroborates this claim. As discussed above, the instant petitioner, which is also an affiliate of K&P Craft, Inc., is not a "new office" under the regulatory definition and the beneficiary cannot once again benefit from the lenient treatment granted to managers and executives responsible for setting up new offices in the United States. Only L-1 petitions governed by the new office regulations require USCIS to consider evidence that is speculative in nature, such as business plans and proposed hiring plans.

In this case, 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).

At the time the petition was filed, the petitioner claimed to employ two employees, a general manager, and a part-time sales clerk. The evidence of record shows that the part-time sales clerk received wages from the petitioner only during the months of April, May and June 2007, but was no longer on the company's payroll as of the third quarter of 2007. There is no evidence that she worked for the petitioner at the time of filing and she appears to have been terminated before the petitioner responded to the RFE. While there is much discussion in the record regarding the opening of a restaurant, a chain of four retail stores, a wholesale division, and the hiring of as many as nearly 30 employees in the future, the fact remains that the petitioner, at the time of filing, and at the time the petition was adjudicated, was operating a single retail store with a single employee.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "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 USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell

company” that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Here, the petitioner has not established that a company operating a retail establishment with one employee has a reasonable need at its current stage of development for a new employee to perform primarily managerial or executive duties. Rather, it is reasonable to conclude, and has not been show otherwise, that the beneficiary, at least for the immediate future, would have to participate in the day-to-day operations of the business or other non-qualifying administrative or operational functions, and would not be solely focused on long-term goals, strategies and policies, as claimed by the petitioner. Again, 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). Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Based on the foregoing discussion, the petitioner has not established that it will employ the beneficiary in a primarily managerial or executive capacity.

The second issue addressed by the director is whether the petitioner established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity prior to his transfer to the United States in L-1A status.

In the notice of denial dated December 10, 2007, the director stated:

Simply having a managerial title does not, in itself, mean that the beneficiary has been or will be performing primarily managerial duties for either the foreign or United States entities. While the beneficiary may have performed and will be in a position which requires some responsibility and authority, the record is not persuasive in showing that the beneficiary has been in a qualifying executive/managerial capacity with the foreign entity.

The above-referenced paragraph constitutes the entirety of the director's discussion regarding the beneficiary's employment capacity with the foreign entity. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. See 8 C.F.R. § 103.3(a)(1)(i).

Upon review of the totality of the evidence in the record, the AAO will withdraw the director's decision with respect to this issue only. The evidence submitted, which includes a letter from the foreign entity, an organizational chart, and financial records, is sufficient to establish that the beneficiary exercised the requisite level of authority over the foreign entity as its owner, and employed sufficient staff, including subordinate supervisors or managers, to relieve him from performing the day-to-day operations of the business.

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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.