



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: DEC 30 2014 Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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. The petition will remain denied.

This nonimmigrant petition was filed seeking to continue 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, on the Form I-129, Petition for a Nonimmigrant Worker, Supplement L, identifies itself as an affiliate of [REDACTED] a Russian company. On the Form I-129, the petitioner lists its business as "Interstate Trucking Corporation, Transportation, Repair, Servicing." According to the petition, the petitioner seeks to employ the beneficiary in L-1A classification as its chief technology officer for three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary had been or would be employed in either an executive or managerial capacity.

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, counsel asserts that the new evidence shows that the beneficiary has been and will be employed in a managerial or an executive capacity. Counsel submits the petitioner's letter, the petitioner's Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, for the 2013 year, the petitioner's organizational chart, and 29 IRS Forms 1099, Miscellaneous Income, issued in a range of amounts. Counsel also re-submits previously provided documentation.

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.

A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive capacity and the statutory definition for managerial capacity.

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 BENEFICIARY'S EMPLOYMENT IN THE UNITED STATES

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

A. Facts

The petitioner was incorporated in California in December 2011. The petitioner filed the new office petition in August 2012 which was approved for a validity period from October 4, 2012 to September 24, 2013. The petitioner filed the instant petition on September 3, 2013. The petitioner indicated on the Form I-129, that it and the foreign entity are affiliates owned equally by the beneficiary and [REDACTED] the petitioner's regional manager. In a letter, dated August 22, 2013, counsel for the petitioner noted that in 2013 the petitioner's business moved to its North Carolina office and the beneficiary was reassigned to the [REDACTED] North Carolina office as chief technology officer at that time.

On the Form I-129, the petitioner stated that the beneficiary's proposed duties in the United States involved "[d]evelopment of the commercial truck repair line and directing all level management thereof." In the August 22, 2013 letter appended to the petition, counsel repeated this statement. The petitioner also provided its payroll records for May 2013 to August 2013. The record included a number of contracts executed in August 2013 between the petitioner and other entities to provide carrier or trucking services to other businesses. The initial record also included the petitioner's corporate documents, evidence the foreign entity continued to do business, a document authorizing the transfer of the beneficiary, and the petitioner's insurance and banking documents.

Upon review, the director issued a request for additional evidence ("RFE") on February 3, 2014, advising the petitioner, in part, that the record did not include descriptions of the beneficiary's duties for the previous year and the duties the beneficiary will perform under the extended petition. The director outlined the evidence that could be submitted to overcome the deficiencies in the petition.

In response to the director's RFE, counsel for the petitioner claimed:

[The] beneficiary is the Chief Technology Officer whose duties include overseeing all technical aspects for the company, dealing with all regulatory agencies as well as hiring and firing employees dealing with technology, streamlining operations through modern technology and hiring and firing system administration and IT personnel.

Counsel identified different individuals in the positions of accountant, office manager, manager, mechanics and heavy truck drivers.

Counsel also noted that the beneficiary's duties for the past year included: "supervising contracts and contacts with clients and partners, staffing and ensuring transfers of funds and compliance with laws and regulations of respective countries and jurisdictions involved."

The record in response to the director's RFE also included, the foreign entity's corporation documents, the petitioner's one-year lease of property in North Carolina beginning June 1, 2013, contracts with other businesses, banking information, and previously submitted documents.

Upon review, the director determined that the petitioner had not presented evidence sufficient to establish that the beneficiary functions at a senior level within the organization hierarchy or that the beneficiary will be involved in the supervision and control of other supervisory, professional, or managerial employees, who will relieve the beneficiary from performing non-qualifying duties, beyond the level of a first-line supervisor. The director noted that the petitioner had not submitted its organizational chart indicating the chain of command and nature of the beneficiary's position.

On appeal, the petitioner submits an undated letter signed by its operations manager, [REDACTED]. The petitioner's operations manager notes that the beneficiary and its other co-owner initially planned that the bulk of their investments would be in technology but for realistic and practical reasons, the petitioner chose to start a trucking and freight hauling business. The operations manager indicates that the beneficiary retained the title of chief technology officer and that his duties are similar to the duties of a top executive or vice president and those duties include:

- Establishing and carrying out organizational goals, policies, and procedures for Operations and Mechanical Divisions.
- Directing and overseeing the Corporation's financial and budgetary activities.
- Overseeing the managerial staff in providing hauling and mechanical services.
- Consulting with other executives, managers and board members about strategic decisions.
- Negotiating, signing, and approving contracts and agreements with customers and vendors.
- Hiring, appointing, and firing managers and supervisors.
- Analysis of financial statements, sales reports, and other performance documentation.

