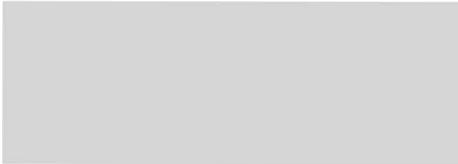




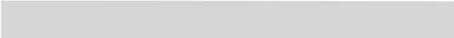
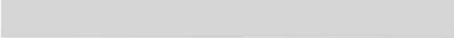
U.S. Citizenship  
and Immigration  
Services

(b)(6)



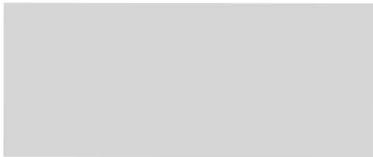
DATE: **AUG 21 2015**

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](http://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, is engaged in "interior, vinyl siding, and cosmetic auto repairs" services. The petitioner claims to be a subsidiary of [REDACTED] located in Austria. The petitioner seeks to employ the beneficiary as its CEO for a period of one year.

The director denied the petition on January 2, 2015, concluding that the evidence of record did not establish that: (1) the beneficiary was employed abroad in a qualifying executive or managerial capacity for one year in the previous three years prior to filing the petition; and (2) that the beneficiary will be employed 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. The petitioner submits a brief in support of the appeal.<sup>1</sup>

## 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(i)(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.

---

<sup>1</sup> We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

## II. THE ISSUES ON APPEAL

### A. Employment Abroad in a Qualifying Managerial or Executive Capacity

The first issue to be addressed is whether the petitioner established that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

#### 1. Facts

On the Form I-129, the petitioner stated that the beneficiary's position abroad was as a "Member of the Supervisory Board." In a letter of support dated November 12, 2014, the petitioner explained the beneficiary's position abroad as follows:

In 1999 [the beneficiary] became the head franchisee for [the petitioner's] franchises in Austria, The Netherlands and Germany. [The petitioner] is a company that specializes in vinyl and leather repair and as a franchisee, [the beneficiary] was responsible for developing marketing strategy, and coordinating business operations. His sales and marketing expertise allowed him to quickly develop the company's customer base and revenue, and he bought [the petitioner] in 2001. As owner of [the petitioner], [the beneficiary] directed franchise development in 16 countries. He developed improvements to the company's marketing strategy and operations, which doubled the sales and size of the franchise system while he was there.

[The beneficiary] has 30 years of experience as an entrepreneur and business owner that have allowed him to develop extensive marketing, operations and inventory control expertise. He has a proven track record of establishing and maintaining company budgets and driving sales of company products and his ability to drive sales, direct company growth and increase revenue makes him a highly valued addition to any company.

The director found the initial evidence insufficient to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. Consequently, the director issued a request for evidence (RFE) on December 5, 2014. In response to the RFE, the foreign company submitted a letter dated December 18, 2014, detailing the duties performed by the beneficiary with the foreign company as follows:

- **How the beneficiary will direct management of the organization**  
Serves as representative of [the foreign company] to meet with top executive management of the companies owned by [the foreign company] 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 company] to company. Implement corrective action plans to solve organizational or departmental problems. Explain and interpret policies and goals to management if needed. He will then report to the Board of Directors of [the foreign company] once a quarter to meet [the foreign company's] objectives as it relates to [the foreign company's] interest in the foreign company (owned by [the foreign company]) like [the petitioner].

- **How the beneficiary will establish the goals and policies of the organization**  
Serves as representative of [the foreign company] to meet with top executive management of the companies owned by [the foreign company] to direct and coordinate the company owned by [the foreign company's] financial/budget activities and to fund operations, maximize investments, and increase efficiency. He 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 for companies owned by [the foreign company]. He has a wide latitude of discretion on behalf of [the foreign company] to approve expenses made by companies owned by [the foreign company] for US\$100,000 without approval of the Board of Directors of [the foreign company]
- **Whether the beneficiary will receive only general supervision or directions from higher level executives, or board of directors**  
[The beneficiary] will only receive general direction from the Board of Directors of [the foreign company].

