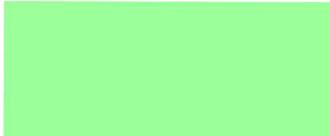




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **FEB 07 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 petitioner subsequently appealed the denial and this matter is now before the Administrative Appeals Office (AAO). The AAO will dismiss the appeal.

The petitioner seeks 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 is a Texas limited liability company established on June 9, 2009. It engages in the business of "Residential/Commercial Remodeling & Construction, Auto Repair, Convenience Store, Used Car Sales." The petitioner claims to be a subsidiary of [REDACTED] based in Turkey. The petitioner seeks to employ the beneficiary as General Manager of its new office location.¹

The director denied the petition, finding the petitioner failed to establish that it will employ the beneficiary in a primarily managerial or executive capacity within one year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner contends it has submitted sufficient evidence to establish it will employ the beneficiary in a primarily managerial or executive capacity.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

¹ The petitioner requested a two-year period of approval. However, pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

- (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

The director denied the instant petition based on a finding that the petitioner failed to show it will employ the beneficiary in a primarily managerial or executive capacity within one year.

In February 2011, the petitioner signed a lease to operate a gas station/convenience store. It shortly thereafter purchased a 50% interest in two other corporations located on the same physical premises: a used car dealership and a construction company. The petitioner stated that it needs the beneficiary to act as General Manager for all three companies in a managerial or executive capacity.

The director denied the petition, finding that the beneficiary's job duties as described by the petitioner were not primarily executive or managerial in nature.

On appeal, the petitioner submits a brief and states that the director did not articulate any specific problems with its petition. The petitioner contends that it has sufficiently demonstrated it will employ the beneficiary in a primarily managerial or executive capacity.

III. Discussion

When examining the managerial or executive 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 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.* In addition, the definitions of executive and managerial capacity each have two parts. To meet these definitions, the petitioner must first 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 his time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

After the petitioner submitted its Petition for a Nonimmigrant Worker, Form I-129, the director issued a Request for Evidence (RFE) asking for more detailed information regarding, *inter alia*, the anticipated managerial/executive decisions the beneficiary would make. In response, the petitioner submitted a list of job duties and the amount of time required for each, as stated below:

- (A) Hire, train, and manage subordinate supervisors. [The beneficiary] would converse with each manager every day and ask range of questions . . . This would take 1½ hours a day on the average, or 7½ hours a week.
- (B) Provide a business and service vision to managers and employees . . . This is not an everyday task. One hour per week.
- (C) Receive reports from the managers and make policy decisions affecting the business' operations. This duty is subsumed and referenced in Duty A above.
- (D) Review reports from the in-house bookkeeper or outside accountants, evaluate financial statements This is a major duty, everyday about 2 hours, 10 hours per week.
- (E) Determine the need for loans or financing, and direct the preparation of loan applications. . . . If we rolled this out to a weekly average, it would be maybe 15 minutes a week. 0.25 hours.
- (F) Oversee the department of marketing strategies, such as the use of promotions, advertisements in print or on the internet, participation in construction industry trade fairs. . . . This duty takes up an hour a day on the average, or 5 hours per week.

(G) Oversee the development and implementation of personnel policies, performance management systems, training and hiring practices. . . . Averaged out, we would expect 1 hour per week.

(H) Decide on major purchases. . . . Averaged over time, we expect 1 hour a week.

(I) Plan (when applicable) for major changes to the business model, such offering new products and services, relocation to bigger facilities, and new ways of attracting customers. . . . Averaged over time, we expect 1 hour per week on this duty.

(J) Ensure integrity of files and financial records. . . . We expect this duty would take about 1 hour per week.

(K) Oversee the implementation of administrative systems to track customers, inventory, accounts payable / receivable, insurance coverage, and government reports / documents, such as tax returns and I-9s. . . . Averaged over time, we expect the duty will take up 1 hour per week.

(L) Verify, through subordinate managers, the implementation of safety standards on the premises, and at the construction site. . . . Over time, we expect this duty would require about 0.5 hours per week.

(M) Provide regular updates of the business' performance to the owners. This is a major duty, requiring at least 2 hours per week.

The petitioner acknowledged that the duties listed account for 31.25 hours per week, or 78% of a 40 hour work week. It stated that these are managerial or executive tasks and that the beneficiary will spend the remainder of his week performing non-managerial and non-executive tasks.

The petitioner does not clarify whether the beneficiary will be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

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). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). 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).

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 written job offer that clearly describes 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).

