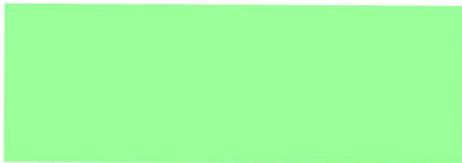




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 11 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 qualify 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 2012, states it is engaged in the design and printing business. It claims to be wholly owned subsidiary of [REDACTED] located in Columbia. The petitioner seeks to employ the beneficiary as the General Manager of a "new office" in the United States for a period of one year.

The director denied the petition, concluding that the petitioner had not established that the beneficiary was acting primarily in a manager or executive capacity with the foreign employer as required by the Act. The director noted that the beneficiary's claimed subordinate supervisors lacked at least baccalaureate degrees necessary to establish them as professionals as defined by law. The director also found that the petitioner had not demonstrated that the beneficiary would be employed in the United States in a managerial or executive capacity within one year of the approval of the petition. The director pointed to the petitioner's failure to provide a credible business plan, hiring plans, or proof of investment necessary to establish that the petitioner would commence business immediately upon approval and support the beneficiary in a 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, counsel asserts that the beneficiary is established as a personnel manager with the foreign employer since he supervises and controls other managers and supervisors, contending that the director erred in concluding that the beneficiary's subordinates must be established as professionals to qualify the beneficiary as a manager. Further, counsel maintains that the director erred in concluding that the beneficiary would not be acting primarily as a manager or executive after one year. Counsel asserts that little evidence is required to establish eligibility as a new office in the United States and that the petitioner is not required to make future predictions and speculate with respect to its U.S. business plans. Further, counsel contends that it has demonstrated the amount of its financial investment in the U.S. venture through the submittal of "substantial" bank account balances for the foreign employer.

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 Issues on Appeal:

A. Employment with the foreign employer in a managerial or executive capacity

As noted, the director concluded that the petitioner had not established that the beneficiary is employed in an executive or managerial capacity with the foreign employer as required by 8 C.F.R. § 214.2(l)(3)(v)(A). Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established with sufficient evidence that the beneficiary acts primarily as an executive or manager with the foreign employer.

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.* In the I-129 Petition for a Nonimmigrant Worker, the petitioner explained the beneficiary's duties with the foreign employer as follows: "Supervises all aspects of Colombian printing and graphic design company: set company policies, employed personnel, decided on new product and service lines, oversaw all operations to ensure customer satisfaction."

Due to the lack of supporting evidence regarding the beneficiary's foreign job duties, the director specified in the Request for Evidence (RFE) that the petitioner submit, *inter alia*, the following: (1) a letter from the foreign employer describing the nature of the beneficiary's employment, including a complete position description identifying all the duties performed, and managerial decisions made, by the beneficiary on behalf of the foreign employer; (2) a complete listing of the foreign employees, by name, title, education, including position descriptions for each with hours spent on job duties on a weekly basis, and (3) a position description for the beneficiary reflecting hours spent on specific job duties on a weekly basis. Although the petitioner provided a duty description for the beneficiary and short duty descriptions for the beneficiary's subordinates, the petitioner failed to provide hourly duty breakdowns for the beneficiary and his subordinates, as requested by the director. 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).

In response, the petitioner submitted a support letter from the beneficiary setting forth the following duties for the beneficiary with the foreign employer:

1. Direct, coordinate, monitor and make rules for the efficient development of the Company in compliance with the policies adopted by the Board.
2. Present to the Board the plans that are required to develop programs for the Company in compliance with the policies adopted.
3. Submit for the approval of the Board the projected budget of income and expenses for each fiscal year, as well as periodic financial statements of the company, on the dates indicated in the regulations.
4. Present to the Board for approval, plans for development in the short, medium, and long term.
5. Submit for the approval of the Board capital budget projects and operations within its corporate purpose, as required.

6. Prepare and present for the approval of the Board, the Internal Laws of the Company and their modifications.
7. Carry out all operations within the purpose of the Company.
8. Appoint, employ, and remove employees of the Company.
9. Conclude contracts with external contractors or workers.
10. Represent the Company as a legal entity and authorize by signature the acts and contracts in which it has to intervene.
11. Oversee the proper collection of those things which the Company is entitled.
12. Represent the shares that the Company holds in other organizations.
13. Adopt regulations, operating manuals and establish rules and procedures necessary to carry out the activities of the Company.
14. Organize the expenses, recognize and arrange the payments from the Company.
15. Delegate the functions deemed necessary in accordance with the existing rules on the subject.
16. Demand the guarantees and contract insurance policies necessary for the protection of property and assets of the business from other risks, which protection is deemed socially and economically advisable.
17. Present to the Board annual management reports.
18. Exercise other duties as assigned or delegated by the Board, the laws and those that by their nature correspond to an Executive Officer.

