



U.S. Citizenship
and Immigration
Services

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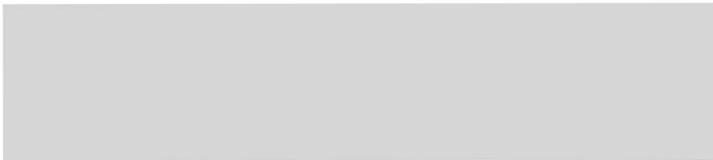
DATE: **MAY 18 2015**

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 petitioner filed a motion to reopen the matter which was dismissed by the director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Petition for a Nonimmigrant Worker (Form I-129) seeking to extend the beneficiary's status as an L-1A 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 states that it is engaged in wholesale brokerage and import-export services. The petitioner indicates that it is a wholly owned subsidiary of [REDACTED] located in Serbia. The beneficiary was previously granted one year as an L-1A intracompany transferee in order to open a "new office" in the United States as the petitioner's director. The petitioner now seeks to extend the beneficiary's status for two additional years.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary is employed in a qualifying managerial or executive capacity.

On appeal, the petitioner contends that the director did not provide sufficient rationale for denying the petition and placed undue emphasis on the petitioner's staffing levels in determining that the beneficiary is not employed in a qualifying managerial or executive position.

I. THE LAW

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

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a "new office" petition must submit the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

II. ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner has established that the beneficiary is employed in a qualifying managerial or executive capacity.

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.

A. Facts and Procedural History

The petitioner filed the Form I-129 on April 4, 2014. The petitioner stated in a support letter that it was established in 2012 "for the express purpose of bringing [the foreign entity's] import/export brokerage and consulting services to the North American marketplace" and that it is "engaged in providing a full range of wholesale brokerage and export-import services to domestic and international customers." The petitioner indicated that it has one employee and that it earned \$221,025 in revenue in 2013. The petitioner asserted that the company had reached "nearly complete self-sustainability" during its first year of operation.

The petitioner stated that the beneficiary will "continue to be a key member of our global executive team" and have "full executive control over all functions and operations of [the petitioner]." The petitioner indicated that the beneficiary will "continue to oversee strategic business development and operational initiatives, including evaluation of business strategies and significant transactions involving [the petitioner]" and will "continue to plan recruitment to ensure the development of the organizational structure." The petitioner further explained the beneficiary's duties as follows:

- Developing, establishing, and directing the execution of new company operations, procedures and resources to facilitate organizational effectiveness and efficiency;
- Providing leadership and management in line with the mission and core values of the parent company;
- Establishing, planning and achieving company goals in line with the mission and vision of the company;

- Directing the operations to meet budget and financial goals; allocating resources to enable task performance;
- Directing short-term and long-term range planning and budget development to support strategic business goals;
- Managing teams recruiting and selecting office staff, organizing orientation and training of new staff members, assigning and monitoring responsibilities of senior management;
- Directing senior management activities to ensure maximum efficiency;
- Developing strategies to forecast new services and demands in our environment;
- Approve the resources, technical criteria, etc. for new projects in collaboration with the senior management.
- Analyzing activity reports and financial statements to determine progress and status in attaining objectives and revising goals in accordance with prevailing conditions; and
- Coordinating corporate information with the parent company's management.

Further, the petitioner stated that beneficiary holds a "senior executive position" requiring "significant managerial experience, as well as advanced knowledge of our organization's services and business procedures, including knowledge of our management procedures and marketing operations."

The petitioner indicated that it planned on hiring six additional employees "by the end of the first full three years of operation" and as many as eight after five years. The petitioner explained that the beneficiary would continue to recruit for the following subordinate positions: chief operating officer, marketing manager, marketing assistant, sales manager, sales representatives, logistics manager, and an administrative assistant. The petitioner noted that the beneficiary would engage independent contractors, including an accountant and "adviser." The petitioner provided a proposed organizational chart indicating that the beneficiary would oversee the chief operating officer (COO) who would in turn supervise the independent accountant and adviser, the marketing manager, sales manager, logistic manager, and administrative assistant. The chart reflected that the marketing manager would oversee a marketing assistant and the sales manager and sales representative.

