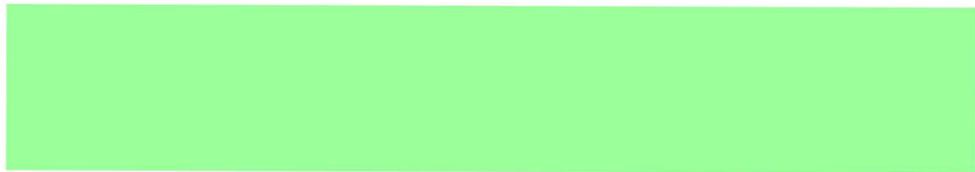
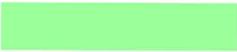


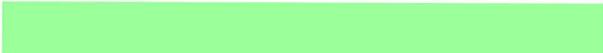


U.S. Citizenship  
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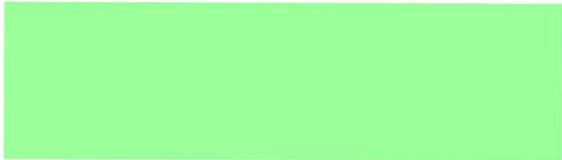


DATE: **SEP 29 2014** Office: VERMONT SERVICE CENTER FILE: 

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, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Form I-129 Petition for a Nonimmigrant Worker 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, a Florida corporation, states that it operates an electronic equipment export and freight forwarding business. The petitioner indicates that it is a subsidiary of [REDACTED]. The beneficiary was previously granted one year as an L-1A intracompany transferee in order to open a "new office" in the United States as the petitioner's general manager. The petitioner now seeks to extend the beneficiary's status for three additional years.<sup>1</sup>

The director denied the petition, concluding that the petitioner did not establish that it will employ the beneficiary in a qualifying 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 submits additional evidence and asserts that the director misinterpreted the case law and evidence. Counsel contends that the beneficiary will primarily perform qualifying managerial or executive duties and thereby qualifies for the requested extension of status.

#### I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, 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.

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<sup>1</sup> Consistent with 8 C.F.R. § 214.2(l)(15)(ii), an extension of stay may only be authorized in increments of up to two years.

- (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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a "new office" petition must submit 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. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

The sole issue addressed by the director is whether the petitioner has established that the beneficiary will be employed in a qualifying managerial or executive capacity.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

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

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

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

#### A. Facts and Procedural History

The petitioner filed the Form I-129 on October 21, 2013. The petitioner stated that it is engaged in exporting computers, electronics, batteries, cameras, and personal hygiene products. In addition, the petitioner states that it offers freight forwarding services to Brazil and other Latin American countries. As of the date of the filing of the petition, the petitioner indicated that it had four employees and that it earned \$362,528 in revenue in 2012.

On the Form I-129 the petitioner stated that the beneficiary will act as general manager, while a support letter submitted along with the petitioner indicated that the beneficiary would act as chief executive officer (CEO) and perform the following duties:

- To be responsible for the entire operations of the corporation and reports directly to the chairman and board of directors.
- To be responsible for to implement board decisions and initiatives and to maintain the smooth operation of the company, with the assistance of senior management.
- To review analysis of activities, cost and operations and will forecast data to determine the progress achieved by the company towards stated goals and objectives.
- To control all of the financial aspect of the corporation including receiving and distributing funds and acquiring debts. This will take 15% of his time.

- To be in charge of obtaining new representation agreements.
- To oversee negotiations of substantial contracts and will conduct legal negotiations on behalf of the corporation.
- To confer with [the foreign entity] to approve new investments in the United States.
- To make decision as to the areas in which concentrate marketing efforts and as to which methods to utilize to expand client base on the research and analysis of market trends and economic conditions. This will take 10% of his time.
- To be responsible for ensuring the execution of all of the day-to-day tasks necessary to achieve the company's vision, managing the company's non-senior level employees, and "making things happen." This will take 10% of his time.

