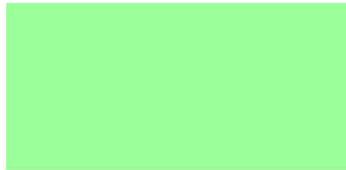




U.S. Citizenship  
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Services

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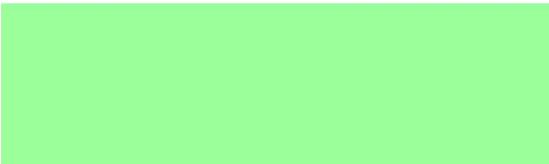


DATE: **OCT 20 2014** OFFICE: VERMONT SERVICE CENTER FILE:

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a New Jersey corporation, established in September [REDACTED]. The petitioner claims to be a subsidiary of [REDACTED] located in Pakistan. The petitioner seeks to employ the beneficiary in the position of Executive Officer/Manager to open a new office.<sup>1</sup>

On February 7, 2014, the director denied the petition concluding that the petitioner failed to establish that: (1) the petitioner secured sufficient physical premises for the new office; (2) the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position; and, (3) the beneficiary had been employed abroad primarily 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 us. On appeal, counsel submits a brief and duplicate 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.

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<sup>1</sup> We review each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

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

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

remunerate the beneficiary and commence doing business in the United States. *Id.*

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 22, 2013.

## II. THE ISSUES ON APPEAL

### A. Secure Sufficient Physical Premises

#### 1. Facts

The first issue in this proceeding is whether the petitioner has established that it secured sufficient physical premises to house a new office. The director noted that the petitioner submitted a copy of a lease agreement, photographs of the office space, and a hand written floor plan that indicated a 12 x 14 foot office space. The director noted, "Though it is unclear how many positions you intend to have altogether, it is clear that an office consisting of three desks, chairs, and computers is not sufficient to accommodate the five positions identified."

On appeal, the petitioner states the following:

As per proposed organizational chart we have enough room for Executive Officer, Manager/President. Our secretary has an independent table. Dispatcher and accountant does not need to be in office all the time. We have hired the services of the CPA to manage the accounts and dispatcher comes to the office to pickup or dispatch the samples when needed. Our corporation is only few months old, it will take some time for us to move to a bigger place and hire more personals [sic] as promised.

#### 2. Analysis

The petitioner submitted a lease agreement, dated September 16, 2013; however, the lease agreement is missing sections 20 – 25. It is not clear why the petitioner failed to submit the complete document. 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).

In addition, the proposed organizational chart states that the petitioner will employ the President, the beneficiary as Executive Officer/Manager, a Secretary, an Accountant, a Dispatcher and "Future Employees." The photographs of the office only show three desks but the proposed organizational chart has 5 listed employees and "future employees." On appeal, the petitioner states that the accountant and dispatcher do not need desks; however, the current office space is not sufficient for the anticipated space requirements for the new office as noted in the proposed organizational chart. Based on the insufficiency of the information furnished, it cannot be concluded that the petitioner has secured sufficient space to house the new office.

B. Intended U.S. operation will support an executive or managerial position within one year of the petition's approval

The second issue to be addressed is whether the petitioner established that the intended U.S. operation would support an executive or managerial position within one year of the petition's approval.

1. Facts

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner described the beneficiary's proposed position and duties in the United States as follows:

The beneficiary is under the instructions to organize and operate the US entity and perform all duties and functions necessary for the successful operations of the business...His work will be mainly hiring/firing and training manpower, contacting prospective customers, getting in to a contracts, pricing and margin of profitability, obtaining the required licensing from Government agencies concerned, among many others duties usually associated with the new business venture. [sic]

The executive officer/manager will also be dealing with secretary, accountant, dispatcher and all other future employees.

The petitioner also submitted a proposed organizational chart that indicated the president and the beneficiary's position, Executive Officer/Manager, are on the same level. They would in turn supervise a secretary, an accountant, a dispatcher and all "future employees."

The director issued a request for evidence (RFE), instructing the petitioner, in part, to submit evidence to establish that the new office will support an executive or managerial position within one year of petition approval. Specifically, the director requested information regarding the proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals, the size of the U.S. investment and the financial ability of the foreign entity to pay the beneficiary and to begin doing business in the U.S. The director outlined evidence that could be submitted to fulfill the above request.

