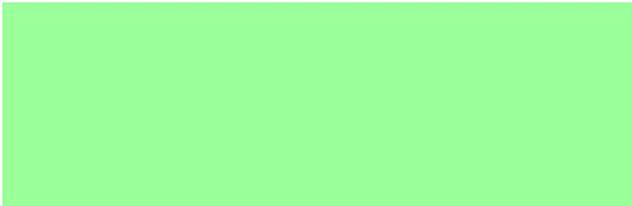


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



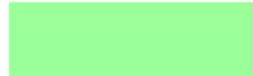
U.S. Citizenship
and Immigration
Services



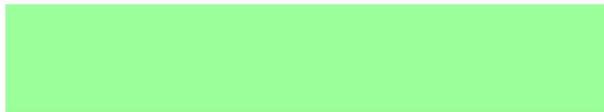
DATE: JUN 16 2014

OFFICE: VERMONT SERVICE CENTER

FILE:

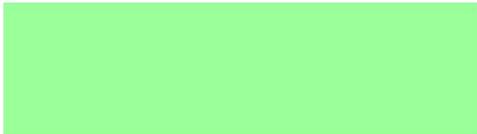


IN RE: Petitioner:
Beneficiary:



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 (AAO) in your case.

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to classify the beneficiary as an intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida limited liability company, is engaged in the distribution of fire safety equipment. It claims to be an affiliate of [REDACTED] located in the Dominican Republic. The petitioner seeks to employ the beneficiary as its manager for a period of one year.

The director denied the petition concluding that the petitioner failed to establish: (1) that it will employ the beneficiary in a qualifying managerial or executive capacity; or (2) that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity.

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 for the petitioner asserts that the evidence of record establishes that the beneficiary is the owner and president of both the U.S. and foreign entities and therefore supports a finding that he has been and will be employed in an executive capacity. The petitioner submits a brief from counsel and additional evidence in support of the appeal.

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.

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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. The Issues on Appeal

A. Employment in a Managerial or Executive Capacity (United States)

The first issue to be addressed is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity.

1. Facts

The petitioner filed the Form I-129 on May 20, 2013. The petitioner indicated on the petition that it operates a fire equipment distribution business with two current employees. The petitioner stated that the beneficiary "will be involved in the management of sales and services" and will perform the following duties:

1. Train [the petitioner's] employees in fire safety and services.
2. Reach out to local businesses to provide consultation services with respect to fire prevention.
3. Increase the number of retained services.
4. Increase the sale revenue of all products.
5. Manage the inventory.
6. Manage the marketing of products.
7. Target companies and create a new client portfolio.

The director issued a request for evidence (RFE) on May 29, 2013, advising the petitioner that its initial evidence did not establish that the beneficiary would primarily perform qualifying managerial or executive duties, and did not explain how he would be relieved from performing non-qualifying duties in light of the petitioner's current staffing levels. Accordingly, the director requested: (1) a letter from the petitioner describing the nature of the beneficiary's expected managerial or executive duties and the percentage of time he will allocate to specific duties; (2) an organizational chart listing all U.S. employees by name, job title, summary of duties, educational level and salary; (3) copies of the petitioner's state quarterly wage reports for all four quarters of 2012 and the first quarter of 2013; and (4) copies of Internal Revenue Service (IRS) Forms W-2, W-3 and 1099 as evidence of payments to employees and contractors.

In response to the RFE, the petitioner submitted a letter dated August 21, 2013 from its sales manager, [REDACTED] Mr. [REDACTED] stated that the beneficiary would perform the following duties in his proposed position as "Manager":

1. Purchase, sell and service fire prevention equipment. He will dedicate 10% of his time to these duties.
2. Train staff, and clients on the proper usage of said equipment, and safety. He will dedicate 35% of his time to these duties.
3. Establish, and maintain relationship with potential new clients, as well as existing clients. He will dedicate 15% of his time to these duties.

4. Manage the inventory of our products, and services. He will dedicate 10% of his time to these duties.
5. Manage marketing of our products, and services. He will dedicate 5% of his time to these duties.
6. Consult with clients on services relating to fire prevention. He will dedicate 5% of his time to these duties.
7. Increase the number of retained services. He will dedicate 5% of his time to these duties.
8. Increase the sales revenue of all our products, and services. He will dedicate 5% of his time to these duties.

