



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

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

MATTER OF L-S-, LLC

DATE: MAY 11, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an import and export business, seeks to permanently employ the Beneficiary as its chief executive officer (CEO) under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director, Nebraska Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the Beneficiary will be employed in the United States in a managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner submits copies of previously submitted evidence, asserts that the Director erred by misreading or disregarding evidence, and claims that the Beneficiary will be employed in a “purely executive capacity.”

Upon *de novo* review, we will dismiss the appeal.

**I. LEGAL FRAMEWORK**

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 the alien 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.

(b)(6)

*Matter of L-S-, LLC*

A United States employer may file Form I-140, Immigrant Petition for Alien Worker, to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. A labor certification is not required for this classification.

## II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that the Beneficiary will be employed in a qualifying managerial or executive capacity. The Petitioner does not claim that the Beneficiary will be employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary will be employed an executive capacity.

The regulation at 8 C.F.R. § 204.5(j)(5) requires the Petitioner to submit a statement which indicates that the Beneficiary is to be employed in the United States in a managerial or executive capacity. The statement must clearly describe the duties to be performed by the Beneficiary.

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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. 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. *See* section 101(a)(44)(C) of the Act.

### A. Evidence of Record

The Petitioner filed the Form I-140 on December 5, 2014. On the Form I-140, the Petitioner indicated that it has eight current employees in the United States and a gross annual income of \$417,877.

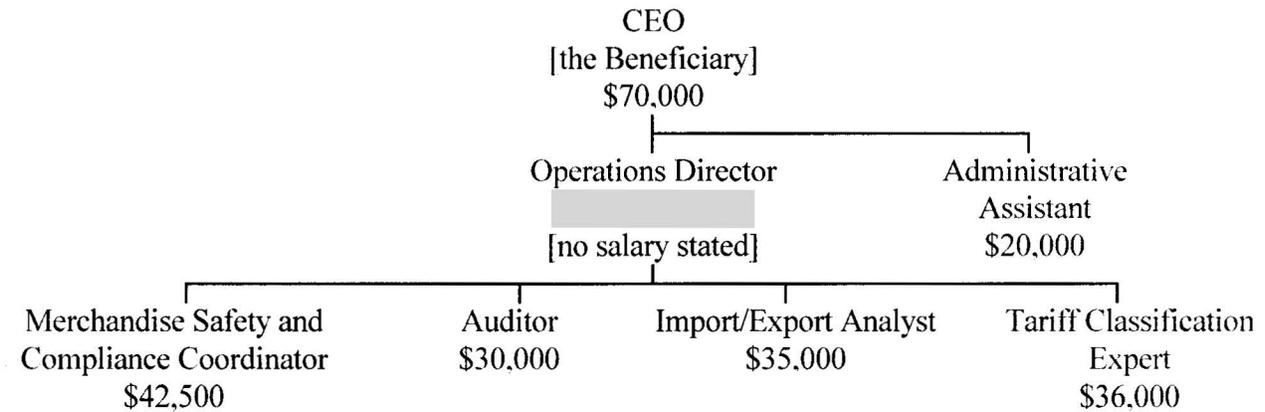
The initial evidence included a September 5, 2014, letter from [REDACTED], identified at the time as the Petitioner’s chairman of the board. [REDACTED] provided a 13-item list of the Beneficiary’s duties as Chief Executive Officer. The Petitioner later submitted a very similar list with three

(b)(6)

*Matter of L-S-, LLC*

additional job duties in response to a request for evidence, and we will address that duty description below.

The Petitioner submitted an organizational chart showing the following company structure, job titles, and annual salaries as of the date of filing:



Although the organizational chart referred to [redacted] as the Petitioner’s operations director, [redacted] identified himself in the accompanying letter as the chairman of the board. He stated that the Beneficiary supervises the administrative assistant and the “Chief Operations Officer, [redacted] [redacted] who was identified on the organizational chart as the tariff classification expert.

