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U.S. Citizenship
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Services

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File: SRC 05 262 51022 Office: TEXAS SERVICE CENTER Date: MAY 02 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

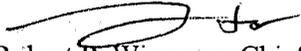
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office.

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

The petitioner filed this nonimmigrant petition seeking to extend the employment of its executive director as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Florida that claims to be engaged in consulting, investment, and import of Venezuelan products and services. The petitioner states that it is an affiliate of [REDACTED] C.A., located in Venezuela. The beneficiary was initially granted a one-year period of stay in the United States in order to open a new office, and the petitioner now seeks to employ the beneficiary for three additional years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner's representative asserts that the director's decision was based on an incorrect application of law, and did not properly consider the evidence submitted by the petitioner. The petitioner's representative further alleges that the director placed undue emphasis on the small size of the petitioner's staff and failed to fully consider the petitioner's descriptions of the beneficiary's job duties.

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)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

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 nonimmigrant petition was filed on September 28, 2005. The petitioner stated on Form I-129 that the beneficiary would continue to serve as president of the three-person office, and described his proposed duties as the following:

Design and implement short and long term strategies for the organization. Complete management and financial responsibilities, power to hire and terminate employment, serve as legal advisor and business consultants [sic] to our [V]enezuelan clients. Responsible for running day to day operations during the first three years of the company.

The petitioner submitted a copy of its Florida Form UCT-6, Employer's Quarterly Report, for the second quarter of 2005, which confirmed the employment of the beneficiary and two part-time employees who each earned a monthly salary of \$500.

On October 24, 2005, the director issued a request for additional evidence to establish that the beneficiary would be employed in a primarily managerial or executive capacity. Specifically, the director instructed the petitioner to submit a definitive statement describing the beneficiary's U.S. employment, including his position title, a list of all duties, the percentage of time spent on each duty, and the number of subordinate managers/supervisors or other employees who report directly to the beneficiary, along with a brief description of their job titles, educational background and duties. The director also asked the petitioner to indicate whether the beneficiary functions at a senior level within the corporation, and to specify who provides the product sales/services or produces the product of the business. In addition, the director requested a copy of the petitioner's organizational chart and payroll records for the period October 1, 2004 through October 1, 2005.

In a response dated January 8, 2006, the petitioner stated that the beneficiary serves as the beneficiary's vice-president and noted that the position is equivalent to a chief executive officer, at the top of the company's hierarchy. The petitioner provided the following description of the beneficiary's duties:

- Responsible for delivering leadership and support of his team on issues such as management and direction of the daily activities and investments of the business with an emphasis on implementing the operating policies, making sure that the organizational leadership and its strategic plan meet and exceed the corporation's goals. 12 hours/week – 30%
- Oversee and direct all personnel matters such as the selection, placement and supervision of all departmental staff with emphasis in retaining a top level management team capable of meeting and exceeding goals for new sales and renewal revenue for successful client's consulting projects. Authority to hire, fire all levels of personnel. 8 hours/week – 20%
- Work in tandem with the senior management team in their areas of expertise encompassing all aspects of client service, and new business development, hence, promoting the company's growth sales force, including expansion into new geographic markets, to achieve or exceed budget. 8 hours/week – 20%
- Ensure that [the petitioner] keeps being a growing, profitable, client focused firm on the forefront of innovation in the global consulting market in the U.S. implementing sales and marketing strategies and campaigns to generate new business sales and increase renewal sales. Ultimate responsible [sic] for company's P&L. 8 hours/week – 20%
- Responsible for the company's overall operations, business affairs and expansion into new and targeted areas. Represent the company before all authorities at a local, State or Federal level in all issues pertaining to the business (legal, tax, regulating bodies and commissions). 4 hours/week – 10%

The petitioner submitted an organizational chart which depicts the beneficiary as vice-president, reporting to the company president. The chart shows that the beneficiary supervises a finance department manager and an accounts department manager, who in turn supervises a sales representative, a sales assistant, and "independent contractors." The petitioner indicated that the sales representative and sales assistant were hired in November 2005, after the instant petition was filed. As noted by the director, staff hired by the petitioner after the date of filing will not be considered in determining whether the beneficiary will be employed in a managerial or executive capacity. 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. 1978).

The petitioner provided the following description for the position of accounts department manager, who is also referred to as "accounts department vice president":

In this position Ms. [REDACTED] will lead all aspects of current client's needs. She is responsible to look forward and research the market conditions in the local, regional or

national areas to determine potential sales of a product or service. She may gather information on competitors, prices, sales, and methods of marketing and distribution. Further, she may use survey results 10 [sic] create a marketing campaign bases [sic] on regional preferences and buying habits. Developing and prioritizing opportunities for new business within strategic or project parameters; oversight of client's consulting activities across all internal departments; and managing deadlines; budget forecasting; cost estimating; generating billing reports, and approving monthly billing. She is also responsible for overseeing the correct data entering of purchase orders into the system, and making sure that all clerical duties are correctly performed by her team to keep appropriate records of all of the client's business with [REDACTED]

The petitioner provided the following description for its finance department manager, who is also referred to as "finance and administration vice president":

In this position Mrs. [REDACTED] is responsible for the supervision and coordination of activities for management support. Performs a general management function that may include: Account Receivables; Account Payables; supervise daily program planning and evaluation; determine goals, objectives and resource allocation and requirements for activities; select, train, and evaluate professional and administrative support personnel; provide planning and management analysis services. Be the liaison with Pestano & Associates PA.