[The beneficiary] will have under his managerial authority 3 employees, who will be tasked with administrative and clerical duties relating to his duties. Additionally, he will have the authority to hire and terminate both new and existing employees under his supervision as necessary to meet [the petitioner's] needs.

[The beneficiary] will possess the authority to make decisions on daily operations relating to his job functions. These include, but are not limited to: establishing and terminating client relationships as he sees fit to meet [the petitioner's] needs. [The beneficiary] will have full discretion over such duties, unless specifically instructed in writing, by his immediate supervisors – myself, or the vice-president of [the petitioning company].

The petitioner did not submit the requested organizational chart, the job titles and duties of the beneficiary's proposed subordinates, or evidence of payments made to its employees in 2012 and 2013.

The director denied the petition on August 30, 2013, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. The director stated that the job duty description submitted at the time of filing reflects that the beneficiary is being hired to perform marketing, sales, training, inventory and client acquisition duties. The director found that the petitioner did not establish that the beneficiary would be supervising a subordinate staff of managerial, supervisory or professional employees, nor did it identify who is providing the goods and services of the business to customers or clients. The director acknowledged receipt of a response to the RFE, but observed that the response did not include additional documentation related to the proposed position.¹

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in an executive capacity. Counsel states that the beneficiary's duties will include "structuring [the petitioner] to meet the needs of Latin American-based organizations operating [in] the field of protection against fires; establishing and conducting negotiations [with] U.S.-based manufacturers of fire-fighting equipment in

¹ The record reflects that the petitioner submitted some documents in response to the RFE by fax on August 26, 2013, and also mailed a longer response on that date. Based on the director's observations in the decision, it appears she reviewed only the faxed response. As there is correspondence in the record indicating that the service center was experiencing problems with its fax line when the RFE response was due on August 24, and evidence that the petitioner attempted to fax its response on that date, we will consider the petitioner's full response received on August 27, 2013.

order to provide distribution services to the Latin American market, and defining marketing initiatives in order to promote [the petitioner's] brand." In support of the appeal, the petitioner submits a "letter of intent and business plan" written by the beneficiary, the petitioner's employment contract with Mr. [REDACTED] and evidence of his salary payments, and copies of two distributor agreements executed by the beneficiary on behalf of the petitioner. Counsel asserts that the evidence supports a finding that the beneficiary will be employed in an executive capacity and states that "the entirety of his time will be devoted exclusively to the duties of an executive."

2. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, United States Citizenship and Immigration Services (USCIS) 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 in either an executive or a managerial capacity. *Id.*

The petitioner, after being given an opportunity to supplement the record with additional details regarding the beneficiary's duties, identified the beneficiary's proposed position as managerial in nature. However, it provided a position description which indicates that the beneficiary will be primarily engaged in duties that do not fall within the statutory definitions of managerial or executive capacity. The petitioner indicated that the beneficiary will spend 35% of his time training clients and staff on the proper usage of fire prevention equipment sold and serviced by the company, 10% of his time directly purchasing, selling and servicing the equipment, 10% of his time managing inventory, and 5% of his time consulting with clients on services related to fire prevention. While these duties were adequately explained, they indicate that the beneficiary will be primarily providing training, selling products and services, and providing services rather than performing managerial duties. 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). 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).

Further several of the beneficiary's remaining duties were described in vague terms and, without further explanation, suggest his further involvement in sales and marketing tasks. For example, the petitioner stated that the beneficiary will "manage" marketing, "increase sales," and "increase the number of retained services" but it did not indicate who would support the beneficiary in these efforts or indicate what specific duties they entail. The petitioner stated that the beneficiary would supervise three employees "tasked with administrative and clerical duties," but provided no evidence to establish the existence of these employees or the nature of the duties they would perform. 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)).

