



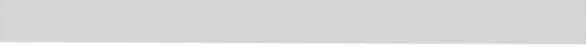
U.S. Citizenship
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Services

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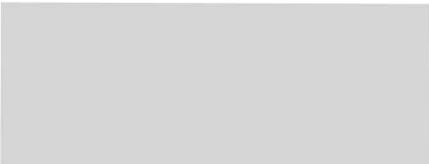
DATE: **JUN 19 2015**

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 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 New York limited liability company established in [REDACTED], states that it engages in the wholesale and retail sale of furniture accessories. The petitioner claims to be an affiliate of [REDACTED], located in Hong Kong. The petitioner seeks to employ the beneficiary as the director of import operations for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed primarily 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 our office. On appeal, the petitioner asserts that the beneficiary will be employed in an executive function manager capacity in the United States. The petitioner submits a brief in support of the appeal.

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.

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 it will employ the beneficiary in a qualifying managerial or executive capacity in the United States.

1. Facts

The petitioner filed the Form I-129 on June 6, 2014 and failed to indicate its current number of employees in the United States or gross annual income. In a letter of support dated May 28, 2014, the petitioner described the beneficiary's proposed position as follows:

As the Director of Import Operations of [the petitioner] [the beneficiary] will be responsible for the development and management of all import operations for the company. . . .

In this capacity he will be responsible for the following:

1. Managing a broad range of complex supply chain processes, including: inventory analysis and planning, demand management, procurement and logistics management, and all import operations[;]
2. Maintaining and expanding a reliable network of furniture hardware and accessories manufacturers and suppliers in Asia, as well as, establishing and developing product distribution within the United States;
3. Researching and identifying opportunities for process improvement and independently executing the demand and supply matching activities;
4. Overseeing legal compliance with applicable U.S. government agencies to ensure that the company's procurement and importing activities are in compliance with relevant government regulations;
5. Developing strategic relationships with Asian market suppliers and customers within the United States;
6. Developing and executing product procurement and importing strategies to meet Company's growing business demands.

The petitioner's business plan specifically states that it expects there will be "up to 5 employees in total, some full time and others part time." It describes the petitioner's organizational structure as follows:

[The petitioner] will be managed, organized, and run by [REDACTED]. The company will have one key employee, [the beneficiary], who brings a unique set of skills to this venture which will prove invaluable in the future.

The company will be organized with [REDACTED] as its president. She will be responsible for all of the financial affairs and cash management. [The beneficiary] will be Functional Manager of the company responsible for inventory management, advertising, marketing, as well as the day-to-day contact with [the foreign entity]. [The beneficiary] will also have relationships with Chinese suppliers, fabrics and etc. to stay on top of all business matters. While this seems like a lot, these are routine tasks [the beneficiary] has performed for many years living in China, speaking good Mandarin and having established strong networking relations in Chinese market.

The petitioner submitted a document titled Payroll Details for May 1, 2013 to December 31, 2013, listing three payments made to [REDACTED] from September 16, 2013 to November 30, 2013, four payments

made to [REDACTED] from September 16, 2013 to November 15, 2013, and four payments made to [REDACTED] from May 1, 2013 to August 31, 2013.

The petitioner submitted its 2013 IRS Form 1040, Schedule C, Profit or Loss from Business, incorporated into [REDACTED] and the beneficiary's 2013 IRS Form 1040, U.S. Individual Income Tax Return, as a married couple. The Form 1040 at Schedule C states that the petitioner paid \$8,676.00 in wages during 2013.

The petitioner did not submit any additional information regarding its current staff or its organizational structure.

The director issued a request for evidence ("RFE") on June 20, 2014, advising the petitioner that the description of duties provided for the beneficiary's position at the U.S. company is not sufficient to show that he will be primarily employed in a managerial or executive capacity. The director noted that the petitioner failed to provide any information regarding its staffing plan or details about positions that would be subordinate to the beneficiary. The director instructed the petitioner to submit evidence demonstrating that the proposed position in the United States will be managerial or executive.

In response to the RFE, the petitioner submitted a letter stating that the beneficiary will occupy an executive position and "will serve as a functional manager." The petitioner further stated that as a functional manager, "he will not have any direct subordinates and . . . will manage an essential function of all import operations of the U.S. Company." The petitioner submitted the same exact list of job duties for the beneficiary's proposed position as previously submitted in its initial letter of support, adding percentages of time the beneficiary will devote to each duty as follows: 1. 25%; 2. 20%; 3. 5%; 4. 10%; 5. 25%; and 6. 15%. The petitioner went on to list additional duties to be performed by the beneficiary in the areas of Government / Institutional Liaising, Import and Contract Management, setting up goals and policies, and specific authorities to perform his work.

