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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

DATE: DEC 2 2 2014 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

This nonimmigrant petition was filed seeking to extend the beneficiary's status 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, on the Form I-129 (Petition for a Nonimmigrant Worker) Supplement L, identifies itself as an affiliate of an Indian company established in 2004. On the Form I-129, the petitioner lists its business as "Retail Commercial Business Operation and Investment." The petitioner seeks to employ the beneficiary as its president for three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity for the U.S. entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to this office. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the evidence of record is sufficient to satisfy its burden of proof in that the evidence establishes that the beneficiary would be employed in a primarily executive and managerial position under the extended petition.

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 parent, subsidiary, or affiliate of the foreign employer.

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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) 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. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in a managerial or executive capacity for the U.S. petitioner under the extended petition.

A. Facts

The petitioner was incorporated in April 2012. The petitioner filed the new office petition in May 2012 which was approved for a validity period from August 14, 2012 to August 13, 2013. The petitioner filed the instant petition on August 12, 2013. On the Form I-129, the petitioner described the beneficiary's proposed duties in the United States as:

> Locate and negotiate the acquisition of targeted commercial real estate properties and retail businesses; Negotiate contracts with vendors, contractors, and suppliers of retail goods; Direct and manage the business operations of the company; Direct all financial transactions; Hire, train and evaluate managerial personnel; Oversee and direct marketing efforts; Participate in the selection of inventory; Research other business ventures to seek investment opportunities in the state of Georgia and overall Southeast Region; Prepare and execute expansion plans; Direct policies and establish goals of the company.

In a letter, dated August 5, 2013, the petitioner referenced its investment in and asserted the beneficiary's "continued presence in the U.S. is required in order to continue to foster the growth of this business, as well as to target more growth opportunities." The petitioner repeated the proposed job duties set out on the Form I-129 with minor changes. The petitioner provided its organizational chart identifying the beneficiary in the role of president and directly over a general manager and an assistant manager. The chart depicts two servers and two cooks who report to the general manager.

The initial record also included brochures relating to the petitioner's bar/restaurant, a lease agreement for the restaurant, business licenses and permits, financial documents, the petitioner's 2012 Internal Revenue Service (IRS) Form 1120S, U.S. Income Tax Return for an S Corporation, bank statements, and utility bills.

The petitioner provided portions of the IRS Form 941, Employer's Quarterly Federal Tax Return, for the fourth quarter of 2012 and the first and second quarters of 2013. The latest filed Form 941, for the quarter ending June 30, 2013 identified seven individuals whose names corresponded to the positions on the organizational chart as set out above.

Upon review, the director issued a request for additional evidence ("RFE") on January 10, 2014, advising the petitioner, in part, that the description of duties for the beneficiary's work the previous year and those to be performed under the extended position was insufficient. The director outlined the evidence that could be submitted to overcome the deficiencies in the petition.

In response to the director's RFE, the petitioner submitted a statement signed and dated March 5, 2014 indicating that the petitioner planned to establish a gas station, and an agreement, dated March 11, 2014, signed by the beneficiary as buyer and unsigned by the seller, noting the beneficiary paid $5000 on behalf of the petitioner for a 49 percent interest in the seller's store. The agreement includes a photocopy of a check made out to the seller on the petitioner's bank account. The agreement also notes that if the beneficiary does not receive L-1A approval the $5000 will be returned. The petitioner further included a statement, dated March 4, 2014, identifying its employees by name, position, and level of academic achievement. The petitioner listed nine employees including the beneficiary and noted that the manager is a C.P.A., the assistant

manager is a computer engineer, a server is a non-graduate, and a supervisor, a security person, a server and a helper are all graduates, but there is no information identifying the graduating institution.[1]

The petitioner also submitted a six-page document identified as its employee check record. The document is undated. This document shows disbursements made through June 30, 2013 but does not identify any disbursements made to employees subsequent to that date. The record further included a two-page general ledger document noting the payroll journal entries and taxes for each month of the 2013 year, the petitioner's balance sheet as of April 30, 2013, and IRS Forms W-2, Wage and Tax Statement, issued by the petitioner in 2012 and 2013. The W-2s showed the earnings in 2013 for the individuals in the positions identified by the petitioner as follows:

