



U.S. Citizenship  
and Immigration  
Services

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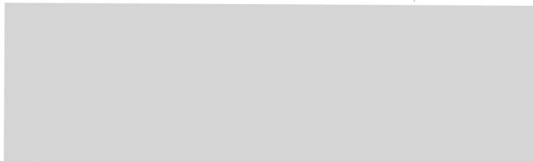
DATE: **MAY 04 2015**

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](http://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. 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, 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 Puerto Rico corporation established in April [REDACTED] states that it operates a telecommunication service company specializing in networking, IP solutions, and contact centers. The petitioner claims to have a qualifying relationship with [REDACTED], the beneficiary's foreign employer, located in [REDACTED] Chile. The petitioner seeks to employ the beneficiary as its president for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has been employed by the foreign entity 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 the AAO for review. On appeal, the petitioner contends that the beneficiary has been employed in a qualifying position at the foreign entity. The petitioner submits a brief and additional evidence 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.

## II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner has established that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B).

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

A. Facts and Procedural History

The petitioner filed the Form I-129 on May 19, 2014. In its letter of support, dated May 13, 2014, the petitioner described the beneficiary's current position with its Chilean affiliate as follows:

The duties [the beneficiary] has as General Manager of [the foreign entity] and will have as President of [the petitioner] includes the following:

- Oversee preparation of annual reports, summarizing the progress on short and long range plans
- Develop and interpret organizational goals, policies and procedures
- Recruit and approve the hiring of company and project staff
- Oversee policy development and documentation
- Ensure compliance to regulatory concerns and reporting
- Manage the hiring and distribution of software and professional services.
- Oversee content, production and distribution of all marketing and publicity materials with the director, designer and project manager
- Manage press-development
- Oversee preparation of annual budget, regular variance statements and annual audits
- Ensure client and vendor file's integrity
- Oversee and ensure accuracy of records including A/R, A/P, inventory, etc.
- Sign and authorize high value contracts and oversee its implementation

\* \* \*

[The beneficiary] has been employed by the foreign company . . . since August 2008 in the position of General Manager. In addition to all the responsibilities outlined above, as the General Manager of [the foreign entity], [the beneficiary] is responsible for ensuring that strategic actions, such as implementation, maintenance, supervision, negotiations of corporate goals are successfully and timely executed.

The petitioner submitted an organizational chart for the foreign entity, depicting the beneficiary at the top tier of the hierarchy as general manager. The chart shows that the beneficiary directly supervises [redacted] - operation manager, [redacted] - IT manager, and [redacted] - admin/financial manager. The operation manager supervises [redacted] - technical support, and the admin/financial manager supervises "personnel contract under professional services, temporarily." The chart also includes a CPA who is identified as an external service provider.

The petitioner submitted a "Certificate of Payment of Social Security Contributions" indicating that the beneficiary was employed by the foreign entity and making social security contributions from October 2009

to December 2013. The petitioner also submitted monthly "Settlement of Wages" documents as evidence of the beneficiary's employment at the foreign entity from January 2013 to August 2013.

The petitioner submitted the beneficiary's resume, in which he states he was employed as the general manager of the foreign entity from July 2008 to the present in 2013. The resume describes his duties at the foreign entity as follows:

- Assist to the Board and staff with the development of long range and annual plans, and with the evaluation and reporting of progress on plans.
- Preparation of an Annual Report summarizing progress on short and long range plans.
- Research and write discussion papers, analysis documents and proposals as needed to assist the organization in determining and meeting its long and short term goals.
- Manage top-level executive relations.
- Responsible for negotiate [*sic*] high value contracts and coordinate implementation.
- Manage accounts and orchestrate post sale professional services and resources.
- Meet with dealers, government and manufacturing accounts, end-users, and the sales force to define new solutions such us [*sic*] Contact Center and Voice Portal Solutions.
- Work with product development to document these requirements in product specifications.
- Analyze competitive product offerings in terms of features and benefits as well as price points.
- Determine sales forecasts and justify new product development investments.
- Review product pricing and gross margin goals for existing products and establish new product pricing.

