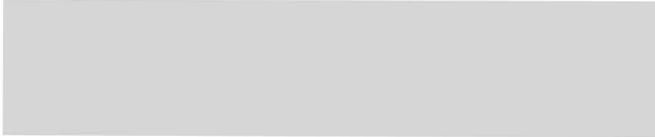




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 28 2015**

PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the nonimmigrant visa petition. The Director subsequently issued a notice of intent to revoke (NOIR) the approval of the petition and ultimately issued a notice of revocation. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The Petitioner filed this Form I-129, Petition for a Nonimmigrant Worker, seeking to extend the Beneficiary's status as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The Petitioner, a New York company established in [REDACTED] and registered to do business in New Jersey, states that it operates an import and export company. It claims to be a subsidiary of [REDACTED] located in Bangladesh. The beneficiary was previously granted one year in L-1A status in order to open a new office in the United States. The Petitioner stated that, under the extended petition, the Beneficiary would continue to be employed as its president and chief executive officer (CEO).

The petition was initially approved by the Vermont Service Center on March 6, 2014. Subsequent to the approval of the petition, USCIS conducted a post-adjudicative site visit to verify the information contained in the petition. After reviewing the information obtained from the site visit, the Director issued a notice of intent to revoke (NOIR) and ultimately revoked his approval of the petition on November 24, 2014. The Director found that the Petitioner's evidence submitted in response to the NOIR was not sufficient to establish that the Petitioner continues to do business as a qualifying organization. The Director further concluded that the Petitioner provided insufficient evidence to demonstrate that the Beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition.

The Petitioner filed an appeal. The Director declined to treat the appeal as a motion and forwarded the appeal to us. On appeal, the Petitioner asserts that the Director's decision is clearly erroneous and arbitrary. The Petitioner contends that it submitted irrefutable and overwhelming evidence of the Petitioner's prior and current business activities, noting that it achieved \$1.2 million in gross sales for 2013. The Petitioner further asserts that the Director's decision was erroneously premised upon the lack of employees present during the site visit but ignores extensive evidence that it has employees and is doing business. The Petitioner submits a brief and resubmits previously provided 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.

Under USCIS regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

II. ISSUES ON APPEAL

A. U.S. Employment in a Managerial or Executive Capacity

The first issue to be addressed is whether the Petitioner established that the Beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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), provides:

The term "executive capacity" means 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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. See section 101(a)(44)(C) of the Act.

1. Facts

The Petitioner filed the Form I-129 on November 22, 2013. At the time of filing, the Petitioner stated that it operates an import, export and trading company with four employees.

The Petitioner stated that the Beneficiary would be employed as its president and CEO and as such will "continue to conduct operational and financial planning and management for our US operations"

and "be responsible for managing our operations." The Petitioner further described his duties as follows:

He will continue to be directly responsible for implementing our business goals, as well as for hiring additional personnel including (additional) subordinate manager(s). Furthermore, he will continue to maintain contact with our VIP clients and manage implementation of our projected sales and business milestones of the US Company.

This will continue to include review sales targets as well as control of adherence to corporate marketing and sales policies and promotional programs. Furthermore, he will continue to review logistical transportation, and supply reports and order sheets, as well as project schedules to ensure smooth operations of our enterprise. His duties will also continue to encompass review of service policies with the US-based vendors and control of the agreed terms of service. Additional, he will also continue to be in charge of budgetary and financial control and planning and will continue to be the executive point of contact with the Bangladesh Company to ensure our locations adherence to agreed global "smart business sense" policies.

[The Beneficiary] will also continue to manage monthly financial statements, operational expenses overview and analysis (including budget-allocated and unforeseen) and preparation of financial and budget reports. He will continue to work to identify areas where operational cost and waste can be reduced and will ensure that all hired employees meet the set corporate standards. Furthermore, he will continue to manage employee evaluation, as well as evaluate, modify, and maintain promotion of best in-house employee practices to encourage employee growth and loyalty to our organization, reduce staff turnover, and creation of positive and productive environment.

The Petitioner provided an organizational chart depicting the following employees as the Beneficiary's direct subordinates: (1) [REDACTED] - manager, marketing & sales; (2) [REDACTED] - manager, purchase & sourcing; and (3) [REDACTED] - administrative assistant.

