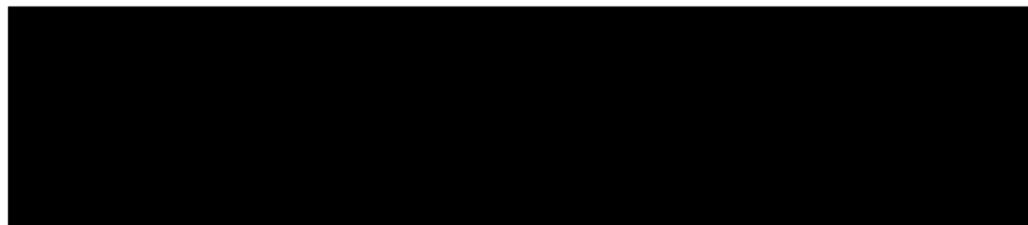


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



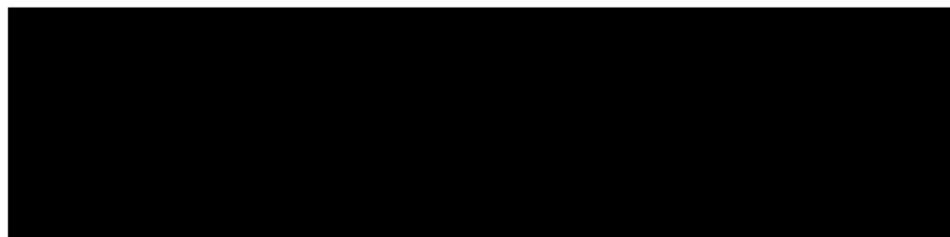
D7

DATE: **OCT 25 2011** Office: VERMONT SERVICE CENTER FILE:

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida corporation established in 2006, is engaged in the provision of hairstyling, skin care and spa services. The petitioner states that it has a qualifying relationship with Atlantis Motos, CA, located in Venezuela. The petitioner seeks to employ the beneficiary in the position of general and operational manager for a period of one year, and indicates that he will be coming to the United States to open a new office.¹

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity within one year.

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 emphasizes that the beneficiary was previously granted L-1A classification based on similar facts. 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.

¹ The record shows that USCIS previously approved an L-1A classification petition filed by the petitioner on behalf of the beneficiary (EAC 07 244 50649) on January 9, 2008. The petitioner indicates that the beneficiary's application for an L-1 visa was denied by a U.S. Consular officer based on a finding that there was no qualifying relationship between the U.S. petitioner and the beneficiary's former foreign employer,

- (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.

II. New Office

As a preliminary matter, the AAO will address whether the petitioning company qualifies as a "new office" for the purposes adjudicating this petition. The record shows that the service center director questioned the petitioner's eligibility as a new office, but ultimately referenced the regulations governing new office petitions when issuing her notice of decision.

Pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(F), "new office" means an organization which has been doing business in the United States through a parent, branch, affiliate or subsidiary for less than one year. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on April 9, 2009. The petitioner indicated on the Form I-129 that the beneficiary is coming to the United States in order to open a new office. At the same time, the petitioner acknowledged that the beneficiary was previously the beneficiary of an approved L-1A classification petition filed by the petitioner and approved on January 8, 2007. The petitioner maintains that the beneficiary was denied issuance of an L-1 visa by a U.S. Consular Officer and was never admitted under the previous new office petition.

The evidence of record shows that the petitioner does not qualify as a new office as defined in the regulations because it had been doing business in the United States for more than one year at the time the petition was filed on April 9, 2009. The petitioning company was incorporated in the State of Florida on November 9, 2006. Although the beneficiary was not able to come to the United States to manage the company as planned, the record nevertheless shows that the company commenced business operations.

The petitioner reported gross sales of \$339,145 on its 2008 IRS Form 1120, U.S. Corporation Income Tax Return. Petitioner's counsel indicates that "initial set up operations commenced in January 2008." The petitioner's bank statement for the month of May 2008 reflects that the company was operating as a retail service provider as early as May 1, 2008. Further, the petitioner submitted a business plan dated August 2008 in which it summarizes its activities during the first six months of operations. The petitioner has not provided any countervailing evidence that would support a finding that the company has been doing business for less than one year as of April 2009. The fact that the beneficiary was not able to obtain a visa and be admitted to the United States pursuant to the initial approved petition is irrelevant and does not entitle him to a second

new office petition. The key facts to be considered are whether, as of the date of filing, the petitioning company had been doing business in the United States for at least one year. The petitioner has not established that it qualifies as a "new office" and the regulations at 8 C.F.R. § 214.2(l)(3)(v)(C) do not apply.

III. The Issue on Appeal

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

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

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

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

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

A. Procedural History

In a letter dated April 8, 2009, the petitioner stated that the U.S. company operates a salon which offers hair styling, makeup, tanning, massages, nail and spa services. The petitioner stated on its Form I-129 that it has 13 employees. In its letter, it stated that it has hired "5 to 10 full-time stylist and spa services providers as well as administrative personnel" and expects to hire additional staff.

