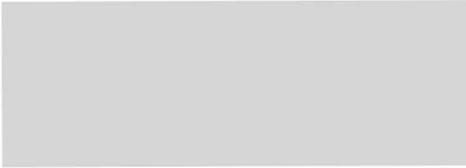


(b)(6)

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: **JUL 27 2015**

PETITION RECEIPT #: 

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to classify the beneficiary as an 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 Florida corporation established in [REDACTED] is a provider of technology solutions for investment banks. It is a subsidiary of [REDACTED] located in Brazil. The beneficiary was initially granted L-1A classification for a period of one year, from February 26, 2013 until February 25, 2014, in order to open a new office in the United States. The petitioner seeks to employ the beneficiary in the position of Regional Operations Manager for two additional years.¹

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to our office. On appeal, the petitioner asserts that it established by a preponderance of the evidence that the beneficiary will be employed in a qualifying managerial capacity based on his supervision of subordinate professionals and his management of an essential function of the organization.

I. THE LAW

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

The regulation at 8 C.F.R. § 214.2(i)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

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

¹ The petitioner filed a Form I-129 to extend the beneficiary's L-1A status on February 24, 2014 ([REDACTED]). The Director, California Service Center, denied that petition on June 18, 2014. The petitioner indicates on the current Form I-129 that it is requesting "a continuation of previously approved employment without change."

- (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.

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.

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

II. THE ISSUE ON APPEAL

The sole issue to be addressed is whether the petitioner established that the beneficiary will be employed in a qualifying managerial capacity. The petitioner does not claim that the beneficiary will be employed in an executive capacity.

A. Facts

The petitioner filed the Form I-129 on July 31, 2014. In a letter dated July 21, 2014, the petitioner explained that it was founded in [REDACTED] and is a "leading supplier of capital markets technology services," which include implementation and support of major platforms, as well as development and consulting. The petitioner explained that its Brazilian parent company has been providing these services since [REDACTED] and enjoys relationships with many prominent financial institutions, many of which maintain offices in the United States. The petitioner opened its offices in New York in [REDACTED] to expand the organization's presence in the region.

The petitioner's letter included a lengthy narrative description of the beneficiary's responsibilities as Regional Operations Manager, as well as the following list of duties:

- 1) Oversee the operations of all portfolio deliveries in the United States and manage client relationships from an operational perspective;
- 2) Oversee coordination with the sales team in transitioning from a prospective client opportunity into a product delivery for all clients and strategies within the Unite[d] States;
- 3) Direct and assign management of business initiatives to analyst staff in each U.S. based initiative ensuring that all expectations, objectives and outcomes are clearly understood and executed;
- 4) Control and distribute workflow to subordinate staff and coordinates resources and timetables with other departments;
- 5) Audit specific initiatives and accounts for financial and operational metrics to ensure quality and budget control;
- 6) Recommend information technology strategies, policies, and procedures by evaluating organization outcomes, identifying problems, evaluating trends, and anticipating requirements;
- 7) Oversee the production of budget reports and present those to senior management;
- 8) Maintain quality service by establishing and enforcing organization standards;
- 9) Manage [the petitioner's] expansion efforts in North America by delegating appropriate subordinates to client presentations, industry conferences, and seminars; and
- 10) Provide leadership and guidance to staff by conducting formal reviews and evaluations, as well as setting and managing production goals for each team member.

The petitioner described the beneficiary as a "key member of our managerial team" based on his operational management experience combined with his knowledge of the company's products and systems. It stated that he will be "responsible for the overall management of critical business operations and important functions for our cross-border strategy by directing and managing the day-to-day business activities of our U.S. operations from our New York office."

The petitioner explained that the beneficiary will manage an essential function, namely, its "operational and strategic business expansion efforts," as well as supervise two professional employees, including a web developer and a sales associate, with the authority to hire and train future subordinate professionals. The petitioner provided position descriptions for the web developer and the sales associate, who the petitioner states "is in charge of leading generation and driving sales bookings for [the petitioner] by . . . directly assisting the Sales Manager in the production of reports, market data and ad hoc client research." The petitioner stated that this employee plays an important role in the Operations group by helping to formulate sales reports, budgetary needs and expenses, as well as assisting in the formulation of strategies, tactics and account plans.

The petitioner stated that the beneficiary will "manage and execute important company functions," and will be "heavily involved in pre-sales activity working in partnership with the sales team and will have unfettered and discretionary authority to sign off all proposals to clients for operational approval." The petitioner indicated that he would also serve as "a point of escalation for any operational issues, ensuring that all ventures are performed on time, on budget and meeting quality expectations."