The petitioner's payroll records and quarterly wage reports confirmed that both employees continued to be employed on a part-time basis at a salary of \$500 per month at the time the petition was filed. In response to the director's request as to who provides the company's product sales/services or produces the product of the business, the petitioner explained as follows:

Depending on the client's consulting needs, one or more departments within [the petitioner] may need to join together to create, design and deliver the type of services that the customer requires.

Usually the Account Department Manager meets with the client to determine its needs and expectations, and provides the Vice-President with a brief as to the required services. Later the Vice-President and the Account Manager design the project and meet with the client to set up the timeline.

The director denied the petition on April 13, 2006, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director found the petitioner's description of the beneficiary's duties to be insufficient to establish that the beneficiary would be employed in an executive capacity, noting that the description was "not supported by documentary evidence, and does not provide sufficient information regarding the direction of the management of the petitioner." The director concluded that, notwithstanding the job titles of the beneficiary's subordinates, the petitioner had not established that the two part-time employees supervised by

the beneficiary are employed in managerial, professional or supervisory positions. The director determined that given the current structure of the company, the beneficiary would perform the day-to-day services of the organization, rather than perform primarily managerial or executive duties.

On appeal, the petitioner's representative asserts that the director's decision "was based on an incorrect application of the law by not properly considering the evidence submitted by the Petitioner." The petitioner's representative asserts that the beneficiary is employed in a primarily managerial or executive capacity as his duties "are in agreement with the job description of an Executive, and he is not involved in the day-to-day operations of the business." Specifically, the petitioner's representative states that the beneficiary "is responsible for the entire operation of the company," "has the authority and has established goals and policies for the company," "exercises wide latitude in discretionary decision-making, and only reports to the President of the company."

The petitioner's representative further emphasizes the beneficiary's authority, noting that he made the decision to "slow down the operations and take a 'cautious wait and see approach' resulting in slower growth than previously forecasted for the U.S. company." The petitioner's representative asserts that both of the beneficiary's subordinates, while employed on a part-time basis, are professionals who work with minimal supervision from the beneficiary. In addition, the representative asserts that the company's continued growth and success is established by evidence that the company hired additional employees soon after the petition was filed, and by the company's increased revenues, as indicated on the 2005 corporate tax return.

In support of the appeal, the petitioner submits, in part: copies of resumes and educational credentials for the company's accounts department manager and finance department manager; letters from five companies, each of which claims to have a subcontractor relationship with the petitioner "by giving support and technical advise to its customers"; and, its 2005 IRS Form 1120, U.S. Corporation Income Tax Return, showing gross receipts of \$90,932.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity under the extended petition. 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.* In addition, the definitions of executive and managerial capacity 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 functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The petitioner claims that the beneficiary qualifies as a manager or executive because he occupies the highest-level position within the company, manages its employees, and is responsible for expansion of the business. However, the fact that an individual has an executive job title and exercises discretion over a company's operations does not necessarily establish eligibility for classification as an intracompany transferee in a

managerial or executive capacity within the meaning of section 101(a)(44) of the Act. The actual duties themselves 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 record does not establish that a majority of the beneficiary's time has been or will be primarily directing the management of the organization. The petitioner's initial description of the beneficiary's duties indicated that he is personally responsible for serving as a legal advisor and business consultant to the petitioner's clients. Since the petitioner claims to be engaged in the provision of business consulting services to the restaurant industry, the duties described suggested that the beneficiary performs both managerial duties associated with overseeing the day-to-day operations, yet also personally provides the services of the business. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Accordingly, the director requested that the petitioner clarify the beneficiary's duties by providing a comprehensive job description of his position. However, the petitioner's response did not assist in clarifying the nature of the beneficiary's duties, or clarify how the beneficiary's time is allocated among managerial and non-managerial tasks. For example, the petitioner indicated that the beneficiary devotes the largest percentage of his time to "delivering leadership and support to his team on issues such as management and direction of the daily activities and investments." However, the petitioner did not clarify what specific "activities" and "investments" the beneficiary "leads," the nature of the "support" he provides, or provide an adequate explanation of why leadership of his two part-time subordinates, who purportedly work with minimal supervision, requires such a large portion of his time. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner indicated that the beneficiary devotes an additional 20 percent of his time to working "in tandem" with his senior management team in their areas of expertise encompassing all aspects of client service and new business development." However, the petitioner does not specifically define the beneficiary's role with respect to providing client services or clearly indicate who on its staff is responsible for delivery of the company's consulting services. As noted above, the petitioner initially indicated that the beneficiary himself serves as a consultant and legal advisor to the petitioner's clients, and in response to the request for evidence, suggested that the beneficiary merely leads such activities through the supervision of lower-level workers. The initial description appeared to have the beneficiary doing more of the actual work, while the second iteration of the job has the beneficiary managing more of the actual work done in the petitioner's operation. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

