



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF V-P- USA CORP.

DATE: SEPT. 18, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a parking management and valet parking company, seeks to classify the beneficiary as an immigrant multinational manager or executive. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. 1153(b)(1)(C). The Director, Texas Service Center, denied the petition. The Petitioner filed an appeal, which we initially rejected as improperly filed. We have reopened the matter *sua sponte* in order to consider the merits of the Petitioner’s appeal. *See* 8 C.F.R. § 103.5(a)(5)(ii). The appeal will be dismissed.

The Petitioner states that it is an affiliate of the Beneficiary’s prior employer located in Mexico. It seeks to employ the Beneficiary as its President and CEO.

The Director denied the petition, concluding that the Petitioner did not establish: (1) that it will employ the Beneficiary in a qualifying managerial or executive capacity; and (2) that the foreign entity employed the Beneficiary in a qualifying managerial or executive capacity.

The Petitioner subsequently filed an appeal. On appeal, the Petitioner asserts that the Director did not consider the fact that the Beneficiary is the chief executive and majority owner of both the Petitioner and its Mexican affiliate and overlooked substantial evidence which establishes his executive and managerial role with both companies.

I. THE LAW

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. – An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed

for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

Additionally, the regulations at 8 C.F.R. § 204.5(j)(3)(i) state that the petitioner must provide the following evidence in support of the petition in order to establish eligibility:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. U.S. EMPLOYMENT

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.

A. Facts

The Petitioner filed the Form I-140 on February 26, 2010. It described its business as “Parking management, valet parking, vending” and stated that it has 17 employees and gross annual income of \$400,000.

The Petitioner submitted a signed ETA Form 9089, Application for Permanent Employment Certification which described the Beneficiary’s proposed duties as follows: “As President/CEO he runs the US Company with overall [*sic*] responsibility for its operation and success. Coordinates human resources and financial resources. Negotiates and bids on parking management services.”

(b)(6)

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The Petitioner provided an organizational chart which depicted a total of 15 employees and contractors working under the Beneficiary in the United States. The employees and contractors identified by name included a secretary, two accountants, two attorneys, an operations manager and four parking lot attendants. The chart also lists a valet special event supervisor, and other valet special event staff including an attendant, a part-time attendant, a golf cart shuttle driver and a watchman. None of these workers were identified by name.

The Petitioner's initial evidence included the following documentation: copies of its IRS Form 1120, U.S. Corporation Income Tax Return, for the years 2006 through 2008; copies of its IRS Form 941, Employer's Quarterly Federal Tax Return, for all four quarters of 2008 and the first two quarters of 2009; and advertising materials and invoices related to its valet parking services. The Petitioner also submitted a copy of its lease agreement with [REDACTED] for a parking lot known as ' [REDACTED] ' which had a term of January 1, 2009 through December 31, 2009. The most recent Form 941 submitted showed that the Petitioner paid \$16,166 in salaries and wages to six employees during the second quarter of 2009.

The Director issued a notice of intent to deny (NOID) the petition on September 2, 2010, advising the Petitioner, in part, that the initial evidence did not establish that it would employ the Beneficiary in a qualifying managerial or executive capacity. The Director advised that the Petitioner did not sufficiently describe the Beneficiary's day-to-day duties, the amount of time he will allocate to specific tasks, or the number and types of employees he will supervise. The Director requested a current organizational chart and evidence of wages paid to employees listed on the chart.

In response, the Petitioner provided the following description of the Beneficiary's "daily duties":

- Overseen [*sic*] daily operations, interact with manager(s) / Supervisor(s)
- Making certain that daily reports' information is current and accurate
- Assuring monies are been [*sic*] deposited and recorded correctly
- Be on standby ready to solve an unexpected situation
- Visit the places of service
- Interact with customers "Customer Service-Care Program"
- Revise the correct operational function of the Equipment
- On-Line banking (monitor transactions : Checks, deposits etc)
- Promote the business (word of mouth in the community)
- Purchase on line/on site working supplies (when needed)

The following are done immediately as soon as they arise or when due dates are up:

- Leadership, goal and strategic planning
- Administrative, Financial, Marketing, Sales, Accounting and Legal Strategies
- Business development growth and productivity strategies
- Commercial relationships
- Local and foreign operations