The petitioner went on to further elaborate upon the beneficiary's role as a function manager, noting that he would be "responsible for managing the essential Operations function." In this regard, the petitioner stated that the beneficiary "is charged with overseeing the proper maintenance and management of all offices including but not limited to the physical facilities, mobile and web connectivity, and communication lines and availability of support to other company functions." The petitioner stated that he is also expected to anticipate and provide for the necessary technical specialist team to service and maintain new and ongoing account requirements, and on a broader basis, "is tasked with enabling all other company functions to operate at their maximum efficiency . . . by providing them with the resources, recourses and support they need."

The petitioner described the role of the "operations group," noting that it plays a leading role in managing raw materials and personnel by controlling inventory, purchasing supplies, hiring new labor as needed, overseeing assignment of staff, planning staff development, managing the supply chain, minimizing the costs of production, issuing disbursements and company checks, paying invoices, and holding final execution authority over all financial documents. The petitioner stated that operational managers such as the beneficiary are in constant contact with senior executives in the presentation of financial and operational reports.

The petitioner submitted an organizational chart for its New York office which indicates that the beneficiary and another employee, a Business Development Director, jointly supervise the sales

assistant and web developer. The beneficiary reports to the chief operating officer, while the business development director reports to the company CEO. According to an internal company letter dated May 26, 2014, the business development director is "leading sales and business development [for the petitioner] in the US." This letter mentions that one technical resource, [REDACTED] left the company in 2013 after six months of employment, while a sales person remained with the company for five months before exiting in 2014.

Finally, the petitioner provided an "Analysis and Advisory Evaluation of Position" from [REDACTED] Ph.D., a professor at [REDACTED]. He based his evaluation of the beneficiary's position as Regional Operations Manager on a list of 18 duties the petitioner provided to him and concluded that the beneficiary would qualify as a manager based on his supervision of professional personnel.

The director issued a request for additional evidence (RFE) on August 12, 2014. The director advised the petitioner that its initial evidence did not show that the beneficiary will be engaged in primarily managerial duties, and requested a more detailed statement of the beneficiary's duties, supported by corroborating evidence. The director also requested additional evidence regarding the staffing of the company including evidence of wages paid to employees.

In response to the RFE, the petitioner submitted a letter dated September 12, 2014, in which it emphasized that the New York office is charged with the implementation and support of major platforms for key clients, providing specialized services for major platforms (such as project management, scope and planning definition), as well as providing onsite support and system development for critical accounts. The petitioner stated that the beneficiary "serves as the functional manager of all of our U.S. operations and exercises control over our critical Operations function." The petitioner emphasized its large contracts with [REDACTED] and [REDACTED] and noted that the beneficiary contributes to the petitioner's growth by overseeing client portfolios.

The petitioner provided copies of its employment agreements with the beneficiary's two subordinates, as well as evidence of wages paid to these employees. The employment agreement for the claimed "sales associate" indicates that this employee was actually offered the position of "office clerk" and is responsible for making and answering telephone calls, setting up meetings, email correspondence, creating documents, performing general office duties and "help[ing] the sales staff in their research of new clients." The petitioner also submitted a copy of an employee performance evaluation for a former U.S. employee as evidence of the beneficiary's authority to conduct performance reviews.

The director denied the petition on September 30, 2014, concluding that the petitioner did not establish that the beneficiary would be employed in a qualifying managerial or executive position. In denying the petition, the director determined that the petitioner provided only a vague description of the duties the beneficiary will perform. The director further found that the petitioner had not clearly defined a function managed by the beneficiary, established that he is at a senior level in the company's organizational hierarchy, or shown that his claimed subordinates would relieve him from non-qualifying duties associated with the function. The director also questioned whether the

petitioner had grown to the point where it can support a managerial or executive position given its financial position and level of business activities.

On appeal, the petitioner asserts that the beneficiary is employed in a managerial capacity and that there are only two employees in the petitioner's global organization who are senior to his position. The petitioner states that the beneficiary has direct managerial oversight over two professional employees as well as "ranking managerial authority" over eleven professionals in the "global Operations group," as he continues to rely on resources located abroad. The petitioner asserts that the facts of this case are similar to those in an unpublished decision in which we determined that a beneficiary qualified as a function manager based on his responsibility for development of the U.S. market for the company's international organization.

The petitioner further contends that the beneficiary's two direct subordinates support his role in expanding the U.S. business and provides additional information regarding these employees' responsibilities. The petitioner states that the beneficiary "has full discretionary and autonomous decision-making authority to hire employees, oversee assignment distribution and execution, plan and oversee staff development, and discipline and terminate employees when necessary," and emphasizes that "these duties account for the overwhelming majority of his time." The petitioner notes that its expansion to the U.S. market is recent and it does not require large teams of designated professionals in New York at this time. Nevertheless, the petitioner asserts that the beneficiary's authority extends to operations for the entire Americas region.

