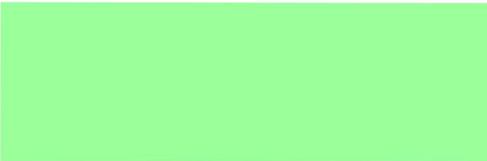


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **FEB 26 2015** Office: CALIFORNIA SERVICE CENTER FILE:

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with 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 nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a [REDACTED] corporation established in [REDACTED] states that it operates a wholesale/import/export business. The petitioner claims to have a qualifying relationship with [REDACTED] located in China. The beneficiary was previously granted one year as an L-1A intracompany transferee in order to open a "new office" in the United States as the petitioner's president. The petitioner now seeks to extend the beneficiary's status for two additional years.

The director denied the petition, concluding that the petitioner failed to establish the beneficiary is 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 the AAO for review. On appeal, the petitioner asserts that the evidence is sufficient to establish that the beneficiary is employed in a managerial or executive capacity in the United States.

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.
- (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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

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.

II. Managerial or Executive Capacity

The sole issue addressed by the director is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity under the extended petition.

A. Facts

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 8, 2014. The petitioner indicated that it has four U.S. employees and a gross annual income of \$8,680.

The petitioner stated on the Form I-129 that the beneficiary, as president, is "in charge of the corporate strategy, business development, relationship with headquarter [*sic*] in China, and human resource function." It did not include any additional information regarding the beneficiary's job duties at the time of filing.

The petitioner provided an organization chart for the U.S. company. The beneficiary is at the apex of the company's hierarchy. The chart depicts a subordinate general manager, who in turn oversees subordinate sales, administration, and materials positions. The chart also indicates a future design position subordinate to the general manager. The chart includes additional positions subordinate to the sales, design, administration, and material positions; however, there are no individuals identified in these positions. Although there are five employees identified by name on the chart, the petitioner submitted an employee list with only four names, including the beneficiary, the general manager, an accounting employee (the individual identified as "administration" on the organization chart), and the sales employee.

As evidence of its business activities, the petitioner submitted copies of five invoices dated between January and April 2014. The invoices were for the sale of wine and nutritional supplements to Chinese customers, as well as invoices for "consulting services rendered by [the beneficiary]" to various companies, which were also billed to a Chinese customer.

The petitioner submitted its 2013 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for the beneficiary and the individual identified as the administration/accounting employee. The petitioner also submitted a payroll summary for the month of March 2014 indicating that the petitioner paid the beneficiary

and the individuals identified as the general manager, administration, and sales employees. The document indicates that the beneficiary worked 173.33 hours; the general manager worked 86.66 hours; the sales employee worked 16 hours; and the administration employee worked 88.67 hours.

The director issued a request for additional evidence ("RFE") instructing the petitioner to submit additional evidence that the beneficiary is employed in a managerial or executive capacity in the United States. Specifically, the director requested a letter describing the beneficiary's typical managerial or executive duties and the percentage of time spend on each; a chart or diagram listing all employees in the beneficiary's immediate department; copies of the U.S. entity's state quarterly wage reports for the 3rd and 4th quarters of 2013; copies of the U.S. entity's payroll summary, Forms W-2, W-3, and 1099-MISC showing wages paid to all employees under the beneficiary's direction; and copies of employment agreements entered into by any newly hired employees who will be managed by the beneficiary.

The petitioner resubmitted its organization chart and provided a list of employees, position descriptions, and wages for the U.S. employees identified as its general manager, material manager, salesman, and administration manager. The petitioner also submitted a California Report of New Employees that included the beneficiary, the general manager, sales employee, administration employee, and material employee. The report indicates that the beneficiary and administration employee started work on July 1, 2013. The general manager's start of work date is February 15, 2014, and the material and sales employees have a start of work date of March 24, 2014. The petitioner submitted signed employment offers for the general manager, material manager, salesman, and administration manager.

The petitioner described the positions subordinate to the beneficiary as follows:

General Manager

1. 40% manages the function of sales, administration and material purchasing.
2. 40% manages the salesperson(s): provide leadership to the day-to-day activities of the sales department; establish performance goals for salespersons; train salespersons; develop the performance appraisal metrics; conduct the performance review; recommend hiring and firing decision;
3. 20% sales reports; responsible for annual and quarterly sales forecast for budgeting purposes; prepare weekly and monthly sales report for senior

Material Manager

1. 50% purchase: interact with vendors, mainly the foreign entity in China for purchase; manage and implement the sourcing plan; overseeing the logistics.
2. 25% (Pending) manage the buyers and warehouse staff: review the purchase reports submitted by subordinate(s); manage and evaluate staff's performance.
3. 25% reports: Prepare purchase plan in accordance with the annual and quarterly budget and the sales projection; review and finalize the purchase report submitted by the subordinate(s).

Salesman

1. 100% sales: cold call; develop customer leads; participate in trade shows; coordinate with logistics team; prepare daily sales activity report to Sales Manager.