In support of the petition, the Petitioner provided a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the third quarter of 2013, which showed that the Petitioner paid \$25,097 to four employees. The Petitioner also provided ADP earnings records for its employees showing that the its employees are paid as follows: [REDACTED] – 120 hours per month at \$9.00 per hour; [REDACTED] – 125 hours per month at \$13.00 per hour; and [REDACTED] – 120 hours per month at \$10 per hour. The most recent payroll evidence indicated that the Beneficiary works for 188 hours per month at \$32.00 per hour. The Petitioner also submitted an ADP employee summary which showed the hire date for each employee as follows: [REDACTED] – August 1, 2013; [REDACTED] – October 15, 2012; and [REDACTED] – October 15, 2012.

Subsequent to the approval, the petition was randomly selected for USCIS' Administrative Site Visit Verification Program (ASVVP) and post-adjudicative site visits were conducted to verify the veracity of the information contained in the petition.¹

During a site visit conducted on June 24, 2014, the USCIS site inspector was unable to locate the Petitioner's workers, company signs or business activity to indicate that the Petitioner was conducting operations at [REDACTED] New Jersey, the address listed on the Form I-129. The inspector spoke with the Beneficiary by telephone on June 27, 2014 and was informed that the company had moved its operations to a new location at [REDACTED] [REDACTED] N.J. The inspector visited the [REDACTED] location on July 14, 2014 and found a different business, [REDACTED]. The inspector was unable to verify that the Petitioner was doing business at this new location as the Petitioner had no employees or signage at the premises at the time of the visit.

In the NOIR, the Director advised the Petitioner that she could not verify that the Beneficiary was employed in a qualifying managerial or executive capacity. The Director stated that the Beneficiary's duties were broad and vaguely described, and that his three subordinates did not appear to be professional, supervisory or managerial employees. Further, the Director advised that none of the employees were present at the time of the site inspector's visit. The Director requested evidence including a detailed description of the Beneficiary's duties and responsibilities with a percentage of time allocated to each duty, and evidence that the Beneficiary's direct subordinates are professionals, if applicable, among other evidence.

In response, Petitioner provided employment agreements, an organizational chart, and descriptions for the Beneficiary and other employees. The Petitioner further described the Beneficiary's responsibilities as follows:

- Responsible for persistent and constant achievement of its company's vision, mission and financial objectives.
- Defines that the organization has short term and long-term strategies which continuously works towards its mission, and objectives with timely progress.
- Provides leadership and direction to the staff under below him and continue development programs, ideas for the organization along with financial plans, and carries a plans and policies authorized by the parent company.
- Promote participation and active use of company and resources as well as staff skills. Liaison along with other international buyers, marketers, local organizations.
- Maintaining all documents & official records and ensure that compliance is being followed with local, state and Federal regulations.

¹ The Department of Homeland Security and USCIS have the right to verify any information a petitioner submits to establish eligibility for the claimed immigration benefit. The legal right to verify this information is conferred by 8 U.S.C. §§ 1103, 1155, 1184, and 8 C.F.R. parts 103, 204, 205, and 214.

- Staying on top of overall operations; having a working knowledge of every day significant developments and local market trends and all other related products.
- Try to encourage maximum efficiency and see the effective management team is being developed.
- Assume total responsibility for maintaining solid financial practices as well as it's [sic] further development.

The Petitioner also listed the "key responsibilities and accountabilities" of the Beneficiary's three subordinates. The Petitioner stated that [REDACTED] is responsible for marketing and sales objectives, marketing research, identifying market opportunities, responding to customer sale inquiries, and collecting and analyzing data. The Petitioner explained that [REDACTED] is responsible for planning and carrying out direct sourcing from food manufacturers, maintaining and developing a computerized supplier database, managing relationships with suppliers and performing market research. Finally, the Petitioner stated that [REDACTED] assists with a variety of administrative, secretarial and support duties.

The Petitioner submitted documents indicating that it had paid wages to its employees throughout 2013 and during the first three quarters of 2014. These documents including IRS Forms 941, which showed four employees and \$29,715 in wages paid during the first quarter, four employees and \$29,650 in wages paid during the second quarter, and zero employees and \$29,715 in wages paid during the third quarter of 2014. The Petitioner also provided ADP earnings records for its employees for the most recent pay date (September 19, 2014) which showed its continued employment of all four workers identified in the record, including the Beneficiary.

