



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

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

MATTER OF WG-, LLC

DATE: DEC. 16, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an advertising and online solutions company, seeks to extend the Beneficiary's temporary employment as its chief executive officer (CEO) under the L-1A nonimmigrant intracompany transferee classification. 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.

I. ISSUES

The issues before us are whether the Petitioner established (1) that the Beneficiary will be employed in a qualifying managerial or executive capacity in accordance with the applicable statutory and regulatory provisions, and (2) that it maintains sufficient physical premises to conduct business.¹

II. 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.

¹ In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); see also 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*.

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 (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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a "new office" petition must submit 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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

III. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The first issue to be addressed is whether the Petitioner has 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, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

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A. Facts

The Petitioner filed the Form I-129 on July 9, 2014 and stated on the petition that it has five employees and earned \$93,600 in gross revenue in 2014. In a letter submitted in support of the petition, the Petitioner explained that it provides “online solutions” and offers services including “design, product development, promotional campaigns and other marketing tools.” The Petitioner stated that it planned to create a portal [REDACTED] to allow property sales in the United States “to be offered simultaneously to several other countries” and “real estate agents and owners to advertise their properties in a global way.”

The Petitioner explained that the Beneficiary would continue to act as its CEO and described his duties as follows:

- Management of the U.S. office, including sales, purchasing, administrative, financial and personnel.
- Complete decision making regarding these functions, including goal setting and performance review and monitoring.
- Responsible for expanding and developing the marketing strategy to reach new projects.
- Responsible to develop business strategies, product and service plans, financial and sales plans and responsible to consolidate operating budgets for the company’s operations in the USA.
- He will be responsible for the management of projects and for reporting to the Board of Directors as to the progress of the U.S. operations.
- Direct and executive, administrative and managerial employees of the company.
- Day-to-day supervision of all of the company’s operations as well as strategic planning and performance goals. Specifically, this entails the overall management and supervision of all administrative, personnel, financial, sales and marketing functions, including the coordination of subordinate managers involved.

The Petitioner further provided examples of the executive and managerial decisions made by the Beneficiary including “opening new strategic locations, developing the information systems/portal, marketing advertisement in other countries, contract development with clients and realtors Development and structure of the U.S. company, final operational decisions of the company, final investment and financial decisions of the company, and execution of strategy planning in telecommunications, internet and marketing.” The Petitioner stated that “100% of [the Beneficiary’s] time is spent on executive duties.”

In addition, the Petitioner explained that the Beneficiary also reviews strategic reports, establishes marketing objectives and goals, manages marketing projects and strategies and reviews activity reports. The Petitioner explained that the Beneficiary “uses his independent discretion and authority

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to establish goals and policies for the organization” and that he was responsible for “new development and structure of the company,” “financial growth and operational development,” and “expansion of the new business into new markets.” The Petitioner stated that his decision making authority included “the employment of business professionals” and that he would “continue to be supervising professional staff.” The Petitioner indicated that the Beneficiary “will be involved in decision making processes in each aspect of the corporation, but will rely on his subordinates to handle the day-to-day details of the business.”

The Petitioner stated that the Beneficiary oversees an operations manager who has an associate’s degree in the arts. The Petitioner explained that the operations manager was responsible for staffing, developing and implementing marketing strategies, directing and coordinating distribution, directing finances and budgets, establishing and implementing departmental policies and procedures and reviewing financial statements.

The Petitioner submitted a business plan dated in June 2013 stating that the company would develop the [REDACTED] portal also known as the [REDACTED] portal, noting that “there is no similar system on the world market and it will be a great tool to help Real Estates, agents and owners as a sales tool in a global way.” The business plan indicated that the Beneficiary would aide in the launch of the site because he “was a pioneer in the internet industry in Brazil” and “developed marketing strategies for small, medium and large companies.” The business plan reflected that the foreign employer planned to invest \$300,000 in the Petitioner and up to \$1.5 million over the first three years. The business plan stated that the Petitioner planned on launching the “physical structure” of the business with three employees who would also make “initial contact with the great [REDACTED]” and projected that it would employ “20 consultants of sales within two years.”