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- Safety policies and procedures
- Commercial Relation with service providers such as Insurance Agent
- Resources management
- Annual budget
- Review and approval of financial and accounting statements
- Evaluation and performance of officers and staff
- Public affairs, relationships with local chambers of commerce, service and charity organizations. . .
- Network with governmental agencies and private entities
- Preside board meetings
- Development and approval of Company Policies
- Negotiation of contracts and agreements
- Business presentation for new opportunities
- Review and approve daily and monthly reports
- Oversee employees' welfare, working conditions
- Purchasing of working and capital equipment
- Customer service and development at the executive level with other business executives or owners

The Petitioner approximated that the Beneficiary allocates his time as follows on an annual basis: 50 percent to business development, growth and operations; 15 percent to development of projects; 10 percent to strategic planning (financing/marketing); 10 percent to customer relationships; 10 percent to "Administrative/Management/Reports" and 5 percent to "Others/unexpected." The Petitioner explained that the position does not have a set schedule, as "the work has to be done and delivered with the highest quality and on time, regardless of any circumstance."

The Petitioner stated that the Beneficiary, as of September 2010, was supervising "20+" internal employees, including an operations manager and cashiers based at the company's paid parking lot and an operations supervisor and operators responsible for valet parking events.

The Petitioner also provided a new organizational chart showing essentially the same structure depicted on the previous chart. The company's accountant, attorney and legal counsel are depicted as external service providers, and the Petitioner explained that the company secretary "recently received her working card" and will be assigned work "as needed." The chart shows a parking operations manager and a valet special events supervisor who report to the Beneficiary. According to the chart, there are four parking lot attendants who are each paid \$15,000 to \$16,500 annually, the parking operations manager is paid \$16,500 to \$18,000 annually, the valet special events supervisor is paid \$25 per hour, and the other valet special event staff are paid \$8.00 per hour. The Petitioner again did not provide the names of the subordinate valet special events staff. The Petitioner provided a description of duties for its external advisors (accountant, attorney, immigration counsel), and for its parking operations and valet operations staff.

The Petitioner's response to the NOID including copies of its IRS Forms 941 for the last two quarters of 2009 and the first two quarters of 2010, along with its Texas Quarterly Wage Report for

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the same time periods. During this time, the number of employees paid in any given month ranged from five employees in August and September 2009 to 20 employees in February 2010, the month in which the petition was filed. The Petitioner had nine employees in January 2010, the month before the petition was filed, and six employees at the end of the second quarter of 2010. The Petitioner did not submit evidence in support of its claim that the Beneficiary supervised “20+” employees in September 2010.

The Petitioner also provided its payroll summary for the period June 1, 2009 through September 11, 2010. During this time, it paid a total of \$105,728 to 39 individuals. Of these, 20 individuals were paid a total of between \$40 and \$200 as “commission.” During the first quarter of 2010, the Petitioner paid a total of 23 employees. Of these, nine individuals earned \$40.00 and were not identified on either organizational chart. It paid an additional six individuals between approximately \$300 and \$600, and none of these individuals were listed on either organizational chart. The Petitioner paid the following wages to employees identified by name on its initial organizational chart during the first quarter of 2010:

- [REDACTED] (operations manager) - \$3,870
- [REDACTED] (parking lot attendant) - \$3,694
- [REDACTED] (parking lot attendant) - \$3,531
- [REDACTED] (parking lot attendant) - \$2,291
- [REDACTED] (parking lot attendant) - \$2,362
- The Beneficiary - \$3,000

Finally, the Petitioner paid \$585 to the individual identified in its subsequent chart as the Valet Special Events Supervisor during the first quarter of 2010. The payroll summary shows that he earns \$7.25 per hour (not \$25.00 per hour as stated on the organizational chart) and worked a total of 424 hours between June 2009 and September 2010.

The Director denied the petition on August 29, 2012, concluding that the Petitioner did not establish that the Beneficiary would be employed in a qualifying managerial or executive capacity. In denying the petition, the Director observed that the Petitioner did not establish that it has a support staff to assist the Beneficiary with many of the day-to-day operations of the business, such as administrative, financial, customer service, sales and marketing, purchasing and other functions. The Director found that the Beneficiary would perform non-managerial duties associated with these areas of the business.

