



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAY 07 2013** Office: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida corporation established in October of 2011, states that it intends to operate an import and export business. It claims to be a subsidiary of [REDACTED] located in Guyana. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States.

The director denied the petition, concluding that the petitioner failed to establish that: (1) the foreign entity had employed the beneficiary abroad in a qualifying managerial or executive position; and (2) the petitioner has secured sufficient physical premises to house the new office.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that it provided sufficient evidence of the company's business plans and anticipated expansion for the first year of petition to support the approval of the petition. The petitioner further submits that it provided sufficient evidence regarding the capacity in which the beneficiary had been employed abroad that was sufficient to satisfy the regulatory requirements.

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(i)(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.

II. The Issues on Appeal

A. Employment Abroad in a Managerial or Executive Capacity

The first issue addressed by the director is whether the petitioner established that the beneficiary had been employed abroad in a primarily managerial or executive capacity for one continuous year within the three years preceding the filing of the petition.

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.

In a letter dated April 11, 2012, the petitioner stated that the foreign entity is "a well-known and prestigious import/export wholesale distribution business which is particularly renowned for plastic supplies exportation." The petitioner further stated that the beneficiary started the business abroad as a small family business but later formally registered the business as the company prospered.

The petitioner submitted the following description of the beneficiary's duties while working as the foreign entity's general manager:

- Responsible for the delivery of goals and objectives of the organization within set time an approved budget by utilizing resources available efficiently.
- Supervise the financial, legal, and operational affairs of the company.
- Responsible for maintaining a smooth flow of work between department and for resolving interdepartmental conflicts.
- Assure that the company stays on schedule and meets or exceeds the goals.
- Establishing the goals and objectives and ensure their execution according to the plan of the company.
- Attaining financial suitability and development of opportunities which are fruitful for the Company.
- Delivering services to customers and attaining their satisfaction.
- Managing the other works of the Company like setting goals and targets which are efficient performance indicators.
- Finalizing the business plans that are fruitful for the business.
- Defining the product sales & marketing plan.
- Supervising sales and distribution of a product.
- Recruiting and training the hired employees.

- Proper implementation of business plan to maximize utilization of the resources available.
- Contribute to the team effort by accomplishing related results as needed.

The petitioner's letter in support of the petition included a different description of the beneficiary's duties, along with the percentage of time allocated to each area of responsibility. Briefly, the petitioner stated that the beneficiary: supervises all company activities (10%); establishes directives, plans and objectives for the company (15%); supervises other managers by coordinating the objectives of the entire company (15%); supervises the importation manager, who gives instructions and directions to distributors, approves purchase and sales proposals, and controls sales numbers and projections (15%); supervises the general operations manager, who develops solutions in administering personnel (15%); supervises the financial manager (20%); and attends and presides over meetings (10%).

The petitioner also submitted a copy of the foreign entity's organizational chart, which indicated that the beneficiary, as general manager, oversees three managers, namely, an import/export manager identified as [REDACTED] an unidentified distribution manager, and a financial manager identified as [REDACTED]. It is noted, however, that the petitioner's letter of support, contrary to the organizational chart, identified [REDACTED] as the distribution manager and [REDACTED] as its financial manager, yet did not identify [REDACTED] as the import/export manager.

The petitioner's letter of support also identified the following four additional full-time positions: (1) Sales-Marketing Specialist; (2) Export-Import Specialist; (3) Administrative Operations; and (4) Bookkeeper. No individuals were identified as being employed in these positions; however, the petitioner's payroll records for the first six months of 2011, in addition to the three managers listed above, identified an additional employee, [REDACTED] whose position was not specified.

In the request for evidence issued on May 21, 2012, the director requested additional details regarding the staffing of the foreign entity. Specifically, the director requested evidence identifying each employee by name and position title, and further requested an overview of the duties each employee performed. In addition, the director requested a breakdown of the percentage of time each employee devoted to his or her stated duties, including one for the beneficiary.

