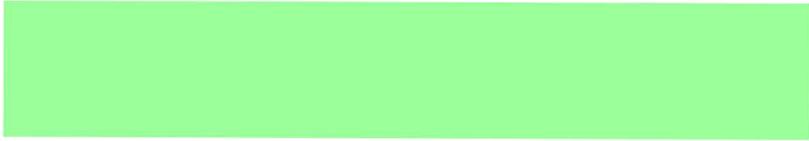


(b)(6)

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



DATE: APR 01 2013 Office: VERMONT SERVICE CENTER FILE:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 Florida corporation established in April 2011, states it will be engaged in the business of providing business communication and technical translation services for multinational corporations. It claims to be an affiliate of [REDACTED] located in Brazil. The petitioner seeks to employ the beneficiary as the president of a new office in the United States for a period of one year. The petitioner submitted evidence that the beneficiary, [REDACTED] has complete control of both [REDACTED] and the petitioner.

The director issued a lengthy request for evidence (RFE) on May 18, 2011 instructing the petitioner to submit, *inter alia*, a detailed business plan for its first year, evidence of the finances available to the new office, details regarding the beneficiary's duties and claimed managerial decisions at [REDACTED] details regarding the number and job duties of the petitioner's planned future hires, and proof that the premises secured will be able to house the described business. The director also inquired as to how the Brazilian company would be able to continue doing business in the beneficiary's absence, given that she is now its sole operator.

In a response dated June 13, 2011, the petitioner submitted a business plan for the proposed new office, a flyer with pricing for the services it will provide, an office lease, photographs of the common areas in the rented office complex, a Florida certificate of incorporation issued to [REDACTED] Solutions on April 28, 2011, a receipt for \$8,180 paid to American legal counsel, a print-out from the IRS website containing the petitioner's EIN number, three letters from companies who state they have used the [REDACTED] translation services, letters and resumes from four individuals who state they were employed as translators by the Brazilian entity, untranslated bank account statements and invoices, a translated copy of [REDACTED] purported Brazilian tax records, and a power of attorney issued to [REDACTED] accountant, [REDACTED]

The director denied the petition on June 30, 2011, finding that the petitioner failed to establish 1) the beneficiary had worked for [REDACTED] in an executive or managerial capacity, 2) she worked in such capacity for one out of the previous three years, 3) she would be engaged primarily in executive or managerial tasks at the new office within one year, and 4) the space acquired is sufficient to support the stated activities of the new office.

On July 27, 2011, the petitioner submitted a motion to reconsider. In its motion, the petitioner made several assertions, including that it *had* provided evidence of sufficient space to house the proposed operation, that it established the beneficiary was employed by the Brazilian affiliate for one year out of the past three in a managerial capacity, that 85% of the beneficiary's duties with the petitioner would be managerial in nature, and that 100% of her duties would be related to her role as the functional manager of petitioner's financial operations. In support of these statements, the petitioner cited previously submitted evidence in addition to newly submitted pictures of a woman (presumably the beneficiary) standing in and outside of an office, a power of attorney over [REDACTED] given to accountant [REDACTED] statements from [REDACTED] as to the income of [REDACTED] and the amount paid to contracted employees, and a job description for the position of translator.

The director granted the motion to reconsider and issued a new decision on October 17, 2011. In this new decision, the director conceded that the space acquired by the petitioner is sufficient for the business proposed. However, he then denied the petition based on the petitioner's failure to establish that the beneficiary would be acting in a managerial or executive capacity within one year. The director cited a letter from the petitioner stating it expects to hire one office staff employee and two to four translators within the first year. Based on this projected hiring, the director concluded that the beneficiary could not reasonably be expected to be removed from performing the day to day operations of the business.

The petitioner filed an appeal on December 14, 2011. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner argues it has established that, within a year, the majority of the beneficiary's time will be spent on managerial duties. The petitioner states the beneficiary qualifies as a personnel manager because the translators hired will be required to have advanced degrees. The petitioner also states that the beneficiary will be a functional manager, as her duties will all relate to the essential function of Financial Operations.

For the reasons stated herein, the petitioner's appeal is denied.

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. The Issue on Appeal:

Employment in the United States in a Managerial or Executive Capacity

The director denied the petition based on the petitioner's failure to establish that it would employ the beneficiary in a primarily managerial or executive capacity within one year.

The "new office" provision of the regulations was meant as an accommodation for newly established enterprises to provide 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, 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. Often the full range of managerial responsibility cannot be performed in that first year. 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.

However, a petitioner that indicates its beneficiary is coming to the United States to open a "new office" must show 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.*

The AAO does not find counsel's arguments on appeal persuasive. Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that it will support the beneficiary in a managerial or executive capacity within one year.

