

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **AUG 08 2013** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker under 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to classify 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 limited liability company, states that it operates an import export business and is a subsidiary of [REDACTED] located in China. The beneficiary was initially granted a one-year period of stay in L-1A status to open a new office in the United States. The petitioner now seeks to extend its authorization to employ the beneficiary as its product marketing manager for three additional years.

The director denied the petition on September 18, 2012, concluding that the petitioner failed to establish: (1) that the beneficiary will be working primarily in a qualifying executive or managerial capacity; and (2) that the petitioner had sufficient physical premises in the United States. The director also found that the petitioner failed to provide the requested U.S. Internal Revenue Service documents.

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 submits a brief and additional evidence.

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)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

II. Statement of Facts and Procedural History

The beneficiary was initially granted L-1A status for a one year period from August 30, 2011 through August 29, 2012, to open or be employed in a new office in the United States. The petitioner filed the instant Form I-129 on July 27, 2012 seeking to extend the beneficiary's employment as its product marketing manager. The L Supplement of the Form I-129 indicates that the petitioner was formed in 2011 and has two employees.

The petitioner's initial supporting evidence included, *inter alia*, the following: (1) the petitioner's Florida articles of organization filed October 10, 2010; (2) a business plan; (3) email correspondence dated from April 24, 2010 through February 3, 2012; (4) bills of lading from September 9, 2010 through April 17, 2012;

(5) an invoice on the petitioner's letterhead dated April 22, 2012; (6) photographs demonstrating the company's presence at tradeshows; (7) organization charts for the U.S. and foreign entities; (8) sales agency agreements granting semi-exclusive rights to [REDACTED] for the sale and importation of the foreign entity's construction materials effective for twelve months beginning June 15, 2011; (9) product and marketing materials; (10) a letter to the foreign entity's Board of Directors dated April 8, 2011; and (11) records from the foreign entity with uncertified partial translations.

The petitioner described the proffered position as "a special role collecting and processing information pertaining to market demands" and stated that the beneficiary's responsibilities as product marketing manager would include the following:

- 1) visit USA clients with sales representatives, understand customer demands for product features;
- 2) visit project sites that used competition's products, determine core competence of products of the company;
- 3) conduct research on competition's marketing and sales approaches, pricing [*sic*], competitiveness, and customer engagement, develop strategic marketing plan;
- 4) collect customer use case examples, develop new product feature and functionality in partnership with Engineering;
- 5) participates and acts as marketing's primary advocate on crossfunctional [*sic*] development teams;
- 6) attend professional trade shows to exhibit products;
- 7) manage issues associated with ordering of product;
- 8) identify areas for growth and create product line roadmaps to help drive adoption of the product and differentiating features;
- 9) drive resolution of customer satisfaction issues;
- 10) develop material for multiple product or service launches [*sic*] including press releases, launch materials, presentations, videos, Podcasts, and sales training materials;
- 11) develop and drive competitive marketing campaigns to ensure company's market [*sic*] share and profitability;
- 12) collaborates cross-functionally on competitive selling, pricing, market development and field solutions;
- 13) forecast and help drive opportunities for product lines.

Counsel explained that according to the business plan, "the company plans to sell honeycomb material directly or indirectly to distributors" and that the beneficiary's position would be in charge of attending trade shows, conducting market surveys, visiting customers to collect requirements for products, communicating with headquarters to customize products, managing logistics, and managing billing. Counsel stated that "once the new office starts, the beneficiary must hire a couple of employees to operate one or two functions."

The organization chart for the U.S. company indicates that the beneficiary has three subordinate employees, including a sales manager, marketing specialist/ins. sales, and a technical support employee. The chart also indicates that the sales manager supervises two outside sales positions. The petitioner did not identify the names of any employees or indicate that the positions had been filled. However, the petitioner indicated on the Form I-129 that it has two current employees.

In a letter to the foreign entity's Board of Directors, the petitioner stated that the company signed a contract with [REDACTED] to distribute the product, and that the beneficiary will be responsible for collecting market requirement data, hiring employees and leading a team to market products in the United States and Canada through trade show attendance, visits to key customers, and market surveys. The letter further states that the beneficiary's current duties include: "conducting market survey, attending trade shows, promoting products through ads, [and] communicating with developers to customize products for customers."

The agreement between the foreign entity and [REDACTED] states that [REDACTED] agrees to sell COREgravel, COREgrass, COREpaver, and COREglow products in the United States. The terms of the agreement stipulate that the foreign entity will not directly sell or export to customers through channels other than [REDACTED] and possibly one other party, limiting the sale and importation to a maximum of two channels for any given territory. The duration of the agreement is twelve months effective June 15, 2011 with an automatic twelve month extension upon expiration, unless written notice is given to the contrary.

