



U.S. Citizenship
and Immigration
Services

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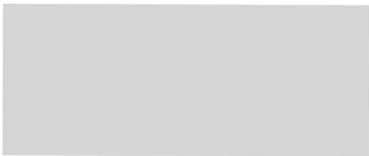
DATE: **AUG 10 2015**

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 this 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 Missouri corporation established in [REDACTED], states that it operates a "franchisor" business. The petitioner claims to be a subsidiary of [REDACTED] located in Austria. The petitioner seeks to employ the beneficiary as the Chief Financial Officer (CFO) for a period of two years.

The director denied the petition on two alternate grounds, concluding that the evidence of record did not establish that (1) the beneficiary was employed abroad primarily in a qualifying executive or managerial capacity; and (2) the beneficiary will be employed primarily in a qualifying managerial or executive capacity in the United States.

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 asserts that the beneficiary has been employed in a primarily executive capacity abroad and will also be employed in a primarily executive capacity in the United States. The petitioner submits a brief 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.

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.

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.* 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.

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").

II. THE ISSUES ON APPEAL

A. Employment in a Qualifying Managerial Position in the United States

The first issue to be addressed is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity in the United States.

1. Facts

The petitioner filed the Form I-129 on November 26, 2014 and indicated that it had eight current employees in the United States and a gross annual income of \$1,800,000. On the Form I-129, where asked to describe the beneficiary's proposed duties in the United States, and in its letter of support, dated November 3, 2014, the petitioner specifically stated that the beneficiary will be employed in an executive position as the CFO of its U.S. company and described her proposed executive duties as follows:

She will have executive and supervisory responsibility for both operational and programmatic support to the organization. She will supervise the finance unit and is the chief financial spokesperson for the organization. She will report directly to the Chief Executive Officer (CEO) and directly assists the Chief Operating Officer (COO) on all strategic and tactical matters as they relate to budget management, cost benefit analysis, forecasting needs and the securing of new funding. She will also work with the CEO on the strategic vision including fostering and cultivating stakeholder relationships on city, state, and national levels, as well as assisting in the development and negotiation of contracts; participate in developing new business, specifically: assist the CEO and COO in identifying new funding opportunities, the drafting of prospective programmatic budgets, and determining cost effectiveness of prospective service delivery.

The petitioner submitted its business plan describing the beneficiary's proposed position in the United States as follows:

[The beneficiary] will oversee all financial aspects and will lead the development of the company's business initiatives. She will be accountable for the accuracy of a company's

financial reporting. Direct the company's financial goals, objectives, and budgets. She work closely with [the CEO] on focusing on the planning of the business, directing the daily operations pertaining to the finances, and human resource activities, including the approval of human resource plans and the establishment and organization of company objectives on a day-to-day basis.

The business plan also includes an organizational chart depicting the beneficiary as the CFO, reporting directly to the CEO, [REDACTED]. As the CFO, the beneficiary directly supervises a Director of Purchasing, [REDACTED], who, in turn, supervises Accounts Receivable, [REDACTED] and a Bookkeeper, who has not been hired. The organizational chart also lists a Legal Department/National Accounts/Notary Public, [REDACTED] and a COO, [REDACTED] parallel to the beneficiary's position and also reporting directly to the CEO. The Legal Department/National Accounts/Notary Public position supervises one Receptionist/Assistant (TBA), and the COO supervises one Director Auto Paint Repairs, [REDACTED], who supervises a Warehouse Manager, [REDACTED] and an HQ Training position, [REDACTED] who supervises a "Second Trainer" who has not been hired.

The business plan further shows that the petitioner will have ten¹ employees during "year one," but it does not indicate what year constitutes "year one." The business plan states that, in year one, the petitioner will employ: one CEO, [REDACTED] one CFO, the beneficiary; one Franchise Director; one Purchasing Director; one Paint Trainer; one Interior Trainer; one Warehouse Manager; one Account Receivable; one Legal/Notary; and one Receptionist. Year two will remain the same and at year three, the petitioner will hire one additional Paint Trainer and one additional Interior Trainer, and then remain the same through year five.

The petitioner submitted an undated document titled Job Duties in the U.S., providing the exact same position description for the beneficiary's position in the United States as previously provided on the Form I-129 and in its November 3, 2014 letter of support.