The record on appeal included for the first time the petitioner's organizational chart depicting the chief technology officer/owner over an operations manager and a mechanical manager. The operations manager is shown over a bookkeeper and three dispatchers. Each of the three dispatchers shows six truck drivers reporting to the dispatcher position. The mechanical manager is depicted as over a mechanical supervisor who in turn is over two mechanic positions. The organizational chart does not identify the individuals in the specific positions.

As noted above, the petitioner also submitted 29 IRS Forms 1099 for the 2013 year and the petitioner's 2013 IRS Form 1120. The Forms 1099 show the beneficiary and the co-owner each received \$36,000 for the 2013 year. The monies paid for the remaining 27 Forms 1099 for the 2013 year total \$325,002.81. The monies issued range from a low of \$414.83 for an individual identified as a driver to a high of \$67,509 for the individual the petitioner identified as the mechanical manager.¹ The Form 1120 shows that the petitioner paid

¹ The individual identified by the petitioner on appeal as its mechanical manager is identified as the operations manager on the contracts signed on behalf of the petitioner with other businesses in August 2013. The record does not include clarifying evidence of this individual's actual position.

\$44,906 to compensate officers, salaries and wages in the amount of \$86,682, and \$195,418 paid in subcontract labor. Form 1125-E, Compensation of Officers, depicts the beneficiary receiving \$25,666 and co-owner and regional manager receiving \$19,240.²

Counsel asserts that the evidence submitted on appeal shows that the beneficiary will be involved in the supervision and control of the work of other supervisory, professional, or managerial employees who will relieve him from performing non-qualifying activities.

B. Analysis

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.

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 initially provided a one-sentence general statement indicating that the beneficiary would develop the truck repair line and direct the management of the repair line. As the information submitted did not detail the beneficiary's actual proposed duties, the director requested further evidence.

In response, counsel asserted that the beneficiary would oversee the technical aspects of the company including hiring and firing system administrator(s) and IT personnel. As the petitioner has not described its business as a technology company and has not ever identified systems administrator(s) or other IT personnel amongst its employees, counsel's assertion is not supported by any evidence. Counsel also indicated that for the past year the beneficiary had supervised contracts and contacts, ensured the transfer of funds and "compliance with laws and regulations of respective countries and jurisdictions involved." Here, we note that the contracts submitted in support of the petition are signed in August 2013, by an individual identified as an operations manager, not the beneficiary. In addition, the record does not include any evidence of the beneficiary's supervision of contracts or contacts. Further, the record does not indicate that the petitioner is operating in different countries. Thus again, counsel's claims are not supported by evidence. Without

² The record does not include explanations regarding the discrepancies in salaries and wages for employees, subcontractors, and officers reported to the IRS on the petitioner's Form 1120 and on the Forms 1099.

documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, we do not find counsel's assertions in response to the director's RFE probative in this matter.

On appeal, the petitioner asserts the beneficiary's position is similar to that of a top executive or vice president. The petitioner then provides a general description of duties, essentially paraphrasing portions of the definitions of executive and managerial capacity as set out in the statute. See sections 101(a)(44)(A)(ii), (iii) and 101(a)(44)(B)(i),(ii), and (iii). 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).

The petitioner also references the beneficiary's general involvement in negotiating, signing, and approving contracts and analyzing financial statements, sales reports, and other performance documentation. However, the record does not include any documentary evidence demonstrating the beneficiary performed these duties. 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)). Moreover, the petitioner does not provide the necessary information to ascertain how these tasks relate specifically to the petitioner's freight forwarding and trucking repair business. Furthermore, it is unclear whether these duties will comprise primarily qualifying duties or whether these duties are non-qualifying operational and logistic tasks.

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 places the beneficiary's position at the top of the organizational chart but does not describe the beneficiary's day-to-day duties in that role. As the petitioner has not provided evidence of what the beneficiary will do, it is reasonable to assume that the beneficiary may only be an investor in the company and not an active participant. We observe as well that the petitioner does not allocate the percentage of the beneficiary's time he will spend on any of the broadly described duties. Thus, it is also not possible to conclude that the beneficiary will spend the majority of his time on any particular tasks or duties.

