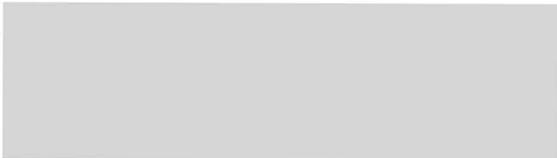




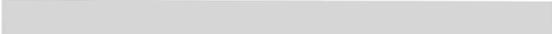
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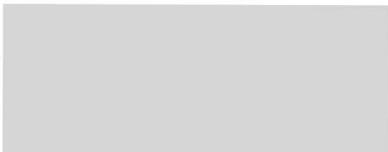
DATE: **AUG 06 2015**

PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 (Form I-129), seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Maryland corporation established in [REDACTED] is operating as a "North American sales arm for international manufacturer of food products." The petitioner claims to be a subsidiary of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States.

The director denied the petition concluding that the evidence of record did not establish that the beneficiary will be employed in a qualifying managerial or executive capacity within one year of approval of the new office petition.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to our office. On appeal, the petitioner contends that it is submitting evidence addressing the issue identified in the director's decision and that there is a specific hiring plan and substantial resources that will necessitate the beneficiary to act in a managerial capacity during the first year of operations. The petitioner submits a brief and additional evidence in support of the appeal.

I. THE LAW

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

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

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

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.

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 qualifying managerial capacity within one year of approval of the new office petition.

A. Facts

The petitioner filed the Form I-129 on June 23, 2014. On the Form I-129, where asked to describe the beneficiary's proposed duties in the United States, the petitioner stated:

1. Controlling [the foreign entity's] U.S. operations, including making decisions regarding Petitioner's internal corporate structure based on his projections of the current business development and needs.
2. Managing all aspects of hiring and supervision of Petitioner's employees;
3. Establishing a budget for Petitioner;
4. Supervise coordination with other departments and branches of [the foreign entity];
5. Identify new business opportunities throughout North America, and enhance relationships with existing business partners, both to augment the supply chain and to establish new distribution networks; and
6. Prioritize marketing objectives. In particular, [the beneficiary] will be tasked with identifying and contracting with both wholesalers and retailers on behalf of [the foreign entity]. He will also be responsible for recruiting distributors to carry [the foreign entity's] product line.

The petitioner submitted a document from the foreign entity, titled Offer Letter and dated April 8, 2014, offering the position of general manager at the U.S. company and listing his proposed duties as follows:

- Develop and execute the business strategies, business plans and budgets of the business unit(s) assigned, aiming to maximize revenue and profitability
- Maintain and enhance relationships with existing customers
- Identify new business opportunities and cross sell other business units' areas of expertise as appropriate
- Oversee the operation flow to maximize the effectiveness and efficiency in all aspects
- Identify, develop, motivate and retain talent of the business unit(s)
- Handle emergency and provide damage control solutions
- Oversee all aspects of the business units to ensure compliance with corporate policies

The petitioner submitted a letter of support, dated June 16, 2014, and briefly described the beneficiary's proposed position in the United States as follows:

Petitioner would like to employ the beneficiary as its General Manager where he will continue to be responsible for the following duties:

1. Controlling [the foreign entity's] U.S. operations, including making decisions regarding Petitioner's internal corporate structure based on his projections of the current business development and needs.
2. Managing all aspects of hiring and supervision of Petitioner's employees;
3. Establishing a budget for Petitioner;
4. Supervise coordination with other departments and branches of [the foreign entity];
5. Identify new business opportunities throughout North America, and enhance relationships with existing business partners; and,
6. Prioritize marketing objectives. In particular, [the beneficiary] will be tasked with identifying and contracting with both wholesalers and retailers on behalf of [the foreign entity]. He will also be responsible for recruiting distributors to carry [the foreign entity's] product line.

[The beneficiary] will clearly be employed in a managerial capacity. . . .

The petitioner submitted its business plan, stating the following about the beneficiary's proposed position and its organizational structure:

[The beneficiary] will be charged with the creation of a sales and marketing team for the North American arm of [the foreign entity's] business. Individuals will be hired as [the petitioner] grows and needs develop.

6.1 Organizational Structure

[The petitioner's] planned organization calls for sales and marketing, product development, finance and administration. Each of those areas will be under the direction of [the petitioner's] General Manager.

6.2 Management Team

The management will be led by the General Manager. Ultimately, account representatives and sales manager will be hired with account representatives reporting to sales managers and sales managers reporting to the General Manager.

The petitioner did not submit any additional information about the beneficiary's proposed position in the United States or its staffing plan for the new office.

The director issued a request for evidence ("RFE") on July 3, 2014, instructing the petitioner to submit evidence demonstrating that the beneficiary's proposed position in the United States will be in a managerial or executive capacity at the end of the petitioner's first year of operations.