In response to the RFE, the petitioner submitted a letter from the Owner/Director of the foreign company that explained the U.S. employment as follows:

As an Executive Officer/Manager, he will be performing the same for the US corporation as he did for the Pakistani corporation. The beneficiary has a complete and ultimate authority on day to day operations. The beneficiary is working as a full time Executive Officer/Manager.

The other employees working under the beneficiary will be the secretary, accountant and dispatcher.

The petitioner states that the beneficiary will do the exact same job duties as he did in his position abroad, to wit:

1. Formulate, direct and coordinate marketing activities and policies to promote products and services, working with advertising and promotion managers.
2. Identify, develop, or evaluate marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors.
3. Direct the hiring, training, or performance evaluations of marketing or sales staff and oversee their daily activities.
4. Evaluate the financial aspects of product development, such as budgets, expenditures, research and development appropriations, or return-on-investment and profit-loss projections.
5. Develop pricing strategies, balancing firm objectives and customer satisfaction.
6. Compile lists describing product or service offerings.
7. Initiate market research studies or analyze their findings.
8. Use sales forecasting or strategic planning to ensure the sale and profitability of products, or services, analyzing business developments and monitoring market trends.
9. Coordinate or participate in promotional activities, working with developers, advertisers, or production managers, to market products or services.
10. Consult with buying personnel to gain advice regarding the types of products or services expected to be produced.

The director denied the petition on October 23, 2007 on the ground that insufficient evidence was submitted to demonstrate that the beneficiary would be employed in a primarily executive or managerial capacity by the U.S. company within one year of commencing operations. On appeal, the petitioner states that the beneficiary is "not a First Line Supervisor[,] he holds an executive position with petitioner as a Director Marketing and Customer's Service [sic] transferred to USA with unlimited authority to open a business and protect the interest of petitioner making any decision in any regard."

## 2. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii).

On review, the petitioner's description of the beneficiary's duties fails to establish that the beneficiary will be engaged in either a primarily managerial or primarily executive position. While the petitioner indicates that the beneficiary will exercise discretionary authority over the U.S. company, the petitioner has not provided sufficient information detailing the beneficiary's proposed duties to demonstrate that these duties qualify him as a manager or an executive. The petitioner did not

submit any details about the beneficiary's proposed position in the United States. The description provided in support of the petition is vague and brief and does not provide any insight regarding the beneficiary's actual tasks.

For instance, the beneficiary will "formulate, direct and coordinate marketing activities and policies to promote products and services, working with advertising and promotion managers;" "use sales forecasting or strategic planning to ensure the sale and profitability of products, or services, analyzing business developments and monitoring market trends;" "identify, develop, or evaluate marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors;" "evaluate the financial aspects of product development, such as budgets, expenditures, research and development appropriations, or return-on-investment and profit-loss projections;" and, "develop pricing strategies, balancing firm objectives and customer satisfaction." The petitioner did not, however, define the petitioner's goals and policies, or clarify the financial responsibilities and the marketing and sales goals of the organization. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The petitioner's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature

It also appears that the beneficiary will perform several non-qualifying duties by performing the marketing, sales, and financial operations for the business. The petitioner did not explain that it plans to hire any employees in marketing, sales, or in the financial department to relieve the beneficiary from performing primarily non-qualifying duties. The petitioner did not provide a specific staffing plan indicating the duties to be performed by the beneficiary's subordinates to demonstrate that he will be relieved from performing primarily non-qualifying duties within one year of the commencement of operations. It appears that the beneficiary will be in charge of market research, marketing, and negotiation rather than directing such activities through subordinate employees. 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 Intn'l.*, 19 I&N Dec. at 604.

Even though the petitioner is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. The regulations require the petitioner to present a credible picture of where the company will stand in one year, and to provide sufficient supporting evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position. See generally 8 C.F.R. § 214.2(l)(3)(v)(C). 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 regulations require the petitioner to provide evidence regarding the nature of the new office, the scope of the entity, its organizational structure, and its financial goals. See 8 C.F.R. §

214.2(1)(3)(v)(C)(1). As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. See *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

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

*Id.*

The petitioner failed to submit any business plan for the U.S. entity. The petitioner submitted invoices of merchandise sold to the U.S. entity. However, the petitioner has not submitted agreements or contracts to evidence that it can market and sell the products. Furthermore, as discussed, the petitioner has provided inconsistent information regarding the number and types of employees it intends to hire, no timeline for the hiring of additional employees, and no financial projections to support its claims that it can feasibly hire the employees indicated on the proposed organizational chart within one year. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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

petitioner did not clearly indicate the personnel it planned to hire within one year of operations, and thus the petitioner has not demonstrated that the beneficiary will be primarily focused on the broad goals and policies of the company within one year. Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a primarily executive capacity.