The petitioner submitted a business plan stating that it would focus on providing a "full range of export/import services," but that it was "focused on obtaining a license for brokerage and eventually export [redacted] goods and services." The plan indicated that the petitioner had experienced "administrative delays" during the fourth quarter of 2013, but that it had hired one full time employee at this time. The plan set forth duties for the proposed COO, marketing manager, sales manager, and sales representative positions. For instance, the duties of the COO reflected that he or she would be responsible for coordinating "with the Director to oversee activities including grant applications, management of grants, special projects, fiscal management." Otherwise, the duties of the beneficiary's proposed subordinates included few details relating to their actual day-to-day tasks or specifics relevant to the petitioner's business. The business plan specified certain milestones for the company, including obtaining an [redacted] " by May 2014. The petitioner stated in the plan that it had over \$500,000 in confirmed orders for "bulked consumer goods" by the last quarter of 2013. In addition, the plan set forth the company's hiring plans reflecting that the petitioner planned on employing

only the beneficiary prior to May 2014, and then that projecting hiring the COO and a marketing manager in June 2014.

The petitioner provided several contracts executed with companies to provide brokerage services, including a contract with a company called [REDACTED] dated in January 2014. The contract tasked the petitioner with purchasing ethanol and nitric acid for [REDACTED]. The petitioner submitted bank statements reflecting that the majority of its income during the last year resulted from credits to its accounts for [REDACTED].

The petitioner submitted a 2013 IRS Form 1120 U.S. Corporation Income Tax Return indicating that it had earned \$221,025 in revenue and paid \$8,800 in wages and salaries during that year. A listing of other deductions and expenses in the IRS 1120 included \$535 in "professional fees."

The director later issued a request for evidence (RFE) stating that the petitioner's initial evidence was insufficient to establish that the beneficiary is employed in a qualifying managerial or executive capacity. The director indicated that the petitioner had explained the beneficiary's duties in only general terms. The director further noted that the petitioner's organizational chart reflected that the beneficiary is currently its sole employee and that the record did not contain evidence that it employed other employees or contractors. As such, the director asked the petitioner to describe the beneficiary's duties during the last year and provide evidence to support these stated duties. The director asked that the petitioner provide quarterly wage reports for the last four quarters, a payroll summary, W-2's or W-3's, and an organizational chart specifying the names and titles of each employee and their duties and salaries.

In response, the petitioner asserted that the beneficiary is and will continue to be employed in an executive capacity. The petitioner pointed to its significant contract with [REDACTED] which is valued at up to \$646,000. The petitioner stated that the beneficiary "focuses primarily on executive tasks and performs higher level responsibilities," and that he "does not spend a majority of his tasks on day to day administrative or operational functions." The petitioner indicated that the beneficiary "has contracted out many services of the company, thus relieving him from performing non qualifying duties." The petitioner further explained the beneficiary's role as follows:

[The beneficiary] has and continues to have sole discretion making ability to establish and develop international purchases and sales which resulted in contracts negotiated and confirmed. [The beneficiary] also has sole decision making ability to evaluate, select, and acquire outside vendor services of the company to relieve him from performing non qualifying duties and perform the administrative and operational activities of the company, including CPA, Compliance Officers, marketing, IT, business services, website design and maintenance, office premises, and receptionist and clerical duties.

In addition, the petitioner stated that the beneficiary is "currently researching and deciding what US export licenses [the petitioner] should pursue" and that he is "actively recruiting for US citizens with specific experience in defense industry and international trade as it is a requirement of the US licenses being researched and pursued by [the beneficiary]." The petitioner asserted that it has "outsourced [a] significant amount of company services to outside vendors to ensure [the beneficiary] is devoting all of his time to

qualifying executive duties." The petitioner indicated that the beneficiary is actively recruiting and that he planned to hire an office assistant and a COO.

