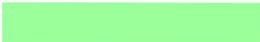


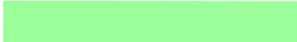
(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: **JAN 29 2015** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

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

Thank you,

 Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner filed a Petition for a Nonimmigrant Worker (Form I-129) 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 Nebraska limited liability company established in [REDACTED] states that it intends to operate as a chemical wholesaler and provider of related consulting services. It claims to be the subsidiary of [REDACTED] located in [REDACTED] China. The petitioner seeks to employ the beneficiary as the president of its new office in the United States for a one-year period.

The director denied the petition, concluding that the petitioner failed to establish that the U.S. company would support a qualifying managerial or executive position within one year.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to our office for review. On appeal, the petitioner asserts that it provided sufficient evidence of the company's business plans and anticipated expansion for the first year of operations to support the approval of the petition, and asserts that it has established that the proffered position is executive in nature.

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.

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 Issue on Appeal

The issue before us on appeal is whether the petitioner established that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity within one year.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as

promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by U.S. Citizenship and Immigration Services (USCIS) regulation. 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 an alien in a primarily managerial or executive position.

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

A. Facts

In a letter dated April 28, 2014, the petitioner's foreign parent stated that the beneficiary will be responsible for "the overall vision and management of the company's efforts to establish itself as a solid force in the North American market." The petitioner provided the following description of the beneficiary's proposed duties:

- Establish and implement the company's strategy and policy.
- Organize, amend, and implement the company's annual business and investment plans.
- Prepare the company's annual budget and approve all major financial expenditures.
- Operate the company and guide its strategic direction consistent with Biochem company's business expansion goals.
- Manage all company personnel including all responsibilities related to recruitment, new hires, promotions, and terminations.
- Develop and implement strategies with respect to office location selection, local staff recruitment, workflow, and standard operating policies / procedures.
- Establish good working relationship and liaise with local regulators, government agencies, and business partners.
- Sign contracts, agreements and orders.

The petitioner also stated that the beneficiary "will have key input regarding the decisions to hire, promote, demote, and terminate any and all employees and ultimate decision-making authority with regard to all employment issues."

The petitioner also submitted a separate document entitled "Job Description – President" which provided the following additional details:

Job Description:

Fully responsible for establishment of strategy and policy of company, take charge of daily management and business development, responsible for the safe operation of company, organize, conduct and amend the company's annual business and investment plans. To carry out the board of director's resolution, completes each concrete work of the management plan. Organize to make financial policy, approval of major financial expenditure. Leading establish in a good company image, build and maintain efficient internal and external communications channels. The specific plan setting adjustment or cancellation of the company's internal management structure, responsible for the work of staff to hire, promote, fire and demote all the staff in the company.

Responsibilities:

- Make and implement the business plan and the company's annual budget.
- Setup and invest company's subsidiaries of overseas according to company's strategies.

- Setup and/or adjust the organization chart, propose the appointment, dismissal and promotion of staff in company and subsidiaries.
- Prepare and implement overseas subsidiaries projects, including office location selection, local staff recruitment, workflow and procedure setup.
- Establish good relationship and liaise with local regulators, government agencies and business partners.
- Sign contracts, agreements, and orders.

The petitioner also submitted a copy of its proposed organizational chart for the U.S. entity, which indicated that the beneficiary, as president, would directly supervise an administrative assistant and a marketing manager. The marketing manager, in turn, would supervise an image and package design specialist and a pesticide registration coordinator. The petitioner also submitted a copy of its lease agreement, demonstrating that it was leasing an 830 square foot commercial premises. Photographs of the premises were also submitted.

Finally, the petitioner submitted a 56-page business plan. The business plan states that the company's initial goal is to "become a niche player in the development and supply of high quality agrochemicals and aroma chemical products to local (U.S.) customers." It further claimed that it intended to offer technical and business consulting and customs services, and noted its intention to become a leading supplier of [REDACTED] one of its parent company's aroma chemical products, within five years. The petitioner indicated that it anticipates a sales revenue of \$630,000 by June 30, 2015 with a gross profit of \$178,500 and a net profit of \$23,940.

With respect to the company's agrochemical products, the petitioner indicated that it plans to register two to three new products in the United States within three years. With respect to its aroma chemical products, the petitioner identified two existing U.S. distributors of the parent company's trademarked [REDACTED] product and stated that the foreign entity supplied 25 tons of the product to the United States in 2013. The petitioner stated that its goal is to increase sales volume of this product to 40 tons in 2014. In addition, the petitioner indicated that it is planning to develop and apply for trademark registration for a new brand of aromatherapy products called [REDACTED] but did not provide any projected sales figures for this product line. The business plan indicated that the company's aroma chemicals will be imported and sold to distributors in the United States who sell the products to fragrance and cosmetic formulators. The business plans stated that the petitioner intends to establish an aromatherapy website for direct sales, place some products in local gift shops and boutiques, and develop a product catalog.

