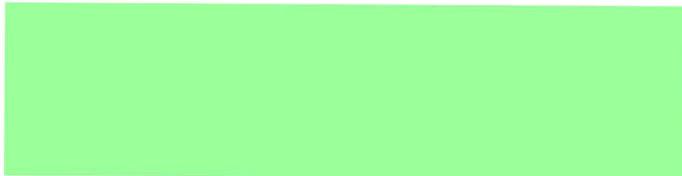
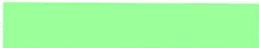


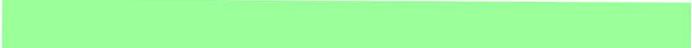
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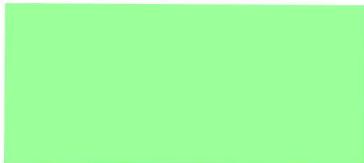


DATE: **JUN 11 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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

A handwritten signature in black ink, appearing to read "Ron Rosenberg", is written over the typed name.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 extend the beneficiary's status 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 Missouri limited liability company, established in 2011, engaged in the hospitality business. It states that it is a branch office of [REDACTED] located in Canada. The beneficiary was previously granted one year as an L-1A nonimmigrant intracompany transferee in order to open a "new office" in the United States as the company's General Manager.¹

The director denied the petition, in part, finding that the petitioner had failed to demonstrate that the beneficiary was employed primarily in a qualifying managerial or executive capacity. Further, the director found that the petitioner had failed to establish a qualifying relationship between the petitioner and the foreign employer. Specifically, the director found that there was insufficient evidence to show that the petitioner and the foreign employer were affiliates, owned and controlled by the same parent or individual or by the same group of individuals, as required by the Act.

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 director's decision was arbitrary and capricious given the evidence submitted on the record. Counsel maintains that it has established with a preponderance of the evidence that the beneficiary acts primarily in a managerial and executive capacity as evidenced by quarterly federal wage documentation and a detailed organizational chart submitted on the record. Additionally, counsel notes that the petitioner does not claim to be an affiliate of the foreign employer as analyzed by the director, but a branch office. Lastly, counsel asserts that the previously approved petition should allow for deference in approving the current petition.

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.

¹ The petitioner was formed in the State of Missouri as a limited liability company in March 2011 and filed the originally approved petition in July 2011. Additional dated documentation on the record supports that the petitioner was approved as a new office in the United States from August 18, 2011 through August 17, 2012, including a business plan, an executed operating agreement for the petitioner, and a lease for the operation of a hotel in Columbia, MO. As such, the petitioner will be adjudicated as a new office seeking an extension as set forth in 8 C.F.R. § 214.2(l)(14)(ii).

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:

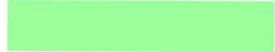
- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including 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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a one year "new office" petition accompany their Form I-129 petition with 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. The Issues on Appeal:

A. Qualifying Relationship



The first issue to be addressed is whether the petitioner established that the petitioner and foreign employer are qualifying organizations as required by 8 C.F.R. § 214.2(l)(3)(i) and 8 C.F.R. § 214.2(l)(14)(ii)(A).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

(J) *Branch* means an operating division or office of the same organization housed in a different location.

* * *

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

* * *

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity...

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

In the current matter, the petitioner states that it is a branch office of the foreign employer. In defining the nonimmigrant classification, the regulations specifically provide for the temporary admission of an intracompany transferee "to the United States to be employed by a parent, *branch*, affiliate, or subsidiary of [the foreign firm, corporation, or other legal entity]." 8 C.F.R. § 214.2(l)(1)(i) (emphasis added). The regulations define the term "branch" as "an operating division or office of the same organization housed in a different location." 8 C.F.R. § 214.2(l)(1)(ii)(J). USCIS has recognized that the branch office of a foreign corporation may file a nonimmigrant petition for an intracompany transferee. See *Matter of Kloetti*, 18 I&N Dec. 295 (Reg. Comm'r 1981); *Matter of Leblanc*, 13 I&N Dec. 816 (Reg. Comm'r 1971); *Matter of Schick*, 13 I&N Dec. 647 (Reg. Comm'r 1970); see also *Matter of Penner*, 18 I&N Dec. 49, 54 (Comm'r 1982)(stating that a Canadian corporation may not petition for L-1B employees who are directly employed by the Canadian office rather than a United States office). When a foreign company establishes a branch in the United States, that branch is bound to the parent company through common ownership and management. A branch that is authorized to do business under United States law becomes, in effect, part of the national industry. *Matter of Schick*, *supra* at 649-50.

