



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-L-USA, LLC

DATE: DEC. 3, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a Florida limited liability company engaged in transport, storage, and freight forwarding, seeks to extend the Beneficiary's classification as an L-1A nonimmigrant intracompany transferee. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner is an affiliate of [REDACTED], located in [REDACTED], Brazil. The Beneficiary was previously granted L-1A status from December 13, 2013 to December 12, 2014 in order to open a new office in the United States. The Petitioner now seeks to extend the Beneficiary's employment as its President for a period of two years.

The Director concluded that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity under the extended petition. The Director further found that the Petitioner submitted an expired lease agreement and did not establish that it maintains sufficient physical premises for its business.

I. THE LAW

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

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- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

II. THE ISSUES ON APPEAL

A. Physical Premises

As a preliminary matter, we will discuss the issue of physical premises. In her decision, the Director noted that the Petitioner's extended lease agreement, expired on January 31, 2015 and found the lease to be insufficient to establish that the Petitioner has continued to provide sufficient space for operations. On appeal, the Petitioner submits a document titled "Second Amendment to Lease Agreement," signed and dated January 30, 2015, between [REDACTED] and

the Petitioner for an extension of the Petitioner's existing lease through January 31, 2016. As such, we will withdraw the Director's findings as they pertain to this issue only.

B. Employment in a Managerial or Executive Capacity in the United States

The second issue addressed by the Director is whether the Petitioner established that the Beneficiary will be employed in a managerial or executive capacity under the extended petition.

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.

Finally, 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.

1. Facts

The Petitioner filed the Form I-129 on December 10, 2014. On the Form I-129, the Petitioner indicated that it engages in transport, storage, and freight forwarding with seven current employees in the U.S. and an estimated gross annual income of \$300,000. In its letter of support, dated December 9, 2014, the Petitioner described the Beneficiary's duties in the United States as follows:

In this position, [the Beneficiary's] scope of responsibilities will include:

1. Direct the opening of the new US company; 5%
2. Responsible for the management of the Florida's office [*sic*], including sales, purchasing, administrative, financial and personnel. He will have complete decision making regarding these functions, including goal setting and performance review and monitoring; 30%
3. Register the company with the US government and other departments; 5%
4. Plan and direct the preparation of the new company's operational policies; 10%
5. Plan and direct the company operational costs and expenses; 10%
6. Coordinate the US company's departments concerning with [*sic*] pricing, marketing and logistics; 15%
7. Hire, evaluate and review job description of supervisors, managers and staff; 5%
8. Select, hire and interact with outside auditors, consultants and other professional advisors; 5%
9. Daily meeting with managers (Logistic & Operations, Sales & Marketing, Administrative & Finance, Warehouse, and Compliance); 5%
10. Quarterly meeting with entire staff. 5%
11. Order reports to be submitted to Brazil. 5%

[The Beneficiary] will continue to have executive duties to direct the finance of the US Company. He will continue to be responsible for planning, developing, and establishing the company policies and objectives in accordance with the corporate goals. In that capacity, he will be able to review the overall operation and logistics of the company, to determine strategies to improve profits, review tax and costs, hire and fire accountants and staff. In addition, he will continue to direct the overall finance management of the organization and exercises wide latitude in discretionary decision making at the American corporation.

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....

[T]he duties that he will be performing in Florida are similar to the duties performed in his present position in the Brazilian affiliate.

The key elements of those duties are planning, directing, and coordinating essential supportive operations of the organization to assure that the U.S. operations will remain viable.

The Petitioner submitted its organizational chart, depicting the Beneficiary at the top tier of the hierarchy as its President, directly supervising a “Manager & Sales” position, held by [REDACTED]. The “Manager & Sales” position supervises “Branch NJ” and “Branch FL.” In Florida, the “Manager & Sales” position supervises one “Logistics Operations & Warehouse Manager” position, held by [REDACTED]. In New Jersey, the “Manager & Sales” position supervises one “Manager & Sales” position, held by [REDACTED], who supervises one “Logistics Operations & Warehouse Manager” position, held by [REDACTED]. The New Jersey “Logistics Operations & Warehouse Manager” position then supervises two Drivers, [REDACTED].