The Petitioner provided copies of its California Form DE-9, Quarterly Contribution Return and Report of Wages, for all four quarters of 2013, showing that it employed six to eight employees during that year. The Petitioner submitted the Beneficiary’s bi-weekly paystubs for the period January through July 2014, but did not provide recent evidence of wages paid to the other employees on the organizational chart.

The Director issued a request for evidence (RFE) on May 6, 2015. Stating “[t]he petitioner provided only a generalized statement of the Beneficiary’s duties in the U.S.,” the Director asked the Petitioner for a list of the Beneficiary’s “specific daily tasks . . . and the percentage of time to be spent on each.” The Director also requested information about the Petitioner’s staffing and the duties performed by its other employees.

In response, the Petitioner submitted a new letter, dated July 22, 2015, in which [redacted] provided a revised list of the Beneficiary’s duties, expanded from 13 items to 16, with the approximate percentages of the time the Beneficiary will devote to each:

1. Direct and develop the Company’s mission, operations, projects and services. 10%
2. Create and Develop the [Petitioner’s] financial plan that will allow the company to maximize its operation and increase sales. 5%

(b)(6)

*Matter of L-S-, LLC*

3. Provide leadership in developing a program that will allow the development and growth of [the petitioning company]. 5%
4. Create and develop policies that will ensure that the company is going to grow according to the financial plan and increase productivity. 10%
5. Develop policies and procedures for each department[] within the Company to integrate logistics with business systems or processes, such as customer sales, accounting and delivery of orders. 5%
6. Continue to develop relationships, negotiate and approve contracts with current clients and new clients, including U.S. Embassies, such as the Embassy in Mexico. 5%
7. Review both monthly and yearly reports submitted by the different account managers and staff to determine productivity. 5%
8. Responsible for appointing department heads and managers, and develop internal policies for employees. 10%
9. Supervise [the] Chief Operations Officer, [REDACTED] Chief Financial Officer, [REDACTED] and Administrative Assistant. . . . 5%
10. Responsible for creating or developing new departments within the organization after evaluating the need [for] a new department or position. 5%
11. Create policies of recruitment, employment, and termination of all personnel. 10%
12. Create policies to resolve complaints or problems with clients. 5%
13. Ensure that job descriptions are developed, and that regular performance evaluations are held. 5%
14. Ensure that adequate funds are available to permit the organization to carry out its work. 5%
15. Oversee and monitor that the Company is in compliance with state and federal regulations. 5%
16. Report to the Board of Directors. 5%

Regarding the company's staffing, [REDACTED] stated that the company has "seven employees currently . . . in charge of handling all the necessary task[s] to provide the logistics services in the United States." He stated that the Petitioner contracts for legal and accounting services, and "receives a lot of support from its Mexican affiliate that allows [the petitioning company] to operate with a smaller number of employees as compared to the operation of the Mexican side."

The Petitioner submitted a separate, unsigned "Service and Company Overview," describing the roles performed by various employees. The statement reads, in part:

[The Petitioner] imports and exports goods for many high-end customers, both to and from Mexico and the United States. . . .

[O]ur Import/Export Analyst as well as . . . our Tariff Classification Expert, receive[] the merchandise, inspect[] it for conformity with the notice and purchase order, classif[y] the goods for export and the required tariffs. . . .

(b)(6)

*Matter of L-S-, LLC*

The logistics service includes the [redacted] verification, done by our [redacted] Coordinator and Safety Coordinator. . . which includes inspection and audits of the warehouse, trucks, and drivers in the US, both for imports from Mexico to the US as well as merchandise stored in our US warehouse.

The information is then given to the [redacted] (our sister Company in Mexico), who prepares the goods for exportation and entry requirements for Mexican customs.