The petitioner issued a request for evidence ("RFE") on June 2, 2014, advising the petitioner that the information pertaining to the beneficiary's position abroad, stated in the letter of support, did not fully explain either the managerial or the executive responsibilities involved and would require additional supporting evidence of the beneficiary's specific duties. The director further advised the petitioner that although the organizational chart submitted for the foreign entity does reflect the beneficiary's position, it does not elaborate on any other details of the other employees listed. The director instructed the petitioner to submit evidence that the beneficiary's position abroad was in a managerial or executive capacity, such as an organizational chart listing all employees by name, job title, summary of duties, education level, and salary.

In response to the RFE, the petitioner submitted a letter from the foreign entity, dated July 7, 2014, describing the beneficiary's duties abroad as follows:

As General Manager, [the beneficiary] has planned, developed and established the objectives and policies of the corporation, as well as oversee the implementation and timely execution of the same. He has also been responsible for the hiring and supervision of the company's employees and project contractors. He makes the final decision on the release of all marketing, press and publicity materials. Also included in his responsibilities as General Manager of [the foreign entity], is negotiating and signing high value contracts with clients. Under his management, [the foreign entity] has increased its revenues and presence in Chile to the point that it is now one of the leading telecommunications service companies in the country.

The petitioner submitted an additional "Certificate of Payment of Social Security Contributions" indicating that the beneficiary was employed by the foreign entity and making social security contributions from January 2014 to April 2014. The petitioner also submitted additional monthly "Settlement of Wages" documents for the beneficiary's employment at the foreign entity from September 2013 to December 2013. The petitioner also re-submitted the foreign entity's organizational chart.

The director denied the petition on July 24, 2014, concluding that the petitioner failed to establish that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity. In denying the petition, the director observed that the duties listed for the beneficiary's position abroad do not fully explain the responsibilities or clearly cite examples of the beneficiary's experience with the company as a General Manager. The director found that the petitioner failed to show that the beneficiary functioned at a senior level within the organization hierarchy other than in position title or that he has been involved in the supervision and control of the work of subordinate supervisory, professional, or managerial employees who relieved him from performing non-qualifying activities. The director noted that, while the evidence establishes that the beneficiary has been employed at the foreign entity for one continuous year, it does not demonstrate that he was employed in a managerial capacity.

On appeal, the petitioner states that the "beneficiary has been employed in a managerial or executive position in the foreign company for the past six years and is clearly qualified for the proffered position."

In support of the appeal, the petitioner submits notarized sworn statements from [REDACTED] and [REDACTED] each declaring that the beneficiary has been employed at the foreign entity as general manager since June 2008.

The petitioner submits copies of business cards for [REDACTED], Development Manager, [REDACTED], Engineer Manager, [REDACTED], Programmer Engineer, and [REDACTED], Support Manager, all employees of the foreign entity, along with evidence of wages paid to these individuals.

In addition, the petitioner provides an updated resume for the beneficiary, listing the exact same duties for his position as general manager at the foreign entity, and adds the following at the end of the previously listed duties:

- Stablishing [sic] the Goals and Policies of the organization:
  1. Creating General and Individual goals and objectives.
  2. Forecasting results and potential problems of the Annual Business Plan.
  3. Developing alternatives and setting priorities.
  4. Developing associated budgets.
  5. Creating and making personnel inputs.
  6. Creating and making specific policies related to the unit.
  7. Allocating physical and human resources to the organization.
  8. Appraising how the management unit has succeeded in meeting its goals and objectives, periodically.

The petitioner also submits a new organizational chart for the foreign entity, depicting the beneficiary as general manager, reporting directly to [REDACTED] as the owner. The chart indicates that the beneficiary supervises [REDACTED] IT manager, [REDACTED], operation manager, and [REDACTED] financial manager. The chart identifies [REDACTED] as "general personnel" reporting to Mr. [REDACTED]

### B. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that that the foreign entity has employed the beneficiary in a qualifying managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, U.S. Citizenship and Immigration Services (USCIS) will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.*

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day 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").

Here, while the petitioner has submitted sufficient evidence to establish that the beneficiary has been employed as the foreign entity's general manager since 2008, it has not established that he primarily performs managerial or executive duties consistent with the statutory definitions at section 101(a)(44) of the Act.