Server - $541.42
Helper - $866.27
Server - $5,771.52
New Assistant Manager - $6,291.28
Security (Previously Server) - $6,445.10
Supervisor (Previously Cook) - $6,529.51
Cook (Previously Assistant Manager) - $7,650
General Manager - $11,225.18
President/Executive Director (the beneficiary's position) - $22,145

After reviewing the petitioner's response to the RFE, the director determined that the petitioner had not presented evidence sufficient to establish eligibility and denied the petition.

On appeal, counsel for the petitioner asserts that the titles of the beneficiary's subordinate employees are sufficient to explain the duties of the subordinate employees. Counsel contends that the petitioner's employment of an executive director, manager and assistant manager for a modest sized restaurant clearly establishes, beyond a preponderance of the evidence, that the beneficiary is not primarily involved in performing duties that are inconsistent with those of an executive or manager.

B. Standard of Review

In light of counsel's reference to the requirement that U.S. Citizenship and Immigration Services (USCIS) apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

[1] We observe that the information in this statement presents a different view of the petitioner's previously submitted organizational chart. The beneficiary is now identified as the executive director and the individual in the position of assistant manager and one of the cooks have switched positions. In addition, one of the individuals previously identified as a cook is now identified as a supervisor, a position not listed on the initial organizational chart. Further, the petitioner added a security person and a helper, positions not previously identified on the petitioner's organizational chart. The petitioner does not explain these changes.

> Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.
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> The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.
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> Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.
>
> Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe.* Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's determinations in this matter were correct. Upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established by a preponderance of the evidence that it will employ the beneficiary in a qualifying managerial or executive capacity.

C. The Beneficiary's Employment in an Executive or Managerial Capacity

We have reviewed the petitioner's descriptions of the beneficiary's duties in order to determine if the petitioner has provided a description sufficient to establish that the beneficiary would be employed in the United States in a managerial or executive capacity as defined at 101(a)(44)(A) or (B) of the Act.

Preliminarily we note that the petitioner has requested the extension of the beneficiary's L-1A classification approved in order for the petitioner to establish a new office. In that regard, we point out that the regulation at

8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of a "new office" petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, to employ the beneficiary in a predominantly managerial or executive position, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not provided sufficient probative evidence establishing that it has reached the point that it could employ the beneficiary in a predominantly managerial or executive position within the one year from the approval of the "new office" petition.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary owns or 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").

When examining the executive or managerial capacity of the beneficiary, we 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 either in an executive or managerial capacity. *Id.* Here the petitioner provided broad descriptions of the duties of the position, apparently relying on the fact that the beneficiary is the individual who owns the petitioner and is the individual at the top of the organizational chart. The petitioner initially claimed only that the beneficiary performed in an executive capacity. We observe that on appeal, counsel claims that the beneficiary served in both an executive and managerial 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.*

Here, the petitioner indicated that the beneficiary will locate and negotiate acquisition of property and businesses and research other business ventures to seek investment opportunities. The petitioner did not provide any evidence that the petitioner employed individuals who would perform the tasks associated with researching business opportunities or locating and acquiring property and businesses. Thus, these operational duties necessary to expand the petitioner's business must be carried out by the beneficiary. Although the

beneficiary may perform these duties as the petitioner's owner, these duties and the tasks associated with them are not inherently executive tasks. Similarly, the beneficiary's negotiation of contracts as generally described appears to be an operational task. Likewise, the beneficiary's selection of inventory is an operational task; that is, the beneficiary is the individual performing the necessary duties to identify and purchase the petitioner's inventory. The petitioner does not identify any individuals on its organizational chart or in a description of duties that indicates other employees carry out this duty. The petitioner in this matter also indicated that the beneficiary will "[d]irect all financial transactions," and "[o]versee and direct marketing efforts." However, neither the petitioner's organizational chart nor the titles of the petitioner's employees suggest that any of the petitioner's employees will perform the necessary daily bookkeeping, banking, and marketing duties to enable the petitioner's continued operations. There is no one designated to perform these operational and administrative tasks, other than the beneficiary.