In addition, the Petitioner submitted copies of IRS Forms W-2, Wage and Tax Statement, issued in 2013. The Petitioner paid \$4,320 to [REDACTED] \$17,810 to [REDACTED] \$51,048 to the Beneficiary and \$13,200 to [REDACTED]

In revoking the approval of the petition, the Director found that the Petitioner had not sufficiently established that it had employees as claimed at the time the USCIS site inspector performed the site visits. The Director further found that the Petitioner had not demonstrated that the Beneficiary's subordinates are employed as professionals or managers.

On appeal, the Petitioner asserts that its IRS Form 941 for the third quarter of 2014, together with additional documents relating to wages paid, sufficiently establishes that the Petitioner had four employees prior to, during and after the July 14, 2014 site visit.

2. Analysis

Upon review, the Petitioner has not established that it will employ the Beneficiary in a qualifying managerial or executive capacity under the extended petition.

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). The definitions of executive and managerial capacity have two parts. First, a petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, a petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Here, the Petitioner initially provided a broad and generalized description of the beneficiary's duties that was insufficient to establish that he performs primarily managerial or executive duties. For example, the Petitioner stated that the Beneficiary will implement business goals, manage implementation of sales milestones, perform financial planning and budget control, and ensure adherence to corporate standards. While these areas of responsibility suggest that the Beneficiary has the appropriate level of authority, they do not provide insight into what specific tasks he performs on a day-to-day basis. Further, the initial description of the Beneficiary's duties reflects that some portion of his time is spent performing non-managerial duties associated with sales and product sourcing, and the description did not provide a breakdown of how much time he allocates to such duties. For example, the Petitioner stated that the Beneficiary's responsibilities include maintaining contacts with VIP clients, reviewing transportation and supply reports and order sheets, reviewing agreements with vendors, and preparing financial and budget reports. The Petitioner did not explain how these duties qualify as either managerial or executive in nature or indicate how much time the Beneficiary allocates to these types of activities. Whether the Beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act.

Accordingly, the Director reasonably requested a more detailed description of the Beneficiary's duties and information regarding the amount of time he allocates to specific tasks. The Petitioner's response provided neither the requested level of detail nor the requested percentages of time he devotes to specific duties. The Petitioner reiterated the initial position description and provided a list of ten broadly described "key responsibilities and accountabilities" which was even less detailed than the information provided previously. For example, the Petitioner stated that the Beneficiary is responsible for: "achievement of its company's vision, mission and financial objectives"; defining short and long term strategies; "providing leadership and direction"; "staying on top of overall operations"; trying "to encourage maximum efficiency"; and assuming responsibility for financial practices. These duties did not add additional clarification to the initial job duties and simply added new, vaguely defined responsibilities. 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 not provided sufficient detail or explanation of the Beneficiary's activities in the course of her/his daily routine. The actual duties themselves will 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).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See sections 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(4). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Although the Petitioner has consistently claimed that the Beneficiary has three subordinates, the Director determined that the Petitioner did not provide sufficient evidence to establish that it had any employees at the time the USCIS site inspector visited the Petitioner's asserted physical premises. The Petitioner has provided ADP earnings records, IRS Forms 941 and W-2 and other credible documentary evidence of wages paid to its employees sufficient to establish by a preponderance of the evidence that they were on the payroll at the time the petition was filed and at the time the site visit occurred. However, the Petitioner has not established that any of these employees are professionals, managers or supervisors.

In evaluating whether the Beneficiary manages professional employees, we 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).

Therefore, we 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. Here, the Petitioner indicates that the purchasing and sourcing manager has a bachelor's degree in marketing, but did not provide evidence of his credentials or sufficient evidence that a degree in marketing is actually required for the position. Further, although two of the Beneficiary's subordinates have managerial job titles, they do not supervise subordinate employees, nor do their job duties include any managerial functions. Rather, they are directly responsible for the company's routine sales and purchasing activities. Accordingly, the Petitioner has not shown that the Beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act. The Petitioner did not address this matter on appeal.

