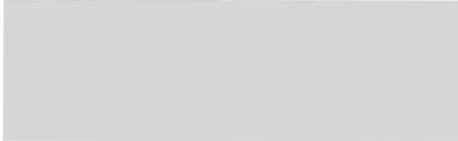


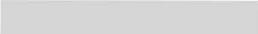


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 21 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 petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Maryland limited liability company that seeks to employ the beneficiary as its president and CEO. Therefore, the petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary's position with the U.S. entity would be in a qualifying managerial or executive capacity.

On appeal, the petitioner contends that the director's decision was erroneous and submits a brief contesting the director's adverse findings.

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.

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.

In addition, 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.

II. Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 20, 2014. The record contains a number of supporting documents pertaining to the U.S. entity, including a supporting statement from the petitioner, an organizational chart, as well as corporate, business, and financial documents. The petitioner claimed to have four employees at the time of filing, as indicated at Part 5, No. 12 of the Form I-129.

On June 3, 2014, the director issued a request for evidence (RFE), instructing the petitioner to provide evidence pertaining to various eligibility factors. Among the issues addressed was that of the beneficiary's proposed employment with the petitioning entity. Specifically, the director instructed the petitioner to provide a letter from the petitioning organization itemizing the beneficiary's typical job duties and indicating what percentage of time the beneficiary would allocate to each item on the list. The director also asked the petitioner to provide a payroll summary with evidence of wages paid along with a chart or diagram

illustrating its organizational structure and staffing levels and listing all employees by name and job title and including their respective job descriptions and educational levels.

The petitioner's response included a July 12, 2014 statement, which included the beneficiary's proposed job description and job requirements. The petitioner also provided corporate documents and numerous business contracts, checks, and real estate settlement sheets showing the various real estate transactions in which it has engaged since it commenced doing business. Lastly, the petitioner provided a letter, dated August 12, 2014, from [REDACTED] of [REDACTED] attempting to establish that the petitioner has an active seafood and restaurant operation.

On September 4, 2014, the director issued a decision denying the petition. The director concluded that the petitioner had not submitted sufficient evidence establishing that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

The petitioner filed an appeal seeking to overturn the director's decision and have the petition approved.

Based on our own comprehensive review of the record and for the reasons provided in our discussion below, we find that the petitioner has not overcome the chief basis for denial. While we have considered all evidence that has been submitted into the record, we will specifically reference only those submissions that are relevant to the beneficiary's proposed position with the U.S. entity.

III. The Issue on Appeal

As indicated above, the primary issue to be addressed in this decision is the beneficiary's proposed position with the petitioning entity and whether the petitioner provided sufficient evidence to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

We generally commence our analysis of the beneficiary's proposed employment by looking first to the petitioner's description of the beneficiary's job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The job description must clearly describe the job duties to be performed and indicate whether such duties are in either an executive or a managerial capacity. *Id.* Published case law has determined that the duties themselves will reveal the true nature of the beneficiary's 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). We then consider the beneficiary's job description within the context of the organizational structure of the prospective U.S. employer, as well as the existence of in-house or contractual support personnel capable of relieving the beneficiary from having to allocate her time to primarily non-qualifying operational tasks. These factors contribute to a comprehensive understanding of the beneficiary's daily tasks and her prospective role within the petitioning organization.

Turning first to the job description that the petitioner provided in the RFE response statement, we note that the petitioner did not assign time constraints to any of the beneficiary's proposed activities. Further, as properly indicated in the director's analysis, the petitioner's description of the proposed employment is overly vague in terms of not providing details about the specific daily tasks the beneficiary would actually perform within the scope of the petitioner's business activity at the time of filing. For instance, the petitioner broadly claimed that the beneficiary would set goals, objectives, policies, and procedures in an effort to increase the petitioner's market share and maximize profits. However, there is no indication as to the actual tasks the beneficiary would perform to meet this broad set of responsibilities, which can be applied to most top-tier

employees in any industry, regardless of whether the duties performed by that individual are primarily of a qualifying nature or whether the tasks are primarily operational and thus outside the scope of what would be deemed as being within a managerial or executive capacity. The petitioner also does not explain precisely which tasks comprise being "responsible and accountable for the overall operation and management" of the petitioner's business activities. Again, this statement is overly broad and does not cite any actual underlying job duties the beneficiary would perform. Merely indicating that the beneficiary would be responsible and accountable for an entity's operation does not necessarily establish that the job duties involved would be primarily of a qualifying managerial or executive nature, regardless of the beneficiary's top placement within the petitioner's organizational hierarchy.

Furthermore, artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position. In the present matter, the petitioner's original supporting organizational chart depicts a multi-tiered entity with three separate departments -- restaurant and seafood products, real estate, and car services. However, the record contains evidence that shows that only the real estate department was operational at the time of filing. Despite including a car services department in the organizational chart, the petitioner indicated that this department is planned to become operational sometime in 2015, thus indicating that it was not operational at the time the petition was filed. In addition, while the petitioner also included a restaurant and seafood department in its organizational chart, the only evidence the petitioner provided to establish that the department commenced operations was the above referenced August 12, 2014 letter in which [REDACTED] of [REDACTED] indicated that [REDACTED] the individual identified as the petitioner's vice president and director of restaurant and seafood products, has "actively engaged in identifying possible sources of [seafood] supply" for [REDACTED]. The petitioner has provided no documentation to corroborate the claims made in the letter.

We further note that the petitioner's repeated references to an "executive management team" are unsubstantiated, as the petitioner did not provide the requested payroll evidence to establish that the claimed executive management team was in place at the time of filing. 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)). In fact, the petitioner provided no evidence to establish that the four employees it claimed in Part 5 of the petition were actively working for and being compensated by the petitioner at the time of filing. We note that merely naming employees in its organizational chart does not establish that the petitioner actually employed the named individuals. *See id.*

On appeal, the petitioner challenges the director's reliance on the petitioner's support staff as a factor used to determine that the petitioner is ineligible for the immigration benefit sought herein. The petitioner also asserts that the director should consider the petitioner's reasonable needs and asks that we take into account its use of independent contractors to perform the necessary operational tasks. However, we note that the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Here, the petitioner has not documented precisely what tasks the beneficiary would perform in her capacity as the petitioner's president

and CEO. Without a comprehensive account of what the beneficiary would actually be doing, we are unable to determine whether the petitioner's limited staffing was sufficient to support the beneficiary in a managerial or executive capacity, where she would allocate her time primarily to tasks of a qualifying nature. Based on the evidence presented, we find that the petitioner focused exclusively on the purchase, improvement, and sales of real estate. While it is possible that the petitioner would eventually expand to include businesses other than real estate, there is no evidence that the petitioner engaged in any business transactions related to restaurant and seafood products or car services, despite claiming that it had employees to head each type of operation at the time of filing. 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). As the petitioner's operation was limited to include primarily real estate transactions, the petitioner must establish precisely what role the beneficiary would assume and which job duties she would perform within the scope of the business that existed at the time of filing. We cannot determine the beneficiary's eligibility based on projections regarding the petitioner's growth and expansion into additional industries.

Here, the petitioner has not provided sufficient evidence establishing what job duties would comprise the beneficiary's proposed position; nor did the petitioner provide evidence to demonstrate that it had attained a level of organizational complexity that would support the beneficiary in a position where the primary portion of his time would be allocated to tasks of a managerial or executive nature. Therefore, we find that the petitioner did not establish that the beneficiary would be employed in an executive or managerial capacity and on the basis of this conclusion, this petition cannot be approved.

IV. 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.