The petitioner also stated generally that the beneficiary will "[d]irect and manage the business operations," "[h]ire, train and evaluate managerial personnel," "[p]repare and execute expansion plans," and "[d]irect policies and establish goals of the company." However, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of 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).

In response to the director's RFE, the petitioner claimed that it had entered into an agreement to purchase an additional asset; however, the agreement provided is not signed by the seller. Notably, the agreement indicates that the "token" payment will be returned if the beneficiary is not granted L-1A classification, thus, the purchase is speculative. There is no evidence that the purchase was or will be completed. Moreover, the evidence of record does not support the petitioner's implicit claim that the act of acquiring an additional business requires primarily executive duties, rather than the operational and administrative actions carried out by an owner. Finally, the petitioner does not allocate the percentage of the beneficiary's time he will spend on any particular task. Thus, it is not possible to conclude that the beneficiary will spend the majority of his time on any particular tasks or duties.

Moreover, the petitioner provided a different description of the petitioner's organization in response to the RFE. The petitioner does not explain or clarify its movement of individuals on its organizational chart. 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).

Although the petitioner does not claim that the beneficiary will perform primarily managerial duties, nonetheless, we will review the beneficiary's duties and duties of the beneficiary's subordinate employees to assess whether the beneficiary will be employed primarily as a manager. 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.

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

In this matter, the petitioner has claimed to employ seven individuals when the petition was filed and nine employees at the time it responded to the RFE. However, the petitioner does not describe the subordinates' daily duties, even though the director requested that information. On appeal, counsel for the petitioner claims that the employees' titles and the petitioner's business of operating a modest-sized restaurant is sufficient to define the subordinate employees' duties.

Upon review of the petitioner's organizational chart, the petitioner has inserted a manager and/or an assistant manager between the beneficiary's position and the positions of server, helper, and cook. The petitioner has not identified the duties of either the manager or assistant manager. Thus, it is not possible to ascertain whether these two individuals primarily supervise or manage other employees or functions. Based on the evidence in the record, however, it appears that the individuals subordinate to the manager and assistant manager are part-time employees. Thus, it is more likely than not that the manager and assistant manager would not primarily supervise or manage personnel but rather would perform the operational and administrative tasks necessary to operate the petitioner's restaurant. As such, the record does not demonstrate that the beneficiary is primarily a manager of supervisory or managerial employees. In addition, the record does not provide sufficient evidence to demonstrate that either the manager or assistant manager position is a professional position.[2]

Further, we note that 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. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. In this matter, the petitioner has not established that the beneficiary manages supervisory, managerial, or professional employees. The petitioner has not established the beneficiary is a personnel manager.

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[2] In evaluating whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Here, the petitioner's claim that its manager and assistant manager possess bachelor's degrees does not automatically lead to the conclusion that either of the employees was employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not established that a bachelor's degree is actually necessary to perform the duties of a restaurant manager or assistant manager. Further, the petitioner has not provided documentary evidence that either of these individuals actually possesses a degree.

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. Again, an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)). Here, the petitioner has not articulated a claim that the beneficiary qualifies as a function manager and the evidence of record is insufficient to establish that the beneficiary will primarily manage an essential function.

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. While several of the overbroad duties described by the petitioner may fall generally under the definitions of managerial or executive capacity, the lack of specificity and lack of subordinate employees to perform operational tasks, raises questions as to the beneficiary's actual primary responsibilities. 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).

Notably a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Based on the limited documentation furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the petition may not be approved.

III. CONCLUSION

In this matter, upon review of the totality of the record, the record does not demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity for the U.S. petitioner. Accordingly, the

petition will be denied and the appeal dismissed for the above stated reason. 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.