



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **MAR 27 2014** OFFICE: VERMONT SERVICE CENTER

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)

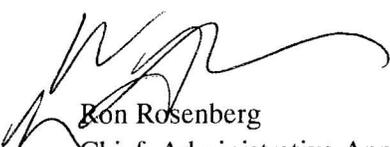
ON BEHALF OF PETITIONER:

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, Vermont Service Center ("the director"), denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, seeking to classify the beneficiary as a 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 Florida corporation, is a marketing and retail shop for men, women, and children's clothing. It claims to be an affiliate of [REDACTED], the beneficiary's foreign employer in Columbia. The beneficiary was previously granted one year in L-1A classification in order to open a new office and the petitioner seeks to extend her status so that she may continue to serve as its General Manager.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will 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, counsel for the petitioner asserts that the evidence of record establishes that the beneficiary will function in a qualifying managerial capacity. Counsel submits a brief in support of the appeal.

### I. The Law

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

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 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.

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.

## II. The Issue on Appeal

The sole issue addressed by the director is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity under the extended petition. The petitioner has consistently stated that the beneficiary will be employed in a managerial capacity.

The petitioner filed the Form I-129 on December 17, 2012. The petitioner indicated that it is a "marketing and commercialization" business for men, women, and children's clothing with five employees and no stated gross annual income. The petitioner states that it currently operates a retail location in Miami Beach, Florida.

The petitioner stated that, the beneficiary, as its General Manager, is responsible for developing, directing, and overseeing the United States operations. She is responsible for the decision making process, purchasing of corporate assets, planning of business objectives to develop organizational policies and strategies, and coordinating functions between divisions and departments as the company continues to grow. The petitioner further described the beneficiary's duties as follows:

- Plan, develop, and establish business policies and objectives for the organization.
- Review activity reports and financial statements to determine progress.
- Direct and coordinate the formulation of financial programs to maximize returns on investment and increase productivity.
- Approve capital investments required for the company's initial and continued operations.
- Plan and develop industrial, labor, and public relations policies designed to improve the company's image and relations with customers, employees, and the communities.
- Evaluate the performance of managerial, professional, and entry-level staff for compliance with established business policies and objectives of the corporation and team contribution as attaining objectives.
- Enter into contracts with domestic and international companies for the importing of company's products required to continue operations in the United States.
- Negotiate, discuss, and enter into agreements and contracts required to complete the start-up phase and continue growing the affiliate's operations in the United States.
- Direct the company's human resources activities, including the approval of human resources plans and activities, the selection of managers and other high-level staff, and the establishment and organization of the company's departments.
- Appoint department head managers and assign or delegate responsibilities to them.

The petitioner explained that the beneficiary directly supervises the Marketing and Sales Manager who is in turn responsible for the Store Supervisor and two Sales Representatives. The petitioner provided position descriptions for these three positions.

In support of the petition, the petitioner provided copies of its current lease, bank statements, a business plan, an organizational chart, Form 941 for 2012: Employer's Quarterly Federal Tax Return for the third quarter of 2012, and payroll documents.

The organizational chart submitted shows the beneficiary as General Manager and the Marketing & Sales Manager reporting to the beneficiary. The organizational chart also shows two consignees reporting indirectly to the Marketing & Sales Manager. The organizational chart further depicts a Store Supervisor directly reporting to the Marketing & Sales Manager and two Sales Representatives who report to the Store Supervisor.

The director issued a request for additional evidence ("RFE") which instructed the petitioner to submit, *inter alia*, the following: (1) a more detailed description of the beneficiary's duties in the United States including percentage of time required to perform the duties; (2) a more detailed description of the petitioner's staff including the job title, summary of duties including percentage of time dedicated to each duty, educational level, and salary for the beneficiary's subordinates; (3) a copy of the Form 941 for 2012: Employer's Quarterly Federal Tax Return for the first, second, third, and fourth quarters of 2012; and (4) evidence establishing the financial status of the United States organization.

The petitioner submitted a letter in response, describing the beneficiary's decision making process and her level of authority. The petitioner provided a list of the beneficiary's duties with percentage breakdown of tasks as follows: (1) analyze documents and proposals as needed, assess and analyze the overall operational plan of the company (10%); provide recommendations regarding investments and cash strategies and approve capital investments (2.5%); identify opportunities for expansion geographically and direct the implementation of these activities (10%); provide vision and leadership in long-term fiscal planning as well as recommendations regarding utilization of short and long term debt (2.5%); oversee preparation of the annual report and annual budget (5%); review the company activity reports including financial statements, budgets, sales reports, and operation reports (10%); direct the company's human resource activities including the approval of plans and activities and the selection of managers (5%); evaluate the performance of subordinate managerial and professional staff (5%); enter into executive service contracts for the supply of services and products (5%); develop a weekly action plan for the company (10%); direct the negotiation process for acquiring goods to be resold (7.5%); establish standards for customer service and investigate complaints (5%); meet with the management team to evaluate progress (10%); handle and resolve management complains, settling disputes, and resolving conflicts (7.5%); other duties including e-mails and responding to calls (5%).