The Petitioner submitted a document titled “Job Description of Employees from US Entity,” dated December 2014. The document lists the “position and job description” for each of the following positions: President, the Beneficiary; Sales and Marketing General Manager for Florida and New Jersey, [REDACTED]; Finance & Adm. Manager (Florida), to be hired; Logistic and Operation (Florida), [REDACTED]; Secretary and Receptionist (Florida), to be hired; Assistant Manager – Secretary (Florida), to be hired; Compliance Manager (Florida), to be hired; Warehouse Assistant (Florida), to be hired; Driver (Florida), to be hired; Sale Manager (New Jersey), [REDACTED]; Logistics Operations and Warehouse Manager (New Jersey), [REDACTED], and two Drivers (New Jersey), [REDACTED]. The document also lists independent contractors and professionals, such as an Immigration Attorney, Business Attorney, CPA, Business Associate, and Logistic and Operations Support. The document listed the duties of the Beneficiary’s position as President as follows:

- Plans, direct and coordinate the company’s opening[;]
- Responsible for the direction of the operations, including logistics, finance, tax and accounting[;]
- Direct the registration of the company at the US Government and other departments[;]
- Plan and Direct [*sic*] the operations policies[;]
- Plans and direct [*sic*] the company budget and determine the prices of services[;]
- Direct the marketing and Sales[;]
- Daily meetings with management[;]
- Quarterly meeting with the entire staff[;]
- Order preparation of activity reports[;]

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- Provides overall direction to managers, supervisors and staff during weekly meetings[;]
- Hire and fire management and other staff as need[ed][;]
- Hire and fire professionals like accountant and legal counsels[.]

The Petitioner submitted payroll documents indicating that it employed [REDACTED] in Florida from October 3, 2014 to November 14, 2014; [REDACTED] [sic] in New Jersey from October 3, 2014 to November 14, 2014; [REDACTED] [sic] in New Jersey from October 3, 2014 to November 14, 2014; [REDACTED] [sic] in Florida from January 10, 2014 to November 14, 2014; [REDACTED] in New Jersey from October 3, 2014 to November 14, 2014; [REDACTED] in Florida from October 17, 2014 to November 14, 2014; and the Beneficiary in Florida from July 25, 2014 to November 14, 2014.

The Director issued a request for evidence (RFE) on December 18, 2014, instructing the Petitioner to submit evidence that the Beneficiary will be employed in an executive or managerial capacity.

In response to the RFE, the Petitioner submitted a letter, dated January 15, 2015, slightly expanding its description of the Beneficiary's duties in the United States, as follows:

1. Direct and coordinates de company's [sic] operations[;]
 - a. Direct the managers to follow the parent company's rules[.]
2. Plans, directs and coordinates the activities of the company including areas of logistics, finance, tax and accounting[;]
3. Manages and enforces the company policies and business strategies;
 - a. Developed and implemented company's policies[.]
 - b. Meetings with marketing companies for business strategies[.]
4. Provides overall direction to manager, supervisors and staff;
 - a. Order reports from Managers[.]
5. Hires, coordinates and supervises the outsourced jobs;
 - a. Hire accountant firm to take care of payment of taxes, payroll, accountant payables and receivables[.]
 - b. Hire Third party contractor for transportation in Florida ([REDACTED]) [.]
6. Hires, fires and evaluates performance of managing staff;
 - a. Evaluation of the managers and staff[.]
 - b. Hires and fires as necessary[.]
7. Signed agreements with transport companies abroad;
 - a. In countries where the Petitioner . . . does not have an office.
8. Represents the company before the public officers as necessary; and
9. Reports to the Affiliate Company in Brazil.
 - a. Travels to Brazil for the annual meetings[.]

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On the next two-years, [the Beneficiary] will continue to perform the same duties as listed above and plan to hire the additional staff and managers to complete the proposed organization chart. . . .

The Petitioner submitted a new organizational chart, dated January 2015, depicting the Beneficiary at the top tier of the hierarchy as its President, directly supervising a “General Manager,” [REDACTED]. The General Manager supervises “Branch Florida,” “Branch New Jersey,” and “Branch Massachusetts.” In Florida, the General Manager supervises one “Logistics Operations & Warehouse Assistant,” [REDACTED], who in turn supervises one “Helper,” [REDACTED] and one “third party contractor for transportation,” [REDACTED]. In New Jersey, the General Manager supervises one “Sales & Marketing Manager,” [REDACTED], and one “Warehouse Manager,” [REDACTED]. The Sales and Marketing Manager then supervises one “Assistant Sales,” [REDACTED], and one “Sales Person,” [REDACTED]. The Warehouse Manager supervises one Driver, [REDACTED] [sic]. The organizational chart does not list any employees for the Massachusetts branch.