Upon review, the petitioner has not submitted sufficient evidence to establish that the intended United States operation, within one year of approval, will support an executive or managerial position.

### C. Employment Abroad in a Managerial or Executive Capacity

The last issue is whether the petitioner established that the foreign company employed the beneficiary in a qualifying managerial or executive capacity.

#### 1. Facts

On the Form I-129, the petitioner stated that the beneficiary was employed by the foreign entity since 2003 and holds the position of Director of Marketing and Customer Services. The description of the job duties performed abroad is as follows:

The beneficiary is under the instructions to organize and operate and perform all duties and functions necessary for the successful operations of the business...His work with Pakistani corporation is hiring/firing and training manpower, contacting prospective customers, getting in to a contracts, pricing and margin of profitability, obtaining the required licensing from Government agencies concerned, among many others duties usually associated to run a successful business. [sic]

The director sent out an RFE and requested additional information regarding the beneficiary's position abroad. The director requested, in part, a detailed percentage breakdown of the beneficiary's duties abroad, as well as an organizational chart of his team by name, job title, duties, education level, and salary.

In response, the petitioner submitted a letter from the owner of the foreign entity that confirmed the beneficiary was employed abroad since 2003 and holds the position of Director of Marketing and Customer Service. The letter indicated the beneficiary's duties abroad as follows:

1. Formulate, direct and coordinate marketing activities and policies to promote products and services, working with advertising and promotion managers.
2. Identify, develop, or evaluate marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors.
3. Direct the hiring, training, or performance evaluations of marketing or sales staff and oversee their daily activities.
4. Evaluate the financial aspects of product development, such as budgets, expenditures, research and development appropriations, or return-on-investment and profit-loss projections.

5. Develop pricing strategies, balancing firm objectives and customer satisfaction.
6. Compile lists describing product or service offerings.
7. Initiate market research studies or analyze their findings.
8. Use sales forecasting or strategic planning to ensure the sale and profitability of products, or services, analyzing business developments and monitoring market trends.
9. Coordinate or participate in promotional activities, working with developers, advertisers, or production managers, to market products or services.
10. Consult with buying personnel to gain advice regarding the types of products or services expected to be produced.

The director denied the petition on January 13, 2014, concluding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. In denying the petition, the director determined that the petitioner provided an overly broad job description that failed to convey an understanding of what the beneficiary primarily did on a day-to-day basis.

The beneficiary's job description is deficient in that it fails to provide credible and detailed information about the actual tasks the beneficiary performed when working with the foreign company. Namely, the petitioner failed to establish what specific tasks the beneficiary performed while he would "formulate, direct and coordinate marketing activities and policies to promote products and services, working with advertising and promotion managers; "identify, develop, or evaluate marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors;" "evaluate the financial aspects of product development, such as budgets, expenditures, research and development appropriations, or return-on-investment and profit-loss projections;" "use sales forecasting or strategic planning to ensure the sale and profitability of products, or services, analyzing business developments and monitoring market trends;" and, "coordinate or participate in promotional activities, working with developers, advertisers, or production managers, to market products or services." The petitioner has not established that the beneficiary's day-to-day tasks associated with overall marketing, sales and public relations functions are primarily managerial in nature. 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. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir.1990). 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 job duties. The petitioner has failed to provide sufficient detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Furthermore, 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 foreign entity'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 a complete understanding of a beneficiary's actual duties and role in a business.

The petitioner did not submit an organizational chart of the foreign company and did not list the beneficiary's subordinates or provide a job description for each subordinate. Thus, the petitioner does not provide a true understanding of how they assisted the beneficiary in relieving him from performing operational duties with the marketing, sales and public relations functions. Thus, it is not clear if the subordinate employees relieved the beneficiary from performing operational 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)).

Here, the petitioner has provided a vague description of the beneficiary's job duties abroad. Absent a detailed description of the beneficiary's actual duties and a consistent account of how the beneficiary allocated his time to specific duties, we cannot conclude that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity.

### 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, 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 petitioner has not met that burden.

**ORDER:** The appeal is dismissed.