The petitioner stated that the beneficiary's duties as general and operational manager will be the following:

- Determine goods (body lotions, oil, scents, candles, hair products, etc.) and services to be sold, and set prices and credit terms, based on forecasts of customer demand.
- Determine staffing requirements, and interview, hire and train new employees, or oversee these personnel processes.
- Develop and implement product marketing strategies including advertising campaigns and sales promotions.
- Direct and coordinate activities of business concerned with the service pricing, sales and distribution of products.
- Direct and coordinate organization's financial and budget activities to fund operations, maximize investments, and increase efficiency.
- Establish and implement sales policies, goals, objectives and procedures, conferring with board members and staff members as necessary.
- Locate, select, and procure merchandise for resale, representing management in purchase negotiations with local suppliers.
- Manage and supervise the daily activities of the company's staff, preparing work schedules and assigning specific duties.
- Monitor and evaluate customer services to ensure that the company is efficiently and effectively provide [sic] needed services while staying within budgetary limits.
- Oversee activities directly related to providing services.
- Plan and direct activities such as sales promotions and implement marketing strategies.
- Recommend locations for new facilities or oversee the remodeling of current facilities.
- Prepare financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and improvement.

The petitioner submitted an organizational chart which depicts the beneficiary as general and operational manager, with one direct subordinate, a supervisor. The petitioner depicts nine hairstylists, a facial specialist and two manicurists reporting to the supervisor.

The petitioner submitted its accountant-prepared financial statement for 2008, which indicates that the company paid \$134,756 in commissions and \$61,135 in salaries.

The director issued a request for additional evidence ("RFE") on April 20, 2009. The director instructed the petitioner to submit: (1) a breakdown of the number of hours to be devoted to each of the beneficiary's proposed job duties on a weekly basis; (2) a list of the U.S. employees that identifies each employee by name

and job title; (3) a complete position description for all U.S. employees, including a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis; (4) the number of subordinate supervisors who will work under the beneficiary's supervision; (5) the percentage of the beneficiary's time that is to be allocated to managerial or executive duties; (6) the degree of discretionary authority the beneficiary will exercise over the company's day-to-day operations; and (7) copies of the petitioner's IRS Form 941, Employer's Quarterly Federal Tax Return, for the last two quarters of 2008.

In a response dated May 28, 2009, the petitioner provided the following description of the beneficiary's proposed duties:

- Manage and supervise the daily activities of the company's staff, preparing work schedules and assigning specific duties. (20% of time – 8 hrs)
- Monitor and evaluate customer services to ensure that the company is efficiently and effectively provide [*sic*] needed services while staying within budgetary limits. (3% of time – 1.2 hrs)
- Determine staffing requirements, and interview, hire and train new employees in the management and operations of business conduct, as well as the overseeing of policy implementation (7.5% of time – 3hrs)
- Develop and implement product marketing strategies including advertising campaigns and sales promotions to cross sale products and other services such as spa, massage therapies, body products, etc. (8% of time-3.2 hrs)
- Direct and coordinate activities of businesses concerned with the service pricing, sales and distribution of products (14.5% of time – 5.8 hrs)
- Direct and coordinate organization's financial and budget activities to fund operations, maximize investments, and increase efficiency. (10% of time – 4.0 hrs)
- Establish and implement sales policies, goals, objectives and procedures, conferring with board members and staff members as necessary. (6% of time – 2.4 hrs)
- Oversee activities directly related to providing services (3% of time-1.2 hrs)
- Plan and direct activities such as sales promotions and implement marketing strategies. (7% of time – 2.8 hrs)
- Recommend locations for new facilities or oversee the remodeling of current facilities. (3% of time – 1.2 hrs)
- Prepare financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and improvement. (7% of time – 2.8 hrs)
- Locate, select, and procure merchandise for resale, representing management in purchase negotiations with local suppliers. (3.5% of time-1.4 hrs)
- Determine goods (body lotions, soaps, candles) and services to be sold, and set prices and credit terms, based on forecasts of customer demand. (7.5% of time-3 hrs)

The petitioner stated that the beneficiary will be employed "in a managerial capacity of all employees," noting that "13 employees are expected to be hired as soon as permitted."

The petitioner indicated that the company's "supervisor" performs the following duties:

- Collect, count, and disburse money, do basic bookkeeping and complete banking transactions. (6 hours)
- Communicate with customers, employees and other individuals to answer questions, disseminate or explain information about arrange [sic] job schedules. (5 hours)
- Meet and supervise customers' concerns and comments, how to make reservations, services fees, product information, etc. (3 hours).
- Answer telephones, direct calls and take messages. (3 hours)
- Compile, copy, sort and file records of office activities, business transactions, and other activities. (4 hours)
- Complete and mail bills, contracts, policies, invoices, or checks. (6 hours)
- Operate office machines, such as photocopiers and scanners, facsimile machines, voice mail systems and personal computers. (3 hours)
- Maintain and update filing, product inventory, mailing, and database systems, either manually or using a computer. (6 hours)
- Open, sort and route incoming mail and prepare outgoing mail. (2 hours)
- Review customer records. (2 hours)

The petitioner also provided position descriptions for its nine hairstylists, a skin care technician and two manicurists. The petitioner indicated that only the supervisor is an employee of the company while the stylists and technicians are "independent employees."

