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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

[REDACTED]

DATE: FEB 13 2015

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation established in [REDACTED] states that it is an international trade firm. It claims to be a subsidiary of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States for a period of two years.¹

The director denied the petition, concluding that the petitioner failed to establish: (1) the size of the investment in the new office and its ability to support a qualifying managerial or executive position within one year; and (2) that the beneficiary has been employed in a qualifying managerial or executive position for the claimed foreign parent company.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that it provided sufficient evidence to support the approval of the petition. The petitioner submitted a brief and additional evidence in support of the appeal.

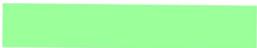
I. The Law

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, Petition for a Nonimmigrant Worker, 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.

¹ Per 8 C.F.R. § 214.2(l)(7)(A)(3), “[i]f the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.”



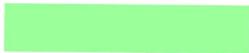
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization 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.

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

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

II. The Issues on Appeal

A. Beneficiary's Foreign Employment

The first issue to be addressed is whether the petitioner established that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity for one year in the three years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

The director denied the petition, stating that the petitioner failed to establish that the beneficiary has been employed abroad in a managerial or executive capacity. The director noted that a number of the beneficiary's duties did not appear to be managerial in nature. Furthermore, it appeared that the beneficiary was a first line supervisor of non-professional employees.

On appeal, the petitioner states that the director overlooked evidence demonstrating that the beneficiary was in fact a supervisor of other supervisory or managerial employees as well as professional employees. Specifically, the beneficiary is responsible for four departments of the parent company including the marketing department, financial department, human resources and administration, and international department.

Upon review, the petitioner has established that the beneficiary is employed in a qualifying managerial or executive position with the foreign employer. Specifically, the petitioner has provided evidence to show that the beneficiary supervises subordinate managerial and professional level positions. Furthermore, while the beneficiary may perform some non-qualifying managerial duties, the majority of the beneficiary's time is spent performing qualifying managerial duties. Accordingly, the director's comments regarding the beneficiary's employment abroad are withdrawn.

B. Employment in the United States in a Managerial or Executive Capacity

The second issue to be addressed is whether the petitioner established that new office will support an executive or managerial position within one year of approval of the petition.

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. The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of a beneficiary 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.*

On the Form I-129, the petitioner stated that it was an international trade firm with no estimated number of employees or income for the first year. In a letter submitted in support of the initial petition, the petitioner stated that the parent company is a wholesale and retail business and has invested \$300,000 to open a branch in the United States. The petitioner described the beneficiary's proposed job duties as follows:

- In charge of overall management of the company
- Plan, develop and establish policies and objectives of the company in accordance with the Board directives.
- Under the supervision of the Board of Directors, exercise the wide latitude of the discretionary decision making.
- Direct the implementation of the business expansion plan and operation policies.
- Direct the utilization of the financial reports and activity data to determining the strategy and progress of the company's business and designate further business goals and plans.
- Oversee the management strategies and promotion activities, and improve company's information system management.
- Have the voting authority to hire, terminate, evaluate and promote the managerial personnel based on their job performance, qualification and contributions.

The petitioner submitted an organizational chart showing the beneficiary as general manager. Four managers are shown reporting to the beneficiary including a Purchase Manager, Project Manager, Office Manager, and Financial Manager. The purchase Manager, Project Manager, and Financial Manager all have employees reporting to them according to the chart. The petitioner provides a position description for the four managers, the purchase specialist, and the accountant.

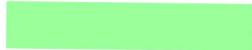
In a request for evidence (RFE) issued on April 14, 2014, the director requested evidence to show evidence that the new office will support an executive or managerial position within one year. The director requested information such as: (1) the proposed nature of the new office, describing the scope of the entity, its organizational structure, and its financial goals; and (2) information regarding the size of the U.S. investment and the financial ability of the foreign entity to remunerate the beneficiary and commence doing business in the United States.

In response, the petitioner submitted a copy of a business plan. The plan indicates that the company intends to engage in three businesses: (1) condiment imports and exports; (2) copyright trading in the U.S.; and (3) land investment. The petitioner provided a brief overview of the business strategy for each area. The petitioner also stated that the “turnover” of the petitioner is the first year is an estimate one million dollars, with a 25% increase each year afterwards. The petitioner stated that the office will “try to recoup the investment and make profits in the second year.”

The business plan also includes a brief hiring and overview plan as follows:

And after the general manager assumes office, it will expand the rented office space and gradually recruit new staff based on the actual requirements. According to the plan, eight employees will be recruited gradually and another eight employees will be added in the next year, including the president, secretary, marketing director, sales manager and procurement manager.

The director concluded that the evidence failed to establish that the new company would grow to a sufficient size to support a managerial or executive position within one year. The director observed



that the petitioner failed to submit evidence to show a timeline or explanation of when positions on the United States organizational chart will be filled. Additionally, the director determined that insufficient information was provided regarding the petitioner's financial goals, its expenses, and the salary of the new office staffing. Finally, the director found that the wire transfer of \$300,000 from the foreign company does not fully establish the size of the investment in the United States company, and additionally, insufficient documentation was provided to demonstrate that the foreign company paid for services to start a business in the United States.