The petitioner first characterized the beneficiary's role abroad as general manager and described his duties in very broad terms that failed to provide any insight into what duties he primarily performs on a day-to-day basis. For example, the petitioner stated that the beneficiary's duties include "develop and interpret organizational goals, policies and procedures," "oversee policy development and documentation" and "oversee preparation of annual reports," as well as holding responsibility for hiring functions, and general oversight of financial and budget matters and regulatory compliance. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The petitioner also indicated that the beneficiary "ensure[s] client and vendor file's integrity" and "oversee[s] and ensure[s] accuracy of records including A/R, A/P, inventory, etc., duties that, without further explanation, could be classified as administrative rather than managerial in nature. Finally, the petitioner indicates that the beneficiary "oversees" content, production and distribution of marketing and publicity materials "with the director, designer and project manager," but the petitioner does not claim that the foreign entity employs a director, designer or project manager, thus leaving the nature of the beneficiary's involvement with marketing and publicity activities unclear.

The petitioner's initial evidence also included the beneficiary's resume, in which he indicated his involvement in potentially non-qualifying duties that were not encompassed by the petitioner's description of his general manager position. These included researching and writing discussion papers and proposals, meeting with dealers, end-users and the sales force to define solutions, working with product development to document requirements, analyzing competitors' products and services, managing accounts and orchestrating post-sale professional services. The information provided in the resume suggests that the beneficiary has been directly involved in product and service development, account oversight, requirements gathering, market research and services. Overall, the initial evidence indicated that the beneficiary likely performs a combination of qualifying and non-qualifying duties. However, the evidence did 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).

Accordingly, the director requested a comprehensive description of the beneficiary's duties and the percentage of time he allocates to specific tasks. In response to the RFE, the petitioner, again, provided a very similar broad and vague job description for the beneficiary's position abroad. Like the first description, this account of the beneficiary's duties did not include the product development, market research, and other operational duties referenced in the beneficiary's resume. Although specifically requested, the petitioner did not provide any additional details or specific tasks related to the beneficiary's briefly listed responsibilities, nor did the petitioner indicate how such duties qualify as managerial or executive in nature. The petitioner's description of duties fails to provide any detail or explanation of the beneficiary's claimed managerial or executive activities in the course of his daily routine. 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 actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Although afforded a second opportunity to provide the deficient information, the petitioner failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The vague description of the beneficiary's position abroad fails to demonstrate that the beneficiary focuses the majority of his time on managerial duties rather than the day-to-day operations of the business.

On appeal, the petitioner does not further address the beneficiary's duties but simply submits additional documents demonstrating that he was employed by the foreign entity in [REDACTED] during the relevant period and that the individuals listed on the organizational chart were also employed at the foreign entity. Again, 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 senior employee. The petitioner must submit a detailed description of the beneficiary's duties and position to demonstrate that his routine daily activities are executive or managerial in nature.

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 company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the

beneficiary from performing operational duties, the nature of the company's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

At the time of filing, the petitioner submitted a chart indicating that the beneficiary supervises an operation manager, an IT manager, and an administration and finance manager. The chart also reflects that the foreign entity has one lower-level technical support employee and contracted "professional services" personnel. On appeal, the petitioner provides additional evidence of wages to the four employees named on the organizational chart, as well as copies of their business cards.<sup>1</sup> The petitioner has not identified the number or types of contract personnel used by the foreign entity or provided evidence of payments made to them.

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

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).

Here, the organizational chart provided for the foreign entity indicated that the position of general manager directly supervises an IT manager, an operation manager, and financial manager. However, although requested by the director, the petitioner did not provide any position descriptions or educational requirements for the beneficiary's subordinates to show that the positions are professional in nature. Further, despite the employees' job titles, the record does not contain sufficient evidence to establish that the beneficiary's subordinates are supervisors or managers. Again, the petitioner did not provide position descriptions for the beneficiary's subordinates which would support a finding that they actually supervise or manage other staff, particularly in light of the foreign entity's organizational chart, which identifies only one employee who is not a "manager." As such, the record does not demonstrate that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act. Going on record

<sup>1</sup> The employees' business cards have different job titles than those indicated on the foreign entity's organizational chart. Specifically, the IT manager has "development manager" on his business card, the operation manager has "engineer manager" on his business card, the "admin/financial manager" has "support manager" on his business card, and the technical support employee has "programmer engineer," on his card.

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 has not established, in the alternative, that the beneficiary is employed abroad 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. However, 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 did not indicate that the beneficiary qualifies as a function manager. The petitioner did not articulate the beneficiary's duties at the foreign entity as a function manager and did not provide a breakdown indicating the amount of time the beneficiary devotes to duties that would clearly demonstrate that he manages an essential function of the foreign entity.