Further, the Petitioner stated that it had hired a number of contractors to assist with the creation of the real estate portal including [REDACTED] a Brazilian company [REDACTED] and an [REDACTED] responsible for help desk support. A proposed organizational chart included in the business plan reflected that the Beneficiary would oversee a senior account executive and a secretary and that the senior account executive would supervise three account executives (one which is elsewhere identified as the operations manager). The senior account executive was shown to also oversee fifteen account representatives and a second secretary. The chart indicated that the company would hire a secretary, senior account executive, an account executive, and three account representatives in 2013, and eight account representatives and another secretary in 2014.

The Petitioner provided a profit and loss statement for the first six months of 2014 indicating that its total sales during this period were nearly \$94,000, and that it paid just over \$26,000 in wages and approximately \$50,000 to “subcontractors.” Meanwhile, the Petitioner submitted an IRS Form 941 Employer's Quarterly Federal Tax Return from the second quarter of 2014 which reflected that it had five employees and it paid \$24,362.33 in wages during this time. The Petitioner’s IRS Form 941 from the first quarter of 2014 indicated that it had three employees and paid \$22,205.45 in wages.

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The Petitioner submitted a current organizational chart reflecting that the Beneficiary acts as “international marketing manager” overseeing an operations manager, a marketing manager and a customer manager. Further, the chart specified that the customer manager supervised a help desk employee. The chart projected that the Petitioner would hire one office assistant in 2014 and another in 2015, both reporting to the operations manager; three marketing assistants in 2015 overseen by the marketing manager; and eight help desk employees in 2014 and ten in 2015, all reporting to the customer manager. The Petitioner provided duty descriptions for each of these positions. It stated that the marketing manager was responsible for “instilling a marketing led ethos,” “developing a marketing strategy and plan,” “managing agencies, success, and budgets,” and “ensuring timely deliver.” The Petitioner stated that the customer manager was tasked with “customer service policy,” communicating with customers, solving their problems and complaints and issuing refunds, and training and leading customer service staff. The Petitioner provided evidence indicating that the customer manager had enrolled at the [REDACTED] in May 2012 and that she had previously worked at various call centers at different companies. The Petitioner further submitted evidence that the operations manager has an associate’s degree.

The Petitioner submitted evidence reflecting that the [REDACTED] and [REDACTED] were trademarked with the [REDACTED] and [REDACTED] but this documentation did not indicate who owned these trademarks. The Petitioner provided marketing materials relevant to the [REDACTED] and [REDACTED]. A portion of these materials reflected that the Beneficiary had received a registration on [REDACTED] as a broker and thereby gained access to the site.

The Director later issued a request for evidence (RFE) stating that the Petitioner had submitted a vague duty description for the Beneficiary that did not sufficiently describe the tasks he performs. The Director indicated that it was not apparent what the Beneficiary’s typical duties were and noted that the Petitioner had not provided the percentage of time he spent on each of his tasks. The Director stated that the Petitioner provided conflicting organizational charts and that the duties of the Beneficiary appeared to overlap significantly with those his subordinates. In addition, the Director indicated that the Petitioner submitted no supporting evidence to substantiate its assertion that it employed independent contractors such as [REDACTED]. As such, the Director requested that the Petitioner provide a detailed organizational chart including the names of each employee and their job titles, duties, educations and salaries along with federal tax documentation corroborating the employment of these individuals.

In response, the Petitioner again stated that the Beneficiary would act as CEO and lead the company’s establishment of the [REDACTED] portal allowing for the sale of properties in the United States and several other countries. The Petitioner provided the same duties for the Beneficiary submitted in support of the petition, but added percentages of time the Beneficiary spent on each of his stated tasks.

The Petitioner submitted an updated organizational chart specifying that the Beneficiary supervised an operation manager (earning \$2,000 monthly and holding a bachelor’s degree), an office manager (earning \$1,750 monthly with a bachelor’s degree), a marketing manager (earning \$2,000 monthly

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and holding a bachelor's degree and an MBA in marketing), and a supporting manager (earning \$12.00 per hour with a bachelor's degree). The chart reflected that the marketing manager supervised a media support manager earning \$12.00 per hour and holding a bachelor's degree and that this manager oversaw three online support specialists making \$8.00 per hour. The Petitioner stated that the operations manager was responsible for the "creation of goods and services" and that the office manager was tasked with "maintaining the equipment, organizational needs, relationships with suppliers," amongst other duties. The Petitioner explained that the marketing manager "researches and reports on external opportunities," "develops the marketing strategy and plan," and ensures timely delivery. The Petitioner stated that the media support manager was tasked with "content strategies," developing brand awareness, generating inbound traffic, cultivating leads and analyzing campaigns, including social media campaigns. Lastly, the Petitioner indicated that the on-line support manager was responsible for resolving issues for users on various forms of technologies and compiling information on [REDACTED] while the on-line support staff provided phone and online support to customers using the portal.