In a letter dated July 2, 2014, the petitioner also addressed its personnel plan as follows:

. . . we employed four individuals during the past year. However, due to reorganizational and policy changes within our organization, we are presently reevaluating our staffing levels and expect to hire a number of professionals to fill several specialized positions in the near future.

Despite these hiring changes, however, it is critical to point out that in his position of Director of Import Operations, [the beneficiary], serves as a functional executive. As such, he does not have any direct subordinates and as detailed . . . manages and directs an **'essential function'** of directing and overseeing all import operations within the organization.

(Emphasis in original).

The petitioner submitted its organizational chart depicting the beneficiary as Director of Import Operations, reporting to the CEO, [REDACTED]. The organizational chart does not indicate that the beneficiary has any subordinate employees, while the CEO also supervises a Sales Officer for New York, a Sales Officer for New Jersey, and a Warehouse Admin, all to be hired. The organizational chart also states that the beneficiary, in the proposed position, "is responsible for ensuring that Business has the right service level

agreements, vendors with the right quality products in the right place to support business plans through a contract and imports plan that fulfils [sic] implementation of the company's strategy."

The petitioner submitted a document titled Role Profile for the beneficiary's proposed position in the United States specifically listing his responsibilities as follows:

- Design, own and facilitate all core purchasing and procurement processes and systems, and manage the integrated strategy of business expansion in the United States
- Act as the first point of contact for all contracting, negotiation and supplying issues for business clients and supply vendors
- To be responsible for the procurement of commodities through the development and implementation of commodity strategies plans and the management of supplier relationship
- Other areas of responsibility include price negotiation, planning, production, inventory control, quality control and factory control.

The director denied the petition on July 14, 2014, concluding, in part, that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity in the United States. In denying the petition, the director found that the petitioner failed to provide evidence of staff subordinate to the beneficiary to demonstrate that he will direct the work of other supervisory, professional, or managerial employees who would relieve him from performing the services of the corporation and from performing other operational day-to-day non-qualifying activities. The director acknowledged the petitioner's claims that the beneficiary will be a functional manager; however, the director found that the petitioner has not demonstrated that there will be additional staff to directly perform the function managed by the beneficiary.

On appeal, the petitioner contends that the director failed to take into account the reasonable needs of its organization or function in light of the overall purpose and stage of development of the organization or function. The petitioner further contends, for the first time on appeal, that the director failed to consider "the significance of the role of the international staff[,] namely, the employees of the petitioner's international affiliate . . . as well as the critical role of outside professional service providers and vendors" in evaluating the beneficiary's executive function. The petitioner states that all of the duties presented for the beneficiary's proposed position fall within the executive activities and responsibilities contemplated by the regulations that address the role of an executive who directs a function of an enterprise, in this case directing all import operations of its U.S. company. The petitioner specifically asserts that "the majority of the day-to-day non-executive tasks associated with the function that [the beneficiary] manages and directs will be performed by the prospective direct employees of the petitioning entity and the indirect subordinates of the foreign entity, as well as by external service providers." The petitioner further states that the beneficiary will direct the essential function of developing the company import operations in North America, "a role which reasonably requires him to rely on support from [foreign entity] staff whose duties directly relate to the objectives and goals of the U.S. office."

2. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, or as a function manager, in the United States.

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.* Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (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 complete understanding of a beneficiary's actual duties and role in a business.

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

In the instant matter, the petitioner first characterized the beneficiary's role as director of import operations and briefly described his proposed duties in very broad terms: manage a broad range of complex supply chain processes; maintain and expand a reliable network of furniture hardware and accessories manufacturers and suppliers in Asia; establish and develop product distribution within the United States; research and identify opportunities for process improvement and independently execute the demand and supply matching activities; oversee legal compliance to ensure that the company's procurement and importing activities are in compliance with relevant government regulations; develop strategic relationships with Asian market suppliers and customers within the United States; and develop and execute product procurement and importing strategies to meet company's growing business demands.

This initial description is insufficient to show that the beneficiary will primarily perform qualifying duties in the United States. The petitioner failed to document what proportion of the beneficiary's duties would consist of managerial duties and what proportion would consist of non-managerial duties. 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 all 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).