In support of the appeal, the petitioner submits an organizational chart showing the "Global Structure" of the petitioner's group. This chart shows the beneficiary as "Regional Head of Americas," reporting to "Global Operations," and supervising the sales associate and web developer, with additional indirect oversight over eleven staff in Brazil (including ten technical analysts and one quality control employee). The global chart also shows "Regional Heads" for Brazil and Latin America.

B. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary would be employed in a qualifying managerial 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 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).

Here, although the petitioner provided a lengthy description of the beneficiary's duties in support of the petition which indicate his authority over the petitioner's New York office and responsibility for

coordinating and overseeing delivery of services to client accounts, the description does not explain what he does on a day-to-day basis within the context of the petitioner's current operations. For example, the petitioner states that he is "responsible for managing the essential Operations function in line with our strategic expansion in the United States" and notes the need to provide "resources and support for the ever growing sales and technology support teams." At the same time, the record indicates that the petitioner hired one technical analyst and one sales person, who have since left the company and were replaced with a web developer and "sales associate," whose employment agreement indicates that she was actually hired as an "office clerk" with none of the duties the petitioner claims have been assigned to her. The petitioner did not submit evidence of its "ever growing sales and technology support teams."

Further, the position description is very broad and includes both qualifying and non-qualifying duties, making it insufficient to establish that the beneficiary's duties would be primarily managerial. The petitioner provided a numbered list of ten duties, but preceded this list with pages of information that mentioned other tasks such as acting as a point of escalation for operational issues, heavy involvement in pre-sales tasks in partnership with the "sales team," controlling inventory, purchasing supplies, managing the supply chain, minimizing the costs of production, issuing disbursements and company checks, and paying invoices.

In addition, the petitioner provided a different list of 18 duties to Professor [REDACTED] in order to obtain an advisory opinion regarding the beneficiary's position, but this description was different than that provided in its letters to USCIS and emphasized the beneficiary's management of projects, noting that he assigns project management and business analysis staff to each U.S. project, accomplishes IT staff results by monitoring work of subordinates, maintaining an adequate project and business analysis staff in the United States, completing projects, conducting project and operational audits, and "contributing to team effort by accomplishing related results as needed." The petitioner did not have any business analysis or project management staff in the United States when the petition was filed, so many of these duties appeared to be prospective.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated or is in any way questionable. *Matter of Caron Int'l.*, 19 I&N Dec. at 795. As noted, [REDACTED] reviewed a position description that is different from that provided to USCIS in the petitioner's own supporting statements. While he determined that the beneficiary performs duties that fall within the statutory definition of "managerial capacity," he does not offer an opinion on whether such duties constitute the beneficiary's primary duties. For example, as noted the description indicates that the beneficiary supervises U.S.-based project managers and business analysts, and these duties are not supported by the record.

Overall, the position descriptions generally support the beneficiary's role in maintaining client relationships from a technical and project delivery standpoint, using his technical knowledge to assist with pre-sales activities and client acquisition, and overseeing any staff who may be temporarily assigned to specific client projects. However, the petitioner's broad and varying descriptions of the beneficiary's duties are insufficient to establish that the beneficiary's actual duties would be primarily managerial in nature. Based on the current record, we are unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties associated with pre-sales activities and project implementation and support. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

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 a comprehensive understanding of 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).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).

² In evaluating whether the beneficiary manages professional employees, we 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). Therefore, we focus on the level of education required by the position, rather than the degree held by a subordinate employee. In the instant case, the petitioner has not established that a bachelor's degree is actually necessary, for example, to perform the work of the office clerk who is among the beneficiary's subordinates.

Here, the petitioner has claimed that the beneficiary serves as both a function manager and as a personnel manager, and on appeal, the petitioner states that the beneficiary spends "the overwhelming majority of his time" hiring employees, overseeing assignments distribution and execution, planning and overseeing staff development, and disciplining and terminating employees. At the time of filing the petitioner indicated that the beneficiary supervises two professionals – a web developer and a "sales associate." As noted by the director, according to the petitioner's organizational chart, both of these employees also report to the company's business development director, who appears to occupy the same level as the beneficiary in the petitioner's organizational hierarchy. The petitioner did not provide evidence that the beneficiary evaluates the work of these two employees, although it did provide an employee evaluation for a technical analyst who is no longer with the company. Further, the petitioner did not provide evidence that either the web developer or the sales associate possesses a bachelor's degree. Finally, as noted, the employment agreement for the claimed sales associate indicates that this employee was hired on June 16, 2014 for an office clerk position that involves answering the petitioner's phones, setting up meetings, handling email correspondence, creating documents and reports, performing other general office duties and "help[ing] the sales staff" with client research. The petitioner did not identify any other sales staff. Therefore, due to this discrepancy, the petitioner has not established that the sales associate actually performs the higher level sales duties attributed to her in its supporting letters.