Administration Manager

1. 30% administrative work: provide administrative support to senior managers, sales and material department.
2. 10% (Pending) manage the accounting clerk: manage and train the staff; set performance goal and evaluate the staff's performance.
3. 30% accounting and bookkeeping: exam and validate data entries; prepare the monthly, quarterly, and annual financial statements; prepare ad hoc financial reports for senior management.
4. 20% HR management: prepare hiring plan; review documents prepared by the assistant; record-keeping of the HR files.
5. 10% work with outside CPA.

The petitioner indicated that each subordinate manager earns an annual salary of \$24,000 and the sales employee earns an hourly wage of \$12.50.

The petitioner also submitted IRS Form 941, Employer's Quarterly Federal Tax Return, for the fourth quarter of 2013 and the first quarter of 2014. The tax returns indicate that the petitioner paid \$30,000 to two individuals in the fourth quarter of 2013 and paid \$8,000 to three individuals in the first quarter of 2014.

Finally, the petitioner submitted a copy of its California Form DE-9C, Quarterly Wage and Withholding report for the first quarter of 2014. The petitioner reported one employee for January and three employees for the months of January and March 2014. The petitioner paid \$6,000 to the beneficiary and \$1,000 each to the general manager and the administration manager.

Although a cover letter accompanying the RFE response stated that the petitioner was also submitting a letter further describing the beneficiary's job duties, the record reflects that such letter was not included among the documents submitted.

The director ultimately denied the petition concluding that the petitioner failed to establish that it employs the beneficiary in a qualifying managerial or executive capacity in the United States. The director noted that, although requested, the petitioner failed to provide a description of the beneficiary's duties in response to the RFE.

On appeal, the petitioner asserts that the director failed to consider a letter submitted in response to the RFE describing the beneficiary's executive duties. The petitioner submits a copy of a letter dated June 13, 2014.

In the letter, the petitioner asserts that the beneficiary's job duties and the time allocated to each duty are as follows:

- Review and finalize the departmental monthly, quarterly, and annual plan, budget [sic] and strategy 20%
- Chairs the weekly department heads meeting 10%
- Supervise the implementation of the sales plan and strategy 20%
- Visit strategic vendors and customers 25%
- Prepare reports for the Board of Directors 5%
- Review the job performance of department managers 10%
- Human resource management of the staff 10%

The petitioner indicates that the beneficiary: "has the overall responsibility for the development and implementation of corporate strategies on product development, feasibility and financial analysis of new product, the finalization of marketing plan in the U.S. and management of profit & loss in the U.S. office."

The petitioner indicates that the beneficiary relocated the office for cost savings, adjusted sales strategies and budget, retained key managers, supervised the teams in China, and supported the U.S. office's financial and product development. The petitioner indicates that the beneficiary relies on managers to provide reports, analysis and strategic proposals and then designates a person who will be responsible for the particular project or program.

B. Analysis

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary's employment in the United States is within a managerial or executive capacity.

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 functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The petitioner submits a letter describing the beneficiary's duties and the percentages of time that the beneficiary spends performing each of his duties for the first time on appeal. The petitioner claims that the description was provided in the RFE response. However, upon review of the record, it appears that this letter was inadvertently omitted from the original RFE response and, therefore, it was not reviewed by the director. Even considering the description provided on appeal, the petitioner has failed to establish the beneficiary's employment in a managerial or executive capacity.

The petitioner indicates that the beneficiary spends a quarter of his time visiting strategic vendors and customers. Although this duty is described in general terms, it does not appear to be a duty typically considered managerial or executive in nature and suggests the beneficiary's involvement in the company's sales and marketing services. Further, the petitioner submitted recent invoices indicated that it is billing

customers for "consulting services" provided by the beneficiary. The petitioner did not include the provision of consulting services among the beneficiary's duties, thus raising questions as to whether the description provides a complete and accurate account of his actual duties. While performing non-qualifying tasks necessary to produce a product or provide a service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties; the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act.

The petitioner describes several of the beneficiary's duties in vague terms that fail to demonstrate what he does on a day-to-day basis. For example, the petitioner indicates that the beneficiary spends his time as follows: reviewing and finalizing the departmental monthly, quarterly, and annual plan, budget and strategy; chairing the weekly department heads meeting; reviewing the job performance of department managers; preparing reports for the board of directors; human resource management of the staff; and supervising the implementation of the sales plan and strategy. Without a further description of the specific activities the beneficiary performs to effectuate the broadly described duties, it cannot be determined that the duties are qualifying under the statute. 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

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 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 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). In the instant matter, the petitioner has not articulated a claim that the beneficiary is employed as a function manager.