However, as in this case, if the petitioner submits evidence to show that it is organized as a limited liability company in the United States, then that entity will not qualify as "an . . . office of the same organization housed in a different location," since the limited liability company is a distinct legal entity separate and apart from the foreign organization. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980). If the claimed branch is organized as a limited liability company in the United States, United States Citizenship and Immigration Service (USCIS) must examine the ownership and control of that corporation to determine whether it qualifies as a subsidiary or affiliate of the overseas employer.

As such, contrary to counsel's assertions, the director's analysis as to whether the petitioner and foreign employer qualified as affiliates was not in error. Indeed, it was an apt analysis, since the petitioner clearly does not qualify as a branch office of the foreign employer, nor do the petitioner and foreign employer have a parent-subsidiary relationship. As set forth in IRS Form 1065 U.S. Return of Partnership Income tax documentation submitted for 2011, and as noted by the director, the petitioner confirmed in a response to the director's Request for Evidence (RFE) that it was owned and controlled by the following partners with respective percentage interests: [REDACTED] (85%), [REDACTED] (8%), [REDACTED] (5%), and [REDACTED] (2%). Further, the petitioner contends that all 100 issued shares in the foreign employer are owned by [REDACTED] pursuant to a transfer in January 2010 whereby the Mr. [REDACTED] forgave a debt owed by the beneficiary in exchange for the aforementioned 100 shares. The AAO notes that the petitioner has not submitted sufficient evidence to establish ownership in the foreign employer and did not properly respond to the director's Request for Evidence (RFE). The petitioner failed to submit stock certificates confirming the stated ownership, a stock ledger, or supporting documentation to demonstrate the aforementioned forgiveness of debt on the part of Mr. [REDACTED] in exchange for shares in the foreign employer. 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). Regardless, even if the offered ownership interest in the foreign employer is acknowledged, the petitioner and foreign employer are not parent and subsidiary companies, as the foreign employer owns no interest in the petitioner. Further, as noted appropriately by the director, the petitioner and foreign employer are not established as affiliates since they are not offered, or established, as subsidiaries owned by the same individual or parent or by the same group of individuals with each individual owning and controlling approximately the same share or proportion of each entity.

As such, the petitioner has not demonstrated that it is a qualifying organization, or a parent, branch, affiliate or subsidiary of the foreign employer. For this reason, the appeal must be dismissed.

B. Employment in the United States in a managerial or executive capacity

The next issue to be addressed is whether the petitioner had failed to establish that the beneficiary is employed in the United States in a primarily executive or managerial capacity as required by 8 C.F.R. § 214.2(l)(3). The director pointed to a material discrepancy with respect to the beneficiary's duties, namely that the total percentage of time spent on various duties by the beneficiary added up to 1075%. The director reasoned that without a credible breakdown of time spent by the beneficiary on various duties that it could not be determined if the beneficiary spent a majority of her time on qualifying managerial or executive duties. The director also noted that the petitioner had failed to submit requested state quarterly withholding documentation relevant to the beneficiary's claimed subordinates.

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.

Upon review of the petition and the evidence, and for the reasons discussed herein, the the petitioner has not established that the petitioner performs primarily executive or managerial duties with the U.S. employer as required by the Act.