The petitioner provided the name, title, job description, wage, and education for all employees under the beneficiary's supervision. The petitioner provided the requested quarterly wage reports as well as the employee's Forms W-2 for 2012 and employee paystubs from December 2012 to March 2013.

The paystubs for the pay period beginning December 15, 2012 to December 21, 2012, the week in which the instant petition was filed show that the two employees paid are part-time workers. The individual depicted in the position of Store Supervisor on the petitioner's organizational chart was paid for 30 hours of work. The individual listed as one of the two Sales Representatives on the organizational chart was paid for 15 hours of work. The petitioner does not provide evidence that other employees were issued paychecks during the week the petition was filed. The petitioner also provided an "Employee Journal By Check" which shows that the Marketing & Sales Manager was paid a total of \$867 for the month of January 2013, with no specified hourly rate. The petitioner also submitted 2012 Forms W-2 for the Store Supervisor, two Sales Representatives, and the Marketing & Sales Manager. In the initial filing, the second Sales Representative, Beatrix Gonzales, was

paid for work from July 31, 2012 to October 31, 2012. She was issued a Form W-2, but does not appear to have been receiving compensation when the petition was filed.

The director denied the petition finding that the petitioner had not established that the beneficiary will be employed in a managerial or executive capacity. The director noted that the beneficiary's duties as described were non-specific and did not appear to be those typically performed by someone in a managerial or executive position. The director also determined that based on the position descriptions provided, the beneficiary's subordinates were not employed in professional level positions and did not appear to direct or manage further subordinate employees even though they were referred to as managers. The director noted that the petitioner's Form 941, Employer's Quarterly Tax Return, for the fourth quarter of 2012, shows that the business employed only two personnel during the quarter.<sup>1</sup> The director determined, based on the organizational structure and job descriptions, that even after one year of operations the beneficiary would continue to be engaged in the non-managerial, day-to-day operations of the business. Finally, the director determined that the petitioner has insufficient physical premises as the current lease indicates "unspecified" space within the store for commercial sales.

On appeal, counsel asserts that the beneficiary's position is primarily managerial in nature and that the director failed to consider the petitioner's reasonable needs in light of its business activities. Specifically, counsel asserts that the beneficiary's position involves the senior supervision of the organization's employees. Furthermore, counsel contends that the position description is not non-specific, but involves the broad and overall responsibility of the business organization. Counsel further contends that the information submitted regarding the beneficiary's subordinates' educational level is sufficient to establish the qualifications of the subordinate employees. Regarding the petitioner's physical premises, the petitioner asserts that the director applied the 2013 level of employees to the space available under the 2011 lease.

#### **A. Physical Premises.**

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity.

Preliminarily, the AAO observes that the "physical premises" requirement that applies to new offices serves as a safeguard to ensure that a newly established business immediately commences doing business so that it will support a managerial or executive position within one year. *See* 52 FR 5738, 5740 (February 26, 1987). A petitioner is not absolved of the requirement to maintain sufficient physical premises simply because it has been in existence for more than one year. In order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic and continuous manner. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Inherent to that requirement, the petitioner must possess sufficient physical premises to conduct business. In this case, the lack of sufficient business premises and the conflicting evidence of record fail to establish that the petitioner has been and will be doing business in a manner that will support the beneficiary's claimed position.

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<sup>1</sup> The petitioner also submitted its Florida Department of Revenue Employer's Quarterly Report for the fourth quarter of 2012. The petitioner indicates on this report that it employed four personnel in October 2012, four personnel in November 2012, and two personnel in December, 2012, the month the Form I-129 was filed.

The petitioner submitted two leases with its initial petition. The first lease was submitted with the initial new office petition and was valid from September 1, 2011 to May, 2012. The second lease was valid July 28, 2012 and is valid for a 12 month period. The second lease, valid during the time of filing, states that it is for "space" located at [REDACTED]. The lease fails to specify the amount or nature of the "space." The director noted in the denial decision that the space is "within" the store of the company [REDACTED]. On appeal, the petitioner did not dispute the director's interpretation of the shared space.