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

In the present matter, the petitioner has introduced a number of inconsistencies into the record with respect to its organizational structure and the beneficiary's intended placement within its hierarchy. At the time of filing, the petitioner indicated on the Form I-129 that it had two employees but it included no additional information regarding its staffing. In response to the RFE, Mr. [REDACTED] submitted a letter in which he identified himself as the petitioner's sales manager and indicated that he would be the beneficiary's immediate supervisor. He also identified a vice president position that is senior to his own position and three "administrative and clerical" positions that would be subordinate to the beneficiary's position as manager. However, the petitioner did not respond to the director's request for a detailed organizational chart with the names, job titles, job duties and educational levels of all employees, nor did it submit any evidence of wages paid to employees in response to the RFE. 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 asserts that the beneficiary will be employed as the petitioner's "executive and president," responsible for establishing the business plan, conducting negotiations with manufacturers, structuring the business, defining promotional strategies, and establishing the company's infrastructure and logistics requirements. The petitioner submits a business plan in which it indicates that Mr. [REDACTED] will be employed as the "manager" subordinate to the beneficiary, and that he will be responsible for executing the business plan, office and warehouse administration, purchasing, conducting promotions and sales, receiving merchandise, dispatching merchandise, and billing and charging clients. The business plan indicates that the company will eventually hire a warehouse employee, a person to handle deliveries, a billing employee and an accountant. The petitioner indicates that Mr. [REDACTED] currently performs all of these duties, but was originally hired to handle logistics. The petitioner also submits a copy of its employment agreement with Mr. [REDACTED] identifying his job title as "administrative manager."

As noted above, the petitioner indicated at the time of filing and in response to the RFE that the beneficiary's job title would be "manager" and Mr. [REDACTED] stated that he would be the beneficiary's immediate supervisor. The petitioner also claimed to have two employees at the time of filing and as many as five employees in response to the RFE, but now indicates that Mr. [REDACTED] is the sole employee of the company. Finally, the petitioner has changed its claim that the beneficiary will be employed in a managerial capacity and now asserts that his role is purely executive, despite the fact that the job description submitted in response to the RFE included no executive duties, but rather included duties related to training, inventory, sales, marketing and provision of services. 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).

A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

While the petitioner emphasizes the beneficiary's membership interest in the petitioning limited liability company, this ownership interest alone is insufficient to support the petitioner's claim that he will be employed as an executive, especially in light of the evidence submitted in support of the petition indicating that his duties would be primarily non-managerial and non-executive in nature. Again, the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In sum, the beneficiary's proposed position is that of manager of a fire protection equipment company which currently employs one employee, who states that he will supervise the beneficiary. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. See section 101(a)(44)(A)(ii) of the Act. Furthermore, the petitioner has not established that it employs a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial or executive duties. Regardless of the beneficiary's position title or ownership of the company, the record is not persuasive that the beneficiary will function at a senior level within an organizational hierarchy. Even though the enterprise may be in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. 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).

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity. Accordingly, the appeal will be dismissed.

B. Employment in a Managerial or Executive Capacity (Foreign)

The remaining issue addressed by the director is whether the petitioner established that the foreign entity has employed the beneficiary in a qualifying managerial or executive capacity for at least one continuous year in the three years preceding the filing of the petition.

1. Facts

The petitioner stated on the Form I-129 that the beneficiary has served as the president of its affiliate company in the Dominican Republic since 1995. The petitioner stated that his duties include "managing the company, marketing, obtaining new clientele and training personnel on how to utilize their equipment," as well as "various presentations to companies and at events to discuss their products."

In the RFE, the director requested that the petitioner submit a more detailed description of the beneficiary's duties and the amount of time he allocates to each duty, as well as the foreign entity's organizational chart identifying all employees by name, job title, job duties, educational level and salary.

In response, the petitioner submitted a letter dated August 21, 2013 from [REDACTED] Chief of Human Resources for the foreign entity. Ms. [REDACTED] described the beneficiary's current role with the foreign entity as follows:

[The beneficiary] is one of the two founding members and owners of Incifire, and has worked as the president for the company since its founding. In his capacity, [the beneficiary] has been responsible for a wide assortment of achievements for the company, including establishing relationships with an extensive list of clients in Santo Domingo, personally hiring staff, yearly increases in profits, and maintaining the company's stock portfolio, drafting company policy and procedures, among other duties. Most notably, he has taken a hands-on approach to working with current clients, and seeking out new ones. To this day, he continues to personally purchase, sell and maintain our products and services, and actively trains new employees on the use and handling of fire protection equipment. He dedicates an equal amount of his time to both his executive duties, and the training of staff.

