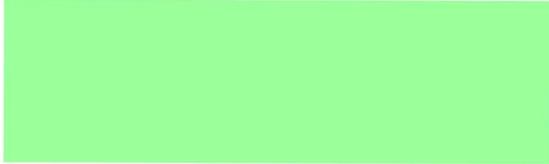




U.S. Citizenship
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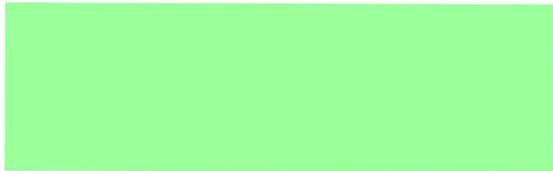


DATE: **DEC 01 2014** OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under 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, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the beneficiary's status as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Virginia limited liability company established in [REDACTED] states that it provides import/export services. The petitioner claims to be a subsidiary of [REDACTED] located in Mongolia. The beneficiary was previously approved for L-1A classification for one year in order to open a new office in the United States and the petitioner now seeks to extend the beneficiary's employment in the position of operations manager.

The director denied the petition, concluding that the petitioner failed to establish: (1) that it was doing business for the previous year; and (2) that the beneficiary is employed in a qualifying managerial or executive capacity.

The petitioner filed the instant appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the director overlooked evidence establishing that the petitioner has been doing business in the United States. Further, the petitioner asserts that the director placed undue emphasis on the petitioner's staffing levels in determining that it would not employ the beneficiary in a qualifying managerial or executive capacity, and failed to take into account the beneficiary's duties and the functional support she receives from foreign-based staff.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (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.

II. Issues on Appeal

A. Employment in a managerial or executive capacity

The first issue to be addressed is whether the petitioner established that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity under the extended petition.

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

1. Facts

The petitioner filed the Form I-129 to extend the beneficiary's L-1A status on December 11, 2013. The petitioner indicated on the Form I-129 that operates an import/export business with three employees.

The Form I-129 indicates that the beneficiary worked as operations manager for the U.S. entity since 2013. The petition indicates that "[the beneficiary] provides all necessary technical and daily operations of US entity which buys, sells and ships company products to the US and all product movement to Mongolia," and lists the beneficiary's proposed duties as:

- Supervises both employees and contract vendors [sic] managers and technical support personnel.
- Is responsible for all day to day decisions of the company and all operations including supervising purchases, export/import rules and regulations.

- Supervises contract staff for assurance of compliance of all federal, state, and local regulations for import and export.
- Is the last approval [*sic*] for all import and export broker exchange.
- Manages all financial operations, personnel decisions and strategic technology required.

(Bullets added)

In a letter dated December 9, 2013, the petitioner further described the beneficiary's duties as follows:

The beneficiary . . . makes all hiring and discharge decisions, implements all organizational policies and goals, directs outsource company such as, but not limited to, custom brokers, freight forwarders, and regulatory programs for the import and export programs. She is in charge of strategic planning and market analysis to determine what products should be imported to the United States and/or Mongolia. She reports directly to the CEO of the parent company.

The petitioner submitted an office lease indicating that the rented office space includes a receptionist, incoming mail handling, and janitorial services. The petitioner also submitted a customer supplier agreement with [REDACTED] which indicates that it sought to have [REDACTED] provide "procurement, sourcing, management and purchasing services" to import American food and consumable goods to Mongolia. The agreement indicates that [REDACTED] "shall obtain from suppliers, vendors, and producers of products and shall offer for resale to [the petitioner] via export to Mongolia." The agreement also states that the petitioner "shall be responsible for its own freight, logistics, [and] shipping and handling of their own goods," but "may request [REDACTED] and its suppliers and vendors to assist on shipping and handling of [the petitioner's] containers."

The petitioner described the beneficiary's main duties and responsibilities as:

1. To manage the subsidiary staff directed to fulfill the plans related to internal organization, business and financial operations, marketing and profitability and ensure normal process of daily activity;
2. To procure the company's import, marketing, and sales activities with general and professional management and take control on them;
3. To take control, instruct, and coordinate on trade, sales and service quality, process of procedure and the workers' productivity.