On appeal, the Petitioner emphasizes that the Director “failed to consider that the applicant is the chief executive and majority owner” of the U.S. Company, and contends that it was “illogical” for the Director to conclude that the Beneficiary would allocate more than half of his time to non-executive duties. The Petitioner further asserts that it is not possible to assign meaningful percentages to the Beneficiary’s specific duties “without an impractical and immediately obsolete time and motion study or making stuff up.”

Nevertheless, in support of the appeal the Beneficiary provides a position description indicating that he allocates 50 percent of his time to company development and growth, 20 percent of his time to administrative activities; 10 percent of his time to company performance, 5 percent of his time to off-site project support, 5 percent of his time to “other” duties, and 10 percent of his time to duties “not described specifically.” The Beneficiary lists his duties under each area of responsibility.

B. Analysis

Upon review, and for the reasons discussed herein, the Petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity.

When determining whether a beneficiary will be employed in a managerial or executive capacity, we look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). 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.* A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's 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). We will then consider this information in light of other relevant factors, including (but not limited to) job descriptions of the beneficiary's subordinate employees, the nature of the business conducted, and any other facts that may contribute to a comprehensive understanding of the beneficiary's actual duties and role in a petitioner's organizational hierarchy.

Here, the Petitioner has established that the Beneficiary is the senior employee of the company and spends part of his time performing qualifying managerial or executive duties in his role as CEO with responsibility for the overall operation of the company. However, 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 establish 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).

Therefore, the fact that a beneficiary manages or directs a business does not necessarily establish eligibility for classification as a multinational manager or executive within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be “primarily” of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). While the Beneficiary may exercise discretion over the petitioner's day-to-day operations and possesses the requisite level of authority with respect to discretionary decision-making, the Petitioner has not submitted a complete and detailed position description sufficient to establish that his actual duties, as of the date of filing, would be primarily managerial or executive in nature.

The Beneficiary's duties, as stated in the record, include a combination of qualifying, non-qualifying and poorly defined tasks that, taken together, do not establish that he performs primarily managerial or executive duties. For example, the Petitioner states that the Beneficiary is responsible for on-line banking, purchasing equipment and supplies, making business presentations for new opportunities,

customer service and relationships, procuring equipment and personnel for guests at special events, visiting places of service, and being on standby ready to solve problems as they arise. The Petitioner also stated that the Beneficiary allocates 15 percent of his time to development of projects and the supporting documentation submitted shows that he is responsible for designing and presenting all proposals for potential customers, including feasibility and case studies, logistics plans, layouts, routes and safety controls. The Beneficiary's duty description also includes vague responsibilities such as "Business Development, growth and productivity," that are too broad to categorize as managerial or executive in nature. The Petitioner has not established how any of these duties qualifying as managerial or executive under the statutory definitions and does not clearly show how much of his time is allocated to qualifying duties and how much of his time is spent performing associated with the design, sale and marketing of the company's marketing services, customer communications, purchasing, on-site supervision of parking services, and day-to-day problem-solving and administrative tasks.

Based on the statements provided in the record, we are unable to determine whether the claimed managerial and executive duties constitute the Beneficiary's primary duties, or whether the Beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, the Petitioner's descriptions of the Beneficiary's job duties does not sufficiently establish what proportion of the beneficiary's duties is managerial or executive in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

As noted, beyond the required description of the job duties, we review the totality of the record when examining a beneficiary's claimed managerial or executive capacity, including such factors as the petitioner's organizational structure, the duties of a 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 understanding the beneficiary's role and actual responsibilities.

Here, the Petitioner indicates that the Beneficiary's duties include supervision of a subordinate parking operations manager and a valet special event supervisor. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The Petitioner has documented its regular employment of only one of the Beneficiary's claimed subordinates at the time of filing, specifically, the parking operations manager. The evidence of record is sufficient to show that this employee more likely than not acts as a first-line supervisor to

parking lot attendants/cashiers and shows regular payments to employees of its paid parking lot. However, the Petitioner has not corroborated its claim that it employs the claimed valet parking supervisor at the stated rate of \$25.00 per hour or that it is paying any employees at this rate. 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)).

