

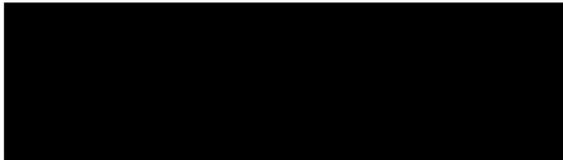
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PUBLIC COMMENT

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D7

DATE: NOV 01 2011 Office: VERMONT SERVICE CENTER FILE: [REDACTED]

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:
[REDACTED]

INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 New York corporation, states that it intends to engage in the international trade of automobiles. It claims to be a subsidiary of Arkstar International, Inc., located in Japan. The petitioner seeks to employ the beneficiary as president of its new office in the United States for a period of three years.¹

The director denied the petition based on two independent and alternative grounds. The director concluded that the petitioner failed to establish: (1) that the U.S. company had secured sufficient physical premises to house the new office; and (2) that the U.S. entity would support a managerial or executive position within one year of commencing operations in the United States.

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. In a letter submitted in support of the appeal, counsel asserts that the director overlooked substantial evidence submitted in support of the petition, and issued a vague decision that gives the petitioner no meaningful opportunity for rebuttal. Counsel stated on the Form I-290B, Notice of Appeal or Motion, that he would forward a brief and/or additional evidence in support of the appeal within to the AAO within 30 days. As of this date, no additional documentation has been received and the record will be considered complete.

I. The Law

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.

¹ Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(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.

- (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(1)(3)(v) further 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 involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

II. Discussion

A. Sufficient Physical Premises to House the New Office

The first issue addressed by the director is whether the petitioner established that it has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(1)(3)(v)(A).

Evidence of the physical premises secured for the new office is required initial evidence for a petition filed pursuant to 8 C.F.R. § 214.2(1)(3)(v). Therefore, the critical facts to be examined are those that were in existence at the time of filing the petition. It is a long-established rule in visa petition proceedings that a petitioner must establish eligibility as of the time of filing the petition. A visa petition may not be approved

based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on June 29, 2009. On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner indicated that its mailing address is [REDACTED]. The petitioner provided no other address where asked to indicate the address where the beneficiary will work.

The petitioner did not submit a lease agreement in support of the petition. According to a Durable Power of Attorney document submitted at the time of filing, the above-referenced address is the residential address of [REDACTED], the petitioner's vice president, who was appointed as the beneficiary's attorney-in-fact.

The director issued a request for additional evidence ("RFE") on July 2, 2009. The director instructed the petitioner to submit evidence establishing that it has secured physical premises to house the new office, including: (1) an original lease agreement and the telephone number of the lessor; (2) the square footage of all premises secured and a copy of the floor plan; and (3) photographs of the interior and exterior of the premises secured.

In a letter dated July 31, 2009, the petitioner clarified that it used the New Jersey address stated on the petition "on an interim basis." The petitioner indicated that since it will be engaged in the sale of pre-owned cars, it requires office space together with a garage.

The petitioner submitted a sublease agreement between the U.S. company and over-tenant, New York Transmissions & Used Auto Sales, dated July 1, 2009. According to the terms of the sublease, the petitioner will pay \$1,200 per month for use of office space and "1/2 shop space" to be used for "auto repair & sales." The sublease "is subject to the Over-Lease" between the over-tenant and the landlord, which has not been provided for review. The petitioner submitted a copy of a check in the amount of \$2,400 for July rent and security deposit issued to the over-tenant. In addition, the petitioner provided photographs of the garage storefront of New York Transmission & Used Auto Sales, which depicts the petitioner's small company sign on an external fence and in a small interior office. The petitioner also submitted a copy of a workspace with auto repair tools and equipment.

According to the petitioner's business plan, the company anticipates that it will sell 50 cars per month and achieving gross annual sales of \$6,000,000.

The director denied the petition on August 18, 2009. In denying the petition, the director observed that the petitioner failed to establish that it had secured sufficient physical premises to house the new office prior to the filing of the petition. The director emphasized that the petitioner must establish eligibility at the time of filing the petition pursuant to 8 C.F.R. § 103.2(b)(1).