The petitioner also provided the following job description:

1. To make plans of the subsidiary's functions and objectives and manage the activities.
2. To work out jointly with the managers and accountants under her subordination and approve the strategic, marketing, sales, and profit plans as well as short-term plans and organize measures to implement the plans.
3. To draw conclusions in current status of goods sales and efficiency to make decisions regarding directions of further working.
4. On the representation of the company, to hold relationships with foreign and domestic counterparts and business partners, governmental and inspection organizations to resolve current matters.
5. To make decisions in regard to labor relationship including investigation of human resources, recruiting or dismissal employees, make labor agreements with employees, pay salaries, wages, bonuses and benefits, and etc. according to the stipulations in Labour code of the named subsidiary.
6. To put the pursuance of relative laws and regulations and the performance of the company's rules and directives by the overall staff under control and give conclusions on their work performance. Should any employee causes [*sic*] violation or shortage to impose disciplinary penalties or liabilities toward assets.
7. To ensure the efficient and economized usage of the company's assets.
8. To be fully responsible for the subsidiary's security and guarding safe operations as well as ensure the procurement of operations utility supply/heating, illumination, energy and water/ and performance of the service standards.
9. To take control on financial performance and sign for and appropriate funds for external payments, customs duties and tax payments and other current expenditures according to the annual or monthly approved budgets.
10. To take control on the performance and responding of the responsible persons regarding to the issues or comments proposed by the higher authorities, overseas partners or domestic clients based on the files register to take appropriate measures.

The initial evidence included copies of the petitioner's 2013 and the updated 2014 business plans, which state: "At a minimum, [the petitioner] will have [a] general manager, sales manager, secretary, and sales representative. Based on its performance and opening additional locations, [the petitioner] will hire additional employees and contractors."

The payroll documents provided for 2013 indicate that the petitioner employed the beneficiary and one additional employee in July, August, and October; and employed only the beneficiary in September.

The director issued a request for additional evidence ("RFE") informing the petitioner that the evidence was insufficient to meet the requirements for a new office extension at 8 C.F.R. § 214.2(l)(14)(ii). The director explained that the provided statement describing the beneficiary's duties and business plans were insufficient to meet the requirement that the petitioner submit a statement describing the beneficiary's duties for the previous year and those to be performed under the extended petition. The director informed the petitioner that it may submit a revised statement and any evidence necessary to meet the requirement. The director also informed the petitioner that the statement describing the staffing of the operation was insufficient. The director acknowledged the submitted payroll records, but explained that the evidence failed to elaborate on the number and type of employees, their duties, or their annual salaries. The director suggested that the petitioner submit: a detailed statement listing the number of employees and types of positions; its state Quarterly Wage Reports for all employees for the last four quarters; its IRS Form W-2s and W-3 showing wages paid in the past year; and a current organization chart showing the petitioner's organizational structure including names, job titles, summaries of duties, and salaries.

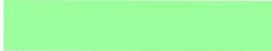
In response to the RFE, the petitioner submitted IRS Form W-2s for three employees; IRS Form 941 for the fourth quarter of 2013; a Virginia employer quarterly tax report for the fourth quarter of 2013; a letter describing the beneficiary's current position; and an abstract of a letter describing the beneficiary's position, duties, and responsibilities. The tax documents indicate that the beneficiary and one additional employee worked for the petitioner in the fourth quarter of 2013.

The petitioner also submitted a letter describing the beneficiary's duties as follows:

[The beneficiary's] duties include but are not limited to the overall management of the United States company. These duties include such things as creation of the sales department, organizing and overseeing the financial aspects of the company, hiring and firing of employees of the company, ensuring the quality of products both to be imported and to be exported and to arrange for this purchase and/or shipment of all products as required. She is in complete charge of all financial documents, financial records and payment of all incurred expenses for both the maintenance of the office in the transshipment of goods.

The letter also described the job duties of the general sales manager subordinate to the beneficiary as organizing and developing a sales department wherein goods may be purchased and/or sold, hiring and firing of sales personnel based upon a percentage of representation basis, and the maintenance of all sales figures and financial directives. The general sales manager reports directly to the beneficiary.

A document described as a "letter abstract" states that within the first year the petitioner expects to employ a secretary, general manager, and sales manager. The abstract indicates that the beneficiary will be managing a subordinate staff of professional and managerial personnel. The abstract also includes position descriptions for positions that the petitioner intends to create after the beneficiary's initial year in the United States. The



positions include: head of administration department, head of human resources department, and head of public relations department.