Again, the Petitioner submitted documentation suggesting that the Beneficiary was a broker who had gained access to the [REDACTED] portal in January 2014. The Petitioner provided a "software development agreement" dated in January 2013 with [REDACTED] reflecting that the contractor would provide certain development services, but the agreement did not specify the nature or scope these services. The Petitioner submitted an IRS Form 941 for the fourth quarter of 2014 indicating that it had seven employees and that it had paid \$42,860.92 in wages and a Florida Department Revenue quarterly wage report for the same period which identifies each of the Petitioner's asserted employees except for two of its stated on-line support employees. The Petitioner further submitted an IRS Form 941 for the third quarter of 2014 reflecting that it had five employees and that it had paid \$27,841.92 in wages during this quarter and a supporting Florida return indicating that it had employed the Beneficiary, the operations manager, marketing manager, support manager, and one on-line support employee at the time the petition was filed.

In denying the petition, the Director stated that the Beneficiary had submitted a vague job description for the Beneficiary. The Director pointed to the fact that the Petitioner's organizational chart included nearly all managerial employees and that it was not apparent from the evidence provided which employees were responsible for performing the non-qualifying operational tasks of the business. The Director concluded that it was therefore likely that the Beneficiary's asserted managerial subordinates were not primarily performing managerial functions as stated. The Director concluded that the evidence did not establish that the Petitioner had developed sufficiently during its initial year in operation to support the Beneficiary in a position where he primarily performs qualifying managerial or executive tasks.

On appeal, the Petitioner contends that the Beneficiary's submitted duties confirm that he acts in a qualifying executive capacity. The Petitioner asserts that the non-qualifying operational duties of the business are being performed by the employees of the foreign employer and the Petitioner states that it submitted contracts to support this contention. The Petitioner contends that there was no basis for the Director to conclude that the Beneficiary's subordinate managers are performing non-managerial

tasks. The Petitioner further asserts that the Beneficiary supervises professional subordinates and states that applicable U.S. Department of Labor Occupational Outlook Handbook (OOH) duty descriptions relevant to the Beneficiary's subordinates demonstrate that they act in professional capacities.

B. Analysis

Upon review of the petition and the evidence, and for the reasons discussed 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 definitions of executive and managerial capacity 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 prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

We concur with the Director that the duties offered for the Beneficiary are overly vague and therefore have limited probative value. For instance, the Petitioner vaguely states that the Beneficiary will be responsible for "management of the U.S. office," "decision making," developing marketing strategies, developing business strategies, product and service plans, financial and sales plans, managing projects, and supervising strategic planning and performance goals. The Beneficiary's stated duties could apply to any executive within any company and offer little insight into the actual qualifying duties of the Beneficiary within the context of the Petitioner's business. Although the Director noted this deficiency in the RFE, the Petitioner did not take the opportunity to offer any further detail or supporting documentation to substantiate the Beneficiary's actual day-to-day tasks in its response.

Furthermore, reciting a 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. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner has not submitted specifics or supporting evidence regarding decisions the Beneficiary made during the first year, marketing or business strategies he developed, or strategic planning or performance goals he supervised. 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 Beneficiary's duties reflect a great deal of overlap with his subordinates thereby leaving question to the actual duties performed by the Beneficiary and his asserted managerial

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subordinates. For instance, the Beneficiary, marketing manager, and operations manager are all described as being primarily responsible for developing marketing strategies. Likewise, the customer manager is stated to be largely responsible for developing customer service policies, leaving question as to what policies and goals remain for the Beneficiary to initiate.