On appeal, counsel for the petitioner does not address the issue of whether the petitioner secured physical premises to house the new office as of the date of filing the petition. Accordingly, the AAO will affirm the director's determination and dismiss the appeal.

The petitioner conceded that the address stated on the petition was an "interim address" and does not claim to have secured physical premises to house an auto sale and repair business prior to June 29, 2009, the date on which the petition was filed.

Further, even if the petitioner had submitted the sublease and photographs at the time of filing, the evidence would be insufficient to establish that the premises secured is sufficient in light of the proposed nature and scope of the petitioner's business. The petitioner initially stated that it intends to engage in the international trade of automobiles; however, the sublease agreement indicates that the petitioner is authorized to use the premises for automobile sales and repairs. The petitioner appears to be renting a small office sufficient for one person and part of an automobile repair shop. The lease agreement does not stipulate that the petitioner has the use of a car lot, and it is unclear whether the petitioner could reasonably achieve its projected sales of 50 vehicles a month given the nature and apparent size of the leased premises. Although requested by the director, the petitioner did not provide a floor plan or evidence of the size of the premises.

In addition, the petitioner has not provided a copy of the master lease for the company's subleased premises. Without a copy of the master lease agreement, the AAO cannot determine whether or if the landlord's consent to the sub-lease of the premises was required or given. The sublease also provides that the provisions of the master lease are part of the sublease and that the petitioning company, as subtenant, was required to read and initial the over-lease.

For the foregoing reasons, the petitioner has not established that it had secured sufficient physical premises to house the new office, pursuant to 8 C.F.R. § 214.2(l)(3)(v)(A). Accordingly, the appeal will be dismissed.

II. Beneficiary's Employment in a Managerial or Executive Capacity

The second issue to be addressed is whether the petitioner established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year.

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 U.S. Citizenship and Immigration Services (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.

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). 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.*

In a letter dated June 22, 2009, the petitioner provided the following description of the beneficiary's proposed duties as president:

In the capacity of president, [the beneficiary] will function as chief executive officer (CEO) with wide latitude of discretionary power. For instance; he will have the full authority to hire, fire, promote and demote employees. He will decide the company's policy/strategies including whether or not, when to engage in a joint venture with other companies. He will request corporate parent for additional capital investment if he deems necessary. He is in charge of overall business operation and will have final say in many important issues. [The beneficiary], however, is not doing this all by himself. He does not supervise daily operation. Instead, he will have a manager and a senior technician who will relieve him from the routine supervision of daily operation, so that [the beneficiary] can focus on more important duties outlined above.

In a separate statement, the petitioner submitted the following job description:

President: a) Set General Goals and Objectives for the company, b) Approve company rules and regulations, c) Review and approve Expenses Budget, Review Financial statements; d) Formulate company structure, Approve hiring and firing of staff at manager or higher level, e) Coordinate with executives of other companies or participate at important trade conferences, f) assume full profit and loss responsibilities for the US company and report to corporate parent. Utilize the expertise of outside expert such as financial consultant. About 7 hours for each itemized duties. Work done through the assistance of sales/marketing manager and senior technician.

Finally, the petitioner submitted a description of the beneficiary's proposed "typical day" noting that the beneficiary's daily duties would include: checking his calendar and to-do list; prioritizing and responding to or delegating responses to e-mails; meeting with the company's sales/marketing manager and senior technician and other internal meetings for two hours daily; reviewing documents and reports prepared by the manager and managing assistant and preparing reports required by parent company; reading trade publications and business magazines; contacting business consultants for marketing, strategy or technical issues; formulating internal rules, adjusting strategies, and communicating with the foreign parent company.

The petitioner provided job titles and proposed job descriptions for employees to be hired in 2009, including a sales/marketing manager, a senior technician, a managing assistant, a part-time bookkeeper, a business consultant to be hired on an hourly basis; a secretary to work with the manager and senior technician; and five to ten commissioned sales persons.