The petitioner submitted the requested IRS Forms 941, Employer's Quarterly Federal Tax Return, for the last two quarters of 2008. The petitioner paid \$5,150 in wages during the third quarter and \$6,438 in wages during the second quarter. The petitioner reported one employee in both quarters.

The director denied the petition on June 20, 2009, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director noted that the petitioner has already been operating with 12 beauticians and one supervisor, and has not shown that the company will support a managerial position.

On appeal, counsel for the petitioner emphasizes that "this same application was previously field [sic] and was approved by USCIS," noting that the previous petition "was approved with the same beneficiary, same duties, same U.S. company." Counsel contends that the director failed to address "why it had been previously approved and how different the scenarios are, if any." Counsel states that, given that there has been no change in information, duties, tasks, wages, beneficiary or location, the petitioner is perplexed by the decision to deny the instant petition. Counsel emphasizes that, since the beneficiary was initially approved for the position of general manager with the petitioning company, and the position remains vacant, he should be authorized for employment with the U.S. company.

B. Discussion

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.*

The definitions of executive and managerial capacity 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 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"). While the AAO does not doubt that the beneficiary would exercise authority over the petitioner's day-to-day operations as the owner and manager of the company, the petitioner has failed to show that his actual duties will be in a primarily managerial or executive capacity.

While the petitioner has provided a breakdown of the percentage of time it expects the beneficiary to allocate to various responsibilities, several of the stated tasks, such as "direct and coordinate activities of business concerned with the service, pricing, sales and distribution of products," and "oversee activities directly related to providing services" are described in overly general terms and provide little insight into what the beneficiary will actually do on a day-to-day basis as the general manager of a salon. Broad assertions such as "oversee every day operations" and "manage the company" are not probative descriptions of the beneficiary's actual day-to-day responsibilities. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner indicates that the beneficiary will allocate approximately 20 percent of his time to sales and marketing tasks which will include planning sales promotions, implementing marketing strategies, developing and implementing advertising campaigns, and establishing sales policies, goals, objectives and procedures. The petitioner has not indicated that any of the company's existing staff perform duties associated with sales, marketing or promotional functions, and it is unclear who would perform non-qualifying duties associated with such functions. The job description indicates that the beneficiary will also be responsible for identifying goods to be sold in the petitioner's salon and personally locating, selecting and procuring merchandise for resale. The petitioner has not explained how researching and purchasing goods rises to the level of managerial or executive capacity.

Notably, the petitioner indicates that the beneficiary will devote the largest portion of his time to managing and supervising the daily activities of the company's staff, preparing work schedules and assigning duties. As will be discussed further below, the petitioner has not established that these duties qualify as managerial in

nature, as the petitioner has not established that the beneficiary's subordinates are managers, supervisors or professionals.

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

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's organizational chart indicates that the beneficiary will manage one "supervisor" or "office supervisor" who in turn supervises the cosmetologists who provide services to the petitioner's customers. The petitioner also states that the beneficiary himself will supervise all employees working in the salon. A review of the detailed job description provided for the supervisor reveals that she does not in fact, supervise any staff, but primarily performs clerical, administrative and routine banking tasks that do not qualify her as a manager, supervisor, or professional.² The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. The totality of the record does not support a conclusion that the beneficiary's subordinates are supervisors, managers, or professionals. The beneficiary does not qualify as a "personnel manager" based on his supervision of hairstylists, manicurists or an office worker.

² In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

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. Here, the petitioner has not articulated a claim that the beneficiary manages an essential function of the petitioning company. Furthermore, as discussed above, the petitioner has not provided a description of the beneficiary's duties sufficient to establish that he will perform primarily managerial duties.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of 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-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.*

In this case, the petitioner has not explained how the beneficiary would spend the majority of his time focused on the broad goals of the organization. The beneficiary's duties as described by the petitioner include sales, marketing and promotional tasks, research and purchasing duties, and direct supervision of non-professional personnel. 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity, and the appeal will be dismissed.

The AAO acknowledges that USCIS previously approved an L-1A petition filed on behalf of the beneficiary by the petitioning company. However, the prior petition was for a "new office" filed pursuant to the eligibility requirements at 8 C.F.R. § 214.2(l)(3)(v). The one-year "new office" provision is an accommodation for newly established enterprises, provided for by USCIS regulation, that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a

new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

As discussed above, the U.S. company no longer qualifies as a "new office" and the petitioner must therefore demonstrate that the beneficiary's duties in the United States will be in a qualifying managerial or executive capacity as of the date the petition was filed. As the instant petition was not subject to the same evidentiary requirements as the previous petition, the director was not in fact required to defer to the approval of the "new office" petition in adjudicating this matter. Moreover, it must be emphasized that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* Section 291 of the Act.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.