Furthermore, the petitioner provided financial statements indicating that the company had incurred \$4,240 in administration expenses and \$12,347 in "other expenses" during 2013. The petitioner provided a number of vendor invoices from the end of 2013 and the beginning of 2014, including: four from [REDACTED] for website and domain services; one from [REDACTED] for approximately \$140; three invoices from its accountant totaling nearly \$1,500; and several invoices from [REDACTED] reflecting a \$40 monthly charge for an online payroll service. Lastly, the petitioner provided two job postings for an administrative office assistant and for the COO position, both of which were posted on April 30, 2014.

In denying the petition, the director stated that the evidence did not demonstrate that the petitioner employs sufficient employees to relieve the beneficiary from performing non-qualifying operational duties. As an example, the director indicated that the petitioner did not substantiate that it employed anyone to handle the buying and selling of chemicals. The director concluded that the petitioner had not established that it developed sufficiently after one year to support the beneficiary in a qualifying executive capacity.

The petitioner later filed a motion to reopen the matter and submitted evidence of employees hired following the filing of the petition. The director dismissed the motion concluding that the petitioner had not submitted new evidence necessary to reopen the matter.

On appeal, the petitioner contends that the director did not provide sufficient rationale for denying the petition. The petitioner asserts that the director erred in concluding that the beneficiary's brokerage duties, specifically those related to the buying and selling of chemicals, represent non-qualifying operational duties. The petitioner further states that the director failed to give the petitioner the opportunity to respond to this conclusion. The petitioner reiterates that it has been outsourcing operational duties to outside vendors to ensure that the beneficiary devotes all of his time to qualifying executive tasks. The petitioner asserts that the director did not properly consider the reasonable needs of the company in denying the petition, as required by the regulations. In addition, the petitioner states that the director improperly based her decision on the staffing of the entity and failed to consider evidence of the beneficiary implementation of goals, policies and strategies. The petitioner contends that the beneficiary primarily performs qualifying executive tasks.

B. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition.

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(1)(3)(ii). The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her

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

Beyond the required description of the job duties, United States Citizenship and Immigration Services (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 business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

In the current matter, the totality of the evidence indicates that the petitioner has not developed sufficiently during the first year to allow the beneficiary to be primarily engaged in qualifying executive duties. The evidence presented reflects that, as of the date of the filing of the petition, the beneficiary is the petitioner's sole employee. Although the petitioner contends that the beneficiary performs certain qualifying duties, such as negotiating brokerage and import and export contracts to purchase goods in the United States, it does not specify or document how the beneficiary is relieved from the daily operational tasks inherent in the performance of these contracts. For instance, we reasonably presume that the purchase contracts require the performance of duties including the daily purchase, shipping, and other administrative functions required to fulfill the contract. In fact, the petitioner's business and hiring plans indicate that this is the case, as the company plans on hiring various operational level employees to support the business, including an administrative assistant, marketing assistant and a sales representative. However, as of the date of the filing of the petition, the petitioner does not employ any of these employees necessary to relieve the beneficiary from the operational tasks of the business. The petitioner asserts that it has hired employees subsequent to filing the petition, but this evidence is not relevant to establishing the beneficiary's eligibility. 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).

Despite providing evidence that the beneficiary performs certain non-managerial duties, the petitioner did not document what proportion of the beneficiary's duties would be managerial or executive functions and what proportion would be non-executive. This failure of documentation is important because some of the beneficiary's daily tasks, as noted above, do not fall directly under traditional managerial duties as defined in the statute. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. For this reason, we cannot determine whether the beneficiary is primarily performing the duties of a qualifying manager or executive. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The petitioner contends on appeal that the beneficiary's duties related to the purchase and sale of chemicals are indeed qualifying tasks. We do not find this contention persuasive. Non-qualifying duties are deemed those related to the direct provision of goods and services. Here, the petitioner is self-described as "a provider of current products for [the] manufacturing industry" and as a provider of "consulting services, brokerage in [the] field of controlled goods." The business plan identifies its specific services as including supplier/buyer identification, purchase process contracting and consulting, shipping set up, warehouse

arrangements, delivery, market analysis and third-party negotiations. To the extent that the petitioner is providing these services, the record reflects that the beneficiary is the only employee available to provide such services. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