The director ultimately denied the petition finding that the beneficiary has not been and will not be employed in a managerial or executive capacity. The director stated that the record does not demonstrate that the beneficiary functions at a senior level within an organization hierarchy or that the beneficiary is managing a subordinate staff of professional, managerial, or supervisory personnel who relieve her from primarily performing non-qualifying duties. Rather, the director concluded that the services offered by the organization are more likely than not performed by the beneficiary.

On appeal, the petitioner asserts that the beneficiary has been and will be employed in a primarily managerial or executive capacity. The petitioner states that "the director placed undue emphasis on the petitioner's small staff size and failed to fully consider the beneficiary's duties and extensive management of and functional support by foreign-based staff." The petitioner cites an unpublished AAO decision in support of its claim that even the sole employee of a firm may be classified as an executive or manager. The petitioner further asserts that the beneficiary's role qualifies as either managerial or executive as she is clearly managing the organization, directing all subordinate staff, exercising authority to hire and fire employees, establishing goals and policies, and receiving only general direction from the parent company.

In support of the appeal, the petitioner submits: IRS Form 941 for the first quarter of 2014 showing it employed four individuals and paid a total of \$35,000 in wages; the Virginia quarterly tax return from the first quarter of 2014 showing the petitioner had three employees in January and four employees in February and March; and education credentials for [redacted]. The petitioner explained that one employee [redacted] left the company at the end of 2013 and lists the beneficiary's current subordinates as:

- [redacted] BS Info Tech Head of Sales, Market Research
- [redacted] BS Econ/MBA Head of HR/Finance
- [redacted] BA in Art Head of Public Relations

2. 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 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 in either an executive or a managerial capacity. *Id.* 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 functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Although the petitioner provided a lengthy position description, it contains several vague duties that suggest the beneficiary's level of authority, but do not provide insight into her actual day-to-day activities. For example, the position description states that the beneficiary: controls performance; is in charge of strategic planning; ensures the efficient usage of the company's assets; draws conclusions about current sales and efficiency; plans functions and objectives; manages activities; has the last approval for all import and export exchanges; and plans and develops organization polices and goals. Without further information about the activities entailed in the performance of these broadly described duties, it is impossible to determine whether the duties are managerial or executive in nature. 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 her 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).

Additionally, the position description includes several duties that do not typically qualify as managerial or executive duties. The petitioner states that the beneficiary's duties include procuring the company's import, marketing, and sales activities; coordinating trade, sales, and service quality; preparing financial status reports and status performance reports; paying all incurred expenses for both the maintenance of the office and the shipment of goods; arranging for the purchase and/or shipment of all products; and ensuring the procurement of utilities for the operations. The petitioner has not demonstrated that these duties are more than the routine administrative, financial, sales, and marketing activities required to operate the company, nor has it indicated how much time the beneficiary allocates to each of these non-managerial duties. While performing non-qualifying tasks necessary to produce a product or provide a service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act; see also *Brazil Quality Stones, Inc. v. Chertoff*, 531, F.3d 1063, 1069-70 (9th Cir. 2008). Here the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. Without a more detailed position description distinguishing the qualifying and non-qualifying duties and a breakdown of the amount of time the beneficiary spends performing each duty, the record does not support a finding that the beneficiary primarily performs managerial or executive duties.

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 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 petitioner's business, and any other factors that will contribute to a comprehensive understanding of a beneficiary's actual duties and role in a business.

The position description contains several duties that involve the beneficiary's oversight over subordinate staff. The position description indicates that the beneficiary "manage[s] the subordinate staff"; "makes all hiring and discharge decisions"; "work[s]...with the managers and accountants under her subordination"; "supervises both employees and contract vendors[,] managers[,] and technical support personnel"; "make[s] decisions in regard to labor relationship[s]"; and implement the company's rules and directives to the staff". The quarterly tax returns indicate that the beneficiary had a single subordinate employee at the time the petition was filed.

The petitioner claims that the beneficiary supervises the work of contracted vendors; however, the petitioner failed to provide evidence identifying any contracted employees, describing the work performed by any contracted employees, or demonstrating the beneficiary's authority over any contracted employees. Without a clear description and evidence of the work performed by contractors to support the beneficiary's managerial or executive position, and evidence of the beneficiary's oversight of this work, the petitioner has not established whether or to what extent contractors relieve the beneficiary from performing non-managerial tasks. 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)).

Although the petitioner submits tax documentation indicating that it employed three individuals as of January 2014, 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 based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r. 1971). Accordingly, we will not consider evidence of new employees hired subsequent to the filing of the petition.