The petitioner has not articulated a claim that the beneficiary qualifies as a function manager. In fact, on appeal, the petitioner states: "It is undisputed that the managers whom [the beneficiary] would supervise are not professionals, and he would not be a function manager." Based on this statement, the petitioner alleges that the beneficiary qualifies as a manager in that he will supervise other supervisory or managerial employees.

The petitioner lists the position of Director at the top of its organizational chart submitted on March 19, 2012. Immediately below the Director is the General Manager, the beneficiary's position. Three branches appear below the General Manager, each representing a separate company: the petitioner, [REDACTED], and [REDACTED]. The petitioner, which claims to directly operate a gas station, convenience store and auto repair shop, indicates that it has one manager, [REDACTED], who has four individuals below him. The petitioner indicates that its claimed subsidiary, [REDACTED] has one manager, [REDACTED], who has one individual below him. Finally, the petitioner states that another subsidiary, [REDACTED] has one manager, [REDACTED] who has eleven individuals below him. The petitioner provided copies of four 2011 IRS Forms 1099, Miscellaneous Income, issued by the petitioning company and seven issued by [REDACTED]

Although the petitioner indicated that it was a filing as a "new office" pursuant to the regulations at 8 C.F.R. § 214.2(l)(3)(v), it did not provide a business plan or otherwise describe the intended nature and scope of the petitioning organization or its proposed organizational structure and financial objectives. Therefore, the record does not support a finding that the petitioner intends to hire additional personnel during the first year of operations.

Section 101(a)(44)(C) of the Act requires the AAO to "take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function." 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 has identified 13 job duties that it contends are managerial or executive in nature, and indicates that such duties will require approximately 78% of the beneficiary's time. However, examination of the duties and the amount of time allocated to each duty reveals that the petitioner has not established that the beneficiary would spend a majority of his time performing qualifying managerial tasks.

According to the list of job duties, the beneficiary will spend ten hours per week reviewing the accounting done by an in-house bookkeeper or outside accountant. However, the petitioner did not establish that it has or plans to hire an in-house bookkeeper. Similarly, it did not indicate that it plans to hire an outside accountant. As such, the AAO will not consider the alleged ten hours per week on accounting as time spent acting in a managerial capacity.

The petitioner also states that the beneficiary will spend five hours per week supervising the marketing department. Its letter submitted in response to the RFE explains:

For any of the marketing, the beneficiary would not write ads or call them into the publisher, but he would review the content, suggest the medium, determine the marketing strategy, and evaluate the ad's price, estimate the benefit of the ad, and approve or disapprove the ad/sign. The actual work of writing the ad's content, and after approval, placing the ad or getting the sign made, would be handled by supervisors subordinate to [the beneficiary].

Despite this explanation, the petitioner did not provide sufficient evidence that it will have a marketing department or employees dedicated to performing necessary marketing functions. In the job descriptions provided for its employees, the petitioner did not indicate that any employees for the petitioner or Angora Construction and Remodeling would perform marketing-related duties. The petitioner claimed that one employee for the [redacted] will place online ads for used cars in addition to meeting potential customers, selling cars, working as a cashier in the convenience store, making sales, assisting the customers with gasoline sales, collecting money, doing product restocking, and studying at [redacted]. Given this wide range of responsibilities, the petitioner failed to explain how this individual can devote enough time to posting internet ads that the beneficiary will be able to spend five hours per week making executive decisions regarding the posts. Again, 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). As a result, the AAO will not count these alleged five hours per week as time the beneficiary would spend acting in a managerial capacity.

Without the job duties discussed above, the petitioner has listed duties that account for only 16.25 hours out of a 40 hour work week. It therefore fails to demonstrate that the beneficiary will spend a majority of his time performing qualifying managerial duties.

The petitioner simultaneously alleges that the petitioner will be employed in an executive capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Due to the previously discussed deficiencies in the beneficiary's proposed job duties, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. For both the accounting and marketing functions previously analyzed, the petitioner has not demonstrated that it has sufficient subordinate personnel to relieve the beneficiary of actually performing the tasks necessary to perform non-qualifying duties associated with these functions. As such, these duties are not executive in nature. Without the accounting and marketing duties, the petitioner has accounted for only 16.25 hours out of a 40-hour work week. The petitioner therefore fails to demonstrate that the beneficiary will spend a majority of his time on executive level tasks.