A. Analysis: Nature of Proposed Work

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities specified in the definitions. Second, the petitioner must prove the beneficiary will *primarily* perform these specified responsibilities and will not spend a majority of 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).

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner lists the beneficiary's job duties as follows:

- 1) Manage and execute [the petitioner]'s business plan in order to achieve the company's goals for the first three (3) years (40%)
- 2) Set-up adequate infrastructure to be able to provide [the petitioner]'s services in USA, including administrative and legal services required to support the operations of the company (10%)
- 3) Recruit, hire and train highly qualified interpreters and translators, who are competent subject matter experts in their field, based on the company's demand for linguistic services (10%)
- 4) Direct the demand for [the petitioner]'s technical linguistics services to the appropriate interpreter and/or translator (10%)
- 5) Manage the quality of linguistic services provided to customers prior to their release (5%)
- 6) Seek and capture new US clients to ensure the viability of the business plan in accordance to the company's marketing strategy (25%)
- 7) Assist the executive in charge, [redacted], of the sister company in Brazil [redacted] to ensure the company continues to thrive in that market (5%)

The petitioner states the beneficiary will spend 40% of her time managing and executing its business plan.

Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the

regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F.Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 21 (2d Cir. 1990). The business plan initially submitted states that the petitioner provides “language services, simultaneous translations and technical translations of documents for businesses worldwide, as well as interpretation services for conference calls, managerial meetings, consecutive translation during planned visits, simultaneous translations at congresses and seminars.” The only specific explanation regarding the role of the beneficiary in the initial business plan states:

The President will establish and implement the proven Brazilian model of hiring qualified technical interpreters and translators. She will provide training in the particular technical terms and languages in the steel and mining industries. She will have sole and complete authority for hiring and firing workers. The U.S. operation is expected to result in hiring 1 office staff and 2-4 technical translators in the first year.

This appears to be separately covered in the list of job duties as: “3) Recruit, hire and train highly qualified interpreters and translators, who are competent subject matter experts in their field, based on the company’s demand for linguistic services (10%).”

The petitioner submitted a more detailed business plan in response to the director’s RFE. The revised plan expands on the petitioner’s philosophies and strengths. In terms of specifics, the plan expands on the role of the beneficiary and its actual business operations in the Services Approach section 5.2, which states in relevant part:

- All written documents, regardless of their size and turnaround time, will be evaluated by the company’s executive, [the beneficiary], to match the project with the appropriate translator.
- Prior to the translation of the document, a mandatory research on the terminology will be completed to ensure communication consistency.
- The document will then be translated, edited and proofread by a second translator.
- Finally, the company’s executive, [the beneficiary], will review the finished product for structural integrity.

The first and last bullet points list the only details in the business plan describing what the beneficiary will do. However, these tasks or their equivalents are already separately listed as individual job duties. The first point above states all incoming projects will be evaluated by the beneficiary, who then matches the job with a translator. This is already listed as: “4) Direct the demand for [the petitioner]’s technical linguistics services to the appropriate interpreter and/or translator (10%).” Similarly, the last point above indicates the beneficiary will review the finished product for structural integrity. This appears comparable to: “5) Manage the quality of linguistic services provided to customers prior to their release (5%).” In sum, the business plan does not provide any specifics as to what the beneficiary will do beyond tasks already separately named and accounted for. It is therefore unclear what the petitioner means when it says the beneficiary will spend a separate 40% of her time managing and enacting the business plan.

In addition to managing its business plan, the petitioner states the beneficiary will spend 25% of her time seeking and capturing U.S. clients. Although the list of job duties provides no details regarding what this entails, the petitioner states in its business plan that its marketing strategy is to rely on word-of-mouth referrals and recommendations from existing clients, presumably of its Brazilian affiliate. On the whole, relying on word-of-mouth referrals is a passive marketing strategy. The petitioner has not identified anything the beneficiary will proactively do to market the corporation and has failed to explain how such a strategy could reasonably be expected to consume 25% of her time. In addition, an employee who primarily performs tasks necessary to produce a product or provide a service is not considered to be "primarily" employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988). Tasks typically associated with marketing such as devising marketing plans, contacting advertisers, and performing any public relations tasks, are generally considered necessary to produce a product or provide a service.

The petitioner also states that the beneficiary will spend 10% of her time setting up the administrative and legal infrastructure necessary for the business to function. No details are provided regarding what this infrastructure entails or what steps the beneficiary will take to put it in place.

The beneficiary will supposedly spend 10% of her time recruiting and training new interpreters. The petitioner plans to hire two to four interpreters in its first year. However, the petitioner's business plan names two current contract interpreters of its Brazilian affiliate as the individuals it will hire. As the beneficiary has already worked with and trained these interpreters, it is illogical to expect that she would spend 10% of her time finding and training others.