Further, there is no evidence that such employees were hired prior to the expiration of the beneficiary's initial one-year new office approval. In fact, in a letter dated March 4, 2014, submitted in response to the RFE, the petitioner's former counsel stated: "The only position that has, to date, been filled is for the Head of the Sales Department." The letter indicated that the position was held by [REDACTED] as of that date. The petitioner now claims that it had a total of four employees as of March 2014 and that Ms. [REDACTED] left the company in 2013. 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. 582, 591-92 (BIA 1988). The petitioner has not explained this discrepancy or offered additional evidence with respect to its staffing at the end of its initial year of operation.

Nevertheless, the evidence confirms that the beneficiary had one subordinate employee as of December 2013 when the petition was filed. 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). Although the beneficiary is not required to supervise personnel, if it is claimed that the beneficiary's duties involve the supervision of employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

The petitioner provided a bachelor's degree in accounting for an individual identified as the beneficiary's subordinate general sales manager. 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'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner provided a minimal position description for the beneficiary's subordinate employee. Due to the lack of evidence regarding the duties required of the position, the petitioner failed to establish that a bachelor's degree is required of the beneficiary's subordinate. Further, the petitioner indicates that this employee left the company while the petition was pending adjudication. The petitioner provided evidence that its claimed Head of HR and Finance has a Master of business administration, but did establish that this employee was working for the company at the time of filing or at the end of the first year in operation. Accordingly, the record does not support a finding that the beneficiary supervises subordinate professionals.

Further, we note that the job titles assigned to all current and recently-hired subordinates suggest managerial or supervisory positions. However, the evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

In the present matter, upon review of the totality of the record, it is reasonable to conclude that the beneficiary and her subordinate perform the actual day-to-day tasks of operating the business. The petitioner has not established that the beneficiary has staff to relieve her from performing non-qualifying duties so that she may primarily engage in managerial duties.

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, while the petitioner's description of the beneficiary's duties suggests that she has the appropriate level of authority, the petitioner failed to describe her day-to-day duties and did not demonstrate that she would allocate her time primarily to the broad goals and policies of the organization at its current stage of development. The evidence does not support a finding that the beneficiary is employed in an executive capacity.

The petitioner further refers to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Further, the petitioner asserts that the facts of this matter are comparable to the cited matter because the beneficiary is supported by employees who are not on the petitioner's payroll. Specifically, the petitioner states that the director "failed to take into account the extensive support given by the professional staff at the Mongolian parent company through the use of the Internet." The petitioner offers no further information or evidence regarding the role of the foreign entity's staff in the day-to-day operation of the U.S. business and in fact mentions such staff for the first time on appeal. Again, 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)). This unsupported assertion is insufficient to establish that the foreign entity's staff relieves the beneficiary from performing the petitioner's non-managerial functions.

Finally, we acknowledge the petitioner's contention that the director placed undue emphasis on the petitioner's size and staffing levels in determining whether the beneficiary would be employed in a qualifying managerial or executive capacity. The petitioner 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). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Further, in the present matter, the regulations provide evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D).¹ The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the

¹ Following the enactment of section 101(a)(44)(C) of the Act in 1990, the former Immigration and Naturalization Service (INS) recognized that that managerial capacity could not be determined based on staffing size alone and deleted reference to "size and staffing levels" at 8 C.F.R. § 214.2(l)(3)(v)(C)(3) (1990), setting out the evidentiary requirements

"new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

For the foregoing reasons, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

B. Doing Business

The next issue addressed by the director is whether the petitioner established that the United States entity has been doing business for the previous year. The term "doing business" means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii)(H).

The regulation at 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 establish the new office. At the time the petitioner seeks an extension of the new office petition, the regulation at 8 C.F.R. § 214.2(l)(14)(ii)(B) requires the petitioner to demonstrate that it has been doing business for the previous year as necessary to support the beneficiary primarily in an executive or managerial capacity. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year to support the beneficiary's stated role, the beneficiary is ineligible for an extension.

1. Facts

The record shows that the beneficiary's initial petition was approved for one year commencing on January 17, 2013 and that she was first admitted in L-1A status on February 26, 2013.