In response to the RFE, the petitioner submitted a letter from the foreign entity describing the petitioner's organizational structure and staffing plan as follows:

Office space has already been secured with a shared receptionist, however, one of [the beneficiary's] first tasks will be to build a team comprising of multiple divisions including, bookkeeping, administrative, and sales. . . . Beneficiary will have supervisory responsibility over each department and employee, and he will also have responsibility for allocating resources to achieve the corporation's business goals of identifying new suppliers and establishing new markets for the Parent's products.

The petitioner submitted an organizational chart, indicating that it was for year one of operations, depicting the beneficiary at the top tier of the hierarchy as the General Manager directly supervising an "Accounting/H.R./Administrative Department" and a "Procurement and Sales Department." The Accounting/HR/Administrative Department includes a "Comptroller" and the Procurement and Sales Department includes a "Senior Sales Associate."

The petitioner submitted a document titled General Manager Job Description, describing the beneficiary's proposed position in the United States and stating that "the general manager's responsibilities involve supervision, public relations, marketing, profitability and sales, service, reporting, capital requirements, and other duties as assigned by the board of directors." The document goes on to list the following clusters of responsibilities and includes additional tasks associated to each one:

- Supervision
- Develop and communicate company goals and results to all personnel
- Select, supervise, and support the employee team
- Uphold company policies
- Public Relations
- Marketing
- Profitability and Sales
- Establish and achieve profitability goals
- Establish and achieve sales goals
- Increase market share through regular sales efforts
- Service
- Reporting

- Capital Requirements

The petitioner also provided similar job descriptions for the Sales Manager and the Comptroller. The petitioner submitted a timeline for its first year of operations indicating that it will begin the hiring process for a salesperson and bookkeeper within one month of the beneficiary's arrival and hire them by the second month.

The director denied the petition on October 3, 2014, concluding that the petitioner did not establish that the beneficiary will be employed in a qualifying managerial capacity within one year of approval of the new office petition. In denying the petition, the director found that with the lack of specificity in the petitioner's business plan, job descriptions, and hiring plan for the new office, it could not determine that the proposed new office will grow to a size, within one year of petition approval, to support and require the beneficiary to act in a managerial capacity and be relieved from the day-to-day tasks of running the new office. The director further found that the proposed organizational chart and job descriptions consist primarily of generalized high-level employees and lack specificity in the logistics of procurement and sales distribution.

On appeal, the petitioner contends that the beneficiary will be employed in a managerial capacity within one year. The petitioner states that it has continued preparations for the beneficiary's employment in the United States by retaining a real estate agent in New Jersey to locate a warehouse to store imported canned goods, identifying two individuals who will be hired for the support positions, preparing an updated budget with three year projections including detailing the anticipated impact of the warehouse and staff, and receiving financial commitments from other large Chinese manufacturers of canned goods. The petitioner submits an Investment Agreement for [REDACTED], a Feasibility Study for "[REDACTED]" a new organizational chart for its U.S. company, a warehouse real estate listing and letter from the agent, resumes of prospective employees subordinate to the beneficiary, and letters from several companies appointing the petitioner as their representative in the United States. The petitioner also submits an email written by the beneficiary listing the nature of its business in the United States.

The petitioner submits a new organizational chart titled "Warehouse food trading business" depicting the beneficiary at the top tier of the hierarchy as the General Manager directly supervising [REDACTED] who is identified as "Purchasing and Warehousing," as well as the following positions: "Purchasing," "Office/Accounting," and "Warehousing." The chart indicates that the Purchasing position supervises "Contract Sales"; the Office/Accounting position supervises "1 people"; and the Warehousing position supervises "2 workers."

The petitioner also submits resumes for [REDACTED] indicating that he has received a Master of Professional Accountancy, and [REDACTED] indicating that he has received a Bachelor degree in computer science.

B. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a qualifying managerial capacity within one year of commencing operations in the United States.

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by U.S. Citizenship and Immigration Services (USCIS) regulation. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations may be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of a beneficiary in a qualifying managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure, and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

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 in either an executive or a managerial capacity. *Id.*

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary will perform the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary will *primarily* perform 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").