The 10% of time spent distributing work among translators is not managerial in nature. On the contrary, this task reveals the degree of input and control the beneficiary maintains over every translation produced.

The business plan states that 5% of the beneficiary's time will be spent assisting the accountant left in charge of the Brazilian affiliate company. Any time spent working for a different entity cannot be considered time spent working for the petitioner at all, let alone in a managerial or executive capacity.

The petitioner states that 5% of the beneficiary's time will be spent monitoring the quality of output. Based on other evidence in the record, this seems to be the equivalent of editing written translations done by contract interpreters. As work directly related to producing a product, this is not time spent in a managerial or executive capacity.

Based on this analysis of job duties as listed by the petitioner, the AAO does not agree that the beneficiary would spend 80% or a majority of her time working in a managerial capacity. Beyond the 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).

The petitioner states that it hopes to replicate the business model of its Brazilian affiliate. The beneficiary is the Brazilian company's only full-time employee. She has worked for the Brazilian company since 1987 and served as its president since 2003. Letters from previous clients state that the beneficiary "was a motivated, responsible translator with excellent communication skills," and that she "... provided us very accurate and precise English to Portuguese simultaneous translations. She interacted with us and their people to provide a very natural flow for providing information . . . We worked with [the beneficiary] for approximately 5 days to collect information in individual interviews and focus groups . . ." These letters indicate that the beneficiary herself directly performs translation services. In addition, letters from contracted translators indicate that the beneficiary had a high degree of involvement in the work they produced, stating that she:

- is responsible for receiving the services from the clients, distributing them among the translators, revising and sending them back to the clients.
- has always been in charge of sales, customer relations, supervision, distribution, edition and final approval of translated jobs. She is also responsible for sending the translated files to customers.
- captures clients, distributes and reviews the translation jobs, which she then sends back to the clients, thus assuring the excellent quality of the services provided.

Thus, even when outside contractors did work for the Brazilian company, the beneficiary was highly involved in the actual translation for every job.

According to the petitioner's list of job duties, the beneficiary will spend no time performing actual translating services. Based on the letters from previous clients and contract interpreters, however, the beneficiary was heavily involved in translating while working at the Brazilian affiliate. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Church of Scientology International, supra* at 604. Given that the petitioner intends to model its operations on those of its Brazilian affiliate, it is unclear how the beneficiary would be primarily involved in managerial tasks. When the beneficiary markets the petitioner's product, negotiates contracts, and provides translation services, she performs tasks necessary for providing its services and producing its products. These duties are not managerial or executive in nature.

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. Section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F.Supp.2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a

company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g., Systronics Corp. v. INS*, 153 F.Supp.2d 7, 15 (D.D.C. 2001).

The AAO has long interpreted the statute to prohibit discrimination against small or medium-size businesses. However, the AAO has also consistently required the petitioner to establish that the beneficiary's position consists of "primarily" managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks. Reading section 101(a)(44) of the Act in its entirety, the "reasonable needs" of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See Brazil Quality Stones v. Chertoff*, 531 F.3d 1063, 1070 n.10 (9th Cir. 2008).

The petitioner claims the beneficiary will act in a managerial capacity in that she will be managing professionals. The petitioner states that it will hire employees on a contractual basis to translate, do accounting, and perform legal services. It plans to hire one office staff member and two to four translators within its first year and emphasizes the high level of education it requires of its translators. However, the petitioner has not explained how the services of contracted employees obviate the need for the beneficiary to primarily conduct the petitioner's business. As discussed above, the evidence in the record indicates that the petitioner's business model requires the beneficiary to be involved with each translation from its inception to completion. Activities necessary to produce a product are not managerial in nature. Thus, the petitioner has failed to demonstrate that the beneficiary would be employed *primarily* as a personnel manager within one year.

In addition to being a personnel manager, the petitioner claims the beneficiary will act as a function for the new American corporation. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff, but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must clearly describe the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. 214.2(l)(3)(ii). In addition, the petition's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function.

The petitioner asserts the beneficiary will manage the essential function of Financial Operations. The regulations require that the petitioner state with some degree of specificity the job duties listed that involve managing the essential function. *See id.* Here, the petitioner seeks to avoid this requirement by making the conclusory statement that *all* of the beneficiary's job duties relate to Financial Operations. However, a review of the job duties listed reveals this is not the case. The duty most time-consuming, that of managing and executing the petitioner's business plan, is entirely vague and has on its face no relation to managing the financial operations of the company. The remaining duties include setting up infrastructure; recruiting, hiring

and training translators; seeking and capturing new clients; distributing work among translators; managing the quality of output; and assisting the Brazilian affiliate's accountant in running that corporation. None of these has any obvious relation to the financial operations of the petitioner. On the contrary, they all relate to providing translation services and products to clients. There is no evidence to support the assertion that the beneficiary will primarily manage its financial operations. As a result, the petitioner has failed to establish the beneficiary qualifies as a function manager.