In a separate document, the petitioner provided the following description for the CEO position:

- Responsible for the entire operations of the corporation and reports directly to the board of directors. 5% of estimated time.
- Responsible for implement [*sic*] board decisions and initiatives and to maintain the smooth operation of the firm, with the assistance of senior management. 5% of estimated time.
- Responsible for ensuring the execution of all of the day-to-day tasks necessary to achieve the company's vision, managing the company's non-senior level employees, and "making things happen." 15% of estimated time.
- The CEO has responsibilities as communicator, decision maker, leader, manager and executor. 10% of estimated time.
- The communicator role can involve the press and the rest of the outside world, as well as the organization's management and employees. 10% of estimated time.
- The decision-making role involves high-level decisions about policy and strategy. As a leader, the CEO advises the board of directors, motivates employees, and drives change within the organization. 10% of estimated time.
- As a manager, the CEO presides over the organization's day-to-day, month-to-month, and year-to-year operations. 10% of estimated time.
- Responsible for approving high-level budgets prepared by upper management. 5% of estimated time.
- Responsible for implementing and monitoring business strategy, and approving core corporate initiatives and projects. 5% of estimated time.
- Helps to provide internal perspectives for other board members. 5% of estimated time.
- Sets the direction. Which markets will the company enter? Against which competitors? With what product lines? How will the company differentiate itself? 5% of estimated time.
- Decides, sets budgets, forms partnership, and hires a hires a team to steer the company accordingly. 5% of estimated time.
- The CEO hires, fires, and leads the senior management team. They, in turn, hire fire, and lead the rest of the organization. 5% of estimated time.

- The CEO resolves differences between senior team members, and keeps them working together in a common direction. 5% of estimated time.

The petitioner provided an organizational chart reflecting a Chief Operating Officer (COO) and a Chief Financial Officer (CFO) reporting to the beneficiary. Further, the chart indicates that the COO supervises an employee responsible for domestic and international sales. The chart indicated a number of open positions to be hired, including a billing employee, an administrative employee, a budget analyst, and purchasing, customer service, and receiving and inspection employees.

The petitioner submitted duty descriptions for each of its current employees. The petitioner stated that the COO spends her time on overseeing the company's operations, looking after issues related to marketing sales, production, and personnel; strategically planning and allocating resources; ensuring quality control of all company output; setting operational and performance goals; establishing and monitoring performance reporting systems, amongst other duties. The petitioner indicated that the COO is paid \$31,200 per year. Further, the petitioner explained that the CFO is responsible for analyzing and reviewing financial data, reporting financial performance, preparing budgets and monitoring expenditures and costs; ensuring in-depth testing of internal information technology systems; and assisting other departments in improving information technology usage and capabilities; overseeing treasury activities including banking, investment, derivative management, debt issuance, and liquidity management, amongst other duties. The petitioner stated that the CFO is paid \$33,800 per year.

The petitioner submitted a Florida Department of Revenue Employer's Quarterly Report for the second quarter of 2013 indicating that it paid the following amounts in salaries and wages: (1) \$7,750 to the beneficiary; (2) \$3,900 to the CFO; (3) \$2,600 to the COO; and (4) \$2,080 to the sales employee. In addition, the petitioner provided pay stubs for each employee indicating the following weekly salaries: \$550 to the beneficiary, \$300 to the CFO, \$200 to the COO and \$160 to the sales employee.

The director later issued a request for evidence (RFE) instructing the petitioner to submit additional evidence relevant to the beneficiary's employment in the United States.