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has provided no specifics as to how the beneficiary carried out the general tasks and goals listed above as a part of his daily duties. For instance, the petitioner did not provide specifics, examples, or supporting documentation regarding rules and policies developed and implemented; short, medium or long term plans or budgets presented to the Board; contracts negotiated and executed; regulations, operating manuals, rules, and procedures adopted; functions delegated; or insurance procured, to give the job duties referenced more credibility or probative value. Indeed, there is little in the duties to distinguish them from those of any executive or manager with any company, and it is not possible to discern from the foreign duty description, due to the lack of specifics, within what industry the beneficiary operates. Further, the foreign duties are largely repetitive of the statutory language. As such, the total lack of specificity or examples in the provided foreign duties casts doubt on their credibility. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. 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)). Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Additionally, whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections

101(a)(44)(A) and (B) of the Act. 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). A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Certain material discrepancies in the beneficiary's duties cast additional doubt as to their credibility and whether the beneficiary spends a majority of his time performing executive or managerial duties. For instance, many of the duties for the beneficiary indicate the beneficiary reporting to the Board of Directors. However, the petitioner has not credibility established that the foreign employer has a Board of Directors. Indeed, the record shows that the beneficiary himself has a controlling 51% interest in the foreign employer; therefore, it is not likely that a significant portion of his duties would involve reporting to himself as the controlling member of the organization. Further, although the petitioner claims that the beneficiary spends 95% of his time on managerial or executive functions and delegates to three subordinate supervisors, the petitioner also states on the record that the petitioner is a small company and that the beneficiary "directly observes every employee every day," suggesting he is actually spending a majority of his time on non-qualifying day-to-day operational duties. 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. 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, 591-92 (BIA 1988). Additionally, the petitioner has failed to document the beneficiary's duties hourly or specify specific managerial duties the beneficiary made on behalf of the organization as directly requested by the director. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Counsel further maintains on appeal that the beneficiary qualifies as a personnel manager due to the fact that he has subordinate managers and supervisors, noting that the director erred in concluding that the petitioner must establish that these subordinates are professionals. The AAO concurs in part with counsel's assertion that a personnel manager may be established through demonstrating that a beneficiary has subordinate managers or supervisors, without establishing that these same employees are professionals as defined by law. 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 "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817

(Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

However, the petitioner has not credibly established that the beneficiary has subordinate managers and supervisors to whom he primarily delegates day-to-day operational duties. As previously noted, the petitioner has provided overly vague and non-credible daily duties for the beneficiary; as such, it cannot be established with certainty that the beneficiary primarily performs managerial duties. Further, the petitioner has not appropriately responded to the director's RFE as necessary to demonstrate that the beneficiary has managerial and supervisory subordinates. As referenced, the director requested that the petitioner provide detailed duties, including hourly breakdowns of duties, for all of the foreign employer's employees. However, the petitioner only provided one sentence descriptions of six operational employees, and three subordinate managers, including Managers of the Commercial Department, Administrative Department, and Finance Department. It is not sufficient for a petitioner to simply state that the beneficiary has subordinate managers or supervisors, but this must be established with the preponderance of the evidence. However, the beneficiary has not provided sufficient supporting documentation to confirm the existence of the foreign employer's subordinate managers and supervisors, or the other supporting operational employees, such as the sales, production, quality control, accounting, or machine operator employees. In fact, the petitioner has provided little more than titles, one sentence descriptions of their duties, and claimed hours of work for each employee; but not credibility supported these roles with other documentary evidence or further details, such as hourly duties or salaries, or proof that these employees are actually employed by the foreign employer. 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)). In sum, when assessing the totality of the circumstances, the record does not establish that the petitioner employs three managerial or supervisory subordinates as asserted; therefore, the beneficiary has not been established as a personnel manager as defined by the Act.

An individual will not be deemed a manager or executive under the statute simply because they have a managerial or executive title or because they are claimed to direct the enterprise as the owner or sole managerial employee. It is the petitioner's burden to show with specific duty descriptions and documentary evidence that a beneficiary acts primarily as a manager or executive with a foreign employer. See 8 C.F.R. § 214.2(l)(3)(ii) However, as noted, the petitioner has submitted sparse, vague and contradictory evidence related to the beneficiary's claimed foreign employment. As such, it cannot be found that the beneficiary was primarily employed in a managerial or executive capacity with the foreign employer as required by 8 C.F.R. § 214.2(l)(3)(v)(A). For this reason, the appeal must be dismissed.

B. Employment with the petitioner in a managerial or executive capacity:

The director further denied the petition by finding that the petitioner had failed to establish that the petitioner would support an executive or managerial role within one year of approval of the petition as required by 8 C.F.R. § 214.2(l)(3)(v)(C). Upon review of the record, and for the reasons discussed herein, the AAO concurs with the decision of the director that the petitioner has not established that it would support the claimed executive or managerial role for the beneficiary within one year.