In his **capacity as Corporate Secretary of [the foreign company]** he is responsible for ensuring that accurate minutes of meetings are taken and approved. Requirements of minutes may vary with the jurisdiction but should include at a minimum:

- Date, time, location of meeting;
- List of those present and absent;
- List of items discussed;
- List of reports presented;
- Text of motions presented and description of their disposition.

He signs a copy of the final, approved minutes and ensures that this copy is maintained in the corporate records. He also ensures that the records of the organization are maintained as required by law and made available when required by authorized persons. These records may include founding documents, (eg. letters patent, articles of incorporation), lists of directors, board and committee meeting

minutes financial reports, and other official records and ensures that an up-to-date copy of the bylaws is available at all meetings.

At the Board meetings he participates as a voting member. He provides items for the agenda as appropriate. In the absence of the President (and Vice-President, if the position exists), he calls the meeting to order, presiding until a temporary chairperson is elected. He is designated by the Board of Directors and/or bylaws as one of the signing officers for certain documents. He serves as the registered agent with respect to the laws of the jurisdiction.

The letter also stated that the beneficiary was employed with the foreign company since October 2013.

## 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

At the time of filing, the petitioner provided a list of duties that described the beneficiary's position with the foreign company in very generalized terms, noting that he served as a "representative of [the foreign company] to meet with top executive management of the companies owned by [the foreign company] 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 company] to company"; "implement corrective action plans to solve organizational or departmental problems"; "explain and interpret policies and goals to management if needed"; "prepare budgets for approval, including those for funding or implementation of programs for companies owned by [the foreign company]"; and "responsible for ensuring that accurate minutes of meetings are taken and approved." The duties were overly broad and did not provide a sufficient understanding of the specific tasks the beneficiary performed on a day-to-day basis. For example, the petitioner did not provide any further information regarding strategies for corrective action plans, or information regarding budget plans and goals, or any information regarding the departments the beneficiary worked with at the foreign company. The petitioner did not submit an organizational chart for the foreign company to afford an understanding of the company's hierarchy, nor did it provide a list of the employees that would assist the beneficiary in the tasks that are not managerial or executive. 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. *Id.*

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the 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 understanding a beneficiary's actual duties and role in a business. In the instant matter, the petitioner did not identify any company business initiatives, policies or opportunities undertaken by the foreign company. Further, the record does not contain any documentary evidence corroborating the foreign entity's organizational structure or staffing levels. 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 addition, the Form I-129 was filed on November 17, 2014, and the petitioner requested an employment start date of December 1, 2014. In the RFE, the director requested additional information regarding the beneficiary's period of employment with the foreign company. In response, the petitioner submitted a letter from the Chairman of the Board of the foreign company that confirmed that the beneficiary commenced his employment in October 2013. The petitioner also submitted payroll records for November and December 2014, and January 2015, but the documents were not translated into English. The beneficiary's name is on the documents but it is not clear if he received the salary from the foreign company. In addition, the petitioner submitted a document entitled "Personnel File," but this document was also not translated into English. Because the petitioner failed to submit certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

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

#### B. U.S. Employment in a Managerial or Executive Capacity

The second 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 17, 2014 and indicated that it had 8 current employees in the United States and a gross annual income of \$1.8 million. The petitioner explained that the beneficiary will "serve at the highest position in the Company," and provided the following description of the duties to be performed by the beneficiary in the position of CEO:

- Direct or coordinate an organization's financial or budget activities to fund operations, maximize investments, or increase efficiency. – Considering the relative costs and benefits of potential actions to choose the most appropriate one[.]
- Appoint department heads or managers and assign or delegate responsibilities to them. Motivating, developing, and directing people as they work, identifying the best people for the job[.]
- Analyze operations to evaluate performance of a company or its staff in meeting objectives or to determine areas of potential cost reduction, program improvement, or policy change.
- Direct, plan, or implement policies, objectives, or activities of organizations or businesses to ensure continuing operations, to maximize returns on investments, or to increase productivity. Identifying complex problems and reviewing related information to develop and evaluate options and implement solutions[.]
- Prepare budgets for approval, including those for funding or implementation of programs. Determining how money will be spent to get the work done, and accounting for these expenditures[.]
- Confer with board members, organization officials, or staff members to discuss issues, coordinate activities, or resolve problems.
- Implement corrective action plans to solve organizational or departmental problems.
- Direct human resources activities, including the approval of human resource plans or activities, the selection of directors or other high-level staff, or establishment of organization of major departments.
- Establish departmental responsibilities and coordinate functions among department and sites.
- Preside over or serve on boards of directors, management committees, or other governing boards.