In response, the petitioner stated that the beneficiary "was responsible for leading the development and execution of the [petitioner's] long term strategy with a view to creating shareholder value." The petitioner proceeded to provide another duty description for the beneficiary which read as follows:

More specifically, the duties and responsibilities of [the beneficiary] during 2013 included the following:

- to lead, in conjunction with the Board, the development of the Company's strategy;
- to lead and oversee the implementation of the Company's long and short term plans in accordance with its strategy;
- to ensure the Company is appropriately organized and staffed and to have the authority to hire and terminate staff as necessary to enable it to achieve the approved strategy;
- to ensure that expenditures of the Company are within the authorized annual budget;

- to assess the principal risks of the Company and to ensure that these risks are being monitored and managed;
- to ensure effective internal controls and management information systems are in place;
- to ensure that the Company has appropriate systems to enable to conduct its activities both lawfully and ethically;
- to ensure that the Company maintains high standards of corporate citizenship and social responsibility wherever it does business; and
- to communicate effectively with employees, Government authorities, other stakeholders and the public.

Furthermore, the petitioner explained that the beneficiary would perform the following duties during the period of his extended visa:

- to abide by specific internally established control systems, to lead by personal example and encourage all employees to conduct their activities in accordance with all applicable laws and the Company's standards and policies;
- to keep abreast of all material undertakings and activities of the Company and all material external factors affecting the Company and to ensure that processes and systems are in place to ensure that the management of the Company are adequately informed;
- to ensure that the supervisors are properly informed and that sufficient information is provided to the Board to enable the Directors to form appropriate judgments;
- to ensure the integrity of all public disclosure by the Company;
- to request that special meetings of the Board be called when appropriate;
- to determine the date, time and location of the annual meeting of shareholders and to develop the agenda for the meeting;
- to sit on committees of the Board where appropriate as determined by the Board.

The petitioner stated that it currently employs four full-time individuals, including the beneficiary, but planned to hire three new employees during 2014 and 2015. The petitioner indicated that these future hires would be billing, customer service, and billing employees to be supervised by the COO and CFO, and noted that they would be delegated "daily operational activities." The petitioner provided duty descriptions for each of its proposed employees. The petitioner explained that the customer service employee, projected for hire in 2014, would be responsible for ensuring that customer's needs are met, processing customer orders, and attending to customer questions, complaints and concerns. Further, the petitioner explained that the receiving clerk, also estimated for hire in 2014, would perform shipping and receiving duties, including keeping an adequate supply of shipping materials and forwarding requisitions. The petitioner stated that a billing clerk will be hired in 2015 and be responsible for creating invoices and credit memos and issuing them to customers. The petitioner stated that it planned to hire three other employees in 2016, including an administrative assistant, a budget analyst, and a purchasing assistant. The petitioner indicated that each of these new employees would make \$22,450 per year.

The petitioner also submitted a duty description for the Domestic and International Sales Executive specifying that she is responsible for negotiating the terms of agreements and closing sales, organizing sales visits, demonstrating and presenting products, and maintaining accurate records. Otherwise, the petitioner resubmitted the same duties for the beneficiary's other subordinates, the COO and CFO.

In addition, the petitioner provided a Florida Department of Revenue Employer's Quarterly Report for the third quarter of 2013 reflecting that it continued to employ the beneficiary, the COO, the CFO and the sales employee at the same wages reflected on the previous quarterly report. Lastly, the petitioner indicated that the sales employee holds an associate's degree in publicity and marketing and that the COO and CFO earned degrees in business administration, all from universities in Brazil.

In denying the petition, the director stated that the evidence presented indicates that the petitioner has not grown sufficiently after one year to support the beneficiary in a qualifying managerial or executive capacity. The director noted that the petitioner indicated that it has staffed three executive positions, including the beneficiary, but has only one employee responsible for day-to-day operational tasks. The director concluded, given the top heavy nature of the organization, that it was likely that the beneficiary primarily performed non-qualifying operational duties.

On appeal, counsel contends that the director overlooked evidence showing that the beneficiary oversees independent contractors in addition to its current "four to five" employees. Counsel asserts that the director inappropriately denied the petition based solely on the size of the organization. Counsel emphasizes that the beneficiary was previously approved for an intracompany transferee visa in 2012 and states that the evidence establishes, contrary to the director's conclusion, that the beneficiary is primarily performing qualifying executive or managerial duties.

