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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 2 7 2013 Office: VERMONT SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Ron Rosenberg
Acting 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 classify 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 was formed as a corporation under the laws of the State of Florida in 2009, and states that it operates as an import/export business for television and radio broadcasting equipment. It claims to be an affiliate of [redacted] The beneficiary was previously granted one year in L-1A classification in order to open a new office in the United States. The petitioner seeks to employ the beneficiary in the position of president for three additional years.

The director denied the petition, 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 petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the evidence of record is sufficient to establish that the beneficiary will be functioning in a managerial or executive position.

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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate in a managerial, executive or specialized knowledge capacity.

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

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

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation

II. Discussion

The sole issue to be addressed is whether the petitioner established that the beneficiary will be employed in the United States in a managerial or executive capacity.

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

> The term "managerial capacity" means 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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 15, 2010. The petitioner indicated that it is engaged in the purchase and export of cutting-edge recording, sound engineering, editing and video production hardware and software for use by the foreign entity and by other end-user customers in Brazil. In a letter submitted in support of the petition, counsel for the petitioner stated that the organization acts as a purchasing agent for the Brazilian affiliate as well as consolidating sales to end-user customers in Brazil who desire to purchase "expensive, cutting-edge sound engineering, monitoring, mixing and video production centers."

The petitioner stated the beneficiary will continue to be employed in the position of president. In a letter submitted in support of the initial petition, former counsel stated that the beneficiary allocates his time among five categories of duties including the following: (1) overseeing the domestic and international operations of the business, making discretionary decisions, and setting general business and international operations policies and procedures (40%); (2) overseeing the company's import and export affairs and identifying new business opportunities in the United States and overseas (15%); (3) directing the implementation of policies, objectives and activities of the organization (15%); (4) establishing long-range U.S. and international marketing objectives and specifying the strategies and actions to achieve them (15%); and, (5) and conferring with the Brazilian company to determine projections for the U.S. business (15%).

In the same letter, former counsel stated that the beneficiary will be responsible for supervising five full-time employees including the Director of Operations, Operations Supervisor, Warehouse & Sales Associate, and a Sales Associate. The petitioner provided educational requirements, salaries, and duties for each of the beneficiary's subordinates. Specifically, the letter stated that the Director of Operations is responsible for "administering and coordinating the daily business activities of the petitioner." The duties included meeting with the president to discuss procedures for dealing with the vendors and suppliers regarding scheduled purchases, negotiating contracts for the supply of goods, and hiring and firing employees. Former counsel indicated that the Operations Supervisor was also responsible for "administering and coordinating the daily business activities of the petitioner." The Operations Supervisor's duties included meeting with the front office personnel regarding scheduled activities, assisting the director of operations in preparing contracts for the supply of goods, hiring and firing employees, and planning and controlling budgets for supplies and marketing materials. Counsel stated that the Warehouse & Sales Associate is responsible for coordinating

the shipping, logistical, and inventory management of the business, as well as implementing sales and marketing strategies established by the Director of Operations and the President. Finally, counsel stated that the Sales Associate is responsible for assisting the Operations Supervisor with the day-to-day sales and marketing operations of the business.

The petitioner included a number of invoices, purchase orders and receipts for a variety of electronic equipment including computers and tablets, musical instruments and equipment, medical, industrial, and multi-media products. Based on the invoices and the activity indicated on the petitioner's bank statements, it appears that the petitioner purchases the items it exports from U.S.-based wholesalers and retailers, and ships them to individual buyers residing in Brazil.

The director issued a request for additional evidence ("RFE") on November 15, 2010. The director requested that the petitioner provide, *inter alia*: (1) a comprehensive description of the beneficiary's duties in the U.S. including percentage of time spent on each of the listed duties; (2) a list of United States employees including position descriptions, number of hours devoted to each duty on a weekly basis, and educational requirements for the positions; (3) a copy of IRS Form 941, Employer's Quarterly Federal Tax Return for the first and third quarters of 2010; (4) a copy of IRS Forms W-2 and 1099 issued by the petitioner in 2009; and (5) samples of advertising for print media, such as newspapers, magazines, and trade journals.