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.* 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 failed to demonstrate that the beneficiary's duties abroad are primarily focused on the broad goals and policies of the organization. The petitioner repeatedly stated that the beneficiary is the general manager at the foreign entity, but never described the beneficiary's duties sufficiently to demonstrate that his routine daily activities are executive in nature. Although the director specifically advised the petitioner that the description of the beneficiary's duties abroad was insufficient and provided examples of evidence to be submitted in the RFE, the petitioner failed to submit a description of the beneficiary's duties at the foreign entity that would demonstrate that he primarily performs executive duties and that he is relieved from involvement in the non-executive, day-to-day operations of the company. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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 nonimmigrant 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 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. *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 foreign entity is a telecommunications services company which claims to employ a general manager, a administration/financial manager, an IT manager, and an operation manager whose duties have not been clearly defined, as well as a single lower-level employee who is identified in the record as either "technical support," "programmer engineer" or "general personnel." The business cards submitted for the foreign entity's employees on appeal suggest that all three managers are in fact technical employees responsible for engineering, development, and support, respectively, and the petitioner has not explained the discrepancy in their job titles. If the individual identified as the "finance/admin manager" is actually the support manager, it is unclear who is responsible for the company's routine financial and administrative activities, other than the beneficiary, whose duties include "overseeing" accounting and inventory records as well as client and vendor recordkeeping. While the beneficiary's job descriptions refer to subordinate positions such as "director," "project manager," "designer," "project staff" and the "sales force," the petitioner has not established that any of these positions actually exist within the foreign entity. Overall, the petitioner has not provided sufficient information to demonstrate that the beneficiary's four subordinates are able to relieve him from significant involvement in the day-to-day technical, sales, marketing, financial, administrative and support tasks necessary to operate the foreign entity, such that the company has a reasonable need for the beneficiary to perform primarily managerial or executive duties.

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 has been employed in a primarily managerial or executive capacity, 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 has been employed by the foreign entity in a qualifying managerial or executive capacity. Accordingly, the appeal will be dismissed.

### III. U.S. EMPLOYMENT IN A MANGERIAL OR EXECUTIVE CAPACITY

Beyond the decision of the director, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity in the United States. See 8 C.F.R. § 214.2(l)(3)(ii).

#### A. Facts

The petitioner indicated on the Form I-129 that it has four employees and explained that the beneficiary's duties as its president will be the same as those he performed as the foreign entity's general manager. The

petitioner also submitted its organizational chart, depicting the beneficiary at the top tier of the hierarchy as president, supervising [REDACTED] as sales manager, [REDACTED] as IT manager, and [REDACTED] as CPA external services. The chart shows that the sales manager supervises [REDACTED] as salesman, and the IT manager supervises "personnel contract under professional services contract." The petitioner also provided a Form 480.6A, Informative Return – Income Not Subject to Withholding, showing that it paid a total of ten individuals as contractors in 2013, with two individuals earning less than \$1,000, five earning \$3,000 or less, one earning nearly \$5,000, and the remaining two earning over \$16,000.

Finally, the petitioner provided copies of resumes for the beneficiary's direct subordinates, one of which was in Spanish without an accompanying translation. The resumes had not been updated to include the employees' positions with the petitioner.

In the RFE, the director advised the petitioner that the information pertaining to the beneficiary's proposed position in the United States, stated in the letter of support, did not fully explain the executive responsibilities involved and requires additional supporting evidence. The director further advised the petitioner that although its organizational chart does reflect the beneficiary's proposed position, it does not elaborate on any other details of the other employees listed. The director specifically stated that the employees' resumes are insufficient to demonstrate the details of the listed subordinate positions.

In response to the RFE, the petitioner submitted a letter, dated July 7, 2014, describing the beneficiary's proposed duties in the United States as follows:

- Strengthen the corporate presence with the position of President in order to provide direct supervision and guidance to the tasks of the managers in Puerto Rico
- Improve relationships with the customers' and providers' executives by enabling them to meet directly with the company's President
- Directly oversee and control the hiring of new marketing, administration, engineering and finance managers
- Discuss with managers and determine necessary improvements to the business and operational management of the company
- Develop and direct the implementation of a business technology partnership with government agencies in Puerto Rico
- Expand the company's presence throughout Puerto Rico, especially to the areas outside the metropolitan area
- Expand business services to the greater Caribbean islands

In addition, to working directly on the accomplishment of these goals, [the beneficiary] will make all hiring decisions, as well as all final publicity, marketing and press decisions; supervise and control the work of the employees and professional contractors hired for projects; review activity reports and financial statements to determine progress, and; negotiate and sign high profile contracts. He will exercise wide latitude in all discretionary decision making and will be the one meeting and reporting to the board of directors the results of his decisions.