The petitioner submits additional evidence in support of the appeal. This evidence includes a business plan for 2014-16 which indicates that it "will offer" export services of "lawful products" to Colombia, Mexico, Ecuador, Peru, Guatemala, and Brazil and includes pricing and delivery timelines for each country. The petitioner submitted a Florida Department of Revenue Employer's Quarterly Report for the fourth quarter of 2013 indicating that it had hired two additional employees who earned \$700 during that quarter, but otherwise the quarterly report reflected the payment of wages identical to previous quarterly reports. The petitioner indicated that the new employees were hired in December 2013 to perform customer service and shipping and receiving functions.

Further, the petitioner provided 2013 Forms W-2 Wage and Tax Statements relevant to each of its employees indicating that they earned the following wages during 2013: (1) the beneficiary (\$28,600); (2) CFO (\$15,600); (3) the CFO (\$10,400); and (4) the sales employee (\$6,240). In addition, the petitioner submitted 2013 Forms 1099, Miscellaneous Income for each of its employees, indicating that the beneficiary earned \$28,600, the CFO was paid \$23,400, the COO earned \$15,600, and the sales employee received \$9,260. The petitioner submitted paystubs reflecting that each of its employees earned the following weekly wages for forty hours of work during January and February 2013: (1) the beneficiary \$550 per week; (2) the CFO, \$300; (3) the CFO, \$200; (4) the sales employee, \$160 and (5) the customer service employee, \$350.

B. Analysis

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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 duties offered by the petitioner for the beneficiary, such as developing the company's strategy, implementing long term and short term goals, ensuring that the company is appropriately organized and staffed, authorizing annual budgets, ensuring effective internal controls and management systems are in place, and keeping abreast of material undertakings are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. Although the beneficiary has provided a number of duty descriptions for the beneficiary, they include few specifics relevant to the beneficiary's day-to-day activities such as examples or documentation substantiating strategies or goals developed or implemented by the beneficiary, specific budgets he managed, risks he assessed, or internal controls he implemented. In fact, several of the beneficiary's duties simply describe the general attributes of an executive, rather than the specific tasks the beneficiary performs. For example, the petitioner stated that the beneficiary will act in a "communicator role" both inside and outside the organization and "make things happen." Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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). 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)).

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

Here, the petitioner has not established that the staffing and organizational structure in place at the time of filing had sufficient operational employees to support the beneficiary in a qualifying managerial or executive capacity. As noted by the director, the petitioner indicates that it employed three executives and one sales employee at the time the petition was filed. In response to the RFE, the petitioner projected that it

will hire a number of operational employees during the next two years, including billing, administrative, customer service, and receiving and inspection employees. The petitioner failed to articulate who performs these necessary operational duties as of the date of the filing of the petition. On appeal, the petitioner submits evidence indicating that it has hired customer service and receiving and inspection employees as of December 2013. However, the petition was filed in October 2013. As such, the hiring of employees after the filing of the petition is not relevant to demonstrating that the petitioner has developed sufficiently within the initial year to support the beneficiary in a qualifying managerial or executive capacity. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Further, the petitioner has submitted only generalized position descriptions for the beneficiary's immediate subordinates. Much like the beneficiary's duty description, the duty descriptions provided for his subordinates provide little insight into their actual day-to-day duties. For instance, the petitioner vaguely states that the COO spends her time on overseeing the company's operations, looking after issues related to marketing sales, production, and personnel; strategically planning and allocating resources; ensuring quality control of all company output; setting operational and performance goals; and establishing and monitoring performance reporting systems. Further, the petitioner explained that the CFO is responsible for analyzing and reviewing financial data, reporting financial performance, preparing budgets and monitoring expenditures and costs; ensuring in-depth testing of internal information technology systems; assisting other departments in improving information technology usage and capabilities; and overseeing treasury activities.