The petitioner submits a payroll summary indicating that the petitioner paid wages to four individuals including the beneficiary in March 2014. The document is inconsistent with the organization chart, the California Report of New Employees, and the submitted employment offer letters. The documents indicate that the material manager and the salesman both began working for the company on March 24, 2014. While the March payroll summary demonstrates wages paid to the salesman, there is no evidence in the record that the petitioner was paying wages to the material manager at the time the petition was filed. Further, the petitioner reported only the beneficiary, the administration employee and the general manager on its quarterly wage report for the first quarter of 2014. 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). Additionally, the regulations for the extension of a new office petition explicitly require evidence of wages paid to the petitioner's employees. See 8 C.F.R. § 214.2(l)(14)(ii)(D).

The payroll documents and organization chart indicate that the beneficiary has a subordinate general manager who supervises a salesman and administration manager. However, simply asserting that the general manager manages the sales, administration, and material purchasing without additional details, is insufficient to support the position's placement on the organization chart. Also, as there is no evidence that the petitioner employs the material manager, it is unclear who performs the company's purchasing and logistics functions. The petitioner's evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization can support an executive or manager position. An employee will not be considered to be a supervisor simply because of a job title or because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. See generally *Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)).

The position descriptions for the beneficiary and his subordinate employees contain overlapping duties. The beneficiary's position description indicates that he supervises the implementation of the sales plan and strategy. The petitioner has not explained how the beneficiary's duties differ from the general manager's duties to provide leadership to the day-to-day activities of the sales department and manage the function of sales. The petitioner has also failed to indicate how the beneficiary's responsibility for "human resource management of the staff" differs from the administration managers "HR management" duty. Without a clear description of the duties performed by the beneficiary's subordinates and an explanation of how the beneficiary and his subordinates divide overlapping duties and responsibilities, the record fails to establish that the beneficiary primarily performs qualifying duties and that the subordinate employees relieve the beneficiary from performing the non-qualifying duties. Instead, the evidence reflects that the beneficiary directly supervises the subordinate positions rather than a multi-tiered organization structure.

We also observe that the descriptions of the beneficiary's subordinates reference additional positions that are not included on the organization chart. The position description for the salesman indicates that he will report to the Sales Manager and the administrative manager's duties include reviewing documents "prepared by the assistant." The payroll documents, organization chart, and position descriptions do not demonstrate the existence of more than one sales position. The evidence also does not demonstrate the employment of an assistant to the administration manager. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Even if the general manager were a supervisory or managerial employee, the petitioner has failed to establish that the beneficiary spends the majority of his time managing a single individual whose duties overlap significantly with his own. The petitioner must establish the beneficiary's duties are "primarily" managerial

or executive. The totality of the record fails to demonstrate that the beneficiary spends the majority of his time supervising a sole employee.

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).

Although the petitioner indicates that all of the beneficiary's subordinates possess at least a bachelor degree; the petitioner has failed to establish that the beneficiary's subordinates are professional level employees. The focus is on the level of education required by the position, rather than the degree held by subordinate employees. The evidence does not establish that the general manager, salesman, material manager, or administration manager require a bachelor degree to perform their job duties. The petitioner has not provided position descriptions that illustrate how performance of the company's routine financial, administrative, human resources, or sales duties require a specialized course of instruction and study at the baccalaureate level. Furthermore, although the petitioner claims that all of the beneficiary's subordinate employees have at least a bachelor degree; the petitioner has not submitted evidence to support its claim. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Here, the evidence does not establish that the beneficiary's subordinates are professional employees.

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 clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who "primarily" performs the tasks necessary to produce a product or to provide services, or other non-qualifying duties, is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm'r. 1988). The petitioner has not articulated a claim that the beneficiary manages an essential function.

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. 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. 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 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.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will be acting primarily in an executive capacity. As explained above, the beneficiary appears to be the first-line supervisor of two to three employees. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

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 for the extension of a "new office" petition require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D).¹ 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 foregoing discussion, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

¹ 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).

III. Doing Business

Beyond the decision of the director, the evidence of record does not establish that the petitioner has been doing business for the year preceding the filing of the petition as required by 8 C.F.R. § 214.2(l)(14)(ii)(B).

The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii). The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) states: "*Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad."

The petitioner has not submitted quarterly tax returns or other evidence that it was engaged in the regular, systematic, and continuous provision of goods and/or services since the commencement of the beneficiary's initial period of L-1A classification in May 2013. In fact, the petitioner admits that the U.S. entity commenced operations on December 13, 2013, five months prior to the filing of the instant petition. While the petitioner indicates that an administrative delay prevented the beneficiary from obtaining his visa until December 14, 2013, the submitted California Report of New Employees indicates that the beneficiary began working in July 2013. Finally, even considering the beneficiary's delayed entry, the evidence regarding the petitioner's business operations in 2014 consisted of two sales receipts and invoices for the beneficiary's performance of unidentified "consulting services." Overall, the evidence is insufficient to demonstrate that the petitioner has been engaged in the regular, systematic, and continuous provision of goods and/or services. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. 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); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

IV. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. 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.