In response, the petitioner submitted a revised organizational chart for the foreign entity, which provided new details regarding the staffing and the organizational hierarchy of the foreign entity. Specifically, the organizational chart again indicated that the beneficiary oversees three managers (i.e., the import/export manager, the distribution manager, and the financial manager), but it is noted that the titles of various employees changed. For example, [REDACTED] who was previously identified as the import/export manager, was depicted as the sales and marketing manager and as a subordinate employee to [REDACTED] who is identified as the import/export manager. Additionally, the petitioner claims that three sales associates are employed under the supervision of Mr. [REDACTED] as Sales and Marketing Manager. The petitioner provided no explanation for the changes reflected in the foreign company's organizational structure.

The petitioner also provided an updated personnel list, which provided the job duties of each employee with a breakdown of the hours devoted to each stated duty. Regarding the percentage of time the beneficiary devoted to each of his stated duties, the petitioner stated as follows:

- Supervise the financial, legal, and operational affairs of the company, guiding, motivating, and directing the managers. 35 hours.
- Defining the product sales & marketing plan. 5 hours.
- Recruiting and training the hired employees. 5 hours
- Contribute to the team effort to meet the company's goals by helping resolve upper management issues and resolving interdepartmental problems. 15 hours.

Regarding the other employees of the foreign entity, the petitioner provided an overview of the duties of each individual identified on the organizational chart, which is incorporated into this decision as part of the record and will not be repeated herein. The petitioner also submitted recent payroll records demonstrating the employment of these individuals by the foreign entity.

The director concluded that the evidence failed to establish that the beneficiary had been employed abroad in a qualifying managerial or executive capacity. Specifically, the director observed that, while the beneficiary did appear to engage in some managerial and executive duties, the record as constituted did not establish that he performed primarily qualifying duties.

On appeal, counsel for the petitioner contends that the director's finding was erroneous, and claims that sufficient evidence of the beneficiary's duties abroad was submitted to establish his eligibility under this criterion.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary had been employed abroad in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties 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 company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

In the instant matter, the petitioner repeatedly described the beneficiary's position abroad in very broad terms, noting his development of goals and policies, establishment of objectives and policies, "maintaining a smooth flow of work between department[s]," and contributing to the team effort. These duties merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. 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.).

Similarly, although the petitioner provided two different breakdowns of how the beneficiary's time was allocated among his various responsibilities, these descriptions were even more vague, indicating that the beneficiary would devote the majority of his time to "supervising the financial, legal, and operational affairs of the company." The AAO cannot accept an ambiguous position description and speculate as to the related

managerial or executive duties to be performed. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Regarding the beneficiary's supervisory role within the foreign entity, the director noted that two of the managerial employees, the distribution manager and the financial manager, supervised no employees. Noting that the duties of the import/export manager, as provided in response to the RFE, appear to primarily require interaction with the public and the foreign entity's customers in general, the director found that this manager was essentially performing non-qualifying duties. Focusing on this fact, the director concluded that the petitioner had failed to demonstrate that the beneficiary was supervising professional or supervisory employees, and found that the beneficiary's duties instead are akin to those of a first-line supervisor.

While the AAO agrees with the director's findings, it must first be noted that there are significant discrepancies between the original organizational structure of the foreign entity, as claimed in the original petition, and the response to the RFE. At the time of filing, the petitioner submitted an organizational chart and personnel list identifying three managerial employees with no subordinate staff members. While there are general departments listed under each manager on the organizational chart, the petitioner presented no evidence that those positions were staffed.¹

Although additional details are submitted in response to the RFE regarding the foreign entity's staff and the duties performed by each individual, the new evidence submitted contains numerous discrepancies. First, without explanation, it shifts the import/export manager into what is presumed to be a subordinate position in the marketing and sales department. In addition, it lists staff members, including one manager and three sales associates, who were not working for the foreign entity at the time the petitioner was filed or during the course of the beneficiary's foreign employment. 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).