In each case, the petitioner has provided few specifics or supporting evidence to corroborate that these employees actually perform the stated duties. In addition, the duties of both of these subordinates include no day-to-day operational duties necessary to the operation of the petitioner's electronics export business. Given that the company has only one operational employee and has yet to hire employees to perform many of the company's daily functions, it is reasonable to believe that the executive staff were in fact performing lower-level tasks in order for the company to operate as of the date of filing. Although the petitioner asserts on appeal that the petitioner's operations are supplemented by independent contractors who perform the operational functions of the business, the petitioner has submitted no supporting evidence to substantiate this assertion. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The petitioner did not provide evidence of payments to contractors, identify any contractors on its organizational chart, or otherwise explain how the contracted staff relieves the beneficiary and the COO and CFO from performing non-qualifying duties.

The petitioner's 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 a qualifying 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 the present matter, the totality of the record does not support a conclusion that the beneficiary's subordinates are supervisors, managers, or professionals. Instead, the record indicates that, despite their executive job titles, the beneficiary's subordinates must perform the actual day-to-day tasks of operating the petitioner's electronics export business. The petitioner has not established that the beneficiary qualifies as a personnel manager.

In addition, there are discrepancies in the record which call into question whether the petitioner's current employees work on a full-time basis. The petitioner asserts that the CFO receives \$39,000 per year, the COO earns \$26,000 per year and that the sales employee earns a salary of \$20,800. However, the petitioner submitted payroll documentation which indicates that the CFO receives \$300 per week, the COO \$200 per week, and the sales employee \$160 per week, each for 40 hours of work. Further, the petitioner provided IRS Forms W-2 for each employee reflecting that they earn the lesser salaries reflecting in their pay stubs and the petitioner's state and federal quarterly wage reports and not the higher salaries reflected elsewhere on the record. On appeal, the petitioner submits IRS Forms 1099 for each employee and the petitioner asserts that all employees were paid additional amounts independent of withholdings. However, this division of payments is not reflected in the submitted pay stubs and the petitioner has offered no specific explanation for this approach. The petitioner has not shown that the employees are receiving their stated weekly salaries.

Furthermore, on appeal, counsel asserts that the director improperly based his decision solely on the size of the petitioner. Counsel correctly observes that 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 § 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). 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.

In the present matter, the director's decision is not based solely on the size of the petitioner's organization. However, as noted above, this may be taken into account along with other relevant evidence. Here, it is a relevant consideration, as the record indicates that the petitioner did not have sufficient operational employees as of the date of the petition to relieve the beneficiary and the two other purported executives from involvement in the day-to-day non-managerial and non-executive tasks of the organization. Indeed, the petitioner indicated at the time of filing that it had yet to hire several lower-level operational positions. Further, the petitioner has provided overly vague duty descriptions for the beneficiary and his asserted subordinates thereby leaving further question as to whether they are acting in their claimed executive and managerial capacities. The submitted invoices and other business documentation reflect that the petitioner purchases electronics products in small quantities from U.S. sellers and ships these products to buyers in Latin America. None of the position descriptions reflect who is performing the routine duties associated with this business model.

Lastly, counsel references the prior approval of its new office petition in 2012, suggesting USCIS should give deference to that approval. First, the prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Further, the previous petition was adjudicated pursuant to the regulations applicable to new offices at 8 C.F.R. § 214.2(l)(3)(v), while this petition is adjudicated pursuant to 8 C.F.R. § 214.2(l)(14)(ii). As previously stated, 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 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. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension. Therefore, the director is tasked with analyzing whether the petitioner has developed sufficiently after one year to support the beneficiary in a qualifying managerial or executive authority. Here, the director reviewed the record according to the applicable regulations and determined that the petitioner did not establish that the company had grown to the point where it requires the beneficiary to perform primarily managerial or executive duties. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

For the reasons set forth above, the petitioner has not demonstrated that the beneficiary will be employed in a qualifying managerial or executive capacity. Therefore, the appeal will be dismissed.

### III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.