The statutory definition of the term “executive capacity” focuses on a person's elevated position within a complex 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.* In the current matter, the Petitioner has not sufficiently articulated or supported the specific goals and policies the Beneficiary has been responsible for setting during the first of operations and those he will focus on during the extended petition.

Beyond the required description of the job duties, United States Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company'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 business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

In the current matter, the totality of the evidence indicates that the Petitioner has not developed sufficiently during the first year to allow the Beneficiary to be primarily engaged in qualifying executive duties. The Petitioner states that its business plan was to build a real estate portal for the purpose of international property sales. However, the Petitioner has submitted little evidence to demonstrate that it has accomplished or will accomplish this plan. The Petitioner contends that it has and will engage contractors to build the portal but submits little supporting evidence to demonstrate that this is being accomplished, such as contracts, work orders and other transactional documents to indicate this work. Although the Petitioner submits one development contract with a contractor [REDACTED] the contract does not indicate for what work the contract was executed and the Petitioner otherwise provides no other supporting documentation to substantiate that this contractor has done significant work for the company. Likewise, the Petitioner provides no evidence that it has engaged [REDACTED] or an [REDACTED] company to support this effort. Indeed, documentation provided on the record suggests that the Beneficiary is not leading an effort to build a real estate portal, but has merely gained access to an already existing real estate system as a broker. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden

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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)).

Given the lack of evidence that the Petitioner has or will create an international real estate sales portal, it is not clear how the Petitioner has garnered revenue during the first year. In fact, the Petitioner has provided no evidence that it currently has any customers, and from the evidence submitted, it is not clear how the Petitioner is earning income based on its current operations. Although the Petitioner contends that it is paying salaries to its employees, compensating contractors for services and earning income, it is not clear how it is doing so based on the evidence presented. Further, the Petitioner provides evidence suggesting that the website [REDACTED] is trademarked, but the evidence does not establish that this trademark is held by the Petitioner or the foreign employer. In addition, the Petitioner indicates that it has invested \$300,000 in the new venture and will invest up to \$1.5 million over the next three years, but provides no specificity as to how the invested money was used to launch the business or that this investment money was provided by the foreign employer.

Therefore, in sum, the totality of the evidence reflects that the Petitioner has not developed sufficiently to support the Beneficiary in a qualifying managerial or executive capacity after the first year. Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, 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).² 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.

On appeal, the Petitioner asserts that the Beneficiary acts as a personnel manager based on his supervision of managerial and professional subordinates. The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” *See* section 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

² Following the enactment of section 101(a)(44)(C) of the Act in 1990, the former Immigration and Naturalization Service (INS) recognized that that managerial capacity could not be determined based on staffing size alone and deleted reference to “size and staffing levels” at 8 C.F.R. § 214.2(l)(3)(v)(C)(3) (1990), setting out the evidentiary requirements for initial new office petitions. *See* 56 Fed. Reg. 61111, 61114 (Dec. 2, 1991). However, the INS chose to maintain the review of the new office’s staffing, among other criteria, at the time that the new office seeks an extension of the visa petition. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D).

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).

The Petitioner has not provided sufficient evidence to establish that the Beneficiary primarily oversees managers or supervisors. As noted by the Director, as of the date of the filing of the petition, the Petitioner was shown to have only five employees, four of which had managerial job titles, including the Beneficiary and operations, marketing, and customer managers. Given the apparent top heavy nature of the organizational chart, it was not clear from the evidence presented who within the organizational chart is performing the day-to-day operational tasks of the business. Indeed, the Petitioner claimed to have only one operational employee working for the business as of the date of filing. As such, given the lack of operational employees, it is not established that the Beneficiary's subordinates are acting primarily in managerial capacities as asserted.

Further, the vague nature of the duties provided for the Beneficiary's claimed managerial subordinates leaves significant question as to the actual duties that they perform. Although the Petitioner provides evidence asserting that it has added three additional help desk employees since the filing of the petition, it is not clear for what these employees are providing support, since the record does not include evidence reflecting the Petitioner's development of an international real estate website. The Petitioner also submits shifting organizational charts and titles for the Beneficiary on the record, leaving question as to its actual organizational structure and the duties of its employees.

