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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

PUBLIC COPY



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DATE: Office: VERMONT SERVICE CENTER

FILE:

MAR 07 2012
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:

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 established in June 2008, states that it manufactures and imports surgical and dental instruments. The petitioner claims to have a qualifying relationship with B.A.K. Industry located in Pakistan. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in a bona fide manager or executive position within one year of the beginning of operations for the United States business entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner states that the director's decision is inconsistent with the regulations. Counsel submits a brief and additional evidence on 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.
- (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.

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.

II. Managerial or Executive Duties

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in a bona fide manager or executive position within one year of the beginning of operations for the United States business entity.

Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 27, 2008. The petitioner indicated on the Form I-129 that it is in the business of manufacturing and importing surgical and dental instruments with zero current employees and an estimated gross annual income of \$5M. In support of the petition, the petitioner submitted a letter describing the duties of the beneficiary as follows:

This position is the principal position in the company. In this capacity, [the beneficiary] will initially organize to establish the company by supervising the initial set up of operations. He will oversee the U.S. Branch operations, by coordinating the importation and product distribution of its surgical, dental and veterinary tools and instruments and other products manufactured by the parent company in Pakistan, throughout the United States; setting and implementing import and distribution policies consistent with U.S. import laws and regulations, and coordinating product marketing and promotion, setting and implementing personnel policy, including hiring, managing and terminating employees, establishing the parameters of job performance, duties, pay scales, salaries, and employee benefits; making final decisions on operating budget and budget distribution to respective departments and functions, purchasing of supplies and equipment, leasing of space, stocking utilities and

vendor selection; overseeing and implementing appropriate marketing strategies for the purpose of maintaining and/or improving sales; handling and negotiating contracts on key accounts beyond the powers of subordinate personnel; making ultimate investment and financial decisions of the corporation; holding personnel meetings to ensure operations are well coordinating and functioning towards the goals and policies of [the petitioner]; and overseeing the supervision and participation of the company at trade show events.

The petitioner did not submit any additional information describing the duties of the beneficiary on a day-to-day basis.

The letter of support further stated:

[I]t is our plan to transfer \$200[,]000.00 as soon as the petition for status of [the beneficiary] is approved and a visa issued to him. These monies will be used as *Seed* money for the initial set up stages. . . . The branch has acquired sufficient premises to start up the business and is located at Brooklyn, NY where it shall maintain its main office. . . . The branch, it is planned, will return profitable within 18-24 months and will be fully staffed."

The petitioner also submitted an organizational chart comprised of a general manager and four subordinates: manager market and sales, manager import and re-export, manager administration, and manager finance.

The petitioner submitted the certificate of incorporation, filed on June 30, 2008, indicating that the corporation is authorized to issue 200 shares of stock at no par value. The petitioner submitted a stock certificate dated August 9, 2008 indicating that the foreign entity is the holder of all 200 shares.

The director issued a request for additional evidence ("RFE") on March 6, 2009, instructing the petitioner to submit, *inter alia*, the following: (1) photographs of the interior and exterior of the premises secured for the U.S. entity, including addresses and detailed directions to each facility; (2) a comprehensive description of the beneficiary's duties for the U.S. company, including evidence of educational credentials; (3) a complete position description for all proposed employees in the U.S., including one for the beneficiary's position; (4) a breakdown of the number of hours devoted to each of the employees' job duties for the U.S. company on a weekly basis and whether or not they require a college education; (5) an original letter from an official of the bank which would confirm the bank balance as of August 27, 2008 for the U.S. company; (6) a copy of the business license to do business in the U.S.; (7) documentation to establish the proper documentation from the U.S. Customs Service has been obtained, including the importer number assigned to the U.S. company; (8) a statement and documentary evidence identifying the U.S. company's import/export brokers; (9) evidence of assets which have been purchased for use in the U.S. enterprise; (10) samples of advertising for print media used by the U.S. company; (11) photographs of the interior and exterior of the premises occupied by the foreign entity, including addresses and detailed directions to each facility; and (12) an organizational chart for the foreign entity, including position descriptions for all of the foreign entity's management employees.

In response to the RFE, counsel provided a brief statement on the beneficiary's duties:

The beneficiary is coming to the [U.S.] to open a new branch which has just been formed. All his responsibilities will be managerial/executive which would include such actions from contracting for the basic services like remodeling of the premises to, establishment of communications, furnishing of the offices and equipping it, hiring of all the staff for the newly formed branch starting from the recruitment and hiring of all the positions for the [U.S.] branch including all managerial and all other positions. Contracting for professional services, like Certified Accountant, and Custom Brokers, etc. [The beneficiary] will also formulate policies and plans for the branch including specific marketing plans, hiring and firing criteria's [sic] included in HR policies etc. Arrange transfer of funds and goods from the parent company[,] establish new client base[,] and enhance the company's presence in the relevant market. It is noted that the process of initial establishment in and of itself is executive in nature and task which [the beneficiary] is already performing.

