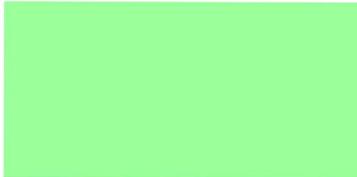
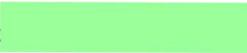


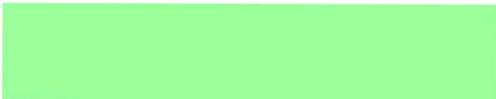
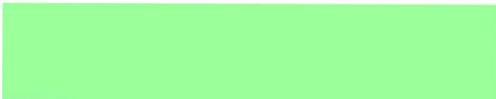


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 08 2015** 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:

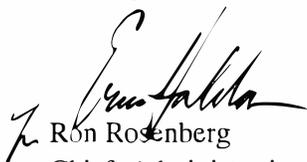
SELF-REPRESENTED

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,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the "director"), 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 the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), 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, a Georgia corporation organized on December [REDACTED] indicates on the Form I-129, that it is engaged in "[r]ecycling of aluminum, plastic and cellulose products." On the Form I-129 Supplement L, the petitioner claims to be a branch of [REDACTED] an entity located in Brazil.¹ The petitioner seeks to employ the beneficiary as its general manager.²

The director denied the petition finding that the petitioner failed to establish: (1) that it has a qualifying relationship with the foreign entity; (2) that the foreign entity had employed the beneficiary in a qualifying managerial or executive capacity; and (3) that the new operation will support an executive or managerial position within one year of the approval of the petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to this office. On appeal, the petitioner submits additional documentation and requests that the petition be approved.

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(1)(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 (1)(1)(ii)(G) of this section.

¹ In response to the director's request for evidence, the foreign entity's interim president noted that the petitioner is "a branch/affiliate/subsidiary" of the foreign entity.

² The petitioner refers to the beneficiary's proposed position as general manager or president interchangeably throughout the record.

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

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

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

II. QUALIFYING RELATIONSHIP

The first issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists with the beneficiary's foreign employer.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) provides the following pertinent definitions:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (I)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, . . . [.]

A. Facts

On the Form I-129, the petitioner stated that the beneficiary owns 99 percent of the shares of the foreign entity and 50 percent of the shares of the petitioner. In response to the director's request for further evidence (RFE) for additional documentation in support of the qualifying relationship between the two entities, the petitioner submitted evidence of the foreign entity's ownership but did not submit documentation demonstrating the petitioner's ownership.

On appeal, the petitioner re-submitted its Certificate of Organization in the State of Georgia, its Articles of Organization identifying the organizers as: "[the beneficiary], [REDACTED] and [REDACTED]". The Articles of Organization state "Optional Provisions: Primary Organizer is also proprietor of [the petitioner], owning 50% of shares along with [REDACTED] who owns 50% of the shares." The document is signed by [REDACTED] Organizer, is dated January 3, 2014, and includes a control number assigned by the Georgia Secretary of State. The record also included the petitioner's Business Advantage Checking account summary with a beginning balance of \$14,290 on April 7, 2014 and an ending balance of \$14,290 on April 30, 2014.

The record on appeal includes the petitioner's Articles of Incorporation, a document which is signed by the beneficiary and [REDACTED] as president and vice president, respectively and is dated February 19, 2014. The document identifies the principal shareholders as: the beneficiary with 10,000 shares (50% of the total shares) valued at \$10,000, and [REDACTED] with 10,000 shares (50% of total shares) valued at \$10,000. This document indicates that the "name of the corporation's organizer is [the beneficiary] – President."

B. Analysis

In this matter, we concur that the record, including the evidence submitted on appeal, does not include sufficient evidence to establish the ownership and control of the petitioner and thus does not establish a qualifying relationship between the petitioner and the foreign entity.

As the director pointed out, general evidence of a petitioner's claimed qualifying relationship, such as a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, U.S. Citizenship and Immigration Services (USCIS) is unable to determine the elements of ownership and control.

