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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: OCT 25 2011 Office: CALIFORNIA 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: SELF-REPRESENTED

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, California 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 classification of 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 wholesale of recycled paper and plywood. It claims to be a wholly owned subsidiary of [REDACTED]. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States for a period of one year.¹

The director denied the petition based on five independent and alternative grounds, concluding that the petitioner failed to establish: (1) that the U.S. company secured sufficient physical premises to house the new office; (2) that the U.S. and foreign entities have a qualifying relationship; (3) that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity; (4) that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity within one year or that the U.S. company would support such a position; and (5) the size of the United States investment or the ability of the foreign entity to commence doing business 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. On appeal, the petitioner asserts that the U.S. company has secured physical premises, that the beneficiary has been and will be serving in the position of President, and that the U.S. and foreign entities "share their ownership." The petitioner submits a brief statement and additional evidence in support of the appeal.

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.

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

- (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) 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 (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.

II. Discussion

As noted above, the director cited five independent and alternative grounds for the denial of the petition. Specifically, the director found that the petitioner did not establish: (1) that the U.S. company secured sufficient physical premises to house the new office; (2) that the U.S. and foreign entities have a qualifying relationship; (3) that the beneficiary has been employed by the foreign entity in a primarily managerial or

executive capacity; (4) that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity within one year or that the U.S. company would support such a position; or (5) the size of the United States investment or the ability of the foreign entity to commence doing business in the United States.

A. Physical Premises

The first issue to be addressed is whether the petitioner established that it has secured sufficient physical premises to house the new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 18, 2009, and therefore must establish that it satisfied the requirements at 8 C.F.R. § 214.2(l)(3)(v)(A) as of this date. 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).

On the Form I-129, the petitioner indicated its address as [REDACTED]. The petitioner also submitted a copy of its Statement of Information dated August 17, 2009, to be filed with the California Secretary of State. The petitioner indicated on this form that its business address is [REDACTED]. The petitioner did not submit a lease agreement in support of the petition.

The director issued a request for evidence ("RFE") on August 25, 2009. The director instructed the petitioner to submit a complete copy of the U.S. company's lease agreement indicating the total square footage of the premises, along with colored photographs of the U.S. business premises.

In a response received on September 2, 2009, the petitioner stated that the company's address is [REDACTED]. The petitioner indicated that the address stated on the Form I-129 petition, [REDACTED] "is an agent's office."

The petitioner submitted an apartment lease agreement with a commencement date of August 20, 2009. While the petitioning company is named as a party to the agreement, the terms of the lease provide that the premise is to be used "solely for private residential purposes."

The director denied the petition on September 12, 2009, based on the petitioner's failure to submit a commercial lease agreement, or any explanation as to how it would conduct its wholesale business from a residential apartment.

On appeal, the petitioner states that the U.S. company "has had a new office at [REDACTED]." The petitioner submits a lease for this address along with photographs. The lease was signed by [REDACTED] as "director" of the petitioning company.

Upon review, the AAO concurs with the director's determination that the petitioner failed to submit evidence that it had secured sufficient physical premises to house the new office prior to filing the petition. The

petition was filed on August 18, 2009 and the two submitted leases are dated August 20, 2009 and October 1, 2009, respectively. 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).

Furthermore, the petitioner has not established that either a residential apartment or office suite of unspecified size would meet the physical space requirements of a company that intends to engage in the wholesale distribution of recycled paper and plywood products. 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)). Accordingly the appeal will be dismissed.

B. Qualifying Relationship

The second issue to be addressed is whether the petitioner has established that the United States and foreign entities are qualifying organizations. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner stated on the Form I-129 that it is a branch of [REDACTED] located in [REDACTED]. The petitioner did not reply where asked to explain the company stock ownership and managerial and control of each company.

With respect to the U.S. company, the petitioner submitted its California Articles of Incorporation indicating that the company is authorized to issue two (2) shares of stock. As evidence of ownership of the foreign entity, the petitioner submitted a "Business Registration Certificate of Privately-Owned Trader" indicated that the beneficiary is the owner of [REDACTED].