The petitioner also submitted its Internal Revenue Service (IRS) Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2014, indicating that it had eight employees and paid \$94,548.72 in wages, tips, and other compensation.

The petitioner did not submit any additional information about the beneficiary's proposed position in the United States or those of her subordinates.

The director issued a request for evidence ("RFE") on December 4, 2014, advising the petitioner that the description of duties provided for the beneficiary's position at the U.S. company is not sufficient to show that she will be primarily employed in a managerial or executive capacity in the United States. The director instructed the petitioner to submit evidence demonstrating that the proposed position in the United States will be managerial or executive.

In response to the RFE, the petitioner submitted a letter, dated December 18, 2014, specifically addressing the beneficiary's position in the United States as follows:

¹ The petitioner's business plan states that the petitioner will have nine employees at year one; however, when adding all of the positions listed on the business plan, it amounts to ten total employees.

- **How the beneficiary will direct management of the organization**

Meet with Department-heads once a month (or as needed) to discuss budgets and productivity of each department. Prepare budgets for approval by CEO, including those for funding or implementation of programs. Work with CFO [*sic*] to set goals/targets for next meeting and re-direct and/or allocate resources where necessary. She will liaise with department heads on financial forecasts and update department budgets and monitor expenses. Direct or coordinate activities of the departments concerned with pricing, sales, and services to Franchise owners.

- **How the beneficiary will establish the goals and policies of the organization**

Beneficiary meets once a quarter with the Board of Directors of the Foreign Company to report on progress and status of US Company. Based on meeting, she will direct and coordinate the US Company's financial/budget activities to fund operations, maximize investments, and increase efficiency. She will prepare financial forecasts and set goals and update budgets and monitor expenses. He [*sic*] will also talk about global strategy of company as a whole and discuss the importance of each department as it fits in global strategy and appoint department heads or managers and assign or delegate responsibilities to them.

- **How the beneficiary will exercise wide latitude in discretionary decision making**

Prepare budgets for approval, including those for funding or implementation of programs. She will direct the buying or selling of inventory or other investments and negotiate or approve contracts with suppliers, distributors, and engage in other contractual obligations on behalf of the company that will legally bind the US Company. She has wide discretionary decision making on Company expenditure under US\$100,000.

- **Whether the beneficiary will receive only general supervision or directions from higher level executives, or board of directors**

He [*sic*] will serve with the CEO at the highest level at the US Company and will only receive general direction from the CEO and the Board of Directors of [the foreign entity] in providing [the foreign entity] with financial reports and the financial wellbeing of [the petitioner].

The RFE response letter includes the same organizational chart provided in the petitioner's business plan and goes on to list job duties for each of the positions listed, including the beneficiary's subordinates, Director of Purchasing and Accounts Receivable.

The petitioner submitted its IRS Forms 941 for the second and third quarters of 2014, indicating that it had seven employees and paid \$87,110.49 in wages, tips, and other compensation during the second quarter and paid \$31,589.48 in wages, tips, and other compensation during the third quarter. The petitioner also submitted its Form MODES41, Missouri Division of Employment Security Quarterly Contribution and Wage Report, for the second and third quarters of 2014, indicating that it had eight employees the first month and seven employees the second and third months of the second quarter, and seven employees the first month and zero employees the second and third months of the third quarter. According to its Form MODES41, the individuals employed by the petitioner (during each period it had employees) were: [REDACTED]

[REDACTED] and [REDACTED], the eighth employee listed only during the first month of the second quarter was [REDACTED]

The director denied the petition on January 7, 2015, concluding, in part, that the evidence of record did not establish that the beneficiary will be employed in a primarily managerial or executive capacity in the United States. In denying the petition, the director found that the description of the beneficiary's proposed duties does not demonstrate that she will direct the management of the organization or establish the goals and policies of the organization. The director further found that the record does not establish that the beneficiary will be primarily supervising and controlling the work of other supervisory, professional, or managerial employees. The director finally found that the petitioner did not establish that the U.S. business has an organizational structure sufficient to elevate the beneficiary to a position that is primarily executive or managerial in nature.