The "new office" provision was meant as an accommodation for newly established enterprises and provided for by U.S. Citizenship and Immigration Services (USCIS) regulation to allow for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

However, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

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

The AAO's ability to analyze whether the beneficiary is likely to act primarily in an executive or managerial role after one year is greatly frustrated by the petitioner's failure to provide a detailed description of the beneficiary's proposed duties in the United States. Indeed, consistent with law, the director requested that the petitioner submit a letter stating the beneficiary's managerial duties and responsibilities with the petitioner; including any subordinate supervisors, managers, or professionals that

would report to the beneficiary and time allotted to managerial and executive duties as opposed to non-qualifying operational duties. Instead, the petitioner responded as follows:

We are a completely new startup company, waiting for permission from you to begin operations. Future staffing levels and other details depend on circumstances, and any predictions about them would be speculation. Please review the attached materials about the Columbia company. We visualize something similar here, a smallish staff of about 5-10 employees and 2 or 3 sub-supervisors. Any organization chart for the future at this point would be sheer guesswork. [The business plan] of the original filing explains or plans as clearly as possible.

The AAO again notes that 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). Further, as mentioned, it is not possible to conclude with any certainty whether the beneficiary is likely to primarily perform executive or managerial duties after one year without any actual description of the beneficiary's proposed job duties. Citing the unpredictability of future business is not a sufficient reason for not provided a listing of duties that are reasonably foreseeable. Indeed, the petitioner's complete lack of proposed duties for the beneficiary casts serious doubt on the likelihood that the petitioner will commence business immediately and succeed rapidly as necessary to support the beneficiary in an executive or managerial role.

Overall, the position descriptions alone are insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. employer would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period.

In the present matter, the petitioner has not provided sufficient information regarding its hiring and investment plans to establish that the petitioner is likely to support the beneficiary in a managerial or executive capacity within one year. Despite the petitioner's assertion that it is not appropriate to speculate on its future plans, the submittal of definitive future plans is exactly what is required by the regulations for a L-1A intercompany transferee to qualify with a new office in the United States. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(1). In short, the petitioner has provided no hiring plans to determine whether the petitioner's organization will be sufficiently complex to support the beneficiary in a primarily executive or managerial capacity and whether the beneficiary will be acting as more than a first-line manager of non-professional employees. Further, the petitioner has not provided any specifics regarding its investment plans in the United States as required by the regulations. *See* 8 C.F.R. § 214.2(l)(3)(v)(C)(2). The petitioner contends that bank account statements of the foreign employer from January and December 2011 are sufficient to show that the petitioner will be financially supported as necessary to allow the petitioner to

commence business immediately and succeed as required to support the beneficiary within one year. However, the offered bank account statements have little relevancy on the amount of investment in the petitioner as of the date of the filing of the petition in June 2012. Additionally, the amounts reflected in the provided bank accounts are as follows: 3,153,260.60 Columbian Pesos (approximately \$1,576.63 U.S. dollars) in January 2011 and 2,387,062.06 Columbian Pesos (approximately \$1,193.53 U.S. dollars) in December 2011 in a [REDACTED] account; and 5,250,783.62 Columbian Pesos (approximately \$2,625.39 U.S. dollars) in January 2011 and 8,844,994.25 Columbian Pesos (approximately \$4,422.50 U.S. dollars) in December 2011 in a [REDACTED] account. As such, the petitioner has shown balances totaling around \$9,818.05 in foreign employer bank accounts, an amount that does not alone demonstrate that the foreign employer has sufficient capital to invest in a new business in the United States. Further, no evidence is provided to shown that any definitive investment is being made in the petitioner, or that any amounts have been transferred for this purpose. Again, it is the petitioner's burden to establish that the U.S. employer would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. However, the petitioner has produced no evidence to demonstrate definitive hiring or investment plans in the petitioner to allow a conclusion that the beneficiary is likely to act primarily in an executive or managerial capacity after 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)).

Lastly, the AAO's analysis of the viability of the new business is severely restricted by the petitioner's failure to submit a credible business plan. The petitioner states that it has provided sufficient detailed regarding the new U.S. venture in the provided business plan. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

Although all the requirements of a business plan in a *Matter of Ho* are not definitively required to establish a credible business plan, the failure to provide the majority of the relevant information above casts serious doubt as to the viability of a provided business plan. In the present matter, the petitioner has provided little

of the evidence suggested in the *Matter of Ho*, but offers only general information regarding products and services the petitioner will provide and vague mission and vision statements that could apply to any business. For instance, the petitioner states its mission as follows: "To satisfy the printing needs of our clients with quality products, in an efficient manner, ensuring an excellent service at the best price." As mentioned, the aforementioned statement provides little detail regarding the petitioner's first year plans and could apply to any business selling any type of product or service. The petitioner has provided no financial projections, competitor information, sources of supply, marketing or pricing strategies, hiring plans or other information referenced in the *Matter of Ho* to establish a credible business plan. In order for a business plan to be deemed credible, it must at least illicit a conclusion that the specific business venture has a reasonable chance of success. The petitioner must demonstrate with a preponderance of the evidence that the venture has a realistic expectation of success such that it will 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(1)(3)(v). However, the business plan submitted in the current matter and the record generally, leads to the conclusion that the petitioner will enter into the United States and pursue any business venture it deems the most expedient upon arrival, which is not sufficient to fulfill the new office requirements set forth in the regulations. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In conclusion, the petitioner has submitted almost no evidence, such as specific duties, hiring plans, investment plans or a credible business plan, to establish that the beneficiary is likely to act primarily in an executive or managerial role after one year as required by the Act. For this additional reason, the appeal must 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, 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.