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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: JUL 2 7 2015 PETITION RECEIPT #: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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,

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 a Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation established in [redacted], is operating an import and export trade business. The petitioner claims to be a subsidiary of [redacted] located in China. The petitioner seeks to employ the beneficiary as the financial manager of its new office in the United States.

The director denied the petition concluding that the evidence of record did not establish that the beneficiary will be employed in a qualifying managerial or executive capacity within one year of approval of the new office petition.

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 contends that the beneficiary will be, at a minimum, a functional manager primarily in charge of the financial and accounting functions of the U.S. company. In support of this contention, the petitioner submits a two-page statement.

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 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)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive of managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

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. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in a qualifying managerial capacity within one year of approval of the new office petition.

A. Facts

The petitioner filed the Form I-129 on June 25, 2014. The petitioner submitted a letter of support, dated June 10, 2014, and briefly described the beneficiary's proposed position in the United States as follows:

> Upon her transfer, [the beneficiary] will be Financial Manager of [the petitioner]. In such position, she will oversee all financial and accounting functions and formulate and administer our company's overall financial plans and policies.
>
> She will also be responsible to establish, or recommend to management, major economic objectives and policies for our company; manage accounting department; direct preparation of budgets; advise management on desirable operational adjustments for accounting concerns; arrange for audits of company accounts; prepare of direct preparation of reports which summarize and forecast company business activity and financial position; direct financial planning, procurement, and investment of funds for our company and the company group.

The petitioner submitted its business plan, dated February 2014. The business plan includes an organizational chart for the U.S. company, depicting the beneficiary as the Financial Manager within the Financial Department, reporting directly to the Managing Director, [redacted] The beneficiary, as Financial Manager, directly supervises an "Accounting" position. The chart also lists an Administration Department with four subordinates to the Administration Manager, and a Sales Department with two subordinates to the Sales Manager. The business plan states that the Managing Director and Financial Manager (the beneficiary) have been selected and that the "Accounting" position, directly subordinate to the beneficiary, will be filled in

2014. The business plan also indicated that an Administration Assistant, a Logistics Coordinator, a Mechanical Engineer, and a Marketing position will be hired in 2014, a "Fitter" and a Sales Engineer will be hired in 2015, and an Administration Manager, a second "Fitter," and a Sales Manager will be in hired in 2016.

The petitioner did not submit any additional information about the beneficiary's proposed position in the United States.

The director issued a request for evidence ("RFE") on July 9, 2014, instructing the petitioner to submit evidence demonstrating that the beneficiary's proposed position in the United States will be in a managerial or executive capacity at the end of the petitioner's first year of operations.

In response to the RFE, the petitioner submitted a letter from the foreign entity dated September 8, 2014, describing the petitioner's organizational structure and staffing plan as follows:

> The U.S. subsidiary will have 9 employees in its first year, and will increase to 12 in its second year. . . . Our company send . . . [the beneficiary] to be the financial manager. The U.S. subsidiary has three departments, finance department, administration department, and sales department. . . . Managing director is responsible for the overall management of the company; financial manager is responsible for the financial management of the company; administration manager is responsible for management of human resource, administration and factory daily operation; sales manager is responsible for achieving sales goals and marketing management; accountant is responsible for preparation of financial statements and tax matters; office clerk is responsible for taking phone calls and handle import export documentation; logistics coordinator is responsible for receiving, delivering and warehouse operation; mechanical engineer is responsible for quality control and customer claims; marketing is responsible for internet marketing, sample design, and exhibition; sales engineer is responsible for developing North American customers; fitter is responsible for installation and maintenance of automobile after-market maintenance product.

The petitioner submitted a Feasibility Study, dated August 2014, which includes a new organizational chart depicting the beneficiary as the Financial Manager, reporting directly to the Managing Director. However, the newly provided organizational chart shows that the Financial Manager indirectly supervises the Administration Manager and the Sales Manager. The chart further indicates that in addition to directly supervising the "Accountant" position, the beneficiary will also indirectly supervise an "Office Clerk," a position directly subordinate to the "Accountant" position. The chart also demonstrates that this "Office Clerk" position is shared among the "Accountant," Administration Manager, and Sales Manager. The Feasibility Study goes on to describe the beneficiary's proposed job duties as follows:

> She will take the full responsibility for the financial management of the subsidiary as a financial manager. She will mainly perform the following duties[:]
>
> - Make the financial budget, profit analysis, short and long term financial planning, assist with the managing director to make business development strategy and plans.