The evidence of record 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. In this matter, although the beneficiary is placed at the top of the organizational chart, the record does not identify the beneficiary's actual duties or the time the beneficiary will spend, if any, directing the management of the petitioner. The petitioner has not established that the beneficiary will perform primarily in an executive capacity for the petitioner.

The petitioner has also failed to establish that the beneficiary will perform primarily managerial duties. 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 claimed to employ 16 individuals on the Form I-129. However, the petitioner does not submit any IRS W-2s, Wage and Tax Statement, the form used when reporting wages paid to "employees." The petitioner subsequently provided evidence that it used a number of subcontractors by submitting the 29 IRS Forms 1099, the form used to report the payment of non-employee income. However, the petitioner does not describe the beneficiary's direct subordinates' daily duties. Thus, it is not possible to ascertain whether the individuals in the positions directly below the beneficiary on the petitioner's organizational chart primarily supervise or manage other employees or functions. Although we can speculate or assume that drivers drive the trucks, dispatchers dispatch the drivers and trucks, and the mechanics fix the trucks, there is no descriptive evidence detailing the duties of the operations manager, the mechanical manager, or mechanical supervisor including evidence of what these individuals do primarily. Moreover, we note that although a dispatcher may dispatch trucks and drivers, there is no evidence that the individuals in these positions have supervisory or managerial authority and that the exercise of this authority is the primary task. Similarly, although a bookkeeper may maintain records, there is no evidence that the petitioner's bookkeeping position is a professional position.³

³ 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 has not established that a bachelor's degree is actually necessary to perform the duties of a bookkeeper or, for that matter, the duties of an operations manager, a mechanical manager or a mechanical supervisor.

Upon review of the petitioner's organizational chart, the petitioner has not provided any documentary evidence supporting the structure and detailing the exact nature of the tasks and duties of the individuals listed on the chart will perform. Again, 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. at 165. Based on the current record, we are unable to conclude that any claimed managerial duties will constitute the majority of the beneficiary's duties. The petitioner has not established that the beneficiary will primarily manage supervisory, managerial, or professional employees. The petitioner has not established the beneficiary will be a personnel manager.

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 does not claim and the record does not demonstrate that the beneficiary will primarily manage an essential function.

Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (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 on appeal may fall generally under the definitions of managerial or executive capacity, the lack of specificity and lack of information regarding the beneficiary's subordinate employees 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 the U.S. petitioner. For this reason, the petition may not be approved.

III. THE BENEFICIARY'S EMPLOYMENT ABROAD

The director in this matter did not explicitly analyze the beneficiary's duties abroad but found that the petitioner did not provide sufficient probative evidence of the beneficiary's duties abroad to conclude that the beneficiary performed in a primarily executive or managerial capacity. We concur in the director's finding.

A. Facts

On the Form I-129, the petitioner identified the beneficiary's duties for the foreign entity as "[o]versee branch managers, hiring and firing upper echelon managers, overseeing the capital construction projects." In counsel's letter, dated August 22, 2013, appended to the petition, counsel noted that the foreign entity is "primarily involved in capital construction and assembly in Russia as well as heavy transportation." Counsel noted the beneficiary held the position of Deputy Director for the foreign entity.

In the RFE issued by the director on February 3, 2014, the director advised the petitioner that the record was deficient in establishing the beneficiary's employment abroad and whether it was in a managerial or executive capacity. The director outlined the type of evidence that could be submitted to overcome this deficiency.

The petitioner did not provide a response on this issue. Accordingly, the director found that the record did not include evidence to establish this essential element.

On appeal, the petitioner refers to the beneficiary as a "top manager" for the foreign entity and states that his educational background and experience "directly relates to duties he has to perform" for the petitioner.

B. Analysis

As the record before this office does not include definitive information of the beneficiary's duties for the foreign entity or establish when the beneficiary was actually employed at the foreign entity, we are precluded from finding that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. *See* section 101(a)(15)(L) of the Act. Accordingly, the petition must also be denied on this ground.

IV. CONCLUSION

In this matter, upon review of the totality of the record, the record does not demonstrate that the beneficiary had been employed abroad or will be employed in a primarily managerial or executive capacity for the U.S. petitioner. Accordingly, we will uphold the director's determination that the petitioner failed to establish that

the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity or will be employed in a qualifying managerial or executive capacity in the United States.

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