The petitioner's pro-forma cash flow statement for the year ended June 30, 2015 allocated \$89,000 to "cash paid for employees." The business plan included an appendix with a summary of duties for the proposed employees, but did not include a hiring timeline. The petitioner indicated that the marketing manager should have at least one year of experience in agrochemical marketing and will develop long-term and short-term marketing strategies through research and analysis, determine the market demand and potential customers, communicate with distributors and customers, and provide suggestions for product development.

The petitioner indicated that the pesticide registration coordinator would require a master's degree and would be responsible to register products in the international market, promote the products, and provide technical support for products sales and business activities. The petitioner indicated that the image and package design specialist should have a college degree in the fine arts or graphic design, and would be responsible for art design of product packaging and advertising, and designing and maintaining the company's website. Finally, the petitioner indicated that the administrative assistant will perform reception duties, secretarial support duties, general administrative duties, and general public relations management.

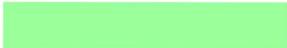
In the request for evidence issued on May 17, 2014, the director requested evidence to demonstrate how the company will grow to be of sufficient size to support a managerial or executive position. Specifically, the director requested a timetable for each proposed action for the initial year of operation starting with the date of filing the petition, as well as a detailed description of the proposed staffing of the new office including the number of employees to be hired and their anticipated wages or salaries, job titles and detailed position descriptions.

In response, the petitioner addressed the issues raised by the director. The petitioner re-submitted the organizational chart provided at the time of filing, and noted that "the marketing manager will be focused on marketing strategies and related tasks and other employees will be responsible for managing and maintaining customer relationships." The petitioner referred the director to the position descriptions provided at the time of filing. The petitioner did not provide any additional information, such as the proposed salaries and hiring dates for the staff.

The petitioner also submitted a workflow timeline for the petitioner's first year of operations. The petitioner indicated that it planned to advertise for the positions of marketing manager, graphic designer, registration coordinator and administrative assistant at the [REDACTED] in June 2014 and register trademarks in July 2014. The petitioner indicated that in July to August of 2014, it would accomplish website design, brochure and catalog design and printing, product formula research and development, product package design, locate a packing contractor, and begin sales of its products online and at local gift shops and boutiques.

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's general overview of the proposed U.S. business, combined with a failure to demonstrate that the beneficiary would ultimately supervise of subordinate staff of managerial, professional, or supervisory employees to relieve her from performing non-qualifying duties, prohibited a conclusion that the beneficiary would be relieved from performing those non-qualifying duties within one year of approval of the petition.

On appeal, the petitioner contends that the director's finding was erroneous. Specifically, the petitioner contends that the beneficiary's proposed duties are executive in nature, not managerial as assessed by the director when rendering her decision. The petitioner also asserts that, in the alternative and contrary to the findings of the director, these duties could also be deemed managerial, pointing out that the beneficiary's position at the top of the U.S. entity's organizational chart establishes that she would in fact supervise or oversee qualifying employees. The petitioner resubmits the organizational chart and the position descriptions for the proposed subordinate staff members. In addition, the petitioner provides a letter from [REDACTED]



International Development Manager for the State of Nebraska's Department of Economic Development, expressing his support for the petitioner's business.

B. Evidentiary Standard

As a preliminary matter, and in light of the petitioner's references to the requirement that we apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within its purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be reopened or reconsidered.

Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's determinations in this matter were correct. Upon review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

C. Analysis

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, we 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 instant matter, the petitioner has repeatedly described the beneficiary's proposed position in very broad terms, specifically emphasizing her responsibility for the implementation of strategy and policy as well as the implementation of the petitioner's business plan. On appeal, the petitioner asserts that the duties as stated satisfy both the regulatory definitions of managerial capacity and executive capacity, and attempts to demonstrate the similarities between the stated duties and the regulatory requirements. For example, the petitioner points out that the beneficiary's role in the implementation of strategy and policy falls easily into the regulatory definition of executive capacity, noting that phrases such as "establishes the goals and policies of the organization" and "exercises wide latitude in discretionary decision-making" clearly contemplate this key task of the beneficiary. *See* sections 101(a)(44)(B)(ii) and (iii) of the Act, 8 U.S.C. §§ 1101(a)(44)(B)(ii) and (iii). However, these duties merely paraphrase the statutory definitions of executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act. Conclusory assertions regarding the beneficiary's employment in a managerial or executive 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.).