In a letter dated December 20, 2010 the petitioner resubmitted the same job duties of the beneficiary and his subordinates as submitted with the initial petition. The petitioner explained that it had not been operating long enough to issue IRS Forms W-2 to its employees in 2009. The IRS Form 941, Employer's Quarterly Federal Tax Return for the third quarter of 2010 confirmed that the petitioner employed five persons, including the beneficiary.

In response to the director's request regarding advertising copies for print media, the petitioner stated that the petitioner does not advertise, "and has no intention of advertising, in media publications." The petitioner explained that its business model involves purchasing goods for export to Brazil, Angola, and other foreign markets. The petitioner provided further detail as follows:

> All transactions are based upon purchase orders from an existing customer base in Brazil and abroad that has been developed over the years mainly on the strength of [the beneficiary's] own commercial contacts abroad. The ultimate objective is to use the U.S. company as a purchasing agent. Hence, [the petitioner] is fomenting special relationships with suppliers in the United States (see Exhibit L), and hopes to secure distributorship rights, mainly in Brazil but also in Angola . . . .

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. In denying the petition, the director determined that it is not apparent that the Warehouse & Sales Associate and Sales Associate are professional level positions. Furthermore, the director concluded that the Warehouse & Sales Associate and Sales Associate positions do not appear to be full-time, therefore it is not clear who is providing the sales and services of the organization to the customers. The director concluded that the beneficiary would be required to perform many non-qualifying duties on a daily basis.

On appeal, counsel asserts that the evidence establishes that the position description provided for the beneficiary establishes that he does not perform the day-to-day functions of the petitioner and is relieved from performing the non-qualifying functions by his subordinate staff. Furthermore, counsel states that both the Warehouse & Sales Associate and Sales Associate positions are full-time, as they both earn $17,000 per year, more than the $7.25 hourly minimum wage in Florida.

Counsel for the petitioner provides a more detailed description of the beneficiary's duties on appeal, with an hourly breakdown of time on a typical workday. The petitioner also presents a new organizational chart on appeal. The chart shows the beneficiary as President. The individual previously identified as Director of Operations is now identified as the "Vice President" and directly supervises the "Account Manager," the individual who was previously identified as the Sales Associate. The Warehouse and Sales Associate is now the Secretary and Warehouse Associate. Finally, the person previously identified as the Operations Supervisor is now identified as the "General Sales Manager" and depicted as the beneficiary's direct subordinate.

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity within one year of approval of the petition.
When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.*

The petitioner's description of the beneficiary's duties for the petitioner fails to establish that the beneficiary would be engaged in primarily managerial or executive duties. The beneficiary's duties, as described by the petitioner in the initial petition and in response to the RFE, included such tasks as overseeing the domestic and international operations of the business; overseeing general import and export affairs, engaging in long-range planning, planning and implementing policies and objectives, establishing long-range national and international marketing objectives. While such responsibilities generally suggest that the beneficiary is responsible for oversight of the business, the descriptions provide little insight into what specific duties he will perform or how he would actually allocate his time on a day-to-day basis. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner failed to provide any detail or explanation of the beneficiary's proposed activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, it is noted that some of the invoices issued to the petitioner's customers in Brazil identify the beneficiary as the "salesperson" responsible for the transaction. As the petitioner's general description of the beneficiary's position did not indicate that he would be involved in sales transactions, the director reasonably requested additional clarification regarding the beneficiary's duties and whether they will be primarily within a qualifying managerial or executive capacity.

In response to the RFE, in which the director requested a "comprehensive description" of the beneficiary's duties, the petitioner provided the same position description as submitted with the initial petition, which the director had already reviewed and found to be insufficient. On appeal, counsel for the petitioner offers a more detailed description of the beneficiary's duties including an hourly breakdown of time on a daily basis. The

regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the more detailed position description to be considered, it should have submitted it in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the position description offered on appeal.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary will perform the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and will not spend a majority of his 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").