The Petitioner submitted another document titled “Job Description of Employees from US Entity,” dated January 2015. The document lists the “position and job description” for each of the following positions: President, the Beneficiary; Sales and Marketing General Manager for Florida, New Jersey, and Massachusetts, [REDACTED]; Finance & Adm. Manager (Florida), to be hired; Logistic and Operation (Florida), [REDACTED]; Secretary and Receptionist (Florida), to be hired; Assistant Manager – Secretary (Florida), to be hired; Compliance Manager (Florida), to be hired; Helper (Florida), to be hired; Driver (Florida), to be hired; Sale Manager (New Jersey), [REDACTED]; Assistant Sales Manager (New Jersey), [REDACTED]; Sales Person (New Jersey), [REDACTED]; Warehouse Manager (New Jersey), [REDACTED]; and Driver (New Jersey), [REDACTED] [sic]. The document describes the Beneficiary’s position as President identical to its letter submitted in response to the RFE. The document also lists the duties for each of the positions identical to the document submitted with the initial petition, except that (1) it changes the title of the Warehouse Assistant position in Florida to Helper and the Logistics Operations and Warehouse Manager in New Jersey to just Warehouse Manager; (2) it adds the positions of Assistant Sales Manager and Sales Person in New Jersey; and (3) removes one Driver in New Jersey.

The Petitioner also submitted new payroll documents indicating that it employed [REDACTED], [REDACTED] [sic], [REDACTED], and the Beneficiary on January 23, 2015.

The Director denied the petition on February 12, 2015, concluding that the Petitioner did not establish that the Beneficiary had been and will be employed in a managerial or executive capacity under the extended petition. In denying the petition, the Director noted that the duties provided for the Beneficiary’s position were vague and did not specify exactly what duties he performed in the past or will perform in the future. The Director found that the descriptions of the responsibilities provided for the Beneficiary’s subordinate employees were not persuasive in establishing that the positions are managerial or professional in nature. The Director determined that the Petitioner did not establish that it employs individuals to perform the day-to-day tasks of the company or that the

Beneficiary is sufficiently removed from the day-to-day tasks of the business. The Director further found that the record indicates that the Beneficiary will be engaged primarily in the non-managerial, operations tasks required in the company, with first-line supervisory duties over non-professional employees.

On appeal, the Petitioner submits a brief, dated March 9, 2015, stating that the Beneficiary has been and will be employed in an executive capacity and disputing the Director's findings by stating the following:

The Beneficiary . . . has been working in his executive capacity with the Petitioner since 2013. The Beneficiary will continue to direct a major component of the organization, the entire administration along with operating as its President. He is and will be establishing goals and policies; exercising wide latitude in discretionary decision making; and receiving only general supervision of the board of Directors; thus qualifying him without any doubt, as a person that is working and will continue to work in an "Executive Capacity".

....

In the case at bar, [the Beneficiary] is considered an "executive" . . . because he is clearly directing a major function in the corporation, he is directing the operations and logistics of the entire company.

2. Analysis

Upon review, and for the reasons stated herein, the Petitioner has not established that the Beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition.

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.*

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary 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").

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In the instant matter, the Petitioner initially characterized the Beneficiary's role as President and provided the following list of job duties with percentages of time devoted to each duty: direct the opening of the company (5%); manage the Florida office, including sales, purchasing, administration, finance, personnel, goal setting, and performance review and monitoring (30%); register company with U.S. government and others (5%); plan and direct preparation of company's operational policies (10%); plan and direct operational costs and expenses of the company (10%); coordinate the company's departments concerning pricing, marketing, and logistics (15%); hire, evaluate, and review supervisor, manager, and staff job descriptions (5%); select, hire, and interact with outside auditors, consultants and other professionals (5%); meet with managers daily (5%); meet with all staff quarterly (5%); and order reports to submit to Brazil (5%). The Petitioner further noted that the Beneficiary will direct the finances of the company, plan, develop, and establish company policies and objectives, review overall operation and logistics of the company, determine strategies for profits, and exercise wide latitude in discretionary decision making. The Petitioner did not include any additional details or specific tasks related to each duty, nor did the Petitioner 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In response to the RFE, the Petitioner submitted a similarly vague list of duties for the Beneficiary's position, noting that he will direct and coordinate company operations; direct managers to follow the parent company's rules; plan, direct, and coordinate activities of the company, including logistics, finance, tax, and accounting; manage and enforce company policies and business strategies; meet with marketing companies for business strategies; provide overall direction to managers, supervisors, and staff; order reports from managers; hire, coordinate, and supervise outsourced jobs; hire accounting firm; hire third party contractor for transportation in Florida [REDACTED]; hire, fire, and evaluate performance of managing staff; evaluate managers and staff; hire and fire as necessary; sign agreements with transport companies abroad; represent the company before public officers; report to the affiliate company in Brazil; and travel to Brazil for annual meetings. Here, the Petitioner did not provide sufficient information detailing the Beneficiary's duties at the U.S. company to demonstrate that these duties will qualify him as a manager or executive. Although the Petitioner previously submitted a list of duties with corresponding percentages of time he will devote to each, this new list of duties includes additional duties not previously listed and removes others. In this new list of duties, the Petitioner did not update how much time the Beneficiary will devote to each. Based on the current record, we are unable to determine whether the few claimed managerial duties would constitute the majority of the Beneficiary's duties. The Petitioner's description of the Beneficiary's job duties does not establish what proportion of the Beneficiary's duties will be managerial in nature, and what proportion will be non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). These general statements do not offer any clarification as to the Beneficiary's actual proposed duties in the United States, and fall considerably short of demonstrating that the Beneficiary will primarily manage the organization and supervise and control the work of other supervisory, professional, or managerial employees. 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 has not provided any 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. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