On August 20, 2012, the director issued a request for evidence ("RFE") informing the petitioner that the evidence provided in support of the petition was insufficient to show that the beneficiary would be employed in a primarily managerial or executive capacity or that scope of the U.S. business was sufficient to employ the beneficiary in a primarily managerial or executive capacity.

Specifically, the director requested *inter alia*, the following: (1) additional information about the number of employees subordinate to the beneficiary including job titles and position descriptions for any subordinates; (2) a description of the executive or managerial technical skills required for the U.S. position, the amount of time the beneficiary allots to managerial or executive duties, and the degree of discretionary authority the beneficiary has while performing the duties; (3) evidence to show how the U.S. business is of a sufficient size to support a managerial or executive position; (4) evidence to demonstrate that the beneficiary is relieved from performing the non-managerial, day-to-day operations involved in producing a product or providing a service; (5) the petitioner's quarterly tax returns; (6) evidence to show the business is ongoing and functioning in a scope or capacity to support an employee in a primarily managerial or executive capacity; and (7) a copy of the petitioner's most recent Internal Revenue Service document and IRS Forms 941, Employer Quarterly Tax Return, for the first and second quarters of 2012. The director further requested that the petitioner describe the nature of its business in detail.

The petitioner submitted a response to the RFE on September 11, 2012. In addition to providing additional copies of previously submitted documents, the petitioner submitted (1) flight itineraries; (2) sales contracts;

(3) the petitioner's U.S. bank statements; (5) the petitioner's 2010 IRS Form 1120, U.S. Corporation Income Tax Return; (6) a Florida Corporate Short Form Income Tax Return for 2011; (7) an auditor's report for the foreign entity; (8) an "Exclusive Commission Agreement" with [REDACTED] (9) wire transfer statements showing money transferred from the foreign entity to the U.S. company; and (10) additional product brochures.

In response to the RFE, counsel for the petitioner explained that the major functions of the petitioner's office are to identify clients in the United States and Canada, to assist in the customization of products for their application, to sign sales contracts, to arrange logistics, and to provide after-sale service to ensure customer satisfaction.

Counsel stated that the beneficiary had hired an account manager and that the account manager supervises a contracted outside sales manager, thus relieving the beneficiary from providing the day-to-day services of the company. The response included a revised job description for the beneficiary which identified her job title as "general manager" rather than "product marketing manager." The petitioner stated that 25% of her time is spent performing each of the following duties: (1) directing the marketing specialist on market research and providing overall strategic planning; (2) directing technical support and assuring customers' needs are addressed; (3) leading the sales managers' work and coordinating supplies and demand; and (4) other work that will facilitate the penetration of the product into the U.S. market.

The director denied the petition on September 18, 2012, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. The director stated that the position description indicated the beneficiary's primary duties relate to product sales. Moreover, the director noted that the petitioner failed to submit the requested tax documents or other documentation to show that the number of employees and scope of the business would support a managerial or executive position. The director further observed that the petitioner appears to be basing its claims on prospective business rather than current business operations. Finally, the director noted that the petitioner failed to provide evidence that it had sufficient physical premises.

On appeal, counsel for the petitioner submits a brief. Counsel concedes that because the company is new, the beneficiary had to lead the effort to break into the new market; however, counsel asserts that the beneficiary holds a managerial position because she supervises the work of a professional and does not take direction from higher authority. Counsel further explains that the requested IRS Forms 941 are unavailable because the foreign entity currently pays the petitioner's employees. Counsel contends that the sales emails, invoices, and agreements with the outside sales representatives demonstrate the beneficiary and her sales team have been working for the past year to generate revenue. On appeal, counsel submits a brief and a copy of a lease agreement, noting the lease was not previously requested by the director.

A. Managerial or Executive Capacity

The primary issue is whether the petitioner established that it will employ the beneficiary in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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), provides:

The term "executive capacity" means 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.

Upon review, the petitioner has failed to establish that the beneficiary will be employed in an executive or managerial 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(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 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's description of the beneficiary's job duties failed to establish that the beneficiary will act in a "managerial" capacity. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description does not establish that the beneficiary will actually perform managerial duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The petitioner provided vague and nonspecific descriptions of the beneficiary's duties that fail to demonstrate what the beneficiary will do on a day-to-day basis. For example, an initial description of the beneficiary's duties include driving opportunities; driving competitive marketing campaigns; collaborating cross-functionally on selling, pricing, market development, and field solutions; and managing issues associated with the ordering of the product. It is unclear what tasks and activities the beneficiary would perform on a daily basis to accomplish these broad objectives. In response to the director's request for a further description of the executive or managerial technical skills required to perform the beneficiary's duties and the amount of time the beneficiary spends on managerial or executive duties, the petitioner provided an even less specific description, stating that the "general manager" would spend 25% of her time on each of the following: providing overall strategic planning; directing the marketing specialist on market research; directing technical support; and assuring customers' needs are addressed. 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. *Id.*

As mentioned by the director, the job duties that are more specifically described appear to be non-qualifying duties related to product sales. The act of marketing or promoting a product is not typically a managerial duty. The petitioner has not explained how attending professional trade shows, managing issues associated with ordering products, developing material for product or service launches, creating product line roadmaps, and conducting research on competition's marketing and sales approaches, pricing, competitiveness, and customer engagement, rise to the level of managerial capacity. While performing non-qualifying tasks

necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act; *see also Brazil Quality Stones, Inc. v. Chertoff*, 531, F.3d 1063, 1069-70 (9th Cir. 2008).