Thus, while several of the duties generally described by the petitioner would fall under either the definition of managerial capacity, or under the definition of executive capacity, the lack of specificity and the failure to categorize the duties as either managerial or executive in nature as required by the regulations 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 petitioner has the 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 be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and projected stage of development within a one-year period.

Here, the petitioner indicates that it will hire four employees to perform marketing functions, packaging and website design, product registration and administrative functions. The petitioner did not provide the requested information regarding the salaries to be paid to the proposed employees, other than indicating that the beneficiary would be paid \$60,000. The petitioner has allocated \$89,000 to employee expenses for its initial year of operations; however, without information regarding proposed salaries, there is insufficient support for a finding that all employees would be hired within one year. Moreover, even if the petitioner does hire all four proposed staff, it is unclear whether they would relieve the beneficiary from performing non-managerial and non-executive duties associated with operating a business with several product lines and methods of distribution. For example, the petitioner has not identified staff who would be responsible for the company's day-to-day financial tasks, procurement, order fulfillment and product delivery or identified who will provide the "consulting services" mentioned in the business plan.

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

We now turn to the petitioner's claim that the position, in the alternative, is managerial in nature.

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 the beneficiary will directly supervise one subordinate managerial employee, the marketing manager, and an administrative assistant. In evaluating whether the beneficiary manages professional employees, we must 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. 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 must focus on the level of education required by the position, rather than the degree held by a 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.

The record indicates that the beneficiary will directly supervise the administrative assistant and the marketing manager. However, the brief overview the petitioner provides for these positions make no reference to a requirement for a baccalaureate level of education. The administrative assistant position appears from the record to be clerical in nature, as the brief description the petitioner provided of this position stated will the administrative assistant would perform reception duties, secretarial support duties, general administrative duties, and general public relationship management. Similarly, the position of marketing manager is described in general terms, mandating an experiential requirement of at least one year of experience in agrochemical marketing rather than an academic requirement of a baccalaureate level of education. The position description further requires the incumbent to establish marketing strategies, yet no academic credentials serve as a prerequisite for such a position.

The petitioner has not provided credible evidence of a proposed organizational structure that would be sufficient to support the beneficiary in a supervisory position that is higher than a first-line supervisor of non-professional employees. The record does not establish that the administrative assistant or marketing manager would hold managerial or supervisory positions. Specifically, we note that while the organizational chart places two employees directly under the marketing manager position,¹ there is no claim in the record

¹ The petitioner indicates that the other two proposed employees identified on the organizational chart (the pesticide registration coordinator and the image and package design specialist) should have at least a baccalaureate level of education for entry into these positions. Specifically, the petitioner states that the pesticide registration coordinator should have a master's degree, and that the image and package design specialist should have a college degree in the fine arts or graphic design. It is unclear, however, from the organizational hierarchy presented here, who will actually oversee these employees or the role in which these employees will play in relieving the beneficiary from performing non-qualifying duties by the end of the first year of operation.

that the marketing manager would be responsible for the supervision or management of those positions, as the provided description includes no supervisory duties.

In this matter, a review of the totality of the evidence submitted provides very little cohesive evidence of a practical and achievable business plan that will be successfully implemented in the first year of operations. The petitioner provided 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. However, despite the petitioner's submission of a 56-page business plan and a workflow chart for the petitioner's first year of operation, the record contains no evidence demonstrating the means by which any of the stated goals will be accomplished. For example, the business plan indicates that in a two-month period from July to August, the petitioner will (1) hire all staff; (2) secure trademark registrations; (3) design its website; (4) design and print its brochure and catalog; (5) conduct product research and development; and (6) sell its product both online and via placement in local shops. The petitioner did not provide an explanation as to how the company expects to achieve all of these milestones in such a brief period of time.

Moreover, the petitioner's submission of a vague job description for the beneficiary, a bank statement showing approximately \$200,000 in an account, coupled with a lengthy but vague business plan, falls significantly short of meeting its burden to establish that the company will be able to support a primarily 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 exactly 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. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14I&N Dec. 190 (Reg. Comm'r. 1972)).

The AAO does not doubt that the beneficiary will have the appropriate level of authority over the petitioner's business as its president. The definitions of executive and managerial capacity, however, 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 time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Overall, the vague job description provided for the beneficiary, considered in light of the petitioner's 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.

IV. Conclusion

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.