- Organize and compile the summarize work reports for the preceding yearly with financial department, administration department and sales department. Make sales plan, sales target, expense budget, cost control and human resource budget etc. for the next year.
- Lead weekly meeting of financial department to decide financial objective, guide and monitor the implementation of the financial decision.
- Set down financial management system and procedures, including the management system of cash, reimbursement system, payment approval system, accounts receivable management system and cost control system etc.
- Report to the managing director directly and prepare financial statement and analysis reports monthly.
- Coordinate the issues between the financial department and other departments to ensure the company's normal operation.
- Be in charge of office equipment purchase and factory preliminary work in initial stage of the U.S. subsidiary.
- Develop new customers, maintain old customers of the parent company's automobile after-sales service and manage sales market (Hand over to sales manager after his arrival.)

The Feasibility Study also includes a brief position description for each of the positions listed on the organizational chart, in relevant part, as follows:

> Accountant: Present the monthly and yearly financial reports, tax declaration. Check daily claims and vouchers. Assist the financial manager to strengthen the cost control, financial budget and all kinds of analysis.
>
> Administration Manager: Be responsible for the personnel management and recruitment. Take care of the daily operation of the factory to ensure the delivery time can meet the customer's requirements. Provide the support to the sales department. Develop and maintain the suppliers.
>
> Office Clerk: Answer the phone, handle the orders, make import and export documents. Assist sale manager, administration manager and accountant to handle daily affairs.
>
> *   *   *
>
> Sales Manager: Make sales plan, sales target and sales strategy to achieve the goal. Build the sales team and sales network. Collect sales information and report to the managing director.

The Feasibility Study lists six positions at the foreign entity that provide some sort of sales or logistical support to the U.S. company, but none are relevant to the finance department where the beneficiary is proposed to be employed.

The director denied the petition on October 16, 2014, concluding that the petitioner did not establish that the beneficiary will be employed in a qualifying managerial capacity within one year of approval of the new office petition. In denying the petition, the director found that the petitioner provided only a vague description of the beneficiary's proposed duties and did not identify the percentage of time required to perform the duties of the managerial or executive position. The director noted that the brief description of the beneficiary's subordinates' duties did not establish that their positions will be supervisory, professional, or managerial in nature, and as such, the beneficiary will not have sufficient staff to support her managerial or executive position within the next year. The director further found that the beneficiary cannot be deemed a functional manager as the petitioner did not demonstrate that the beneficiary manages or directs the management of a department, subdivision, function, or component of the its U.S. company, but rather is primarily involved in the performance of routine operational activities.

On appeal, the petitioner submits a two-page statement, dated November 14, 2014, stating that the director's focus on the percentage of time required to perform the duties of the proposed position is not fair as the director did not mention anything about the percentage of time for the proposed position in the request for evidence. The petitioner further states that it has established that the beneficiary's proposed position in the United States, at a minimum, is a functional manager position as she will be primarily in charge of the financial and accounting functions of its U.S. company.

B. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary would be employed in a qualifying managerial capacity within one year of commencing operations in the United States.

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by U.S. Citizenship and Immigration Services (USCIS) regulation. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations may be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of a beneficiary in a qualifying managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure, and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

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

The petitioner first characterized the beneficiary's role as Financial Manager and briefly described her duties in very broad terms, noting that she will oversee all financial and accounting functions, formulate and administer the company's overall financial plans and policies, establish or recommend major economic objectives and policies for the company, manage the accounting department, direct the preparation of budgets, advise management on desirable operational adjustments for accounting concerns, arrange for audits of company accounts, prepare reports which summarize and forecast the company's business activity and financial position, and direct the financial planning, procurement, and investment of funds for the company. This initial description is very broad and fails to include any detail or specificity as to what the beneficiary will actually do on a daily basis, which is insufficient to show that the beneficiary will primarily perform qualifying duties. The petitioner did not document what proportion of the beneficiary's duties would consist of managerial or executive duties and what proportion would consist of non-managerial or non-executive duties. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner's description of the proposed duties does not provide any detail or explanation of the beneficiary's claimed managerial or executive activities in the course of her daily routine. 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).

In response to the RFE, the petitioner provided an equally vague list of job duties for the beneficiary's proposed position, and again did not allocate percentages of time the beneficiary would spend on specific duties. The petitioner submitted a new list of duties for the beneficiary's proposed position, which included, in part, the following tasks: make the financial budget, profit analysis, and short and long term financial planning; organize and compile the work reports for the preceding year with the financial department, administration department, and sales department; make a sales plan, sales targets, expense budget, cost control, and human resource budget for the next year; lead weekly meetings of the financial department;, set down financial management system and procedures, including the management system of cash, reimbursement system, payment approval system, accounts receivable management system, and cost control system; report to the managing director directly; prepare financial statements and analysis reports monthly; coordinate issues between the financial department and other departments to ensure the company's normal operation; develop new customers and maintain old customers of the parent company's automobile after-sales service; and manage sales market, which will be handed over to the sales manager after his arrival. The petitioner also indicated that the beneficiary would be in charge of office equipment purchase and factory preliminary work in the initial stage of development of the U.S. subsidiary.