Therefore, for purposes of determining whether the beneficiary was employed abroad in a primarily managerial or executive capacity, the organizational structure of the foreign entity at the time the petition was filed, and not months later when the response to the RFE was submitted, is what must be examined in determining the nature of the beneficiary's foreign employment.

As previously noted, the petitioner claimed that the beneficiary's primary duties would include vaguely-described tasks such as supervising the financial, legal, and operational affairs of the company, as well as "guiding, motivating, and directing the managers." However, the fact that the beneficiary's three subordinate employees have managerial titles does not automatically equate managerial responsibilities to those employees such that they can be deemed managerial or professional for purposes of this analysis. Rather, the exact nature of their duties is what must be examined in this instance. The actual duties themselves reveal the true nature of the employment. *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).

¹ It is again noted that a fourth employee, [REDACTED] was listed on the petitioner's payroll at the time of filing but not included on the organizational chart or the personnel list. Therefore, the nature of this

For the reasons set forth above and in contrast to the director's reliance on the response to the RFE, the AAO will return to the petitioner's letter of support which provided position overviews for the three claimed subordinate managers. According to this letter, the import/export manager is required to "establish and maintain" interpersonal relationships with others (presumably clients and suppliers as well as internal personnel), as well as "communicating with persons outside [the] organization" via telephone, e-mail, in writing or in person. He is also tasked with projecting sales, reviewing budgets, and consulting with department heads to plan advertising.

At the time of filing, there was no subordinate staff member below the import/export manager to which these hands-on tasks could be delegated. Therefore, the record indicates that the import/export manager is primarily engaged in customer relations and sales duties.

Similarly, both the distribution manager and financial manager are likewise primarily responsible for performing the duties related to their departments, absent evidence that they supervise a subordinate staff to relieve them from such duties. The distribution manager's tasks, according to the petitioner's initial letter of support, include numerous non-managerial tasks such as "loading and unloading product on trucks, cart racks, and pallets" and "fulfill[ing] company orders based on needs." The financial manager's duties, in addition to including hands-on financial and bookkeeping duties, also include unrelated duties such as overseeing the maintenance and repair of machinery, equipment, and electrical and mechanical systems.

When examining the managerial or executive capacity of a beneficiary, USCIS reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the company's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

In the present matter, the totality of the record does not support a conclusion that the beneficiary's subordinates abroad at the time of filing were supervisors, managers, or professionals.² Instead, the record

² Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." 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).

indicates that the beneficiary's subordinates perform the actual day-to-day tasks of operating the import/export business. The petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's supervisory duties cannot be considered qualifying managerial duties.

The AAO does not doubt that the beneficiary had a substantial level of authority over the foreign entity's business as its general manager. The definitions of executive and managerial capacity, however, each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Overall, the vague job description provided for the beneficiary, considered in light of the foreign entity's import/export business and staffing levels at the time of filing, prohibits a determination that the beneficiary had been employed abroad in a qualifying managerial or executive position. Accordingly, the appeal will be dismissed.

B. Physical Premises to House the New Office

The second issue addressed by the director is whether the petitioner established that it has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(l)(3)(v)(A), as of May 10, 2012, the date the petition was filed.

On the Form I-129, the petitioner indicated in Part 5, Question 3, that the address at which the beneficiary would work while in the United States was [REDACTED]. In contrast, the petitioner also submitted a lease agreement, executed on January 24, 2012, for the premises identified as [REDACTED].

When additional information regarding the location of the U.S. office was requested by the director in the RFE, the petitioner responded by submitting photographs of the premises as well as a letter from the property manager. In a letter dated August 22, 2012, the property manager for [REDACTED] stated that the petitioner had been a tenant in this suite since January 24, 2012, and further stated that the leased premises was 90 square feet.