The petitioner did not submit the requested organizational chart for the foreign entity in response to the RFE.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary is employed abroad in a managerial or executive capacity or that he has been employed with the foreign entity for at least one year in the three years preceding the filing of the petition. The director stated that the petitioner submitted "no documentation" relating to the beneficiary's foreign employment in response to the RFE, and apparently did not consider the letter from Ms. [REDACTED]. The AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Therefore, any relevant evidence submitted in response to the RFE will be considered.

On appeal, the petitioner submits copies of the foreign entity's limited liability company formation documents and merchant registration certification identifying the beneficiary as the majority owner and president of the company. Counsel asserts that these documents "establish that [the beneficiary has been employed as an executive at [REDACTED] for a least one year, within the preceding three year period," and that he "has been recognized as an executive."

2. Analysis

Upon review, the petitioner has not established that the foreign entity employs the beneficiary in a qualifying managerial or executive capacity. However, the record contains sufficient evidence to establish that the foreign entity has employed the beneficiary for more than one continuous year in the three years preceding the filing of the petition. Accordingly, the director's finding to the contrary will be withdrawn.

When examining the executive or managerial capacity of the beneficiary, United States Citizenship and Immigration Services (USCIS) 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 beneficiary's current position abroad indicate that he allocates a significant portion of his time to performing duties that are non-managerial and non-executive in nature. For example, at the time of filing, the petitioner stated that the beneficiary is responsible for "managing the company," but it also stated that his duties include "marketing, obtaining new clientele, and training personnel" as well as making presentations to companies and at events.

Although the director requested a more detailed description of the beneficiary's duties and the percentage of time he allocates to specific duties, the brief job description submitted in response to the RFE did not contain the requested level of detail, nor did it make any clear distinctions between the beneficiary's qualifying and non-qualifying duties. The foreign entity's representative stated that the beneficiary hires staff, holds profit and loss responsibility, manages the company's stock portfolio and drafts company policies and procedures. While these duties appears to be qualifying in nature, the foreign entity also stated that the beneficiary "has taken a hands-on approach to working with current clients, and seeking new ones" and emphasized that he "continues to personally purchase, sell and maintain our products and services" and actively trains new employees on the use and handling of fire prevention equipment. None of these duties qualifies as executive or managerial in nature. The foreign entity indicated that the beneficiary "dedicates an equal amount of his time to both his executive duties and the training of staff," but indicates that the beneficiary performs purchasing, sales, marketing and other tasks that cannot be classified as "executive" and are not related to the training of staff.

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of establishing that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both executive and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's duties, as described above, do not fall directly under traditional managerial duties as defined in the statute. For this reason, 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).

USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the beneficiary's duties, 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 foreign entity's business, and any other factors that will contribute to understanding the beneficiary's actual duties and role in a business. The director requested the foreign entity's organizational chart in order to identify the number of subordinates the beneficiary supervises (if any), as well as their job titles, duties and educational levels. Such information is critical in assisting USCIS to determine whether the beneficiary supervises a subordinate staff of managerial, supervisory or professional employees, and whether he otherwise has sufficient staff to relieve him from extensive involvement in the day-to-day operations of the company. The petitioner failed to submit the requested information in response to the RFE and thus the record contains no information regarding the foreign entity's staffing levels or organizational structure. Any 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 offers no further evidence related to the beneficiary's duties with the foreign entity and instead re-submits evidence reflecting that the beneficiary is the foreign entity's majority owner and president. The director did not question the beneficiary's job title or his ownership of the foreign entity, but denied the petition for lack of evidence related to his actual responsibilities within the scope of the foreign company's business. Notwithstanding the beneficiary's status as the company's owner, the petitioner cannot meet its burden of proof without an adequate description of the beneficiary's current duties and evidence of the foreign entity's organizational structure. 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)).

For the foregoing reasons, the petitioner has not established that the foreign entity employs the beneficiary in a qualifying managerial or executive capacity. Accordingly, the appeal will be dismissed.

III. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. . In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.