The initial evidence of the petitioner's U.S. business operations included: a lease agreement for office space starting October 1, 2013; a service agreement with [REDACTED] signed on August 6, 2013; a receipt dated August 16, 2013 for goods purchased by [REDACTED] and billed to the petitioner with corresponding

for initial new office petitions. See 56 Fed. Reg. 61111, 61114 (Dec. 2, 1991). However, the INS chose to maintain the review of the new office's staffing, among other criteria, at the time that the new office seeks an extension of the visa petition. See 8 C.F.R. § 214.2(l)(14)(ii)(D).

certificate of origin, pick up/delivery memorandum, delivery order, and invoice; and several bank statements.²

In the RFE, the director informed the petitioner that the evidence provided in support of the petition was insufficient to show that the U.S. company has been doing business. The director specifically noted that the petitioner provided bank statements and one supplier agreement, but stated that the documents were insufficient to establish that the petitioner was engaged in any type of regular business activity. The director suggested that the petitioner submit, *inter alia*, the following: Securities and Exchange Commission Form 10-K; federal or state income tax returns; audited financial statements, including balance sheets and statements of income and expenses describing the U.S. entity's business operations; major sales invoices identifying gross sales amounts reported on the income and expenses statement or on corporate income tax returns; shipper's export declarations; the U.S. entity's U.S. Customs and Border Protection forms, Entry Summary and Customs Bond forms showing business activity; business bank statements showing business activity; vendor, supplier, or customer contracts; third party license agreements; and loan and credit agreements.

In response to the RFE, the petitioner provided: its county business license describing the petitioner as an administrative management and general management consulting service business started on October 1, 2013; its 2013 IRS Form 1065, U.S. Return of Partnership Income showing \$219,500 in gross receipts; a business contract from December 21, 2013 showing that the petitioner purchased bath towels and related items valued at \$55,489.50, with corresponding invoice, dock receipt, and payment check; two purchase orders dated July 19, 2013, for a total of over \$15,000 in goods purchased from vendors "[REDACTED] Export" to be delivered to the foreign entity on August 30, 2013; and bank statements and wire transfer documents from October, November and December 2013.

In denying the petition, the director concluded that the provided documents fail to establish that the petitioner has been conducting business in the United States for the previous year. The director noted that the evidence does not show the regular, systematic, and continuous provision of goods/services, but merely shows that goods were purchased on four separate occasions. The director also noted that the bank records mostly show wire transfers from the parent company or payments to the various utility companies.

On appeal, the petitioner asserts that there is nothing in case law or regulation that places an emphasis on the number of transactions performed over the first year to satisfy the "doing business" requirement and that the director dismissed the evidence of business activity totaling over \$136,000 in exported goods. The petitioner highlights the following transactions:

² The bank statements provided cover the months of November 2012 through September 2013. However, bank statements are missing for February 2013 and July 2013. The petitioner maintained an account balance of less than \$750 between March and June 2013. Based on the bank statements before and after the missing months, at least \$35,000 was withdrawn from the account in February and a deposit of at least \$100,000 was made in July 2013. The first page of the banking document for August 2013 indicates that \$66,055.37 was withdrawn from the account, but the pages containing details about the August withdrawals and deposits are missing.

	August 6, 2013	\$66,055.37
	December 21, 2013	\$55,489.50
	July 19, 2013	\$9,171.94
	July 19, 2013	\$6,550.96

The petitioner asserts that the invoices, shipping documents, and bank statements showing wire transfers are sufficient to establish "the regular, systematic, and continuous provision of goods and/or services." The petitioner also submits a January 2014 dock receipt for the [REDACTED] purchase made on December 21, 2013.

2. Analysis

Upon review, the petitioner has failed to establish that it has been doing business during the previous year as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The petitioner submitted adequate documentation to establish that it completed the claimed purchases from [REDACTED]. However, the petitioner's internally prepared purchase orders issued to [REDACTED] are not supported by any supplementary evidence. Further, the petitioner has documented a total of only two purchase transactions during its first year of operations, one which occurred after the petition was filed. It has not provided any evidence of business activities during the beneficiary's first five months in the United States nor has it explained the lengthy delay in commencing business activities.

While the petitioner's bank statements show two wire transfers from Mongolia in the amount of \$100,000 as payment for "import goods," these payments were received on November 7, 2013 and December 4, 2013. The petitioner has not provided copies of any sales invoices issued to its customers or any evidence of payments for goods received prior to November 2013. The record is simply insufficient to show regular, continuous and systematic business activities over the course of the previous year. For this additional reason, the appeal will be dismissed.

III. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.