The petitioner has failed to establish that it secured sufficient physical premises to house the U.S. organization at the time of filing.

As a preliminary matter, the AAO notes that the petitioner introduced an unresolved discrepancy in the record. Although the petitioner claims in its letter of support appended to the petition that the beneficiary will

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the work of the beneficiary's subordinates.

work at the [REDACTED] Florida address, and provides a lease agreement to corroborate this claim, the petitioner, at the time of filing, claimed that the beneficiary would instead be working at an address in [REDACTED] Florida. This is significant since the petitioner's lease for the [REDACTED] Florida property had been in effect for several months at the time the petition was filed.

The petitioner has not acknowledged this discrepancy nor has it provided any explanatory evidence to clarify the actual location of the petitioner's office or why this address was cited as the beneficiary's intended work location. 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).

Additionally, notwithstanding the discrepancy noted above, the petitioner has failed to demonstrate how a 90 square foot office will be sufficient to house its U.S. enterprise. According to the response to the RFE, the beneficiary will have three employees under his supervision: an import/export manager, a sales manager, and an accounting and financial manager. Additionally, the petitioner claimed that the beneficiary "will ensure the hiring of a qualified distribution manager immediately upon his arrival," as well as additional sales staff and an administrative assistant during the first year of operations. Ultimately, the petitioner claims it will employ seven individuals by the end of the first year of operations.

The director noted that a 90 square foot office was insufficient to house the new operation, particularly in light of the nature of the petitioner's import/export business. The petitioner, however, explained that the facility in which its office was located also provided warehouse space, and that it would be able to expand its offices into those warehouse spaces as needed. The petitioner contends that the office space currently leased is sufficient to house the beneficiary and his three subordinate employees. In support of this contention, the petitioner submitted the above-referenced letter from the property manager outlining the square footage of the premises, as well as various photographs of the building's exterior and interior office space.

In denying the petition, the director acknowledged receipt of the lease agreement, manager letter, and photographs submitted in response to the RFE. The director noted that, based on the submitted photographs, the leased premises would not accommodate any additional employees of the petitioning company.

On appeal, the petitioner suggests that the director did not give proper weight to the assertions set forth in response to the RFE regarding the warehouse space also available at the leased premises. The petitioner further asserts that the office, which is sufficient to house its current staff, is only its first step in establishing its expanding business. It is noted that no new evidence pertaining to this issue was submitted on appeal.

When a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is ready to commence doing business immediately upon approval. At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to commence business, that it has the financial ability to commence doing business in the United States, and that it will support the beneficiary in a managerial or executive position within one year of approval. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

Therefore, if the petitioner indicates that it intends to do business as an import/export company, it is reasonable to expect the petitioner to provide evidence that it has secured sufficient physical premises to operate as an importer/exporter. Notwithstanding the discrepancies regarding the actual location of the

petitioner's U.S. office, as discussed above, the petitioner asserts that the beneficiary would work at the [REDACTED] Florida location, which has ample warehouse space sufficient for the petitioner's upcoming needs and which is readily available for lease by the petitioner as needed. The petitioner, however, provides no evidence in support of this claim. 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 evidence of record does not establish that [REDACTED] Florida address, which consists of a 90 square foot office, would be sufficient for the petitioner's operation of its import/export business in the United States. In fact, the inconsistencies in the record with respect to the address indicated on the Form I-129, the address indicated on the lease, and the submitted photographs, raise questions as to whether the petitioner ever occupied or intended to occupy the premises for which it submitted the lease agreement. The record does not contain, for example, evidence that the petitioner paid the security deposit required by the lease agreement or any rent payments for the office.

The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). As of the date of filing, the petitioner intended to operate from either the [REDACTED] Florida address or from an apparently small office in a warehouse/storage facility, and clearly did not have premises from which it could operate an import/export company. Accordingly, the appeal will be dismissed.

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.