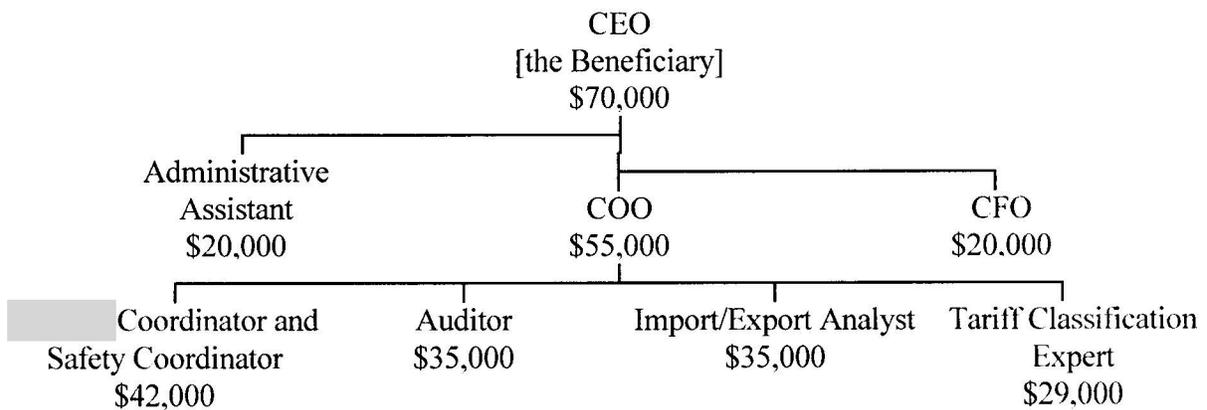
[redacted] requires a dedicated person as well as an Auditor . . . who audits our systems for conformity with . . . US Customs [requirements]. . . .

Overseeing all logistics and verification personnel is our Chief Operating Officer [COO], [redacted] who supervises our [redacted] Coordinator, Auditor, Import/Export Analyst, and Tariff Classification Expert.

Overseeing our finance . . . is our Chief Financial Officer [CFO], [redacted] who oversees our relationship with our outside contractors including our Accountants, and U.S. Customs Broker.

Both our CFO and our COO report directly to our Chief Executive Officer, [the Beneficiary], who also delegates administrative tasks to her Administrative Assistant.

The quoted statement, like the second version of the Beneficiary's duty description, referred to a chief operating officer and chief financial officer not shown on the Petitioner's original organizational chart. The Petitioner submitted a revised chart showing the following structure:



The Petitioner submitted a separate employee list in which it stated that all employees are full-time except for the CFO. The individual identified as the tariff classification expert did not appear on the

(b)(6)

*Matter of L-S-, LLC*

previous chart. Rather, the Petitioner's previous chart depicted [REDACTED] in this role rather than as chief operating officer.

The Petitioner provided a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the fourth quarter of 2014, which shows that it paid \$50,212.03 in wages to eight employees. The Petitioner also provided its IRS Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, which show that it paid a total of \$169,229.68 in salaries and wages in 2014.

Finally, the Petitioner provided a recent payroll report for the first two weeks of June 2015. This document showed that the Petitioner was paying all employees identified on the second organizational chart, although at lower wages than those stated on the organizational chart.

The Director denied the petition on August 19, 2015, concluding that the Petitioner had not established that the Beneficiary would serve in a managerial or executive capacity. The Director found that the Beneficiary's job description lacked detail, and that the Petitioner had not shown that it employs sufficient staff to relieve the Beneficiary from having to primarily perform non-qualifying operational and administrative tasks.

On appeal, the Petitioner states that the submitted evidence "shows the Petitioner will employ the Beneficiary in a purely executive capacity."

B. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has not established that the Beneficiary will be employed in an executive capacity.

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.*

When examining the executive or managerial capacity of a given beneficiary, we will 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 in a managerial or executive capacity. *Id.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

In the denial notice, the Director stated: "The RFE . . . asked for a more detailed description of the U.S. duties. In its RFE response, the Petitioner submitted largely the same job description that it submitted upon initial filing."