The director did not deny the petition based on the 2011 level of staffing, but rather found that the petitioner had not provided probative evidence that it had secured sufficient physical premises to house its operations. That is, the petitioner fails to specify the amount of square footage, office space, amount of display area, and whether the leased space is jointly or individually held. Without specifics, the record does not support a finding that the petitioner has secured sufficient physical premises to conduct operations that will support the beneficiary's claimed position.

#### **B. Employment in a Managerial or Executive Position.**

More importantly upon review, and for the additional reasons stated herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity.

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). The fact that the beneficiary manages a business or a component of a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. See 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

The beneficiary's job descriptions submitted in the initial petition and in response to the RFE are insufficient to establish that the beneficiary will be primarily performing managerial duties. Duties such as "analyze documents and proposals as needed," "provide recommendations regarding investments and cash strategies," and "meet with management team to evaluate progress," do not give a clear picture of what the beneficiary would actually be doing on a day-to-day basis as the General Manager of a clothing store. 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).

Furthermore, it is not clear who will be performing the actual duties associated with the claimed managerial tasks to be performed by the beneficiary. Specifically, the petitioner does not identify any employee who will be producing general "documents and proposals," performing "investments and cash strategies," and producing financial statements, tax reports, monthly budgets, operation reports, and cash flow reports.

Rather, it appears that the beneficiary will be tasked with performing the actual duties related to the running of the day-to-day operations 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'r 1988).

A critical analysis of the nature of the petitioner's business undermines counsel's assertion that the subordinate employees relieve the beneficiary from performing non-qualifying duties. Rather, it appears from the record that the only individuals available to perform the day-to-day tasks associated with running a clothing retail store are the beneficiary, a part-time "manager" who works 30 hours per week, and a part-time sales clerk who works 15 hours a week. Therefore, it can only be assumed, and has not been proven otherwise, that the beneficiary is performing all other marketing functions, financials functions, sales functions, and operational functions associated with the business. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude her from functioning in a primarily managerial or executive role. Again, 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. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

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." See 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. See 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See section 101(a)(44)(A)(ii) of the Act.

The record shows that the beneficiary is the only full-time employee available to perform the day-to-day tasks of the retail clothing store. The petitioner's organizational chart shows that the beneficiary supervises the Marketing & Sales Manager who in turn manages the Store Supervisor. The Store Supervisor is responsible for overseeing two subordinate Sales Representatives. The payroll documents submitted in response to the RFE, however, show that only two of those employees were working when the petition was filed; specifically, the Store Supervisor and one of the Sales Representatives. Both of these employees appear to be part-time as of the date the petition was filed. 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 record does not include sufficient probative evidence to establish that the petitioner employed more than the beneficiary and two part-time employees when the petition was filed. Furthermore,

the record does not establish that the individual in the position of Store Supervisor primarily supervises the one part-time subordinate employee.

In addition, the job descriptions for these two employees given in response to the RFE do not support a finding that the positions are professional level in nature. On appeal, counsel for the petitioner states that a number of the beneficiary's subordinates hold professional level degrees. However, when 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 the 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. Here, the petitioner provided evidence that the Store Supervisor holds a diploma in Construction Management. However, the petitioner has not, in fact, established that a bachelor's degree in any of these diverse fields is actually necessary to perform the sales work of the beneficiary's subordinates.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, United States Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict 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). 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 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.

The proposed position of the beneficiary is a General Manager of a retail clothing store that has two part-time employees other than the beneficiary. The petitioner has not demonstrated that the beneficiary, as a personnel manager, will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. See section 101(a)(44)(A)(ii) of the Act. Furthermore, the petitioner has not established that it will employ a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial duties.

Counsel asserts that as the beneficiary will manage the clothing store and the function of the store is sales, the beneficiary is also a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. The petitioner did not articulate the beneficiary's specific duties as a function manager and did not provide a breakdown indicating the amount of time the beneficiary would devote to duties that would clearly demonstrate that she would manage an essential function of the U.S. company. Regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will function at a senior level within the petitioner's organizational hierarchy.

When examining the managerial or executive capacity of a beneficiary, USCIS reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. In the present matter, the totality of the record does not support a conclusion that the beneficiary will manage a function or manage subordinates who are supervisors, managers, or professionals. Instead, the record indicates that the beneficiary and her subordinates will perform the actual day-to-day tasks of providing the petitioning company's retail sales services. The petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial under the statutory definitions.

Based on the foregoing discussion, the petitioner has failed to establish that it will employ the beneficiary in a managerial or executive capacity and the appeal will be dismissed.

The appeal will be dismissed for the above stated reasons. 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.