Based on the foregoing, the AAO cannot conclude that the petitioner will develop to the point that it can support the beneficiary working in a primarily managerial or executive capacity within one year. Similarly, the petitioner has not established that the beneficiary would be primarily responsible for overseeing an essential function of the corporation, as defined by regulation. See 8 C.F.R. § 214.2(l)(3)(v)(C). Accordingly, the appeal must be dismissed.

B. Beyond the Decision of the Director

To demonstrate that the new office will support the role of the beneficiary in a managerial or executive capacity within one year, the regulations require the petitioner to provide evidence of "[t]he 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 . . ." 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The petitioner has not provided sufficient evidence to satisfy this requirement.

The Brazilian affiliate's corporate contract indicates that the beneficiary has 100% control and 99% ownership of that corporation. The Articles of Organization for the American petitioner list the beneficiary as the sole managing member, which indicates control of that entity. There is no evidence of any capital investment made or ownership interests created on behalf of the petitioner.

As proof of available financial resources, the petitioner submitted bank statements and invoices from its Brazilian affiliate; however these documents are in Portuguese and untranslated. Because the petitioner failed to submit certified translations, the AAO cannot determine whether the statements and invoices support the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, they are not probative and cannot be accorded any weight.

The petitioner also submitted what it holds out as the 2008 tax records of its Brazilian affiliate. They are accompanied by a certified translation. However, an examination of the tax records and their translation reveals that the two do not correspond beyond the first page. The English translation states it pertains to [REDACTED] Corporate Taxpayer Number [REDACTED] the Brazilian affiliate. Page one of the original matches this. From page two on, however, the original tax records appear to be for a company called [REDACTED] Corporate Taxpayer Number [REDACTED]. An attempt to match up the pages that follow reveals that the translation is completely inaccurate. For example, page three of the original document lists [REDACTED] as the person legally responsible for the corporation. The corresponding section of the English translation lists the beneficiary, [REDACTED] as that individual.

To reiterate, the petitioner has misrepresented the contents of an official Brazilian record to provide false corroboration for its claims. It is particularly troubling that the first page of the original document *does* refer

to the petitioner and *does* correspond to the translation, which suggests the petitioner made efforts to conceal the misrepresentation. At the very least, this evidence is not credible and will not be given any weight in this proceeding. However, the fraudulent translation also brings into question the reliability and sufficiency of the other evidence offered. See *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner indicates it does not have a bank account in the United States, but will open one if and when a visa is issued. A letter from the Brazilian affiliate's accountant states that the company had incomes of 66,875.01 Brazilian reais (\$33,108.96) in 2008, 40,643.12 Brazilian reais (\$20,121.89) in 2009, and 71,144.93 Brazilian reais (\$35,222.94) in 2008.¹ The petitioner provided no probative documents from an outside party (i.e. the Brazilian government or a bank) to support these statements.

As a means for funding the petitioner's start-up costs, [redacted] future income is a questionable source of money. The director already raised the issue of [redacted] ability to function without the beneficiary given her significant role in that company's operations. This is a valid concern. [redacted] gave power of attorney to its accountant; however, it is unclear how an accountant will be able to fill the void left by the beneficiary. What's more, the petitioner's business plan states that 72% of its business will come from the current clients of its Brazilian affiliate. It also lists two current contract interpreters of the Brazilian affiliate as the translators it will hire. It is unclear how the Brazilian affiliate will continue to do business if the petitioner takes away such a large percentage of its financial and human resources. At a minimum, it reasons that [redacted] will not be able to make as large a profit as it has in the past. The petitioner indicates that [redacted] will pay the beneficiary a yearly salary of 60,000 reais (approximately \$30,000) during its first year, however it has not provided evidence of financial resources that would make paying this and other start-up costs possible.

The concern regarding future ability to pay is the reason for the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The petitioner states it has demonstrated sufficient financial means by paying legal fees and signing an office lease. While these past payments and financial obligations may be slightly probative, they do not demonstrate the availability of future funds.

The petitioner has not demonstrated a sufficient investment or source of future funds such that it will be able to remunerate the beneficiary and commence doing business in the United States. For this additional reason, it has failed to demonstrate the necessary likelihood that it will employ the beneficiary in a managerial or executive capacity within one year.

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.

¹ Conversion amounts are based on the current exchange rate and are used for general approximation purposes only.