In the request for evidence issued on August 25, 2009, the director requested the following documentation to demonstrate the existence of a qualifying relationship between the U.S. and foreign entities: (1) the U.S. company's articles of incorporation, copies of all stock certificates issued, and the company's stock ledger; (2) evidence to establish that the foreign entity has, in fact, paid for the U.S. entity, including copies of original wire transfers, cancelled checks, deposit receipts, etc.; and (3) a list of owners for the foreign entity, along with evidence of the ownership interest of each owner.

In response, the petitioner stated that the beneficiary owns the foreign entity as a sole proprietor. The petitioner submitted no additional evidence to establish the ownership of the U.S. entity.

The director denied the petition, noting the petitioner's failure to submit the requested documents in response to the RFE. The director determined that, absent evidence of the ownership of the U.S. entity, the petitioner has not established that it has a qualifying relationship with the foreign entity based on ownership by the foreign entity or based on common ownership of both entities by the same individual or group of individuals. The director further determined that the record does not support the petitioner's assertion that the U.S. entity is a branch office of the foreign entity.

On appeal, the petitioner asserts that the petitioner and the foreign entity "share their ownership as attachments of Annual Meetings Minutes Disclosure Statement, [REDACTED] Disclosure Statement and the organizational structure of [the foreign entity] show."

The petitioner submits the U.S. company's "Annual Minutes Disclosure Statement" dated October 1, 2009. This document identifies the beneficiary and [REDACTED] as shareholders of the company.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

The AAO notes for the record that, while it appears that the beneficiary is the sole owner of the foreign entity, and partial owner of the U.S. entity, the petitioner still has not submitted copies of the U.S. company's stock certificates or evidence relating to the purchase of shares. Therefore, the evidence submitted, even if it were admissible in this proceeding, would be insufficient to establish any claimed affiliate relationship based on common ownership and control by the beneficiary. To establish eligibility in this case, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be *de jure* by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be *de facto* by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). Assuming that the beneficiary owns one of the company's two authorized shares, her 50 percent interest, without more, would be insufficient to establish that she exercises *de jure* control over the company. According to the information submitted, the beneficiary's spouse has been named president and CEO of the company, while the beneficiary holds the office of treasurer.

C. Foreign Employment in a Managerial or Executive Capacity

The third issue to be addressed is whether the petitioner established that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B).

On the Form I-129, the petitioner stated that the beneficiary commenced employment with the foreign entity on September 18, 2007. Where asked to describe the beneficiary's duties for the past three years, the petitioner stated "Manager, President." The petitioner did not submit any additional information regarding the beneficiary's job duties.

The petitioner's initial evidence did include the foreign entity's payroll records for June 2009. The records reflect payments to 40 full-time workers, including a director, director assistant, secretary, two accountants, a filing clerk, two office staff, two sales staff, three import-export staff, and two drivers. All other individuals are identified as "employees."

In the request for evidence, the director instructed the petitioner to submit: (1) the foreign entity's detailed organizational chart identifying the total number of employees and clearly identifying the names, job titles, job duties, educational level and salaries of employees who report to the beneficiary; (2) a detailed description of the beneficiary's job duties abroad, including the percentage of time she allocates to each specific duty listed; and (3) copies of the foreign company's payroll records pertaining to the beneficiary for the year preceding the filing of the petition.

In response, the petitioner indicated that it submitted evidence of the number of employees abroad with the initial petition. In a separate letter dated September 4, 2009, the foreign entity stated that it has a staff of nearly 40 personnel "with the high professional skill and technical levels." The petitioner submitted no additional evidence that was responsive to the director's requests.

The director denied the petition based on the petitioner's failure to provide the requested job description, organizational chart, and descriptions of duties for the beneficiary's subordinate employees. The director found the minimal evidence insufficient to establish that he beneficiary supervises the work of supervisory, professional or managerial employees, or that she manages an essential function within the foreign company.

On appeal, the petitioner asserts that the beneficiary "has been a President" of the foreign entity since 2007. The petitioner submits an organizational chart for the foreign entity which identifies the beneficiary as president. The chart depicts a vice president/CEO who reports to the beneficiary and supervises a Vice CEO. The Vice CEO supervises a "director of technology," a "director of accounting" and a "director of import & export."