In this matter, although the petitioner provided some of this information on appeal, the record does not include sufficient probative evidence establishing the petitioner's ownership and control. For example, the Articles of Organization document, dated January 3, 2014, does not define the term "primary organizer." Both the beneficiary and [REDACTED] are referred to as "Organizer." Thus, it is not possible to conclude that the beneficiary is the primary organizer/proprietor of the petitioner. In addition, the record does not include evidence that the beneficiary deposited monies in exchange for a 50 percent interest in the petitioner. Although the record on appeal includes the petitioner's bank statement for April

7, 2014 to April 30, 2014, with a beginning and ending balance of \$14,290, the record does not contain evidence of who deposited the monies and for what purpose. Further, the record does not include minutes of the petitioner's membership and management meetings or any agreements relating to the voting interests of those individuals issued an interest in the petitioner.

The Articles of Incorporation submitted for the first time on appeal identify the beneficiary as the 50% owner of the company, but this document has limited probative value. First, the petitioner was established as a limited liability company, not as a corporation as stated in the newly submitted articles. Further, the petitioner had already provided its Articles of Organization which were certified as filed with the Georgia Secretary of State on January 3, 2014. The petitioner did not provide evidence that it changed its corporate form from an LLC to a corporation or that it actually filed the Articles of Incorporation dated February 2014. The petitioner submitted no explanation as to why it would create both Articles of Organization and Articles of Incorporation for the same company.

Upon review of the totality of the record, including the evidence submitted on appeal, the record is insufficient to establish the ownership and control of the petitioner. The petitioner, therefore, has not established a qualifying relationship with the foreign entity as that term is defined above. Accordingly, the appeal will be dismissed.

III. MANAGERIAL AND EXECUTIVE CAPACITY

The next issues addressed by the director are whether the petitioner established that the beneficiary had been employed in a qualifying managerial or executive capacity for the foreign entity for one continuous year within three years preceding the beneficiary's application for admission into the United States and whether the petitioner established that the beneficiary would be employed in a managerial or executive capacity within one year of the approval of the new office petition. Upon review, we find the record does not include sufficient probative evidence to overcome the director's decision on these issues.

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.

A. The Beneficiary's Foreign Employment

On the Form I-129, the petitioner stated that the beneficiary had been employed as the foreign entity's chief operating officer. The petitioner noted the beneficiary's experience and work in the plastics converting industry and his assistance in launching three plastics converting manufacturing plants in Brazil. The petitioner indicated that the beneficiary had invented primary cleaning and refining technology. The petitioner also indicated that the beneficiary's professional experience and unique language skills allowed him to communicate with future employees and customers as well as to fulfill the financial goals set forth by the company.

The initial record did not include additional evidence describing the beneficiary's actual duties for the foreign entity nor did it include a copy of the foreign entity's organizational chart.

In a response to the director's RFE, dated April 15, 2014, the petitioner repeated the information regarding the beneficiary's experience. The petitioner also noted that the foreign entity is "one of the leading Plastic recycling businesses in the Midwest region of Brazil, with 49 employees and an annual revenue in excess of \$2,263,850."³ In a letter, dated April 12, 2014, the interim president of the foreign entity certified that the beneficiary is the owner of the foreign entity, alongside the interim president, and that the beneficiary is also the president of the foreign entity. The interim president stated further that the "company has operated since 2010 and has been under [the beneficiary's] control and management since then." The foreign entity interim president indicated that it needs the beneficiary in the United States for an initial period of one year and possibly two to three years following to consolidate the company and promote the

³ The record includes translated copies of a document identified as "Form 14A – Calculation of Income Tax on Presumed Profit." The form identifies the foreign entity's gross revenue receipts for each of the four quarters in 2013.

transfer of the administration to a local manager/controller. The record also included documentation previously submitted.

Based on the evidence submitted, the director determined that the petitioner had not established that the beneficiary was employed by the foreign entity in a managerial or executive capacity. The director found insufficient evidence to establish that his role with the foreign entity was as a managerial or executive employee, as opposed to that of an owner.