On appeal, the Petitioner stated that the RFE response "include[d] a detailed description of the Beneficiary's executive duties, including percentage of time spent in each. Disregarding said supplement, the [Director] erred in stating that the Petitioner simply repeated the same job goals and responsibilities without providing detail."

The record supports the Director's reading of the evidence. The Director did not state that the Petitioner "simply repeated" the first list of duties. Instead, the Director stated that "the Petitioner submitted *largely* the same job description" (emphasis added). The original list showed 13 duties; the second list showed 16 duties, 13 of which closely or exactly match elements from the first list. (The three added items are numbered 5, 12, and 15 on the second list, reproduced in this decision.)

With respect to the second version of the job description, the Director stated:

[T]he petitioner does not list any specific tasks the beneficiary will perform in "direct[ing] and develop[ing] the Company's mission, operations, projects and services." Further, the record does not reveal how items 1, 5 and 10 [on the list of duties] are separate duties. Each appear to relate to the same broad job goal.

The Petitioner, on appeal, does not directly address the above finding. Other elements of the job description are, likewise, statements of goals rather than explanations as to how the Beneficiary achieves those goals. The Petitioner does not, for example, explain what specific tasks the Beneficiary performs in order to "[e]nsure that adequate funds are available." Reciting a 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 not provided sufficient 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. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The Beneficiary's job description also refers to "reports submitted by the different account managers." The organizational chart does not refer to any "account managers," and neither does the "Company Overview" submitted in response to the RFE. The record does not include examples of reports that they have prepared that would shed light on the issue.

The Petitioner, on appeal, states that the Director erred because the denial decision “focuses only on the amended job offer letter without taking into consideration the numerous additional documents submitted with the response to the RFE.” Specifically, the Petitioner states that a description of the subordinates’ duties shows that the Beneficiary has delegated operational tasks to lower-level employees.

The Petitioner has established that the Beneficiary controls the company, but the information regarding the Beneficiary’s specific duties is not sufficient to establish that she primarily acts in an executive capacity. The fact that the Beneficiary manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. 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 position description alone is insufficient to establish that her actual duties, as of the date of filing, would be primarily executive in nature.

Accordingly, we also consider the proposed position in light of the nature of the Petitioner’s business, its organizational structure, and the availability of staff to carry out the Petitioner’s daily operational tasks. Federal courts have generally agreed that, in reviewing the relevance of the number of employees a Petitioner has, USCIS “may properly consider an organization’s small size as one factor in assessing whether its operations are substantial enough to support a manager.” *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d at 42; *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, 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., Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

In the denial notice, the Director stated that, according to the Petitioner’s description of the company’s operations, “only two employees work in the warehouse . . . and those two employees, the Import/Export Analyst and the Tariff Classification Expert, are mainly occupied with classifying, tracking, and labeling goods rather than actually shipping, receiving, and fulfilling purchase orders.”

On appeal, the Petitioner protests the Director’s “assumption that only two employees, namely the ‘Import/Export Analyst’ and the ‘Tariff Classification Expert,’ work in the Petitioner’s warehouse in the United States.” The Petitioner states that the Director reached this conclusion “erroneously,” but does not identify any other warehouse personnel. The Petitioner states that it previously submitted an organizational chart and a description of the company’s services, but neither of those documents identifies other warehouse workers. The Petitioner does not address the issue of who is “actually

(b)(6)

*Matter of L-S-, LLC*

shipping, receiving, and fulfilling purchase orders” and has not shown how the Director’s findings were incorrect based on the evidence submitted.