Lastly, the Petitioner further suggests on appeal that employees of the foreign employer are performing operational duties for the business. However, the Petitioner has not provided evidence to support this assertion and the documentation provided reflects that the foreign employer currently has only five employees. Again, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Therefore, the evidence in its totality indicates that the Petitioner is likely acting as a first line supervisor and is not primarily overseeing other managerial and supervisory employees. As noted, 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).

Here, the Petitioner has not demonstrated that the Beneficiary supervises professionals as necessary to establish that he is a personnel manager. 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).

In the current matter, the Petitioner asserts in the most recent organizational chart that the Beneficiary supervises five managerial subordinates all holding bachelor’s degrees, including operations, marketing, support, media support managers and an office manager. In support of this contention, the Petitioner provides evidence reflecting that the marketing manager holds a bachelor’s degree from Brazil in “social communication” and that the operations manager has an associate’s level degree in “general studies.” With respect to the other claimed professionals, the Beneficiary provides no supporting evidence of their educational or professional credentials. On appeal, the Petitioner further contends that U.S. Department of Labor OOH classifications clearly establish the Beneficiary’s subordinates as professionals.

The Petitioner has not submitted sufficient evidence to establish that any of the Beneficiary’s subordinates are professionals. First, the Petitioner has only established that one of its employees, the marketing manager, has a bachelor’s degree. However, the Petitioner has submitted vague duties for this position and not described how the responsibilities of this position require the position to be filled by an individual with a bachelor’s degree in a specific field. In addition, the Petitioner only makes vague reference to the Department of Labor’s OOH and does not articulate how the Beneficiary’s subordinates fit within any specific profession categories listed therein or how they meet the educational requirements of these claimed professional level classifications. Although this office may consult the OOH at times to assess the requirements of various positions within different industries, this resource does not demonstrate that the Beneficiary’s subordinates are professionals without specific analysis of each of the subordinate positions and how they are defined as professional in comparison.

In conclusion, the Petitioner has submitted vague job duties for the Beneficiary and his claimed managerial subordinates that are insufficient to demonstrate that the Beneficiary acts primarily in a qualifying managerial or executive capacity. Further, the Petitioner has not provided sufficient evidence that it is sufficiently operational after one year to support the Beneficiary in a qualifying managerial or executive capacity or that the Beneficiary primarily oversees and controls other managerial, supervisory or professional employees. Based on the foregoing, the Petitioner has not established that the Beneficiary is employed in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

IV. PHYSICAL PREMISES

The next issue addressed by the Director is whether the Petitioner has sufficient premises to conduct business.

We observe that the “physical premises” requirement that applies to new offices serves as a safeguard to ensure that a newly established business immediately commence doing business so that it will support a managerial or executive position within one year. *See* 52 FR 5738, 5740 (February 26, 1987). After one year, USCIS “will determine, in [its] discretion, whether the new office is ‘doing business’ when an extension of the petition is adjudicated.” *Id.*; *see also* 8 C.F.R. § 214.2(l)(14)(ii). A petitioner is not absolved of the requirement to maintain “sufficient physical premises” simply because it has been in existence for more than one year. In order to be considered a qualifying organization, a petitioner must be doing business in a regular, systematic and continuous manner. *See* 8 C.F.R. §§ 214.2(l)(1)(ii)(G) and (H). Inherent to that requirement, the petitioner must possess sufficient physical premises to conduct business.

The Director denied the decision by concluding that the Petitioner had not established that it has sufficient premises to conduct business. The Director pointed to the fact that the Petitioner had obtained only 280 square feet of space to accommodate its claimed nine employees and that it had provided a lease that had expired prior to the filing of the petition. On appeal, the Petitioner submits evidence indicating that it had renewed its current lease agreement through March 16, 2016.

Upon a review of the record, we find that the Petitioner has established that it more likely than not has sufficient premises to conduct business. Although the evidence of record does not establish that the Petitioner’s operations are sufficient to support the Beneficiary in a qualifying managerial or executive capacity, there is now little doubt that it has rented a commercial space that at least should allow it to provide goods and services continuously. Therefore, the Director’s decision to the contrary is hereby withdrawn.

V. CONCLUSION

Regardless, the appeal will be dismissed and the petition will remain denied for the above stated reason. 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.

Cite as *Matter of WG-, LLC*, ID# 14999 (AAO Dec. 16, 2015)