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(I)(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 in either an executive or a managerial capacity. *Id.* The definitions of executive and managerial capacity each 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 show 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).

The petitioner has failed to submit any description of the beneficiary's job duties as president of the foreign entity. Instead, the petitioner sought to rely on her job title and ownership of the business in lieu of providing

the requested detailed description of her duties. 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 fact that the beneficiary manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(15)(L) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). While the AAO does not doubt that the beneficiary exercises discretion over the petitioner's day-to-day operations and possesses the requisite level of authority with respect to discretionary decision-making, the petitioner has failed to show that the beneficiary's actual duties are primarily managerial or executive in nature. The actual duties themselves 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).

Beyond the required description of the beneficiary's 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 claims that the foreign entity employs approximately forty employees and provided a June 2009 payroll chart identifying forty individuals by name, job title and salary. The director requested a detailed organizational chart illustrating the staffing hierarchy within the company, and also requested job duties, educational level, and job titles for all employees. While the petitioner now submits an organizational chart for the foreign entity in support of the appeal, the chart depicts only six employees, including the beneficiary, and does not indicate the number of types or number of employees, if any, who report to the persons identified in the chart. It is unclear whether the chart is intended to depict the entire staff of the foreign entity.

Moreover, the AAO notes that the two individuals identified as holding the positions of "director of technology" and "director of import and export" on the newly submitted organizational chart were identified simply as "employees" on the previously submitted payroll records. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Absent a detailed description of the beneficiary's actual duties and a consistent account of the foreign entity's staffing levels, the AAO cannot conclude that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity. Accordingly, the appeal will be dismissed.

D. Employment in a Managerial or Executive Capacity in the United States

The fourth issue addressed by the director 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 of the approval of the petition.

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.*

On the Form I-129, the petitioner stated that the beneficiary would be employed as manager of the new office. Where asked to describe her proposed duties in the United States, the petitioner stated "open a branch in U.S." The petitioner indicated that the U.S. company would be engaged in the wholesale of recycled paper and plywood. The petitioner submitted no additional information regarding the beneficiary's proposed duties, the proposed nature of the office, the scope of the entity, its proposed organizational structure, or its financial goals. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(I).

Accordingly, in the request for evidence issued on August 25, 2009, the director requested the following items: (1) an original letter from the foreign entity that explains the need for the new office, indicates the proposed number of employees and types of positions they will hold, identifies the size of the investment in the U.S. entity, indicates the number of Form I-129 petitions filed, and explains how the proposed business venture will support a managerial or executive position within one year; (2) copies of current and original business plans that have been prepared for the U.S. entity, including specific details as to the business to be conducted and one, three and five-plan projections for business expenses, sales, gross income and profits or losses; and (3) a detailed proposed organizational chart for the U.S. company indicating its proposed staffing levels and managerial hierarchy.

The petitioner submitted a letter from the foreign entity dated September 4, 2009. The foreign entity stated that it intends to purchase waste paper in the United States to export to Vietnam for distribution to paper

mills, and to purchase U.S. fir to supply to the [REDACTED]. With respect to the proposed staffing of the U.S. company, the foreign entity stated:

In order to the commerce [*sic*] in the U.S.A. will reach the high effect, our establishment intend [*sic*] to appoint 5 employees who are from [REDACTED]. to work and at the first term, we will recruite [*sic*] 12 native employees more. According to the capacity and professional skill, level of every one, they will be responsible for the various positions in the establishment. It's concrete as below:

- The section of establishment management: 3 employees
- The section of accounting, techniques: 02 employees
- The section of direct workers: 12 workers.

According to the development in the business, we will recruite [*sic*] the native employees more to help us to explore all rich material potentialities in U.S.A. that be large [*sic*].

The foreign entity stated that the total invested capital in the U.S. company is "USD 2,000.000/year." The foreign entity indicated that it anticipates the U.S. entity to achieve average profits of \$2.31 million per year. The foreign entity explained that it has "finished the procedures to prepare for the import-export of waste paper," made agreements with carriers to transport the paper to [REDACTED], and has contacted U.S. suppliers and [REDACTED] customers to determine what products are available and needed overseas.