On appeal, the petitioner submits a letter, not on letterhead, signed by the foreign entity's human resources supervisor, dated May 27, 2014, which indicates that the beneficiary's duties as president of the foreign entity include the following:

- 1.1 FINANCIAL chief executive responsible for all financial decisions:
Income/Expenses on a daily basis. Approves all payments (to suppliers, employees, taxes, utilities, etc.).
Approves variable expenses: reimbursements, travel expenses, supplies, etc.
Approves all bank transactions both acquiring or extending credit.
- 1.2 ADMINISTRATIVE issues warnings, approves any leave of absences, signs payroll checks.
Final word when it comes to hiring and firing, promoting or demoting, lay-offs, etc.
Deals with all bank/financial dealings: opens and closes accounts, credit and or loans.
Meets with staff to determine sales strategy and to receive reports.
Meets with suppliers and/or clients whenever needed.
- 1.3 STARTEGY [*sic*] The WHOLE strategy for sales and marketing of our products is designed by [the beneficiary]. He sets the targets and goals for the corporation.

The human resources supervisor notes that the dates of employment for the "managing president" are December 17, 2007 to present.

The record on appeal also includes the foreign entity's 2014 list of current employees, by name, identification number and job title. The list identified 25 employees in the position of production assistant, three employees in the position of machine operator, three employees in the position of secretary, one handyman, one janitorial assistant, and the V.P. – IT Director, for a total of 35 employees.⁴

Upon our review of the totality of the evidence submitted, we find that the petitioner has not established that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity.

⁴ The list of employees does not include the name or position of the individual who signed the letter, dated May 27, 2014, as the foreign entity's human resources supervisor. Neither does the list of employees include the beneficiary's name. Further, the petitioner does not explain its earlier indication that the foreign entity employed 49 persons when responding to the director's RFE but only identifying 35 positions when listing its current 2014 employees.

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

Next, we note that the definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Moreover, we observe that the fact that the beneficiary owns or manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. See 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

In this matter, the petitioner initially referred to the beneficiary's experience and work in the plastics converting industry including his assistance in launching three plastics converting manufacturing plants and his invention of primary cleaning and refining technology. The petitioner did not describe what duties the beneficiary performed in relation to his role as the foreign entity's chief operating officer. In response to the director's RFE, the petitioner confirmed that the foreign entity had been under the beneficiary's control and management since 2010, but again failed to detail the beneficiary's executive or managerial duties, if any.⁵ Accordingly, the director correctly concluded that the petitioner had not demonstrated the beneficiary's role in the foreign organization other than as its owner.

For the first time on appeal, the petitioner presents a broad overview of the beneficiary's duties for the foreign entity. However, the description does not establish that the beneficiary primarily performed in the capacity of either an executive or a manager at the foreign entity, as those terms are defined in the statute and regulations. For example, in the letter, dated May 27, 2014, the foreign entity's human resources supervisor, indicates that the beneficiary is responsible for all financial decisions which include approving payments, expenses, and bank transactions, and is also responsible for administrative actions including issuing warnings, approving leave, hiring and firing, and meeting with staff on sales strategy and meeting with suppliers. These general statements do not convey an understanding of what the beneficiary actually does for the foreign entity on a daily basis. The record does not include any additional details or specific tasks related to these duties, nor does the record demonstrate how such duties qualify as managerial or executive duties.

⁵ The petitioner provides a clarifying letter on appeal, indicating that the beneficiary had been the owner and president of the foreign entity since 2007.

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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The foreign entity's human resources supervisor also notes that the beneficiary designed the strategy for sales and marketing the foreign entity's products and that he sets the targets and goals for the corporation. However, the foreign entity's list of employees does not identify any individuals who perform the sales and marketing of the foreign entity's products. Thus, it is not possible to discern how the beneficiary is relieved from performing the non-qualifying sales and marketing duties for the foreign entity.

Here we observe that the petitioner fails to document what proportion of the beneficiary's duties constitutes qualifying duties and what proportion are non-qualifying. The record suggests that the beneficiary's duties include some supervisory duties, as well as some administrative or operational tasks, and that the beneficiary sets targets and goals for the foreign entity. However, the record does not include any evidence of how much time the beneficiary spends on each of these generally stated duties. This failure of documentation is important because marketing and selling the foreign entity's products, meeting with suppliers, and performing routine banking transactions, for example, do not fall directly under traditional executive or managerial duties as defined in the statute. For this reason, even if the description of the beneficiary's duties for the foreign entity was sufficiently detailed, which it is not, we cannot determine whether the beneficiary is primarily performing the duties of an executive or manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Furthermore, the overview of the beneficiary's duties for the foreign entity offered on appeal is provided by an individual identifying himself as the human resources supervisor. However, the foreign entity's list of employees does not include this individual either by name or position. Notably, the letter, dated May 27, 2014, is not on the foreign entity's letterhead. The record does not include documentation verifying that this individual is actually employed by the foreign entity and that he has authority to represent the foreign entity. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Upon review, the record is deficient in probative evidence establishing the beneficiary's actual duties abroad. Moreover, the record contains inconsistent information regarding the foreign entity's number and type of employees. The petitioner does not include evidence of 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, and any other factors that might contribute to a complete understanding of a beneficiary's actual duties and role in the foreign entity. Based on these deficiencies, the petitioner has not established that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity. Accordingly, for this reason the appeal will be dismissed.