The petitioner indicated that its Japanese parent company transferred \$120,000 in initial capital as an investment in the U.S. company, and provided evidence that it had an available bank account balance of \$121,800 as of May 8, 2009.

In the request for additional evidence issued on July 2, 2009, the director instructed the petitioner to submit the following additional information to establish whether the U.S. company will be capable of supporting a managerial or executive position within one year: (1) a comprehensive description of the beneficiary's proposed duties; (2) an organizational chart for the U.S. entity depicting the beneficiary's proposed position; (3) evidence of all assets that have been purchased for use in the U.S. enterprise; and (4) a copy of the U.S.

company's business plan, including specific details regarding the business to be conducted and one, three and five-year projections for business expenses, sales, gross income and profits and losses.

In a letter dated July 31, 2009, the petitioner emphasized that it provided a description of the beneficiary's proposed duties at the time of filing. The petitioner noted that the beneficiary has already established the U.S. company and will be prepared to immediately begin efforts to recruit a sales/marketing manager and management assistant to relieve him from supervising the daily operation of the company. The petitioner further stated that the beneficiary will perform the following duties:

- a. He will travel around in the US and internationally for business opportunities. He would travel internationally 2-3 times a year.
- b. He will communicate with corporate parent in Japan on weekly basis.
- c. He will review and evaluate the overall performance of business operation on weekly basis.
- d. He will on behalf of our company, join the local trade association and coordinate/associate with his counterparts.
- e. He will review, revise and amend company's rules, regulations.
- f. He will contact banking/financial consultants to build up a solid financial footing.
- g. Our current equipments are included in the leased as is. The president will decide if and when we need to purchase new equipment or move to a bigger, better space.
- h. The president will make hiring decisions of higher ranking employees (the two positions mentioned above), and will review and approve the hiring proposals made by them.

The petitioner submitted a proposed organizational chart which depicts the position of president with two direct subordinates, the managing senior assistant and the sales and marketing manager. The chart indicates that the managing senior assistant will oversee a secretary and bookkeeper, while the sales and marketing manager will oversee one technician and sales staff.

The petitioner also provided a copy of its business plan dated May 2009. The petitioner indicates that "the core of the business will remain the conventional trading, i.e., acting as an agent/dealer to earn low-risk yet reasonably high return rate in each sale of cars." The petitioner indicates that in the first year of operations, the company will engage in the sale of pre-owned Japanese cars, with anticipated sales of 50 cars per month, a margin of \$500 per car, gross annual sales of \$6 million, and gross profit of \$300,000.

Counsel indicated that the petitioner was submitting "copies of commercial invoices regarding business with customers in Dominican Republic." The referenced exhibit included a commercial invoice for "underwear as gift" sent from an individual in the Dominican Republic to the petitioner's vice president, and copies of Spanish-language advertisements placed by the foreign entity through International Press Japan Co.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity, or that the new office would realistically support a managerial or executive position within one year. In denying the petition, the director found the position descriptions submitted for the beneficiary too vague to demonstrate that his actual duties would be primarily managerial or executive in nature. The director concluded that the petitioner failed to establish that it would grow to the point where it would require a manager or executive within one year.

On appeal, counsel for the petitioner asserts that the director failed to consider the significant business operation of the petitioner's parent company in Japan and the fact that the foreign entity invested substantial capital for the U.S. entity. Counsel further contends that the director's analysis did not adequately explain why the beneficiary's proposed job duties are not primarily managerial or executive in nature, and thus provided insufficient support for the director's conclusions. Similarly, counsel asserts that the director's decision failed to address the strengths and weaknesses of the submitted business plan, and thus the petitioner is unsure why the director concluded that "the size and scope of the proposed business activities does not support any executive/managerial level position."

Upon review of the petition and the evidence, and for the reasons discussed herein, 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.