On appeal, the Petitioner contends that the Beneficiary will be employed in an executive capacity. The Petitioner asserts that the Beneficiary will perform all duties associated with running the organization. The Petitioner submits a brief cursorily describing the Beneficiary's position in the United States in equally broad terms and states that he will continue to direct a major component of the organization, performing duties such as: establishing goals and policies; exercising wide latitude in discretionary decision making; and receiving only general supervision of the Board of Directors. The Petitioner further states that the Beneficiary should be considered an executive because he is clearly directing a major function in the corporation, i.e. he is directing the operations and logistics of the entire company. Here, the Petitioner simply stated that the Beneficiary will be employed in an executive capacity and provided the listed duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Id.* at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

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.

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 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.

Here, the Petitioner provided two different organizational charts, both indicating that the Beneficiary directly supervises one Manager & Sales/General Manager position that, in turn, supervises other

manager positions at two branches in the United States. The Petitioner provided position descriptions and lists of job duties for each of the Beneficiary's subordinate employees and a copy of his direct subordinate's Master's degree; however, the actual job duties listed for the Beneficiary's subordinates' positions, including his direct subordinate, do not demonstrate that they require a professional degree. Nor do they indicate that the positions have supervisory or managerial responsibilities. *See* section 101(a)(44)(A)(ii) of the Act.

Further, 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 sufficient to establish that his daily routine will consist of primarily managerial duties. Finally, the Petitioner has not submitted evidence that the Beneficiary's subordinate employees will relieve him from performing non-qualifying operational and administrative duties at the U.S. company.

The Petitioner has not established, in the alternative, that the Beneficiary is employed primarily as a "function manager." The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a position description that describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(1)(3)(ii). In addition, a 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, although the Petitioner did reference, on appeal, that the Beneficiary will be directing a major function of the corporation, it 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.

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 asserts that the Beneficiary will be employed in a primarily executive capacity; however, the Beneficiary’s position has not been shown to be primarily executive in nature, and the Petitioner has not demonstrated 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. As noted above, the Petitioner did not submit a detailed description of the Beneficiary’s position sufficient to establish that the Beneficiary’s daily routine will consist of primarily executive duties, rather than on providing the services of the organization. The Petitioner has not submitted evidence that it has sufficient staff that will relieve him from performing non-qualifying operational and administrative duties at the U.S. company. Although the Petitioner may not be required to demonstrate that the Beneficiary has subordinate employees who will assist him, it is necessary to demonstrate that someone other than the Beneficiary will carry out the day-to-day routine duties required to continue operations. At this time, the Petitioner has not shown that there are sufficient employees, or that the existing employees are performing actual tasks, to carry out such duties as of the date of filing the instant petition.

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).

The Petitioner contends, on appeal, that the size of the company and number of employees was a factor in determining eligibility. The Petitioner refers to an unpublished decision in which we determined that the Beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. The Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the

unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

As discussed, the Petitioner states that it engages in transport, storage, and freight forwarding currently in Florida and New Jersey. The Petitioner demonstrated that it employed a general manager in Florida, a logistics operations and warehouse manager in Florida and New Jersey, a manager and sales person in New Jersey, and two drivers in New Jersey. However, the position descriptions and job duties provided for these positions do not sufficiently demonstrate that those employees carry out the day-to-day routine tasks associated with producing a product or providing a service of the business, such that the Beneficiary is relieved from performing non-qualifying operational and administrative duties. Whether the Beneficiary is an employee in a qualifying managerial or executive capacity turns in part on whether the Petitioner has sustained its burden of proving that his duties are “primarily” managerial or executive. Here, the Petitioner has not met that burden.

Further, in the present matter, the regulations require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the “new office” operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the Petitioner has not reached the point that it can employ the Beneficiary in a predominantly managerial or executive position.

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a qualifying managerial or executive capacity, or that the Petitioner has grown to the point where it will require the services of a full-time manager or executive. Accordingly, the appeal will be dismissed.

III. CONCLUSION

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

ORDER: The appeal is dismissed.

Cite as *Matter of A-L-USA, LLC*, ID# 15056 (AAO Dec. 3, 2015)