Importantly, the vague job description in this case does not reveal what percentage of time the beneficiary devotes to marketing and promoting the petitioner's product or to performing managerial or executive duties. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her duties would be managerial or executive, nor can it deduce whether the beneficiary is primarily performing the duties of a manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

A letter from counsel stated that once the new office started, the beneficiary "must hire a couple of employees to operate one or two functions" and the petitioner provided an organization chart indicating its plans to hire additional employees. However, a petitioner must establish eligibility as of the time of filing the petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The Form I-129 indicates the petitioner has two employees; however, the 2011 corporate tax return does not indicate that the company paid any compensation of officers or salaries and wages. Counsel claims the petitioner was unable to provide the employer quarterly tax returns because the foreign entity paid wages to the petitioner's U.S. employees including the beneficiary. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The record contains no evidence of wages paid to the sales manager listed on the organizational chart and does not include any other evidence of the petitioner's staffing levels.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Although the beneficiary is not required to supervise personnel, if it is claimed that the beneficiary's duties involve the supervision of employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

Counsel claims that the beneficiary has been working in an executive or managerial capacity because her claimed subordinate supervises outside sales agents. The petitioner provides two sales agency contracts and a 2011 corporate tax return indicating that \$5,831 was paid to independent contractors/outside services. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (*cited in Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Although the exclusive commission agreement states that the agency is "subject to the general supervision, advice and direction of [the petitioner]," there is no evidence that the beneficiary or her claimed subordinate has the requisite control or authority over employees of the sales agency to qualify as a personnel manager for the contracted sales agents.

Counsel asserts that the beneficiary is the manager of the marketing function. 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 furnish a job description that clearly explains the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

While the petitioner initially referred to the beneficiary as "product marketing manager," the initial description of her duties indicating that she performs a number of non-qualifying duties associated with the marketing function, rather than primarily managing the function. Further, the petitioner must establish that someone other than the beneficiary is available to relieve her from performing non-managerial marketing duties. The petitioner has not done so in this case based on its failure to adequately document its staffing levels.

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the

Act, 8 U.S.C. § 1101(a)(44)(C). In reviewing the relevance of the number of employees a petitioner has, however, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). 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 regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner failed to establish that it has reached the point that it can employ the beneficiary in a predominantly executive position.

The petitioner has not submitted evidence on appeal to overcome the director's determination that the beneficiary will not be employed in a managerial or executive capacity. Accordingly, the appeal will be dismissed.

B. Physical Premises

The remaining issue addressed by the director is whether the petitioner is maintaining physical premises from which to conduct business.

The "physical premises" requirement that applies to new offices serves as a safeguard to ensure that a newly established business immediately commence doing business so that it will support a managerial or executive position within one year. See 52 FR 5738, 5740 (February 26, 1987). A petitioner is not absolved of the requirement to maintain sufficient physical premises simply because it has been in existence for more than one year. In order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic and continuous manner. See 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Inherent to that requirement, the petitioner must possess sufficient physical premises to conduct business.

For the first time, on appeal, the petitioner submits a copy of a lease agreement for property at [REDACTED]. The term of lease is from the date of commencement of [REDACTED].

business, not to exceed sixty (60) days from January 23, 2011, until December 30, 2013, with an annual rent of \$7,200 to be paid in \$600 increments at the beginning of each calendar month. However, the record does not contain any evidence to indicate that the petitioner paid rent in 2011 or 2012. Specifically, the petitioner's 2011 Form 1120 does not reflect any rent expenses paid in 2011, and the petitioner's bank statements from January 1, 2012 through July 31, 2012 do not contain any payments to the lessor or payments in the amounts stated in the lease agreement. 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). 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. *Id* at 591.

The evidence on record is insufficient to resolve the inconsistencies. The addresses listed on the petitioner's tax returns, business invoices, and bank statements do not match the address on the lease agreement. The final page of the agreement containing the address of the leased property and the signature of the petitioner is a different font from the previous pages and duplicates Section 11 from the previous page. Further, the lease is signed only by the beneficiary and not initialed or signed by the lessor. As such, it cannot be determined that the provided lease agreement is valid and the petitioner has failed to establish that it has secured and maintained sufficient physical presence from which to conduct business in the United States. Accordingly, the appeal will be dismissed.

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, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.