Finally, the petitioner indicated that the beneficiary devotes 20 percent of his time to implement sales and marketing strategies and campaigns to generate sales. However, at the time the petition was filed, the petitioner did not employ the sales representative or sales assistant, and the petitioner has not clarified who on the petitioner's staff was responsible for marketing the petitioner's services, if not the beneficiary. The beneficiary's actual duties in the areas of sales and marketing have not been clearly described. 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. Again, the actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

As noted above, the petitioner's initial description of the beneficiary's duties indicated that he is personally responsible for delivering consulting services to the petitioner's clients, and a review of the employment background of the petitioner's three employees confirms that the beneficiary is the only employee of the company with a professional background in the restaurant business, the industry targeted by the petitioning company. When specifically instructed by the director to explain who provides the petitioner's services, the petitioner provided a vague response, noting that it "depend[s] on the client's consulting needs" and that "one or more departments may need to join together to create, design and deliver the type of services that the customer requires." The petitioner's "departments" consist of two part-time employees, one of whom is claimed to be responsible only for the petitioner's own financial and administrative functions, rather than client services. The accounts department manager, who works on a part-time basis, is claimed to perform a wide variety of duties including market research, data collection and surveying, creation of marketing, budget forecasting, generating billing reports, approving monthly billing, "oversight of client's consulting activities across all internal departments," and "making sure that all clerical duties are correctly performed by her team." Again, the petitioner did not specify to what "internal departments" it was referring, nor does the record establish that the account department manager supervises a "team" to perform clerical duties. Similarly, the finance manager is described as selecting, training and evaluating professional and administrative support personnel," yet, she is not claimed to supervise any employees. Finally, the AAO notes that while the petitioner indicates that Carmen Hernandez serves as the petitioner's accounts department manager, there are several documents in the record which are signed by Ms. Hernandez in the capacity of company president. 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). Overall, the job descriptions submitted do not appear to comport with the size or type of business operated by the petitioner, and it is thus unclear how responsibilities are actually divided among the petitioner's three employees.

On appeal, the petitioner claims for the first time to utilize the services of independent contractors to perform services on behalf of the petitioner's clients. However, the only evidence submitted in support of this claim are letters from five companies who claim to give "support and technical advice" to the petitioner's customers as subcontractors. The petitioner has not provided evidence of payments made to these subcontractors, nor described the nature and scope of the services they provide. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, the AAO notes that two of the companies claiming to be subcontractors

submitted letters in support of the initial petition in which they claimed to be customers of the petitioning company, and evidence in the record indicates that the petitioner has invoiced these companies for consulting services. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Again, 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. *Id.* at 591. The petitioner has not established that subordinate employees or independent contractors will relieve the beneficiary from primarily providing the petitioner's services.

Although the beneficiary is not required to supervise personnel, if it is claimed that he is employed in a managerial capacity based on his supervision of personnel, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. The petitioner claims that its finance department manager and account department manager are professionals.

In evaluating whether the beneficiary manages professional employees, the AAO 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, the AAO 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. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the bookkeeping and administrative work of the finance department manager, who is among the beneficiary's subordinates. Furthermore, although the petitioner has given both of the beneficiary's subordinates managerial job titles, The petitioner has not shown that either of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Thus, the petitioner has not established that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of

approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

At the time of filing, the petitioner was a one-year-old company that claimed to be engaged in providing consulting services to clients in the restaurant industry. The petitioner claimed to employ the beneficiary as its "executive director" or vice-president, and two part-time managers. While company size cannot be the sole basis for denying a petition, that element can nevertheless be considered, particularly in light of other such pertinent factors as the nature of the petitioner's business, which, together, can be used as indicators which help determine whether a beneficiary can remain focused on managerial or executive duties or whether that person is needed, in large part to assist in the company's day-to-day operations. The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. The record does not demonstrate that the beneficiary has a sufficient number of employees in the United States employed full-time who could market, sell and provide consulting services on behalf of the petitioner's clients. At most, it appears that the beneficiary's subordinates would relieve the beneficiary from performing administrative and financial tasks. The petitioner's general description of the beneficiary's duties and the lack of sufficient full-time personnel in the United States to perform the petitioner's client-based tasks, are insufficient to establish that the beneficiary will primarily perform managerial or executive tasks.

Furthermore, as discussed above, the petitioner initially indicated that the beneficiary himself provides services to the petitioner's clients, and he is the only employee with a background in the restaurant industry served by the U.S. company. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as vice-president and two part-time managerial employees. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

As noted above, the petitioner submitted evidence that it hired additional personnel subsequent to the filing of the petition. The AAO is not required to consider evidence of hiring that occurred subsequent to the filing of the petition. 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. 1978). Further, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. While the beneficiary may have achieved significant accomplishments toward establishing the petitioner's operations in the United States, the petitioner has not

shown that it has reached the point that he will be employed in a primarily managerial or executive capacity as of the date this petition was filed. For this reason the appeal will be dismissed.

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.