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(1)(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 support of the I-129 Petition for a Nonimmigrant Worker, the petitioner submitted the following job duties for the beneficiary:

As the General Manager of the [REDACTED] the Beneficiary will report directly to the CEO and supervise the rest of the staff. Her specific job duties include the following:

- Provide leadership and management to staff;
- Work collaboratively as a member of the Senior Management team to direct venue and hotel functions;
- Develop and retain a talented team of staff members at all levels;

- Effectively manage expenses for both the hotel's profit centers and its clients;
- Collaborate with the CEO to develop, implement and manage a three-year Strategic Operation Plan with a clear vision and motivate others to share and pursue that vision;
- Compile, develop and implement a company-wide policy and procedure manual with a clear vision for employee safety, consistency of product and work, and profitability;
- Fully support the Petitioner's corporate, social, & environmental responsibility initiatives;
- Ensure the appropriate use of the Petitioner's technologies, tools and programs;
- Function as a highly visible representative of the company;
- Attend industry, peer and governmental events and meetings;
- Serve as the corporate spokesperson;
- Develop and implement corporate initiatives;
- Facilitate public relations focused activities;
- Lead by example in the development and maintenance of policy and procedure; [and]
- Develop proposals in response to the CEO requests.

The director requested in the RFE that the petitioner submit a more detailed description of the beneficiary's duties, including the percentage of time devoted to the various specific tasks. In response, the petitioner submitted the same job duties submitted in support of the original petition and assigned percentages to each of the duties listed above whereby the total amount of percentages questionably amounted to 1075%. Indeed, the first two listed duties above were shown to take up 70% and 90% of the beneficiary's time respectively, thereby easily accounting for more than 100% of the beneficiary's time with fourteen additional listed duties to still allocate. As noted, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The submittal of credible percentages is important to meeting the preponderance of the evidence burden since the definitions of executive and managerial capacity 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 prove 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). Therefore, without a credible allocation of duties, the AAO cannot determine 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). Further, counsel fails to address this material discrepancy on appeal despite it being directly addressed in the director's decision and it casting doubt on the credibility of the beneficiary's provided 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). This failure of documentation and explanation is additionally important because some of the beneficiary's daily tasks do not fall directly under traditional managerial duties as defined in the statute. In fact, a summary of the beneficiary's duties specified in the organizational

chart submitted in response to the director's RFE stresses that a primary duty of the beneficiary will be to liaison between the CEO and the accounting department to assure "accurate and up to date record keeping," suggesting the beneficiary will be responsible for some non-qualifying day-to-day operational duties.

Further, 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. Portions of the duty description are so overly vague that they provide little or no probative value as to the beneficiary's actual day-to-day activities, such as providing leadership and management to staff; working collaboratively as a member of the senior management team; developing and retaining staff; effectively managing expenses; developing and implementing company-wide policies; developing, implementing, and supporting corporate initiatives; and facilitating public relations focused activities. Further, the petitioner provides no details, examples, or supporting documentation to credibly establish that beneficiary is performing the above referenced tasks. Indeed, the record includes no information regarding the beneficiary's accomplishments during the critical first year of operations, such as plans implemented or executed, new employees hired, or other actions relevant to establishing a new business venture. In sum, the lack of specificity, and supporting documentation, surrounding these offered duties calls into question their credibility. 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. at 1108, *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). 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.*

Additionally, discrepancies on the record related to the beneficiary's claimed subordinates cast further doubt on whether the petitioner is primarily performing managerial or executive duties. The record states that a primary role of the beneficiary is overseeing "tier 2 managers," while the Chief Executive Officer will oversee the petitioner's "professional staff" such as accountants, attorneys and bookkeepers. For instance, the petitioner asserts in a provided organizational chart that the beneficiary has the following subordinate managers either reporting directly or indirectly to her: two assistant general managers; an accountant; a sales manager; a service director; a bar manager; two duty managers; an executive chef; and a head of housekeeping. However, the petitioner has not established that these second tier employees claimed to be reporting to the beneficiary are employed by the petitioner. Indeed, the director was aware of the necessity of establishing the employment of the beneficiary's immediate subordinates in order to demonstrate that the beneficiary was primarily relieved from performing non-qualifying day-to-day operational duties. Towards this, the director requested that the petitioner submit state quarterly wage documentation for the 1st and 2nd quarters of 2012. As noted in the director's denial, the petitioner failed to provide this information. Once 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). On appeal, the petitioner contends that it submitted, and the director ignored, quarterly federal wage documentation that confirms the employment of the beneficiary's subordinates. But, the AAO notes that no such quarterly federal wage documentation has been submitted to confirm the number of employees and those specifically claimed as employed by the petitioner provided organizational chart. In fact, the petitioner has only submitted an internal check register indicating payments made to employees of the petitioner for the second half of June 2011 and no payroll information is provided for the critical first year of operations of the new venture.