In addition, although requested in the RFE, the petitioner failed to provide a job description for the individual at the very top of its organizational chart: the Director. In its response to the RFE, the petitioner stated that the Director works for the petitioner part-time, but it still failed to provide job duties or a description of the Director's role. 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). Given the Director's role as the only individual superior to the petitioner, his duties are potentially relevant in evaluating the beneficiary's claimed executive role in the company.

According to the petitioner's list of job duties for the beneficiary, he will spend less than 50% of his time on potentially managerial or executive duties. As stated above, even taking into account the needs of a small business, a beneficiary who does not spend the majority of his time on qualifying duties cannot be considered a

manager or executive as those terms are defined under the Act. The petitioner's stated job duties therefore fail to support a claim that he would work in a primarily managerial or executive capacity.

On appeal, the petitioner emphasizes that, for a new office petition, it need not demonstrate that the beneficiary will be immediately employed in a managerial or executive capacity, but that he will be employed in a qualifying capacity within one year. In this case, the petitioner has not established when or if contractors or employees would be available to relieve the beneficiary from performing non-qualifying duties. Again, the petitioner has failed to submit a business plan or other hiring plans for the three businesses claimed to be managed by the beneficiary, and has not shown how the current staffing levels, as reflected in the record, would be sufficient to relieve the beneficiary from involvement in non-qualifying duties associated with the business. For example, the petitioner indicates that it directly operates a gas station, convenience store and mechanic shop. The petitioner's lease requires the gas station and convenience store to be open 112 hours per week. The petitioner has not shown how the manager and single cashier documented in the record are able to keep this business open during its stated operating hours, nor has it provided a hiring plan for the first year of operations to establish that the company will actually grow to the point where it can support the beneficiary's claimed managerial or executive position.

When a new business is 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 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 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). 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.

Here, the petitioner appears to rely on the fact that its businesses have already commenced operations in lieu of providing the evidence required by the regulations at 8 C.F.R. § 214.2(l)(3)(v)(C). As such, the evidence of record provides insufficient information regarding the petitioner's ability to support a qualifying managerial or executive position within one year. 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)).

Moreover, the AAO finds that the petitioner's evidence pertaining to its claimed subsidiaries contains other deficiencies not addressed by the director which raise further questions regarding the company's ability to support a managerial or executive position within one year.

The petitioner claims that the beneficiary will perform his listed duties as the General Manager of three companies: the petitioner, [REDACTED]. However, the

petitioner failed to provide consistent and credible evidence that it in fact owns the claimed 50% interests in [REDACTED]. The petitioner submitted "Contracts to Purchase Membership Interest" dated November 22, 2011 for both claimed subsidiary companies. Each contract indicates that Savas Sarikaya states that he owns 100% of the company and agrees to sell 50% to the petitioner. However, the petitioner also submitted "membership interest certificates" dated November 27, 2011 allocating 50% interest to the foreign entity, not the petitioner. In addition, the petitioner provided certificates of membership interest numbered two and three. However, for both companies, the petitioner omitted certificate number one. As such, the petitioner has not documented the original ownership of either claimed subsidiary, nor supported its claim that [REDACTED] was the original sole owner of the claimed subsidiary companies. 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). Due to these discrepancies and omissions, the petitioner has failed to establish that the petitioner actually owns the claimed subsidiaries.

Further, even if the petitioner had established that it owns a 50 percent interest in both [REDACTED] and [REDACTED], such an interest does not necessarily corroborate the beneficiary's alleged authority to direct all three operations. The petitioner did not provide any evidence of an agreement with the other holders of interest for [REDACTED]. Without the consent of the other 50% interest holders in these companies, the petitioner has failed to demonstrate that the petitioner has the authority to hire the beneficiary as General Manager of the two claimed subsidiaries. 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 petitioner states that all three companies are located at [REDACTED]. It included a lease for the property at this address dated February 15, 2011 entered into by the petitioner. Although the petitioner claims that [REDACTED] are also located at this address, it submitted no contract or other document to show an agreement between allowing these separate companies to use this space. In addition, the petitioner's lease states: "Lessee shall use and occupy the leased premises only as a convenience store, gasoline sales and mechanic shop and for no other purpose." The terms of the lease therefore prohibit the petitioner from operating a used car company and a construction company on the premises. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Due to these unresolved inconsistencies, the petitioner's list of job duties and organizational chart lack credibility. 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. at 591.

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For all of the reasons discussed above, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity and the appeal will be dismissed.

IV. Conclusion

Based on the foregoing, the AAO cannot conclude that the petitioner will be employed in a managerial or executive capacity within one year. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). 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.