As a preliminary matter, we acknowledge counsel's assertions that the director provided a fairly vague explanation for the denial of the petition. 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). As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

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. As noted above, 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 very broad terms. The petitioner initially stated that the beneficiary will exercise "wide latitude of discretionary power," "have the full authority to hire, fire, promote and demote employees," "decide the company's policies/strategies," be "in charge of overall business operation," and "have final say in many important issues." The petitioner indicated at the same time that the beneficiary will "set general goals and objectives," "approve company rules and regulations," "review company rules" and "assume full profit and loss responsibilities" while reporting to the corporate parent. Such statements reflect that the beneficiary will be the senior employee in the new company, but they offer little insight into what the beneficiary will actually do on a day-to-day basis as the president of a newly established used automobile sales and repair shop during the

first year of operations and beyond. 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. *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 AAO acknowledges that the petitioner attempted to describe the beneficiary's "typical day" but these duties were also described in very general terms, with the petitioner stating that he beneficiary will be reviewing correspondence, reviewing unspecified "documents and reports" prepared by subordinates, preparing unspecified "documents and reports" for the petitioner's parent company, telephone consultations, formulating rules and strategies, reading trade publications, and attending daily two-hour meetings to "check the status of various projects." Finally, in response to the director's request for a comprehensive description of the beneficiary's proposed duties, the petitioner submitted a description that closely resembled the duties listed at the time of filing, which had already been reviewed by the record and found to be deficient. 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 petitioner did not indicate that the beneficiary would be directly involved in the day-to-day operations of purchasing, repairing or selling used cars, but once again, the list of duties did not fully explain the beneficiary's role within the context of the petitioner's business, and is wholly dependent on whether the petitioner's evidence supports a finding that the petitioner will hire the proposed employees identified in the organizational chart, such that the beneficiary would actually be free to perform the duties described.

In sum, while several of the duties described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, 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. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(2) requires the petitioner to submit evidence that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position supported by information regarding the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals.

In reviewing the totality of the evidence in the record, the AAO must consider the nature of the petitioner's new office, its proposed staffing levels, its preparation for rapid development, and its need for an employee who will perform primarily managerial or executive duties.

The petitioner indicated at the time of filing and in response to the RFE that it will employ a president, a sales/marketing manager, a senior technician, a managing assistant, a bookkeeper, a secretary, commissioned

sales people, and a contracted business consultant. While the organizational structure described may very well be capable of supporting a qualifying managerial or executive position, the petitioner must also demonstrate that its proposed staffing structure is credible and can realistically be put in place within one year.

The petitioner indicates that it intends to engage in the international trade of automobiles and employ six direct employees, along with external sales agents and consultants. The petitioner's business plan states only that the company will engage in the sale of pre-owned Japanese cars, with anticipated sales of 50 cars per month and gross sales of \$6,000,000 per year.

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.

The petitioner's three-page business plan contains little information beyond projected units sold per month, and does not support a finding that the petitioner will in fact be in a position to hire the proposed staff within one year. Moreover, a review of the petitioner's lease and photographs of the leased premises raises further questions regarding the intended nature and scope of the U.S. company. The petitioner indicates an intent to employ five office staff and one technician, but the photographs depict one small office that appears large enough to accommodate only one person. As noted above, the petitioner's lease does not appear to include a car lot and it is unclear where the petitioner intends to store the automobiles that it purchases or imports for repair and re-sale, such that it could realistically reach its goal of selling 600 cars during the first year of operations. The leased premises appear to be sufficient to accommodate auto mechanics and an office worker.

The petitioner has submitted evidence that it had an available balance of \$121,000 in its checking account as of the date of filing the petition, but it has not identified its start-up costs or indicated how this investment will be used to 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 regulations require the petitioner to present a credible picture of where the company will stand in exactly one year, and to provide sufficient supporting evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position within one year. The petition cannot be approved based on a general position description, a proposed organizational chart, and an abbreviated business plan that fails to discuss critical factors such as operating costs, start-up costs, and hiring plans.

The AAO does not doubt that the beneficiary will have the appropriate level of authority over the petitioner's business as its president. The petitioner did not, however, submit sufficient evidence that the petitioner could realistically support a managerial or executive position 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.