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.
Here, the petitioner's business model is based on exporting goods purchased in the United State to customers in Brazil, Angola, and other countries. The petitioner has provided evidence that it executes a large number of purchase and sales transactions. Based on this evidence, it appears that the petitioner purchases items to fill specific requests or orders from its customers in Brazil and does not maintain a large inventory or sell a specific line or lines of products. Therefore, it is reasonable to believe that the tasks of researching, finding and purchasing specific items are performed on a day-to-day basis in order to fill individual customer orders. The petitioner has on staff employees to sell and export goods, however, it has not stated that any of the beneficiary's subordinates are actually responsible for sourcing and purchasing the goods to be exported. Thus, either the beneficiary himself is performing the purchasing or he does not actually manage the purchasing function as claimed by the petitioner. In either case, the AAO is left to question the validity of the petitioner's claim and the remainder of the beneficiary's claimed duties. Doubt cast on any aspect of the petitioner's proof may, of course, 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). If the beneficiary is performing the purchasing function, we note that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Furthermore, although the petitioner claims to have two sales associates, the only names that appear on the invoices as "salesperson" are those of the beneficiary and the operations supervisor. Additionally, the petitioner fails to clarify how the sales associates manages the sales and marketing to the clients abroad and relieves the beneficiary of these sales and marketing duties. The only marketing the petitioner alludes to is the beneficiary's own contacts in Brazil. The petitioner specifically states that it has no intention of advertising in media publications. 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 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 description of the beneficiary's and his subordinates' duties calls into question the organizational structure provided. Based on the duty descriptions provided, the Director of Operations and Operations Supervisor appear to be performing almost the exact same duties relating to the administration and coordination of the daily business activities and the petitioner has provided no explanation for its need for two people in a five-person company to perform the same daily oversight function. As noted above, USCIS reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. 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.

Furthermore, the petitioner failed to provide the requested evidence regarding the breakdown of the proposed employees' job duties on a weekly basis. In response to the RFE, the petitioner provided the same job descriptions as provided in the initial petition. The job descriptions provided were generic and included many overlapping responsibilities among the petitioner's staff. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the petitioner provides a new illustration of its organizational structure showing a more elevated hierarchy than that provided in the initial petition or in response to the RFE. The chart changes both the job titles of four of the company's five employees and the reporting structure, and indicates that the company employs a president, a vice president, a general sales manager, an account manager, and a secretary and warehouse associate. The petitioner provided no accompanying explanation for these changes. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits

competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Without such explanation, the chart appears to be inflating the job titles of the beneficiary's subordinates over those previously described as it altered the position title of each and every subordinate employee. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Overall, the evidence submitted does not provide a clear or credible description of how the day-to-day work associated with sourcing, purchasing, selling, packaging and exporting goods from the United States to Brazil, including related administrative and clerical tasks, is divided among the petitioner's staff or establish a clear hierarchy among the subordinate staff. Therefore, the AAO cannot determine that the beneficiary qualifies on a personnel manager based on his supervision of subordinate professional, managerial or supervisory staff.
Finally, although the director based his decision partially on the size of the enterprise and the number of staff, the director did not take into consideration the reasonable needs of the enterprise. As required by section 101(a)(44)(C) of the Act, 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. 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 size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *See Systronics*, 153 F. Supp. 2d at 15.

At the time of filing, the petitioner was a one-year-old import and export company that claimed to have a gross annual income of $700,000. The firm employed the beneficiary as president, plus a director of operations and an operations supervisor, and on appeal it claims that its five employees include a president, vice president, account manager and general sales manager. The AAO notes that most of the employees have managerial or executive titles. The petitioner did not submit evidence that it employed adequate subordinate staff members who would perform the actual day-to-day, non-managerial operations of the company. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president and a subordinate staff consisting of two to four managers. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility as it failed to submit an adequate response to the director's request for evidence and has not sufficiently described the beneficiary's actual duties.

The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. *See* section 101(a)(44)(A)(ii) of the Act. Furthermore,

the petitioner has not established that it will employ a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial duties. Regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will function at a senior level within an organizational hierarchy. While the petitioner indicates that it intends to hire additional staff and augment its operations by signing exclusive distribution agreements with U.S. suppliers, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

Based on the foregoing discussion, the petitioner has not supported a claim that the beneficiary will be employed in a managerial or executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

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