In addition, the submitted evidence, specifically the Petitioner's monthly earnings records, reflects that the Beneficiary's three subordinates are not full-time employees, which undermines the Petitioner's claim that the subordinate staff relieves the Beneficiary from significant involvement in the day-to-day operations of sourcing, purchasing and importing goods, arranging logistics for goods bought and sold by the Petitioner, and performing other duties associated with the day-to-day operations of the import, export and trading business.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), 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. In the present matter, however, the regulations require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D).² The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the Beneficiary from primarily performing operational and administrative tasks, the Petitioner is ineligible by regulation for an extension.

Here, the Petitioner asserts that its sales and marketing manager is responsible for sales and market research, the administrative assistant performs administrative and clerical tasks, and the manager of purchasing sources and purchases goods in the processed food range. The Petitioner has not established that the part-time workers fully relieve the Beneficiary from sales and purchasing activities, and the Petitioner does not claim to have staff to perform bookkeeping, invoicing or other routine financial duties, nor does it explain who works in its warehouse space or who arranges shipments and deliveries. Further, we note that the Beneficiary is named as the contact person on all invoices, which suggests his involvement in responding to customer inquiries and questions. In addition, the Petitioner's business records reflect many transactions involving the sourcing and purchasing of dyes, textile manufacturing machinery and related goods from foreign companies on behalf of its foreign parent company, and arrangement of delivery to the parent in Bangladesh. The Petitioner has not indicated that any of the Beneficiary's subordinates assist with this segment of its business operations.

² Following the enactment of section 101(a)(44)(C) of the Act in 1990, the former Immigration and Naturalization Service (INS) recognized that that managerial capacity could not be determined based on staffing size alone and deleted reference to "size and staffing levels" at 8 C.F.R. § 214.2(l)(3)(v)(C)(3) (1990), setting out the evidentiary requirements for initial new office petitions. *See* 56 Fed. Reg. 61111, 61114 (Dec. 2, 1991). However, the INS chose to maintain the review of the new office's staffing, among other criteria, at the time that the new office seeks an extension of the visa petition. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D).

Based on the current record, we are unable to determine whether the claimed managerial and executive duties constitute the majority of the Beneficiary's duties, or whether the Beneficiary primarily performs non-managerial administrative or operational duties that have not been assigned to its part-time staff. The Petitioner's description of the Beneficiary's job duties does not establish what proportion of the Beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Considered in the context of the totality of the evidence submitted, the Petitioner has not established that it has a reasonable need for the Beneficiary to perform primarily managerial or executive duties.

Although the Petitioner indicates that it intends to expand and hire additional employees, the record does not show that, at the time of filing, or at the time of the site inspection, that the Petitioner had reached the point where it can employ the Beneficiary in a qualifying managerial or executive position. 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).

Overall, due to the lack of a detailed description of the Beneficiary's duties or a breakdown of how much time he allocates to qualifying managerial or executive duties, and based on the lack of sufficient staff to perform the company's routine operational and administrative functions, the petitioner has not established by a preponderance of the evidence that the Beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition. Accordingly, the approval of the petition was properly revoked and the appeal will be dismissed.

B. Qualifying Organization

The remaining issue to be addressed is whether the petitioner established that it is a qualifying organization that continues to do business in the United States.

The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii).

In revoking the approval of the petition, the Director questioned the Petitioner's lease and found unresolved discrepancies relating to the Petitioner's claimed physical address. The Director also questioned the Petitioner's submission of an amended lease rather than a sublease and questioned why the Petitioner contracted to have items shipped to an old address that it no longer occupied. Moreover, the Director observed that the Petitioner had not sufficiently established that it continued to employ staff at the time the site visits were conducted.

Upon review of the totality of the evidence in the record, we will withdraw the Director's determination that the Petitioner did not establish that it continues to do business. The petitioner has

submitted copies of invoices, bank statements, shipping documents, purchase orders, tax returns and other evidence of business activities sufficient to establish by a preponderance of the evidence that it is conducting business as stated in the petition. The Petitioner has overcome the Director's concerns regarding the continued employment of the Beneficiary's subordinate employees through submission of credible and detailed payroll and tax documentation and provided sufficient evidence of its operations at a new address. Accordingly, the Director's decision will be withdrawn with respect to this issue.

III. CONCLUSION

The approval of the petition will remain revoked and the appeal will be dismissed as the Petitioner did not establish that the Beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition. 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. The Petitioner has not sustained that burden.

ORDER: The appeal is dismissed.