The petitioner acknowledges on appeal that the beneficiary is directly engaged in the performance of services necessary to fulfill its chemical purchase contract with [REDACTED]. It is reasonable to conclude that the duties related to fulfilling this contract take up a majority of the beneficiary's time, as the record reflects that this is currently the only source of the petitioner's income. Otherwise, the petitioner has not substantiated that the beneficiary is engaged in qualifying executive tasks. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner indicated that a major portion of the beneficiary's qualifying duties included recruiting and building the petitioner's organization. However, the petitioner has not hired anyone beyond the beneficiary. Further, the record reflects that the petitioner did not begin to recruit other employees until after the filing of the petition. In addition, the petitioner indicates that it requires a brokerage license to expand its business as projected, but also states that it cannot acquire this license without hiring additional qualified brokers. These discrepancies leave further question as to whether the petitioner has developed sufficiently to support the beneficiary in a qualifying managerial or executive capacity.

Furthermore, the petitioner asserts that it has been engaging sufficient independent contractors to allow the beneficiary to perform exclusively qualifying tasks. First, we note that this contention runs in direct contradiction to the petitioner's assertion that the beneficiary's duties related to the fulfillment of its chemical purchase contract are qualifying, as it indicates that there are in fact non-qualifying duties to be performed by operational staff, which the company does not currently employ. In addition, the petitioner has not submitted sufficient evidence to corroborate its claim that it engages contractors to relieve the beneficiary from operational tasks. For instance, the petitioner provided financial statements indicating that the company had incurred \$4,240 in "administration expenses" and \$12,347 in "other expenses" during 2013. The petitioner provided a number of vendor invoices from the end of 2013 and the beginning of 2014. However, the invoices only reflect the limited engagement of professionals and certain online services, not continuous and substantial employment of contractors to primarily relieve the beneficiary from non-qualifying tasks associated with the services the company provides.

In addition, the petitioner suggests that the beneficiary qualifies as an executive, asserting that as director he will have "full executive control over all functions and operations of [the petitioner]" and "oversee strategic business development and operational initiatives." The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 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.*

The petitioner has not demonstrated with adequate evidence that the beneficiary acts in a qualifying executive capacity. As previously discussed, the petitioner has not provided evidence to establish that the beneficiary is primarily relieved from the performance of non-qualifying operational tasks. In fact, the evidence indicates that a substantial portion of the petitioner's operations are specific to the fulfillment of a chemical purchase contract for [REDACTED] services which the petitioner acknowledges on appeal are being carried out by the beneficiary. Although the petitioner does substantiate that the beneficiary is likely involved in the negotiation of brokerage contracts for the petitioner, it has not articulated or documented the beneficiary's other claimed qualifying tasks, such as goals, policies, or strategies formulated or implemented by the beneficiary. Further, the petitioner has not established that it has developed to the point that the beneficiary has other managerial or professional subordinates as of the date of the petition. As such, the petitioner has not demonstrated that the beneficiary acts, or will act, in a qualifying executive capacity.

As noted by the petitioner on appeal, pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D).¹ The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

In the instant matter, the petitioner has submitted little evidence to substantiate that the beneficiary is primarily engaged in executive-level duties. In fact, the evidence provided indicates that the beneficiary is its sole employee, and therefore, no operational employees are available to relieve the beneficiary from performing non-qualifying tasks. Further, the petitioner has not corroborated its claim that it engages

¹ Following the enactment of section 101(a)(44)(C) of the Act in 1990, the former Immigration and Naturalization Service (INS) recognized that that managerial capacity could not be determined based on staffing size alone and deleted reference to "size and staffing levels" at 8 C.F.R. § 214.2(l)(3)(v)(C)(3) (1990), setting out the evidentiary requirements for initial new office petitions. *See* 56 Fed. Reg. 61111, 61114 (Dec. 2, 1991). However, the INS chose to maintain the review of the new office's staffing, among other criteria, at the time that the new office seeks an extension of the visa petition. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D).

independent contractors to relieve the beneficiary from all of his operational tasks, as asserted. In short, the evidence indicates that the petitioner has not grown to the point where it can support the beneficiary in a qualifying managerial or executive position.

Again, 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).

Based on the foregoing, the petitioner has not established that the beneficiary is employed in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

III. CONCLUSION

The appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.