As noted above, the beneficiary's actual primary responsibility relates to the acquisition and delivery of client projects, and the petitioner has not explained the role of either the web developer or sales associate/office clerk in terms of their contributions to these projects. While the beneficiary is undoubtedly senior to both of these employees, the record does not establish that they are professionals or that he spends the majority of his time supervising them.

The petitioner also asserts that the beneficiary continues to oversee a team of technical analysts based in Brazil. The petitioner did not include them on its initial organizational chart but provides an updated chart on appeal showing the beneficiary's indirect supervision of 11 additional employees. While we do not doubt that the petitioner would rely, in part, on offshore resources for delivery of projects to U.S. customers, the petitioner has not described the staffing structure of any current projects or identified who is assigned to them or what their roles are, such that we can determine to what extent the beneficiary is relieved from the operational tasks associated with project delivery. 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)).

The petitioner indicates that the services it provides from its New York office include project management, scope and planning definition, onsite support and system development. The petitioner did not provide evidence that the Brazilian staff are performing onsite services in New York, and there is no evidence that the web developer or office clerk could provide these services. Absent additional clarification of the specific functions performed by the Brazilian staff for U.S. clients on a project-by-project basis, it cannot be determined who is providing the petitioner's primary services to U.S.-based customers. Further, the beneficiary appears to be the only available U.S.-based employee

capable of performing the onsite services the petitioner provides. Therefore, for all of the foregoing reasons, the petitioner has not established that the beneficiary spends the "overwhelming majority" of his time supervising professional employees, or that he qualifies as a personnel manager.

The petitioner has not established, in the alternative, that the beneficiary qualifies 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 clearly describe 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). In addition, 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.

While performing non-qualifying tasks necessary to produce a product or 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 correctly asserts that function managers are not required to directly supervise subordinate employees. However, the petitioner must still establish that someone other than the beneficiary will perform the non-qualifying duties associated with the petitioner's "operations" function, which includes financial, technical, operational and administrative tasks associated with delivery of services to customers, such that the beneficiary is free to perform primarily qualifying duties.

As discussed, the petitioner has not established to what extent other staff will perform the non-managerial duties that fall within the function managed by the beneficiary. The petitioner employs an office clerk and a web developer who do not appear to perform duties directly related to coordinating project delivery, as well as a business development manager, who is not supervised by the beneficiary and whose duties have not been defined. Based on the submitted evidence, the petitioner has not supported its claim that the beneficiary's duties would be primarily managerial in nature, such that he could qualify as a function manager. He does appear to operate at a co-senior level within the current scope of the U.S. office, but the record does not support the petitioner's claim that he manages the operations function for "the Americas," despite the assignment of a new job title – "Regional Head of Americas" – on appeal. The petitioner claims to operate in the United States, Latin America, and Brazil, yet it also indicates that it has other "Regional Heads" for Latin America and Brazil. It is unclear how his authority extends beyond the U.S. operation.

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). However, 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 or the absence of employees who would perform the non-managerial

or non-executive operations of the company. *See, e.g. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner emphasizes that it has been operating in the United States for only two years and does not require large teams of designated professionals in New York at this time. While this is understood, it is unclear how it operates without any designated professionals to provide the onsite services it claims to provide to its New York-based clients. The petitioner did not replace the technical analyst that it hired in 2013 and it is unclear who was performing the duties of this position at the time of filing, if not the beneficiary. The record indicates that the beneficiary is the only U.S.-based resource with the technical background to perform pre-sales activities and any required onsite services, support, and escalation required for client projects. The petitioner has not established how it currently has a reasonable need for the beneficiary to perform primarily managerial duties associated with regional operations when the company is still in a preliminary stage of staffing and development.

Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. As discussed above, the petitioner's description of the beneficiary's duties, viewed within the totality of the evidence, does not establish that the beneficiary's current duties are primarily managerial in nature.

On appeal, the petitioner further refers to unpublished decisions in which we determined that the beneficiary met the requirements of serving in a managerial capacity for L-1A classification even though they supervised only a small staff or no staff. The petitioner, however, has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Nevertheless, 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.

For the foregoing reasons, the petitioner has not established that the beneficiary will be employed in a qualifying managerial capacity.

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, that burden has not been met.

ORDER: The appeal is dismissed.