Additionally, the petitioner's internal payroll documentation from June 2011 includes only one of the stated subordinate managers [REDACTED] of the beneficiary. In short, the petitioner has not provided sufficient evidence that the beneficiary has a cadre of subordinate managers to which she can delegate day-to-day operational duties, allowing her to primarily perform executive or managerial duties. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, the petitioner has provided insufficient evidence of the current financial status of the petitioner necessary to conclude with certainty that the petitioner is operating as required to support not only the beneficiary, but subordinate managers needed to allow the beneficiary to act in her stated managerial or executive role. In fact, the regulations specifically require that the new office seeking extension submit evidence of the financial status of the United States operation. See 8 C.F.R. § 214.2(l)(14)(ii)(E). Further, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to establish the new office. At the time the petitioner seeks an extension of the new office petition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year as necessary to support the beneficiary primarily in an executive or managerial capacity. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year to support the beneficiary's stated role, the beneficiary is ineligible by regulation for an extension. In the instant matter, the record does not support that the petitioner has reached the point where in can employ the beneficiary in a predominantly managerial or executive position. As noted, the petitioner has not articulated its current financial position. No evidence or explanation is provided on the record as to progress or accomplishments in the first year, or revenue accrued by the petitioner in 2012, the year within which the petitioner operated on the new office petition for approximately eight months. In fact, evidence submitted suggests that the petitioner is not operational as planned thereby calling into question whether the petitioner can support the beneficiary and her many subordinate managers. For instance, the petitioner's Form 1065 U.S. Return of Partnership Income for 2011 indicates that the petitioner earned only \$289,096.00 and took an operating loss of \$126,872.00, despite the petitioner's business plan indicating that the operation would accrue over \$2.7 million in revenue in the first year alone. Additionally, the petitioner's original business plans note that the entity's lone business, the [REDACTED] requires upwards of \$5 million dollars in renovations to operate at the level originally projected and that these renovations will not be completed by the petitioner's landlord until January 1, 2013. Therefore, it is left questionable whether the petitioner is operating even closely to the level it originally intended when the new office petition was approved by USCIS. In sum, the petitioner has submitted insufficient and inconsistent evidence related to its current operations and financial status; therefore, it cannot be established with any certainty that the petitioner is capable of supporting the beneficiary's role and that of her many claimed managerial subordinates. 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)).

Lastly, counsel additionally asserts on appeal that USCIS should somehow be obligated to approve the current petition due to its approval of the previous new office petition. Counsel's assertion is not persuasive. In fact, as specifically noted herein, the regulations dictate specific evidence that must be submitted by a new office after one year to establish that the business is fully operational and capable of supporting the beneficiary in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(14)(ii). The purpose of this evidentiary requirement is clearly for the USCIS to assess the progress of the business and determine whether, after one year, the beneficiary is eligible. As such, the current adjudication has little bearing on a previous USCIS approval of a new office petition. Indeed, the petitioner is held to a greater standard under the current petitioner as it must establish that the beneficiary *is* primarily performing executive or managerial duties and not simply providing evidence as to how the beneficiary *will* act in such a capacity. Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). The prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

In conclusion, the petitioner has failed to establish with sufficient evidence that the beneficiary is employed in the United States in a primarily executive or managerial capacity as required by 8 C.F.R. § 214.2(l)(3). As such, 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.