The matter of warehouse personnel is not the only unresolved issue regarding the Petitioner’s description of its staffing and operations. As noted, both versions of the Beneficiary’s job description refer to “the different account managers.” The “Company Overview” and organizational charts do not identify any account managers. The Petitioner has attributed three different job titles to [REDACTED] chairman of the board, director of operations, and CFO, which makes it uncertain what fixed role [REDACTED] has with the company. The Petitioner states that [REDACTED] is the company’s COO, but the initial organizational chart identified that individual as a tariff specialist. Therefore, it does not appear that he was the COO at the time the Petitioner filed the petition. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. at 591-92.

Citing payroll documents submitted previously, the Petitioner states “the difference in salaries between the subordinates and the Beneficiary’s salary is substantial. . . . The Beneficiary makes \$15,000 more than any other employee within the company.” While it is true that the Beneficiary’s stated annual salary of \$70,000 is \$15,000 higher than that of any other employee, the payroll documents raise further questions.

The Petitioner’s IRS Form 940, described above, shows that the Petitioner paid \$169,299 in wages in 2014, whereas the figures on the organizational chart add up to \$233,500 (with no salary shown for the operations director). Likewise, copies of California Forms DE 9C for the last three quarters of 2013 all show wages considerably lower than the rates of pay shown on the organizational chart.

A payroll report shows the amounts paid to the Petitioner’s employees for the biweekly pay period from May 30 through June 12, 2015. We can extrapolate these amounts to a year’s pay by multiplying the biweekly sums by 26. In doing so, we see that, in June 2015, the Petitioner paid all of its employees, including the Beneficiary, significantly less than the stated rate claimed on the organizational chart submitted in response to the RFE:

Title	Hours Worked	Wages Paid	×26 periods	Stated salary
CEO	80	\$1,684.80	\$43,804.80	\$70,000.00
COO	80	1,146.40	29,806.40	55,000.00
CFO	35	399.70	10,392.20	20,000.00
Administrative Assistant	20	275.00	7,150.00	20,000.00
CTPAT and Safety Coordinator	80	857.60	22,297.60	42,000.00
Auditor	70	679.00	17,654.00	35,000.00
Tariff Classification Expert	80	1,036.00	26,936.00	29,000.00
Import/Export Analyst	70	630.00	16,380.00	35,000.00

The eight annual salaries shown on the revised organizational chart add up to \$306,000. The Petitioner’s 2013 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, indicates that the

(b)(6)

*Matter of L-S-, LLC*

Petitioner paid only \$97,296 in salaries and wages, and \$34,563 in officer compensation. A copy of IRS Form 941, Employer's Quarterly Federal Tax Return, for the fourth quarter of 2014 shows that the Petitioner paid its eight employees \$50,212.03 in salaries and wages, substantially less than the \$76,500 that the Petitioner should have paid, given the claimed annual salary figures.

As shown above, there are substantial discrepancies between the pay rates claimed on the organizational chart and the wages documented in the tax and payroll documentation. Thus, the Petitioner's own documentation shows that the claimed wage figures for its employees are not accurate. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *Id.* at 591-92.

The Petitioner has not established that its subordinate staff, and others, sufficiently relieve the Beneficiary from performing non-qualifying administrative and operational duties. The discrepancy between the subordinate employees' stated salaries and what the Petitioner has actually paid them suggests that the employees may not work for the Petitioner to the extent claimed, which reduces their availability to perform non-qualifying duties. Acknowledging its staffing levels, the Petitioner has claimed to receive "a lot of support from its Mexican affiliate" but has not explained or documented the nature of that support. The foreign entity's organizational chart refers to general areas such as "processing" but provides no specific details. The Petitioner's "Service Description and Company Overview" refers to various functions, some of them specifically performed in Mexico (such as services for the [REDACTED] but others seemingly occurring elsewhere, such as post-shipping inspection of goods imported into the United States and "transportation . . . directly to the customer." The Petitioner has not specified who performs these tasks or adequately explained or document the performance of duties by Mexican personnel. 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) (quoting *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Finally, we note that the Director made an additional finding that the Petitioner had not shown that the Beneficiary will supervise supervisory, managerial, or professional employees. The Petitioner, on appeal, states that it "is not the law" that "an executive must supervise a person who can be classified as a professional, manager, or executive [*sic*]." The Petitioner is correct on this point. The limitation regarding supervised employees appears in the statutory definition of "managerial capacity" at section 101(a)(44)(A)(ii). The Petitioner has not claimed that the Beneficiary qualifies for classification as a manager. Rather, the Petitioner has stressed that it "will employ the Beneficiary in a purely executive capacity."