The Petitioner's payroll evidence suggests that it pays valet parking staff on a per event basis and has variable needs for these employees, but it does not support its assertions that it has a dedicated supervisor who works at all valet parking events. Accordingly, the evidence of record is sufficient to show that the Beneficiary supervises one subordinate supervisor and works with an external accountant and attorney. While the Beneficiary allocates some portion of his time to qualifying supervisory duties, the record does not establish that the Beneficiary is primarily managing a subordinate staff of supervisor, managers or professionals. Accordingly, the record does not establish that the Beneficiary qualifies for the benefit sought as a personnel manager.

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

Here, the Petitioner emphasizes that Beneficiary's role as CEO as evidence of his performance of qualifying executive duties. As discussed, the Petitioner's description of the Beneficiary's duties, considered within the totality of the evidence, does not support a finding that the Beneficiary primarily focuses on the broad goals and policies of the organization rather than on its day-to-day operations.

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).

The Petitioner claimed to have 17 employees at the time of filing and “20+” employees at the time it responded to the NOID; however, a review of its payroll records and quarterly reports shows that many of its employees are intermittent, hired on a per-event basis, and earn minimal wages. The record supports a finding that the Petitioner maintains a dedicated staff of one manager and several attendants for its paid parking garage only. The evidence also shows that the Petitioner hires hourly or commissioned staff for its valet parking projects and events. However, the Petitioner has not established that it employs anyone to design, market and sell its valet parking and event services, to customers, perform day-to-day administrative matters and customer communications associated with these services, or supervise these parking projects. Further, the Petitioner’s description of the Beneficiary’s duties, and supporting evidence such as project proposals, contracts and correspondence, show that the Beneficiary himself is performing these non-managerial and non-executive duties.

Here, given the overly broad breakdown of the Beneficiary’s duties, the prevalence of non-qualifying duties in his position description, and the lack of subordinate staff to perform many essential day-to-day functions of the company, the Petitioner has not established by a preponderance of the evidence that the Beneficiary would be employed in a qualifying managerial or executive capacity. Accordingly, the appeal will be dismissed.

III. FOREIGN EMPLOYMENT

The remaining issue to be addressed is whether the Petitioner established that the Beneficiary was employed by its Mexican affiliate in a qualifying managerial or executive capacity for one year in the three years preceding his admission to the United States.

A. Facts

At the time of filing, the Petitioner stated that the foreign entity also operates a paid parking lot and valet parking business, but it did not provide a description of the duties the Beneficiary performed for the foreign entity prior to his admission to the United States.

The Petitioner provided a current organizational chart for the foreign entity, as well as un-translated payroll tax records from 2009. The organizational chart shows that the foreign entity employs a general director, administrative manager, operations manager, sales manager, and a secretary, as well as parking lot and valet supervisors, two valet parking attendants, four parking lot attendants, and a car wash employee. The Petitioner also provided the foreign entity’s un-translated wage and tax records for July through September 2009 which appear to show that the company had 20 to twenty-two employees during this time.

The Beneficiary stated on his concurrently filed Form G-325A, Biographic Information that he has resided at the same address in Texas since October 2002. USCIS records show that he was initially approved for L-1A status in September 2003 and had been maintaining this status for over six years when the petition was filed. The Beneficiary indicated on the Form G-325A signed in October 2009 that he had worked for the Mexican affiliate from July 1998 until the present time.

In the NOID, the Director advised that Petitioner that it did not submit a description of the Beneficiary's daily duties and the amount of time he spent on specific tasks, his dates of employment, or information regarding the number and types of employees he supervised.