On appeal, the petitioner disputes the director's adverse findings and contends that the beneficiary will be employed in an executive capacity in the United States.

2. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, or as a function manager, in the United States.

In the instant matter, the petitioner first characterized the beneficiary's role as CFO, indicating that it will be an executive position, and described her proposed duties in very broad terms, in part: supervise the finance unit; act as the chief financial spokesperson for the organization; assist the COO on all strategic and tactical matters; work with the CEO on the strategic vision; assist in the development and negotiation of contracts; participate in developing new business; assist the CEO and COO in identifying new funding opportunities; assist in the drafting of prospective programmatic budgets; assist in determining cost effectiveness of prospective service delivery; oversee all financial aspects; lead the development of the company's business initiatives; accountable for the accuracy of financial reporting; direct the financial goals, objectives, and budgets; work closely with CEO on planning the business, directing the daily operations pertaining to the finances; and human resource activities, including the approval of human resource plans and the establishment and organization of company objectives on a day-to-day basis. This initial description of the beneficiary's proposed position is insufficient to show that the beneficiary will primarily perform qualifying duties at the U.S. company. The petitioner did not demonstrate what proportion of the beneficiary's duties would consist of executive or managerial duties and what proportion would consist of non-executive or 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 (2nd Cir. 1990).

In response to the RFE, the petitioner provided an equally vague description of the beneficiary's proposed position, and again did not allocate the percentages of time the beneficiary would spend on specific duties. The petitioner described the beneficiary's proposed position, in part: meet with department-heads once a

month to discuss budgets and productivity; prepare budgets for approval by CEO; set goals/targets for next meeting and re-direct and/or allocate resources where necessary; liaise with department heads on financial forecasts; update department budgets and monitor expenses; coordinate activities of departments pertaining to pricing, sales, and services to franchise owners; report to the foreign entity's Board of Directors once a quarter; direct and coordinate petitioner's financial/budget activities to fund operations, maximize investments, and increase efficiency; prepare financial forecasts; set goals; update budgets and monitor expenses; talk about global strategy of petitioner; appoint department heads or managers and assign or delegate responsibilities; prepare budgets for approval; direct the buying or selling of inventory or other investments and negotiate or approve contracts with suppliers, distributors; has wide discretionary decision making on expenditures under US\$100,000; serve with the CEO at the highest level; receive only general direction from the CEO and the Board of Directors of the foreign entity; and provide the foreign entity with financial reports and the financial wellbeing of the petitioner. Here, the petitioner listed the beneficiary's duties but did not quantify the time she would spend on them. This failure 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).

In the instant matter, the petitioner has not provided sufficient information detailing the beneficiary's proposed duties at the U.S. company to demonstrate that these duties will qualify her as a manager or executive. 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. As noted above, 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. at 1108.

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." 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).

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

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).

Here, the organizational chart indicates that the beneficiary will directly supervise a Director of Purchasing, who supervises Accounts Receivable and a Bookkeeper. 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, although one position has subordinate employees listed in the organizational chart. 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 her daily routine will consist of primarily managerial duties. Finally, the petitioner has not submitted evidence that the beneficiary's subordinate employees will relieve her 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 is 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.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial. For the reasons discussed above, we find that the beneficiary will not be employed as a function manager.

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. 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.* While the definition of "executive capacity" does not require the petitioner to establish that the beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the petitioner's burden to establish that someone other than the beneficiary carries out the day-to-day, non-executive functions of the organization.

Here, the petitioner first asserts that the beneficiary will be an executive; however, the petitioner has not shown that the beneficiary will be employed in a primarily executive capacity. The petitioner did not demonstrate that the beneficiary's duties will 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 and her subordinates do not demonstrate that the beneficiary will focus 51% of her time on executive duties rather than the day-to-day operations of the business.

We note 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). In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). 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. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Based on the deficiencies discussed above, the petitioner has not established that the beneficiary will be employed in a primarily managerial or primarily executive capacity in the United States. Accordingly, the appeal will be dismissed.

B. Employment Abroad in a Qualifying Managerial Capacity

The second issue to be addressed is whether the petitioner established that the beneficiary was employed full time by a qualifying foreign entity for one continuous year in the three years preceding the filing of the petition in a qualifying managerial capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B).