On appeal, the petitioner states that the evidence support a finding that the new office will be able to support the beneficiary in a primarily managerial or executive position within one year of approval of the petitioner. Specifically, the petitioner states the evidence supports a finding that the parent company invested \$300,000 in the United States entity. The petitioner further claims that is "is obvious that a \$300,000 cash investment will of course support such a new office within one year of approval of the petition."

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed by the United States entity in a managerial or executive capacity within one year.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The petitioner's 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).

In the initial submission, the petitioner described the beneficiary's duties in very broad terms, noting that he is in charge of the overall management of the company; plan, develop, and establish policies and objectives of the company; exercise wide latitude in decision making; direct the implementation of the business expansion plan and operation policies; and oversee management strategies and promotion activities. These duties merely paraphrase the statutory definition of executive capacity. *See* section 101(a)(44)(B) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F.

Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

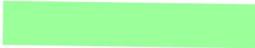
While several of the duties broadly described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 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)(2). 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).

The petitioner indicates that it will operate a condiments import/export operation, copyright trading, and land investment business and that the beneficiary will manage subordinate general managers. The petitioner, however, fails to provide any position descriptions for the subordinate managers or describe who will perform the day-to-day operations of the business. Furthermore, the petitioner fails to provide with specificity the number and types of employees that will be hired within the first year of operations. Therefore, the record does not support a finding that the beneficiary would act as a personnel manager within one year.

Our analysis of this issue is restricted by the petitioner's failure to submit an adequate business plan. 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 states that the parent company invested \$300,000 for start-up business costs. The petitioner, however, failed to provide with any specificity sales projections, specific start-up costs, income projections, and operational costs. In fact, the petitioner states that it expects to turnover \$1 million USD in the first year, but will not recoup start-up costs until the second year, calling into question whether the \$300,000 will be sufficient for start-up purposes. 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)).

A review of the totality of the evidence submitted provides very little information regarding the number of employees to be hired, the timeline for hiring employees, the financial position of the U.S. company, the petitioner's anticipated start-up costs and financial objectives for the first year of operations, and the physical premises secured by the U.S. company. The petitioner's submission of a vague job description for the beneficiary, and a general business plan, falls significantly short of meeting its burden to establish that the company will be able to support a qualifying managerial or executive position within a twelve-month period. The regulations require the petitioner to present a credible picture of where the company will stand in one year, and to provide sufficient evidence in support of its claim that the company will grow to a point where it can support a managerial or executive position within one year. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

Overall, the vague job description provided for the beneficiary, considered in light of the petitioner's minimal business and hiring plans for the first year of operations, prohibits a determination that the petitioner could realistically support a managerial or executive position within one year. Accordingly, the appeal will be dismissed.

C. Physical Premises to House the New Office

Beyond the decision of the director, the record contains insufficient evidence to establish that the petitioner has secured sufficient physical premises to house the new office, as required by 8 C.F.R. § 214.2(1)(3)(v)(A).

On the Form I-129, the petitioner indicated its mailing address [REDACTED] [REDACTED]. The petitioner indicated this same address as the beneficiary's intended worksite.

The petitioner submitted a lease agreement for premises located at this address. The lease is with [REDACTED] and states that it is valid from December 15, 2013 to December 13, 2014. The lease states that the petitioner has leased over number 27, for a total of 160 square feet. A schedule attached to the lease provides a fee schedule of additional services such as conference space, IT & telecom services, and copy and printing services. The petitioner submitted photographs of the office space.

The petitioner submitted an organizational chart showing a minimum of an additional nine employees to be hired other than the beneficiary.

The director issued a request for additional evidence on April 14, 2014. The director instructed the petitioner to provide evidence that sufficient physical premises to house the new office have been secured.

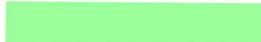
In response to the RFE, the petitioner submitted an additional office lease agreement for office 22 and 23 in the same facility as the initial lease. The date of the agreement is June 6, 2013 and the term commences on August 1, 2014. The offices are 168 and 183 square feet respectively.

The petitioner submitted a business plan stating that it will engage in the condiment imports and exports; copyright trading; and investing in land. The plan states that the first plan is to "initiate the import of dry condiments" with the target market of the large retailer. The business plan states that the hiring strategy is that "eight employees will be recruited gradually and another eight employees will be added in the next year." The plan does not specify what employees will be recruited in the first year.

Upon review, the petitioner has not established that it had secured sufficient physical premises to house the intended new office as of the date the petition was filed.

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

The petitioner initially submitted a lease for one single office space. In response to the director's RFE, the petitioner provided a lease for two additional offices. The lease, however, was not entered into until after the filing date of the petition. This additional lease entered into after the filing date



of the petition does not establish eligibility at the time of filing. 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).

Furthermore, the petitioner's lease for one office location is not sufficient to support the proposed staff of a minimum of nine employees. The petitioner's initial lease only includes space for housing employees and not the storage of good or the sale of its products. The lease as submitted is for office space alone. If the petitioner is to engage in the import of condiments, the record does not contain any evidence to show how these goods will be stored upon importation or how the petitioner intends to engage in the sale of these goods. The petitioner also provides insufficient information regarding where the eight employees other than the beneficiary will work during the petitioner's first year of operations. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). 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 alternate 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.