The petitioner first characterized the beneficiary's role as General Manager and briefly described his duties in very broad terms, noting that he will control U.S. operations, manage all aspects of hiring and supervision of U.S. employees, establish a budget for the petitioner, supervise coordination with other departments and branches of the foreign entity, identify new business opportunities throughout North America, enhance relationships with existing business partners, prioritize marketing objectives, identify and contract wholesalers and retailers on behalf of the foreign entity, and recruit distributors to carry the foreign entity's product line. This initial description is very broad and does not include any detail or specificity as to what the beneficiary will actually do on a daily basis, which is insufficient to show that the beneficiary will primarily perform qualifying duties. The petitioner did not document what proportion of the beneficiary's duties would consist of managerial duties and what proportion would consist of non-managerial duties. 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's description of the proposed

duties does not provide any detail or explanation of the beneficiary's claimed managerial or executive activities in the course of her 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 RFE, the petitioner provided a somewhat expanded, but equally vague and broad, list of job duties for the beneficiary's proposed position, and again did not allocate percentages of time the beneficiary would spend on specific duties. The petitioner submitted a new list of duties for the beneficiary's proposed position, which included, in part, the following tasks:

- Develop and communicate company goals and results to personnel
- Select, supervise, and support employees
- Uphold company policies
- Develop and review budget and goals with staff within 60 days of fiscal year end
- Hold regular employee meetings
- Assign employee responsibilities and maintain job descriptions
- Develop performance standards
- Supervise ongoing employee training
- Complete and administer a yearly merit review with all direct reports
- Enforce and uphold all company policies
- Ensure company facilities and equipment meet all regulations
- Ensure no customer is uninformed of safe product handling
- Develop sound working relationships with other companies and within the business community
- Adhere to and promote all department and company policies and decisions
- Prepare and review marketing plans with employees on a regular basis
- Review individual department marketing plans annually
- Review individual department sales and promotion programs annually
- Plan marketing activities and review results and expectations with employees
- Establish and achieve sales and profitability goals
- Increase the company's market share through regular sales efforts
- Procure raw materials for the parent company's manufacturing plant
- Supervise performance of purchasing functions to insure greatest value
- Supervise pricing and inventory policies
- Establish profit expectations
- Establish sales goals and develop plans to achieve them
- Maintain inventories to assure service with a minimum of delivery delays
- Supervise sales staff and sales efforts
- Review daily reports
- Review sales results with staff regularly
- Ensure employees have the knowledge and information needed to achieve market share growth
- Ensure all customers receive courteous and efficient service from all employees
- Handle claims and complaints promptly
- Promote outstanding customer service

- Keep the board informed of the company's status and activities
- Assist the board in formulating policies
- Determine the company's fixed asset needs and present a fixed asset budget to the board.

Here, the petitioner listed the beneficiary's duties but failed to quantify the time the beneficiary would spend on them. This lack of documentation is important because the beneficiary's proposed daily tasks, as noted above, do not fall directly under traditional managerial or executive duties as defined in the statute. For this reason, the petitioner did not establish that the beneficiary would primarily perform duties in either a managerial or executive capacity. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. See generally, 8 C.F.R. § 214.2(l)(3)(v)(C).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See sections 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional."¹ Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Here, the first organizational chart, submitted in response to the RFE, indicates that the beneficiary will directly supervise "Accounting/H.R./Administrative Department" and a "Procurement and Sales Department,"

¹ In evaluating whether the 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).

each with a single listed employee. The second organizational chart, submitted on appeal, indicates that the beneficiary will directly supervise a Purchasing and Warehousing position and what appear to be three departments: Purchasing, supervising Contract Sales; Office/Accounting, supervising one individual; and Warehousing, supervising two individuals. The petitioner submitted position descriptions for the Comptroller and Sales Manager positions, both listed on the first organizational chart. However, the actual job duties listed for the beneficiary's subordinates' positions do not demonstrate that they require a professional degree. Nor do they indicate that the positions have supervisory or managerial responsibilities. Regardless, the fact that one of the beneficiary's subordinates may manage a particular function or supervise lower-level employees is not sufficient to elevate the beneficiary to a position that is managerial in nature. The petitioner has not demonstrated that the beneficiary's duties primarily focus on the management of the organization and the supervision of qualifying managerial, professional, or supervisory employees, rather than on producing a product or providing a service of the U.S. company. As noted above, the petitioner did not submit a detailed description of the beneficiary's position to establish that his daily routine will consist of primarily managerial duties. Finally, the petitioner has not submitted evidence that the beneficiary's subordinate employees will relieve him from performing non-qualifying operational and administrative duties at the U.S. company.

The petitioner has not established, in the alternative, that the beneficiary is employed primarily as a "function 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 position description that describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. Here, the petitioner did not indicate that the beneficiary will be a function manager. The petitioner did not describe an essential function to be managed by the beneficiary or provide a breakdown of the beneficiary's job duties to support such a claim.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within an organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. See 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 did not demonstrate that the beneficiary's proposed duties primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations. The job duties provided for the beneficiary's proposed employment do not demonstrate that the beneficiary will focus the majority of his time on executive duties rather than the day-to-day operations of the business.



Based on the foregoing, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity, or as a function manager, within one year of the approval of the new office petition. Accordingly, 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 petitioner has not met that burden.

ORDER: The appeal is dismissed.