B. The Beneficiary's Proposed Employment for the Petitioner

The petitioner also described the beneficiary's proposed duties for the U.S. petitioner on the Form I-129 noting that the beneficiary as the head executive will be: "overseeing the opening and establishment process of the company, maintaining the high quality standards required and set by the company in Brazil, hiring employees, managing employees who will carry out the industrial production schedules, the sales and the financial departments." The petitioner added that in the first phase of the business, the beneficiary "will also be responsible for receiving and accepting or rejecting materials as they are delivered from the suppliers, and ordering tools/materials as needed to guarantee the continuous process of industrialization." The petitioner indicated further that the beneficiary "will also be responsible to maintain the recycling facility within OSHA standards, being responsible to oversee all the safety procedures to avoid accidents." The petitioner repeated these statements in a letter, dated "January 29, 2012 [sic]."

In the petitioner's undated business plan, the petitioner described the proposed organizational structure of the petitioner as: "[a]ll recycling and manufacturing operations will report to the COO. All administrative and finance functions will report to the CFO. Both the COO and CFO will report to the CEO, who will also have the responsibility for Sales and Marketing." The petitioner noted that the beneficiary would fulfill the position of chief executive officer and president and that the Executive VP/COO, the CFO and the Sales and Marketing Managers were to be determined. The petitioner noted that by the end of year one, it expected to employ 12 (6 part-time) employees. The business plan listed a number of positions, including shift supervisor, maintenance technicians, skilled recycle plant labor, extruder operation (full/part-time), production assistant (full/part-time), as part of the proposed production personnel. The business plan also listed proposed "sales and marketing personnel" but did not identify the number of positions within this department. The petitioner, in the business plan, further noted that its general and administrative personnel included the president, vice president/COO, CFO/accountant, plant manager, clerk, and shipper receiver.

The submitted organizational chart for the petitioner corresponded to the organizational structure identified in the petitioner's business plan.

The petitioner did not provide further information regarding the beneficiary's proposed position, in response to the director's RFE, other than indicating that the foreign entity needs the beneficiary in the United States for an initial period of one year and possibly two to three years following to consolidate the company and promote the transfer of the administration to a local manager/controller.

The director determined, based on the evidence submitted, that the petitioner had not established how the intended U.S. operation, within one year of the approval of the petition, would support an executive or managerial position.

On appeal, the petitioner provides an updated and revised business plan. The petitioner indicates that its goal has changed since its initial inception due to challenges with leases, documentation, warehouse size, etc. Now, the petitioner indicates that its "main goal is to collect plastics, wash/clean, press them in bundles and export the raw material to [its] own industrial park in Brazil." The petitioner amends its proposed personnel requirements to include 10 to 14 employees in the following positions:

- a) 2 Drivers – to collect plastic (\$10-15/h)
- b) 5 production assistants – receive, wash, press into bundles (\$10-15/h)
- c) 1 production manager – oversee production (\$18-20/h)
- d) 1 secretary – manage office (\$10-13/h)
- e) 1 export specialist – handle export/freight issues (\$15-20/h)
- f) 1 supply chain manager – contact new suppliers of raw material (\$14-18/h)
- g) 1 General Manager (president) – (\$40K/yr)
- h) Accounting and Legal departments would initially be sub-contracted.

The petitioner also attaches a job description for the beneficiary's proposed duties in the United States to the new business plan. The description is the same description as the one listing the beneficiary's foreign duties as managing president, which is provided on appeal, with two differences. The petitioner adds to the description for the foreign entity, that the beneficiary duties for the petitioner will also include being "legally responsible for any government fees, taxes, income declaration, etc." as part of his financial responsibilities. The petitioner also notes that the beneficiary in the proposed position will meet "with staff (Production Manager, Supply Chain Manager & Secretary) to determine collection strategy and to receive reports."