In response, the Petitioner stated that the Beneficiary's daily duties while employed by the foreign entity included the following:

- Leadership, goal and strategic planning
- Administrative, Financial, Marketing, Sales, Accounting and Legal Strategies
- Business development, growth and productivity strategies
- Commercial relationships
- Local and foreign operations
- Safety policies and procedures
- Employee relations
- Resources management
- Annual budget
- Review and approval of financial and accounting statements
- Evaluation and performance of officers and staff
- Public affairs, relationships with local chambers of commerce. . . .
- Network with governmental agencies and private entities
- Preside board meetings
- Development and approval of Company Policies
- Negotiation of contracts and agreements
- Business presentations for new opportunities
- Review and approve daily and monthly reports
- Oversee employees' welfare, working conditions
- Purchasing of working and capital equipment
- Customer service and development at the executive level with other (Business executives and owners)

The Petitioner stated that the Beneficiary supervised "200+/-" employees, including a general director, a "manager (administrative, operations & HR)" supervisors for on-site parking lots and valet service, as well as cashiers, drivers and watchmen. The Petitioner stated that the Beneficiary has been employed by the foreign entity since 1984 and that he allocated 50 percent of his time to the company's development and growth, 20 percent of his time to administrative duties, 10 percent of his time to company performance, 10 percent of his time to customer relationships, five percent of his time on off-site project support and five percent of his time to other, unspecified duties.

The petitioner also submitted a slightly revised organizational chart showing the current structure of the Mexican entity. The chart depicts the general director, administration manager, secretary-assistant, parking lot and valet parking supervisors, parking lot attendants and valet parking attendant and watchman.

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The Director denied the petition, concluding that the Petitioner did not establish that the foreign entity employed the Beneficiary in a qualifying managerial or executive capacity. In denying the petition, the Director found that the Petitioner did not provide specifics regarding what the Beneficiary did on a day-to-day basis. Further, the Director observed that the record did not show that the foreign entity had sufficient personnel to relieve the Beneficiary from duties such as marketing, purchasing, customer networking, public affairs, contract negotiation and other responsibilities attributed to him.

On appeal, the Petitioner asserts that the Director had no basis to conclude that the Beneficiary allocated more than 50 percent of his time to non-qualifying duties, and emphasizes that the Beneficiary is the “owner and full time chief executive” of both companies. The Petitioner submits the foreign entity’s Mexican annual corporate tax return for the years 2010 through 2014, and a statement from the Beneficiary in which he claims that he performs “the same management tasks for my company in Mexico as I do for my company here.” The Beneficiary explains that he continues to oversee the Mexican operations by using mobile radios and is in constant communication with his managers in [REDACTED].

B. Analysis

Upon review, the Petitioner has not established that the Beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity.

The Petitioner has consistently stated that the Beneficiary performs the same duties in the United States as he did in Mexico and that the Petitioner and the Mexican company operate the same type of business with similar staffing levels and a similar organizational structure.¹

As with the U.S. position, the Petitioner’s description of the Beneficiary’s duties included both managerial and administrative or operational tasks, but did not adequately quantify the time the Beneficiary spent on them. This lack of specificity is important because several of the Beneficiary’s daily tasks, as discussed in the previous section, did not fall directly under traditional managerial duties or executive duties as defined in the statute. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of a manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Again, the fact that a beneficiary manages or directs a business does not necessarily establish eligibility for classification as a multinational manager or executive within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be “primarily” of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44).

Moreover, we are unable to review the position description for the Beneficiary’s position in Mexico within the context of the totality of the evidence because the Petitioner provided evidence related to

¹ Although the Petitioner stated in response to the NOID that the Beneficiary supervises “200+” employees in Mexico, the submitted foreign organizational chart and Mexican payroll records suggest that this number is actually “20+.”

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the Mexican entity's current operations only. In order to determine whether the Beneficiary qualifies for the benefit sought, we need to review evidence of his duties, and documentation of the foreign entity's staffing levels and organizational structure, during the three year period preceding his admission to the United States in 2003. While the Petitioner states that the foreign entity currently employs a general director, administration manager, operations manager, as well as supervisors for its valet parking and parking lot operations, it has not provided any evidence pertaining to the relevant time period. 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)).

As the record does not contain evidence of the foreign entity's staffing levels and organizational structure during the relevant time period, and as the Petitioner's description of the Beneficiary's duties with the foreign entity alone is insufficient to establish his eligibility, the Petitioner has not established by a preponderance of the evidence that the Beneficiary was employed in a managerial or executive capacity in Mexico. For this additional reason, the appeal will be dismissed.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative 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.

Cite as *Matter of V-P-U-, Corp.*, ID# 13828 (AAO Sept. 18, 2015)