The petitioner also submitted a new letter of support in response to the RFE. The letter stated:

No major transactions of funds of goods have been undertaken by our newly formed, but not yet operational branch office located in the United States.

It, however, is planned that to fully start up the company and to sustain it during the initial period of setup the parent company will transfer good[s] and cash worth over one million U.S. dollar[s] and sustain the branch in the United States up until it is profitable and can sustain itself.

Bank Transfer: No major Bank Transfers have yet been made as the beneficiary who is to come here [to] start-up the new office is still not here and as a pragmatic measure all major investments are on hold awaiting the result of this filing.

License to do Business: Attached is copy of the incorporation certificate, documents sufficing the requirements for initial formation activities and to commence business. No other licenses are required at this stage other licenses and permissions, e.g. import and export license, will be necessary as and when the company starts importing and exporting, etc., and the business is fully operational etc.

Photograph of the Premises: [A]ttached find some photographs of the premises in [an] envelop[e] marked Photographs of US entity. Please note that the office has yet to be fully established and made functional, a process that will start on arrival of the beneficiary, because he is coming to open a new office.

Evidence of Assets: No assets have been acquired for the branch office. All establishment activities and processes will commence when [the beneficiary] arrives in the USA and starts the process of opening and making functional the U.S. Branch.

Identification of Import Export Broker: As of the date of writing of this letter[,] no import/export brokers have been retained because the U.S. branch office has not started functioning and the process is still in its early stages of establishment.

Advertising Samples: We use product catalogs and trade related journals and advertising medias for advertising of our products. No advertising or catalog printing has been undertaken as of date for the US Branch, because we have not commenced business in the US as yet and are still in the formation phase of the overall establishment and conduct of business.

The petitioner did not submit documentation from the U.S. Customs Service, evidence of import/export brokers, evidence of assets, or samples of advertisements for the U.S. company. The petitioner stated that these documents are not available. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner submitted a revised organizational chart for the U.S. company that lists three management subordinates for the beneficiary, the general manager, three supervisors under the subordinate managers, and 16 additional employees. The petitioner indicated in the letter that "a detailed description of duties and responsibilities of the managerial/supervisory staff including that of the beneficiary is attached as Tabs F and G respectively[;]" however, Tab F included the organizational chart and Tab G does not contain any information. The petitioner failed to submit a comprehensive description of the beneficiary's duties, complete position descriptions for all proposed employees, and a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis for the U.S. company.

The petitioner submitted an organizational chart for the foreign company indicating that the beneficiary is the Director of Marketing and Development and provided a listing of duties for the beneficiary and other executives in the foreign company.

The petitioner also stated in the letter that photographs of the interior and exterior of the premises secured for the U.S. entity were submitted in an envelope. However, the record is devoid of any photographs of the U.S. office; the record only contains photographs of the premises occupied by the foreign company.

The director denied the petition on June 16, 2009, concluding that the petitioner failed to establish that the beneficiary will be employed in a bona fide manager or executive position within one year of the beginning of operations for the United States business entity. In denying the petition, the director found that the description of the beneficiary's position is insufficient to establish the proffered position will be primarily managerial or executive in nature.

On appeal, counsel submits a brief and describes the beneficiary's job duties as follows:

[T]he petition illustrated that the beneficiary would function in an executive capacity, first overseeing the establishment of the new office which entails finding a location for the operations, entering into appropriate contracts for leasing of space, purchasing supplies, purchasing equipment and overseeing its set up and implementation. Although not spelled

out in our initial submission, this will also entail hiring appropriate initial staff whether permanent or contractual such as attorney for immigration, corporate structuring, and contract drafting and negotiating, and import/export legalese, hiring accounting staff to manage the company's monies and to source financing and attractive investments- all of which are professional staff not previously mentioned in our presentation, but nonetheless is part and parcel to our initial planning.

The petitioner provided a job description of the beneficiary's duties as an executive of the new office, noting that outside of the initial setup stages of the physical premises entailing the functions we noted above, that he will be involved in business travel and not involved in the day-to-day operations necessary to produce or sell the product, except for large and very involved contract negotiations beyond the authority of subordinate personnel. If the beneficiary is not there, how can it be said that he will be involved in the day to day operations of importing and selling the products?

Counsel also submits a *Business Week* article dated June 1, 2009 titled "CEOs Without College Degrees" as additional evidence for the record.

Discussion

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.

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.