1. Facts

In its letter of support, dated November 3, 2014, the petitioner stated that the beneficiary was appointed Director of the qualifying foreign entity in October 2013, but did not describe her foreign employment. The

petitioner simply stated that the owners of the foreign entity placed the beneficiary in control of the foreign entity's finances.

The petitioner submitted an undated letter from the foreign entity, describing the beneficiary's foreign employment as follows:

This letter confirms that [the beneficiary] is chairman of the board of [the foreign entity] since the inception of the company and reports to the Supervisory board of [the foreign entity].

As part of her duties she manages and to provides leadership [*sic*] to the Board of Directors of the Company. She is accountable to the Board and acts as a direct liaison between the Board and the management of the Company, through the Chief Executive Officer ("CEO"). The Chairman acts as the communicator for Board decisions where appropriate.

More specifically, her duties and responsibilities of the Chairman are as follows:

1. to act as a liaison between management and the Board;
2. to provide independent advice and counsel to the CEO;
3. to keep abreast generally of the activities of the Company and its management;
4. to ensure that the Directors are properly informed and that sufficient information is provided to enable the Directors to form appropriate judgments;
5. in concert with the CEO, to develop and set the agendas for meetings of the Board;
6. to act as Chair at meetings of the Board;
7. to recommend an annual schedule of the date, time and location of Board and Committee meetings;
8. to review and sign minutes of Board meetings;
9. to sit on other Committees of the Board where appropriate as determined by the Board;
10. to call special meetings of the Board where appropriate;
11. in concert with the CEO, to determine the date, time and location of the annual meeting of shareholders and to develop the agenda for the meeting;
12. to act as Chair at meetings of shareholders;
13. to recommend to the Board, after consultation with the Directors, management and the Governance and Nominating Committee, the appointment of members of the Committees of the Board;
14. to assess and make recommendations to the Board annually regarding the effectiveness of the Board as a whole, the Committees of the Board and individual Directors; and
15. to ensure that regularly, upon completion of the ordinary business of a meeting of the Board, the Directors hold discussions without management present.

The letter went on to provide an overview of the organizational hierarchy of the foreign entity, showing that the President of the petitioner, [REDACTED] reports directly to the Chairman of the Board of the foreign entity. The letter further demonstrated that the beneficiary reports to the Supervisory Board of the foreign entity, which consists of [REDACTED] as Chairman, [REDACTED] and [REDACTED]

In the RFE, the director instructed the petitioner to submit evidence demonstrating that the beneficiary was employed in a primarily managerial or executive position at the foreign entity.

In response to the RFE, the petitioner submitted an undated letter from the foreign entity specifically addressing the beneficiary's position abroad as follows:

- **How the beneficiary directed management of the organization**

Serves as representative of [the foreign entity] to meet with top executive management of the companies owned by [the foreign entity] to discuss budgets and productivity of each department. Work with top management to set goals/targets for next meeting and re-direct and/or allocate resources where necessary from [the foreign entity] to company. Implement corrective action plans to solve organizational or departmental problems. Explain and interpret policies and goals to management if needed. She will then report to the Board of Directors of [the foreign entity] once a quarter to meet [the foreign entity] objectives as it relates to [the foreign entity's] interest in the foreign company (owned by [the foreign entity]) like [the petitioner]. (20%)

- **How the beneficiary established the goals and policies of the organization**

Serves as representative of [the foreign entity] to meet with top executive management of the companies owned by [the foreign entity] to direct and coordinate the company owned by [the foreign entity's] financial/budget activities and to fund operations, maximize investments, and increase efficiency. She will also talk about global strategy of company as a whole and discuss the importance of each department as it fits in global strategy and appoint department heads or managers and assign or delegate responsibilities to them. (30%)

- **How the beneficiary exercised wide latitude in discretionary decision making**

[The beneficiary's] name is on almost ALL the corporate documents of [the foreign entity]. She is given a wide latitude of discretion in engaging in contracts and executing legal documents that legally binds the company. We refer you to some of the documents previously provided, including but not limited to the Articles of Incorporation of [the foreign entity]. She is also responsible for preparing budgets for approval, including those for funding or implementation of programs for companies owned by [the foreign entity]. (50%)

- **Whether the beneficiary will receive only general supervision or directions from higher level executives, or board of directors**

She serves at the highest level of the company and receives only general direction from the Supervisory Board and shareholders.