Here, the petitioner listed the beneficiary's duties but failed to quantify the time the beneficiary would spend on them. This failure of documentation is important because the beneficiary's proposed daily tasks, as noted above, do not fall directly under traditional managerial or executive duties as defined in the statute. For this reason, the petitioner did not establish that the beneficiary would primarily perform duties in either a managerial or executive capacity. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Further, the beneficiary's proposed duties include sales and customer service duties that the petitioner claims will be turned over to the Sales Manager when an employee is hired to fill that position. However, according to the petitioner's business plan, a Sales Manager will not be hired until the petitioner's third year of business. As such, it is appropriate to assume that the beneficiary will be performing these tasks through the third year of the petitioner's business operations. Not knowing how much time the beneficiary will devote to this particularly important aspect of the petitioner's business is crucial in determining whether she will be performing primarily in a managerial or executive position. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

On appeal, the petitioner contends that the director did not provide the petitioner with an opportunity to address the director's concerns regarding the allocation of time the beneficiary would devote to each of her duties. Specifically, the petitioner contends that the director's focus on the percentage of time the beneficiary will devote to each duty is incorrect, as the director did not specifically request that information in the RFE. As to the perceived error in the director's actions, we note that there is no requirement for USCIS to issue an RFE or to issue an RFE pertinent to a ground later identified in the decision denying the visa petition. Title 8 C.F.R. § 103.2(b)(8) permits the director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the director. Moreover, even if the director had erred as a procedural matter in not issuing an RFE relative to the petitioner's failure to establish that the beneficiary would be employed in a capacity that was primarily managerial by the end of the first year of operations, which is not the case here, it is not clear what remedy would be appropriate beyond the appeal process itself. We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In this matter, although the director did not specifically request a breakdown of the percentage of time the beneficiary will devote to each listed duty, it is a relevant factor in considering what the beneficiary will actually do during the course of her daily routine. 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. As noted above, the administrative process affords the petitioner with an opportunity to supplement the record on appeal with evidence to rebut the director's findings regarding the managerial capacity of the beneficiary. Aside from its two-page statement, which generally contests the director's adverse findings, the petitioner has not provided any new evidence to rebut the director's findings.

Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. *See generally*, 8 C.F.R. § 214.2(l)(3)(v)(C).

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."[1] 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*).

Here, the organizational chart indicates that the beneficiary will directly supervise an accountant and indirectly supervise the administration department and the sales department. However, the actual job duties listed for the beneficiary's subordinates' positions do not demonstrate that they require a professional degree. Nor do they indicate that the positions have supervisory or managerial responsibilities, although they have subordinate employees listed in the organizational chart. Regardless, the fact that one of the beneficiary's subordinates may manage a particular function or supervise lower-level employees is not sufficient to elevate the beneficiary to a position that is managerial in nature. The petitioner has not demonstrated that the beneficiary's duties primarily focus on the management of the organization and the supervision of qualifying managerial, professional, or supervisory employees, rather than on producing a product or providing a service of the U.S. company. As noted above, the petitioner did not submit a detailed description of the beneficiary's position to establish that her daily routine will consist of primarily managerial duties. Finally, the petitioner has not submitted evidence that the beneficiary's subordinate employees will relieve her from performing non-qualifying operational and administrative duties at the U.S. company.

The petitioner has not established, in the alternative, that the beneficiary is employed primarily as a "function manager." The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term

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[1] 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).

"essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a position description that describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(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.

Here, the petitioner claims on appeal that it has established, at a minimum, that the beneficiary's proposed position qualifies her as a function manager. However, the petitioner does not specify why or how the beneficiary is a function manager, other than an arbitrary statement that she is primarily in charge of the financial and accounting functions of its U.S. company. The petitioner does not provide any additional information about the beneficiary's proposed position or her proposed duties sufficient to establish that she will manage the function, rather than perform the duties associated with carrying out the function. The petitioner also has not established that the beneficiary will have sufficient support staff to carry out the duties associated with the function in order to relieve the beneficiary from performing said duties and focusing on the management of the financial and accounting functions of its U.S. company. Further, the petitioner makes this claim for the first time on appeal, which raises doubts as to the veracity of this newly defined role. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978).

The statutory definition of the term "executive capacity" focuses on a person's elevated position within an organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. *See* 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.* Here, the petitioner has not claimed that the beneficiary will be employed in an executive capacity and the record does not support a finding that her duties will focus primarily on the broad goals and policies of the organization rather than day-to-day operations.

Based on the foregoing, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity, or as a function manager, within one year of the approval of the new office petition. Accordingly, the appeal will be dismissed.

III. CONCLUSION

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

ORDER: The appeal is dismissed.