In response to the RFE, the petitioner submitted a document providing the same list of proposed job duties for the beneficiary discussed above and allocating percentages of time he will devote to each specific duty. Specifically, the largest percentages of time allocated were 25% each to "managing a broad range of complex supply chain processes, including: inventory analysis and planning, demand management, procurement and logistics management, and all import operations" and "developing strategic relationships with Asian market suppliers and customers within the United States"; and 20% to "maintaining and expanding a reliable network

of furniture hardware and accessories manufacturers and suppliers in Asia, as well as, establishing and developing product distribution within the United States." In allocating the percentages of time to the briefly listed duties, the petitioner did not include any additional details or specific tasks related to each duty, nor did the petitioner indicate how such duties qualify as managerial or executive in nature. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In the instant matter, the petitioner has not provided sufficient information detailing the beneficiary's proposed duties at the U.S. company to demonstrate that these duties will qualify him as a manager or executive, or as a function manager. 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 his daily routine. The actual duties themselves will reveal the true nature of the employment. *Id.* at 1108.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See sections 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

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).

Here, the petitioner clearly indicates that the beneficiary does not have any direct subordinate staff, nor does it currently employ any staff to perform the routine day-to-day activities of its business. According to the petitioner's statements and organizational chart, it previously hired two sales representatives and one administrative assistant during its first year in operation. However, due to reorganizational and policy changes, the petitioner no longer employed any individuals at its U.S. company at the time of filing the

petition. On appeal, the petitioner contends that the beneficiary will rely on support from staff at the foreign entity whose duties directly relate to the objectives and goals of the U.S. office and that the majority of the day-to-day non-executive tasks associated with the function of import operations will be performed by prospective direct employees of the petitioning entity. The petitioner further contends, on appeal, that its proposed organizational chart will be restructured in the future so that the staff will report directly to the beneficiary, who will report directly to the CEO. The petitioner has not established that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

The petitioner has not established, in the alternative, that the beneficiary is employed primarily as a "function manager." The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a position description that describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(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. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial.

Here, the petitioner claims that the beneficiary will manage the essential function of import operations in the United States. However, the breakdown of the beneficiary's job duties provided by the petitioner does not support the beneficiary's management of the function, but rather it appears that the beneficiary will be directly performing the tasks associated with the function. The listed duties include action words stating that the beneficiary will manage, oversee, direct, develop, and design tasks associated with the import operations in the United States; however, the petitioner fails to specifically identify who will be performing the tasks associated with carrying out the actual duties required to import products into the United States. According to the beneficiary's position description, the beneficiary will be the sole employee in the U.S. who will carry out the actual tasks associated with the function of import operations, such as inventory procurement and storage, customer service, and logistics, to name a few. The petitioner indicates for the first time on appeal that employees at the foreign entity will support the beneficiary in carrying out the day-to-day duties related to the function of import operations, but fails to articulate what employees will be dedicated to these tasks abroad and specifically what duties they will perform to relieve the beneficiary from performing day-to-day non-qualifying tasks. The petitioner also states that outside professional service providers and vendors will play a critical role in carrying out such duties, but again, the petitioner fails to provide any evidence of hired contract employees or professional service companies, or the duties they will specifically perform, to

demonstrate that they will also relieve the beneficiary from performing day-to-day non-qualifying duties. As noted by the director, 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 statutory definition of the term "executive capacity" focuses on a person's elevated position within an organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* While the definition of "executive capacity" does not require the petitioner to establish that the beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the petitioner's burden to establish that someone other than the beneficiary carries out the day-to-day, non-executive functions of the organization.

Here, the petitioner asserts that the beneficiary will be an executive; however, the beneficiary has not been shown to be employed in a primarily executive capacity. The petitioner has not demonstrated that the beneficiary's duties will primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations. The job duties provided for the beneficiary do not demonstrate that the beneficiary will focus 51% of his time on executive duties rather than the day-to-day operations of the business.

We note that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). It is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

At the time of filing, the petitioner was an almost one-and-a-half year old import company. The company does not have any direct employees and seeks to employ the beneficiary as an executive function manager. On appeal, the petitioner stated that the foreign entity's employees, along with outside professional services and vendors, will support the beneficiary in his position in the United States. However, the petitioner did not submit any position descriptions for the existing employees abroad, or the contracted professionals in the United States, it claims will carry out the policies implemented by the beneficiary in his management of the

essential function of import operations. The petitioner also did not provide any contracts or identify the number or types of third-party professionals or consultants that would perform the tasks necessary to perform the day-to-day duties of the import operations function. Therefore, the petitioner did not submit evidence that it employed any staff members who would perform the actual day-to-day, non-qualifying operations of the company, and it has not established a reasonable need for an employee who performs primarily executive duties or manages a function of the organization. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, or as a function manager, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Based on the deficiencies discussed above, the petitioner has not established that the beneficiary will be employed in a primarily managerial or primarily executive capacity in the United States. Accordingly, the appeal will be dismissed.

III. CONCLUSION

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.