The petitioner submitted a separate statement intended to outline how the beneficiary will direct the management of the organization, establish the goals and policies of the organization, and exercise wide latitude in discretionary decision making. The statement listed the beneficiary's primary responsibilities as president, as follows:

**Planning:** Outlining philosophy, policy, objectives, and outcomes to be accomplished, and the techniques for accomplishment.

**Organizing:** Establishing structures and systems through which activities are arranged, defined, and coordinated in terms of specific objectives.

**Staffing:** Fulfilling the personnel function, which includes selecting and training staff and maintaining favorable work conditions.

**Directing:** Making decisions, embodying decisions in instructions, and serving as the leader of the enterprise.

**Coordinating:** Interrelating the various parts of the work.

**Reporting:** Keeping those for whom you are responsible, including both staff and public, informed.

**Budgeting:** Making financial plans, maintaining accounting and management control of revenue, and keeping costs in line with objectives.

The petitioner also re-submitted the same organizational chart and employee resumes provided at the time of filing. The petitioner did not submit any additional information pertaining to the beneficiary's proposed duties at its U.S. company or those of his subordinate employees.

#### B. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity in the United States.

The fact that the beneficiary manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(15)(L) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). While the information provided by the petitioner indicates that the beneficiary may exercise discretion over a particular aspect of its business operations, it has failed to show that the beneficiary's actual duties are primarily managerial in nature. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Here, the petitioner failed to provide a detailed description of the beneficiary's duties sufficient to establish that he will primarily perform managerial or executive tasks. Initially, the petitioner indicated that the beneficiary would perform the same duties he currently performs in his role as the foreign entity's general manager. As discussed above, that position description was overly vague and failed to identify the nature of beneficiary's day-to-day duties. Moreover, the beneficiary's resume reflects that he currently performs duties that are non-managerial in nature, such as duties associated with market research, product development, requirements gathering and other operational tasks that were not mentioned in the petitioner's description of his duties. Therefore, the petitioner's claim that he would continue to perform the same duties for the U.S. entity was insufficient to establish that his role as president would require him to perform primarily managerial or executive tasks.

In response to the RFE, the petitioner attempted to provide clarification on the beneficiary's proposed executive duties and how he will carry them out. However, the petitioner did not provide sufficient information to demonstrate that the beneficiary will primarily direct the management of the organization or establish the goals and policies of the organization. Absent a detailed description of the beneficiary's actual executive duties, and evidence to show that his subordinates will relieve him from performing non-qualifying operational and administrative duties, the record does not establish that the beneficiary will be employed in a qualifying executive capacity in the United States. 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).

Moreover, the petitioner failed to provide sufficient evidence of its staffing levels and organizational structure. The petitioner submitted copies of its Forms 480.6A showing that it paid contracted individuals for services rendered in 2012 and 2013, but these individuals, with the exception of one, are not listed on the organizational chart. The petitioner did not submit job titles or position descriptions for the contracted staff or otherwise identify the nature and scope of the services they provide. In addition, the petitioner did not submit position descriptions for its claimed payroll employees, which include the IT manager, the sales manager and one salesperson. Therefore, the petitioner has not established with sufficient evidence that subordinate employees or contract staff would relieve the beneficiary from performing non-qualifying administrative and operational tasks associated with the design and delivery of the petitioner's IT services. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Based on the deficiencies discussed above, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States. For this additional reason, the petition cannot be approved.

#### IV. CONCLUSION

We maintain discretionary authority to review each appeal on a *de novo* basis. Our *de novo* authority has been long recognized by the federal courts. See, e.g. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See

*Spencer Enterprises v. United States*, 229 F. Supp. 2d 1025,1043 (E.D. Cal. 2001), *aff'd* 345 F. 3d 683 (9<sup>th</sup> Cir. 2003).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.