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that the Beneficiary will be employed in an executive capacity.

(b)(6)

*Matter of L-S-, LLC*

### III. ABILITY TO PAY

Beyond the decision of the Director, we find that the Petitioner has not provided sufficient evidence to establish its ability to pay the Beneficiary's proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) reads as follows:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

As indicated at 8 C.F.R. § 204.5(g)(2), the Petition has the burden of establishing its ability to pay commencing with the date it files the Form I-140. In order to establish the ability to pay, the Petitioner must provide copies of its annual reports, federal tax returns, or audited financial statements for the relevant time period in question.

On Form I-140, the Petitioner stated that the Beneficiary's annual salary is \$70,000. The Petitioner did not indicate that this \$70,000 figure referred only to the Beneficiary's expected future salary. Rather, in both of his letters, [REDACTED] stated that the Beneficiary "will continue to receive an annual salary of \$70,000 (U.S. Dollars) per year which will be paid both by the foreign entity and the U.S. Company." The Beneficiary can only "continue to receive" that salary if she has already been receiving it. In his letter dated September 5, 2014, [REDACTED] stated that the Beneficiary had been working for the Petitioner in the United States "for several years."

The regulation at 8 C.F.R. § 204.5(g)(2) requires the Petitioner to submit "evidence that the prospective United States employer has the ability to pay the proffered wage." [REDACTED] stated that the Beneficiary's salary "will be paid both by the [affiliated] foreign entity and the U.S. Company." The foreign affiliate is not the prospective United States employer.

In *Sitar Restaurant v. Ashcroft*, 2003 WL 22203713 \*2, (D. Mass. 2003), the court noted that the employer in that case had not rebutted the contention that nothing in the governing regulation, 8 C.F.R. § 204.5, permits us to consider the financial resources of individuals or entities who have no legal obligation to pay the wage. The court added that immigration authorities did not err when they limited consideration to "assets under Petitioner's legal control." *Id.* at \*4.

*Matter of L-S-, LLC*

The record does not show that the Petitioner has ever paid the Beneficiary at the stated rate of \$70,000 per year. The Petitioner submitted a copy of IRS Form W-2, Wage and Tax Statement, for 2014, the year the Petitioner filed the petition. That form shows that the Petitioner paid the Beneficiary \$36,067.47, slightly more than half the proffered wage.

The most recent income tax return in the record is the Petitioner's IRS Form 1120S return for 2013. That return shows a net income of \$9,494. Schedule K-1, Shareholder's Share of Income, Deductions, Credits, etc., shows that the Beneficiary received half of that amount, \$4,747, as ordinary business income (which is not a salary or wage). The other half went to another shareholder, and therefore was not available for payment to the Beneficiary.

Because the Petitioner does not have sufficient net income to pay the proffered salary, we will review the Petitioner's net current assets. Net current assets are the difference between the Petitioner's current assets and current liabilities. Schedule L of the 2013 IRS Form 1120S return shows current assets totaling \$11,209, which are entirely offset by current liabilities of \$16,431. Therefore, the Petitioner has not shown that it has net current assets available to supplement the Beneficiary's salary.

The Petitioner has not been paying the Beneficiary the full proffered salary, and there is insufficient evidence in the record to show that it had the ability to do so as of the date of filing. For this additional reason, the petition cannot be approved.

#### IV. 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 L-S-, LLC*, ID# 16828 (AAO May 11, 2016)