The petitioner also submitted a business plan with an organizational chart. The organizational chart identified the beneficiary at the top of the corporate hierarchy in the position of CEO. The organizational chart also lists three direct subordinate employees to the beneficiary: a Legal Department/National Accounts/Notary Public, [REDACTED]; a CFO, [REDACTED] and a COO, [REDACTED]. The chart also indicates that a fourth position directly subordinate to the beneficiary, PA to CEO, has not yet been filled.

Regarding these subordinate positions, the chart further indicated that the Legal Department/National Accounts/Notary Public position supervises one Receptionist/Assistant (TBA). The chart also demonstrates that the CFO directly supervises a Director of Purchasing, [REDACTED], who in turn supervises Accounts Receivable, [REDACTED], and a Bookkeeper, who has not been hired. Finally, the chart demonstrates that 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. In response to the RFE, the petitioner also submitted a brief job description for each of these employees.

The petitioner's business plan further shows that the petitioner will have ten<sup>2</sup> 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 director denied the petition on January 2, 2015, concluding, in part, that the petitioner did not establish that the beneficiary will be employed in a qualifying managerial or executive capacity.

## 2. Analysis

Upon review, and for the reasons stated herein, we concur with the director's finding that the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary owns or manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

When examining the executive or managerial capacity of the beneficiary, USCIS 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 were in either an executive or a managerial capacity. *Id.*

The petitioner provided a description of the beneficiary's job duties which included broadly stated job responsibilities. Due to the overly general information included in the job description, we are unable to gain a meaningful understanding of how much time the beneficiary will spend performing qualifying tasks versus those that would be deemed non-qualifying.

The beneficiary's job description does not provide credible and detailed information about the actual tasks the beneficiary will perform while he will "direct or coordinate an organization's financial or budget activities to fund operations, maximize investments, or increase efficiency"; "direct, plan, or implement policies, objectives, or activities of organizations or businesses"; "implement corrective action plans to solve organizational or departmental problems"; and "establish departmental

---

<sup>2</sup> 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.

responsibilities and coordinate functions among departments and sites." The petitioner did not define the petitioner's goals and policies, nor did it clarify the objectives and procedures for business. While the beneficiary, as a claimed executive in the company, exercises authority for planning, the petitioner has not established that his day-to-day tasks associated with overall management of the operations and formulation of business plans are primarily executive in nature. In addition, several duties listed in the job description are vague. 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. 1103. 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 job duties. The petitioner did not provide sufficient detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Id.* at 1108.

Furthermore, beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the entity'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 foreign entity's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

Although the beneficiary is not required to supervise personnel, if it is claimed that his 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 Legal Department/National Accounts/Notary Public, a CFO, and a COO. However, the actual job duties listed for the beneficiary's subordinates' positions do not demonstrate that they require a professional degree. Although the organizational chart indicates that the CFO and the COO have supervisory and/or managerial responsibilities as indicated by the list of subordinate staff under them, 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. 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.

Moreover, we note an additional discrepancy within the record regarding the petitioner's organizational hierarchy and the beneficiary's claimed subordinate staff. In response to the RFE, the petitioner submitted Form 941, Employer's Quarterly Federal Tax Return, for the third quarter of 2014 that indicated zero employees. In light of the petitioner's claim on the Form I-129 that it employs eight persons, and in light of the organizational chart discussed above that identifies numerous employees in positions subordinate to the beneficiary, we are left to question the validity of these claims. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the deficiencies discussed above, the petitioner has not established that the beneficiary will be employed in a qualifying 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 it 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, 1043 (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.