Upon review, we find that the record is insufficient to establish that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in the statute and regulations

When a new business is 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 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 order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. See 8 C.F.R. § 214.2(l)(3)(v)(C). 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.

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. See generally, 8 C.F.R. § 214.2(l)(3)(v). 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 house the new office, and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, 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.*

Here, the petitioner initially provided an abstract description of the beneficiary's proposed duties. Other than overseeing the opening and establishment of the company, the petitioner noted the beneficiary in the first phase of the business "will also be responsible for receiving and accepting or rejecting materials as they are delivered from the suppliers, and ordering tools/materials as needed to guarantee the continuous process of industrialization." The petitioner noted that by the end of year one, it expected to employ 12 (6 part-time) employees. Although the petitioner identified numerous positions by title, the petitioner did not detail the duties the prospective employees would be expected to perform and did not provide a timeline showing when and for what position the prospective employees would be hired.

Again, broadly cast broadly-cast business objectives are not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. Here, the only detail regarding the beneficiary's proposed duties include performing the operational tasks of accepting or rejecting materials, and ordering tools/materials for industrialization. While it appears that the petitioner will hire staff to perform the duties associated with operating a [REDACTED] and refining plant, the record does not establish that the beneficiary would be relieved from performing operational functions within one year. Again, to establish eligibility, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions, and must prove that the beneficiary will *primarily* perform the specified responsibilities and will 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, even if the petitioner opened and began the operation of the proposed plant within one year, the petitioner's proposed staffing for the plant is insufficiently described and substantiated to establish that the company will support a qualifying managerial or executive position within one year.

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. Again, it is the petitioner's burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must also be considered in analyzing whether the proposed duties, general as they are, are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. *See generally*, 8 C.F.R. § 214.2(l)(3)(v)(C).

Here we observe that the petitioner has provided two versions of the nature of the proposed business and staffing plans. The petitioner's initial business plan described the proposed business as a [REDACTED] and refining plant in [REDACTED] Georgia which would use almost all of its recycled material in its packaging division, the focus of the newly created company, and then would sell any surplus material to outside companies. The business plan identified the total funding required to start the business as \$110,000. On appeal, the petitioner amended the business plan to one of collecting plastics, washing and cleaning the plastics for bundling and exporting the raw material to the foreign entity in Brazil and noted its intent is to invest approximately \$40,000 to \$60,000 in recycling equipment/machinery, office supplies, lease/rent, trucks and containers. The petitioner also changed the staffing plan to include 10 to 14 employees in various new positions. The petitioner, however, 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). Notably, the petitioner's acknowledgment that it was necessary to significantly change its goals suggests that when the petition was filed, it was not prepared to commence doing business immediately upon approval of the petition.

In addition to significantly changing its business plan, the petitioner failed to further develop the beneficiary's proposed duties for the petitioner on appeal. The proposed duties submitted on appeal fail to demonstrate what actual duties the beneficiary will be expected to perform the first year of the new office operations. In this matter, using either version of the petitioner's proposed staffing plan, the petitioner does not provide sufficient probative evidence that the beneficiary will be relieved from performing non-executive and non-managerial duties within one year. The record does not include a consistent business plan that explains the petitioner's timetable for hiring and details job descriptions for all proposed positions. The record does not include information regarding how many and which positions will be filled at the petitioner during the first year of operations. The petitioner has not detailed how its goals and financial projections for the petitioner will be achieved. The record does not include sufficient consistent and probative evidence establishing that it will develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year.

Based on the evidentiary deficiencies addressed above, we find that the petitioner has not explained how it would develop over one year so that it would plausibly support the beneficiary in a primarily managerial or executive capacity. 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)).

III. CONCLUSION

In this matter, upon review of the totality of the record, the record does not establish a qualifying relationship between the petitioner and the beneficiary's foreign employer, the record does not demonstrate that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity, and the record does not show that the U.S. company will develop to the point where it will require the beneficiary to perform duties that are primarily managerial or executive in nature within one year.

Accordingly, the appeal will be dismissed. 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.