The director denied the petition concluding, in part, that the petitioner failed to establish that the beneficiary has been employed in a primarily managerial or executive capacity at the foreign entity. In denying the petition, the director found that the description of the beneficiary's duties abroad does not demonstrate that the position is primarily managerial or executive in nature. The director further found that the record does not establish that the foreign business has an organizational structure sufficient to elevate the beneficiary to a position that is primarily managerial or executive.

On appeal, the petitioner states that it provided a letter from the foreign entity "outlining the managerial role and duties the beneficiary has held with the foreign company since the inception of the foreign corporation" and outlining the foreign entity's corporate structure. The petitioner then provided a second letter from the foreign entity, in response to the RFE, elaborating on the duties of the beneficiary and provided some examples of specific duties that are evident of someone in such an "executive role with the foreign company."

2. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary has been employed by a qualifying foreign entity in a primarily managerial or executive capacity.

By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). While the information provided by the petitioner indicates that the beneficiary may exercise discretion over the day-to-day operations of the foreign entity, the petitioner has not shown that the beneficiary's actual duties are primarily managerial in nature. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

As described above, the petitioner first characterized the beneficiary's role at the foreign entity as Chairman of the Board of Directors and described her duties in very broad terms. The foreign entity described the beneficiary's duties abroad, in part, as follows: liaison between management and the board; provides independent advice and counsel to the CEO; ensure that the directors are properly informed; develop and set the agendas for meetings of the board; act as chair at meetings of the board; recommend an annual schedule of the date, time and location of board and committee meetings; review and sign minutes of board meetings; sit on other committees of the board; call special meetings of the board; determine the date, time and location of the annual meeting of shareholders and develop the agenda for the meeting; act as chair at meetings of shareholders; recommend to the board the appointment of members of the committees of the board; and ensure that the directors of the board hold discussions without management present regularly.

In response to the RFE, the petitioner provided a brief and equally vague description of the beneficiary's position at the foreign entity, including an allocation of percentages of time the beneficiary spends on specific duties. The foreign entity indicated that the beneficiary devotes 20% of her time to meeting with top executive management of the foreign entity's companies to discuss budgets and productivity, set goals and target, allocate resources, implement corrective action plans, explain and interpret policies and goals to management, and report to the Board of Directors once a quarter; 30% of her time to meeting with top executive management of the companies owned by the foreign entity to direct and coordinate financial/budget activities, fund operations, maximize investments, increase efficiency, discuss global strategy, discuss the importance of each department, and appoint department heads or managers, as well as assign or delegate responsibilities to them; and 50% of her time to engaging in contracts, executing legal documents that legally bind the company, and prepare budgets for approval, including those for funding or implementation of programs for companies owned by the foreign entity. Within the percentages provided, the foreign entity does not specifically indicate the duties or tasks the beneficiary devotes her time to within the listed duties with accompanying percentages. The foreign entity also listed several duties outside of the allocated percentages but did not quantify the amount of time the beneficiary devotes to those duties or where they fall within the allocated percentages of time. Neither the petitioner nor the foreign entity include any additional

details or specific tasks related to each duty, nor did they indicate how such duties qualify as managerial or executive in nature. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

In the instant matter, the petitioner has not provided sufficient information detailing the beneficiary's duties at the foreign entity to demonstrate that these duties qualify as managerial or executive. Again, 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 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. . *Id.*

Further, the beneficiary has not been shown to be employed in a primarily executive capacity. The petitioner did not demonstrate that the beneficiary's duties abroad primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations. The foreign entity repeatedly states that the beneficiary somewhat manages all of its subsidiary companies, but does not provide evidence of the existence of any subsidiaries other than the petitioner who the beneficiary serves in her role at the foreign entity. The job duties provided for the beneficiary do not demonstrate that the beneficiary focuses 51% of her time on executive duties rather than the day-to-day operations of the business.

Based on the deficiencies discussed above, the petitioner has not established that the beneficiary has been employed by a qualifying foreign entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

III. CONCLUSION

When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1037 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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, 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.