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.*

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner's evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

On review, the petitioner's description of the beneficiary's duties fails to establish that the beneficiary will be engaged in primarily managerial or executive duties. While the AAO does not doubt that the beneficiary will exercise discretionary authority over the U.S. company as its sole employee, the petitioner has not submitted a consistent or credible breakdown of how the beneficiary will allocate his time among specific responsibilities. At the time of filing, the petitioner characterized the beneficiary's role as general manager and identified his duties as described above. While these tasks are undoubtedly necessary in order to establish the U.S. operations, the petitioner has not indicated how such duties qualify as either managerial or executive in nature. 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. Although afforded a second opportunity to provide the deficient information, 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).

In the instant matter, the petitioner and counsel provided three separate, single-paragraph descriptions of the beneficiary's duties for the U.S. company, each listing vague operational functions to establish a business in the U.S. For example, the petitioner stated that the beneficiary will "oversee the U.S. Branch operations by coordinating the importation and product distribution of its surgical [instruments]," "setting and implementing

import and distribution policies," "setting and implementing personnel policy, including hiring, managing and terminating employees," and "making ultimate investment and financial decisions of the corporation." These duties merely paraphrase the statutory definition of executive capacity. See section 101(a)(44)(B) of the Act. 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The petitioner also submitted a description of the beneficiary's duties for the foreign company and stated, "[one h]undred percent (100%) of the beneficiary's time is spent on management, supervisory and executive decision making." The AAO notes that any job duties relating to the foreign company cannot establish eligibility in a managerial or executive capacity with the U.S. company.

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 will 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 will realistically develop to the point where it will 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.

In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. See 8 C.F.R. § 214.2(l)(3)(v)(C).

In the RFE, the director afforded the petitioner an opportunity to describe and document the funding of the proposed operation. In response, the petitioner submitted speculative comments and vague documentation. The petitioner submitted copies of what appear to be monetary statements or transactions for the U.S. company from July 2008 to April 2009; however, these statements are not on any letterhead and do not list the name of any U.S. or foreign bank. As such, they do not satisfy the request for an original letter from an official of the bank, which would confirm the bank balance for the U.S. company. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. In the initial letter of support, the petitioner indicates that "[t]he branch, it is planned, will return profitable within 18-24 months and will be fully staffed." In support of the appeal, counsel indicates that "[the] petition is based upon the beneficiary coming to the U.S. to open up a new office, where, within 24 months, he will hire 22 employees that will perform the day-to-day

operations necessary in importing and selling our products" However, the record does not contain a business plan, hiring plan, or other evidence that would indicate the timeframe for hiring the proposed staff. In fact, the petitioner stated that the foreign company is awaiting the approval of this petition in order to make an investment of \$200,000 and commence operations for the U.S. company. It is impossible to determine, based on the evidence submitted, which, if any, of the staff would be in place within one year.

The petitioner indicated that the beneficiary also opened a new branch of the foreign company in Mexico; however, an English translation of the documentation submitted for that branch is not present and therefore cannot be considered as part of the record. Regardless, the AAO will not assume that the U.S. branch will develop in the same manner as the Mexico branch.

The AAO notes that the petitioner's submission of a vague job description for the beneficiary, a proposed organizational chart, and the lack of a business plan or other evidence that would indicate the timeframe for hiring the proposed staff, falls significantly short of establishing that the company will be able to support a primarily managerial or executive position within a twelve-month period. 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 definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary will perform the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary will *primarily* perform these specified responsibilities and will 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 fact that the beneficiary owns and manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

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*, 14I&NDec. 190 (Reg. Comm'r. 1972)). The AAO will uphold with the director's determination that the petitioner failed to establish that the beneficiary will be employed in a bona fide manager or executive position within one year of the beginning of operations for the U.S. business entity. Accordingly, the appeal will be dismissed.

III. Physical Premises

Beyond the decision of the director, the record does not establish that the petitioner had secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A), as of the date the petition was filed. The petitioner and counsel submitted contradictory statements as to the petitioner's physical premises. In the initial support letter submitted by the petitioner, the petitioner states that it has "acquired sufficient premises to start up the business and is located at Brooklyn, NY where it shall maintain its main offices." In counsel's brief responding to the RFE, counsel states, "[a]ll his responsibilities . . . would

include such actions from contracting for the basic services like remodeling of the premises to . . . furnishing of the offices and equipping it" In counsel's brief supporting the appeal, counsel states, "overseeing the establishment of the new office which entails finding a location for the operations, entering into appropriate contracts for leasing of space" Additionally, the petitioner failed to submit a copy of a lease agreement or photographs of the interior and exterior of the physical premises secured in the U.S. Consequently, it cannot be concluded that the petitioner has secured sufficient physical premises to house the new office. See 8 C.F.R. § 214.2(1)(3)(v)(A). 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).

Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner has secured sufficient space to house the new office. For this additional reason, the petition may not be approved.

IV. 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.