In response to the director's inquiry, the foreign entity stated that it has submitted a total of three Form I-129 petitions for L-1A visas, including the instant petition and two others.

Finally, the foreign entity submitted a chart indicating projected U.S. sales for the first year of operation. According to the chart, the petitioner expects to sell \$2.3 million of waste paper each month by the fourth month in operation, for a gross annual income of \$24.1 million and net income of \$2.31 million. In a separate chart that includes anticipated expenses, the petitioner indicates that it anticipates paying \$990,000 in salaries, and expects to achieve pre-tax profits of \$1,627,000 during the first year in operation.

The director denied the petition, concluding that the petitioner failed to submit the requested business plan, organizational chart, or description of the beneficiary's proposed job duties.

On appeal, the petitioner has not directly addressed this issue. The petitioner has submitted a City of [REDACTED] business license issued to the company on October 1, 2009 which describes the business as '[REDACTED]'

Upon review, and for the reasons discussed below, the petitioner has not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity or that the U.S. entity will support a primarily managerial or executive position within one year.

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 in either an executive or a managerial capacity. *Id.*

Here, the petitioner has indicated that the beneficiary's job title will be "manager" and her role will be to "open a branch in the U.S." No additional information has been provided to assist USCIS in determining the beneficiary's actual proposed duties or level of authority within the new U.S. office. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The actual duties themselves 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 detailed job description for the U.S. company, a business plan for the new office, and a proposed organizational chart, and the petitioner opted to ignore these requests. Again, 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).

While the foreign entity indicates that the petitioner is prepared to commence business in the United States, intends to hire a total of 17 workers, and anticipates sales in excess of \$24 million during its first year of operations, there is insufficient evidence to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO cannot find that the beneficiary will be employed in a managerial or executive capacity based solely on her job title and the unsupported claims of the foreign entity regarding the anticipated staffing and projected growth of the petitioner's new office.

As noted above, the petitioner has not established that the petitioner had secured physical premises at the time the petition was filed, much less obtained all licenses required to begin doing business as an exporter. In addition, as discussed further below, the petitioner has not provided corroborating evidence of the alleged \$2 million investment from the foreign entity. Again, the evidence submitted in support of a new office petition 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 has not met its burden to establish that the beneficiary would be employed in a primarily managerial or executive capacity within one year. Accordingly, the appeal will be dismissed.

E. The Size of the United States Investment

The fifth and final issue to be addressed is whether the petitioner submitted evidence to establish the size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

In the RFE issued on August 25, 2009, the director requested that the petitioner: specify the amount of the investment actually committed and explain how the foreign company can pay the beneficiary's proffered

salary along with all start-up expenses; provide copies of the petitioner's bank account statements for the last three months; and describe in detail the total costs of commencing business in the United States.

In its letter dated September 4, 2009, the foreign entity stated that it invested capital of "USD 2,000,000/year" into the U.S. company. It further stated that the U.S. company is expected to generate profits of over \$2.3 million annually, which will be sufficient to compensate personnel and other expenses associated with the business. Finally, the foreign entity indicated that the U.S. company has established checking and savings accounts with [REDACTED] and provided the account numbers. The petitioner did not provide the requested copies of the petitioner's bank statements or any other evidence of the claimed investment in the U.S. entity. Accordingly, the director denied the petition based on the petitioner's failure to submit the requested evidence.

On appeal, the petitioner indicates that it is submitting the foreign entity's bank statements for the last few months, which are in the [REDACTED] language and not accompanied by an [REDACTED] or a currency conversion to U.S. dollars. The petitioner does not directly address the director's finding that the record does not contain evidence to satisfy the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(2).

Accordingly, the AAO will affirm the denial of the petition. The petitioner still has not submitted evidence to establish the size of the investment in the U.S. entity, the actual start-up costs of the U.S. entity, or evidence to support the petitioner's claim that the foreign entity invested \$2 million in the new office. Again, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

III. Conclusion

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.