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



U.S. Citizenship
and Immigration
Services



DATE: **MAY 21 2015**

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

SELF-REPRESENTED

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

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

Thank you,

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

Ron Rosenberg *for*
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida Corporation, is self-described as an import/export, purchasing agent, brokerage, and business consulting firm. It claims to be a subsidiary of the beneficiary's foreign employer in Venezuela, [REDACTED]. The petitioner seeks approval for the beneficiary in L-1A status for an initial period of one year so that she may serve as the company's President/Chief Executive Officer.

The director denied the petition, concluding that the evidence of record did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The director did not treat the organization as a new office.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to our office for review. On appeal, the petitioner asserts that the evidence of record establishes that the beneficiary will function in a qualifying executive capacity, and further claims that the current operations of the petitioner will support the beneficiary in a position that is primarily managerial or executive. The petitioner also states that the petition should be treated as a new office petition. 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.

II. FACTUAL AND PROCEDURAL BACKGROUND

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on March 14, 2014. The petitioner indicated that it was currently engaged in the import and export business, noting that it acted as a purchasing agent, provided brokerage shopping and consulting services, and offered assistance in business ventures. It claimed to have two employees and a gross annual income of \$644,921.

The petitioner claimed that as the President/Chief Executive Officer of the U.S. entity, the beneficiary would be responsible for the expansion and financial project plans of the entity and for "continued and strengthening success." The petitioner described the beneficiary's duties as follows:

- Coordinating the set up of the new offices and strategic plans for the successful launch of the company['s] new services and products.
- Identify and lead new business development opportunities.
- Develop and coordinate the strategies required to meet organizational objectives of expansion with wide latitude in discretionary decision-making of the business and affairs of the company.
- Preside all Shareholders' and Board of Directors' meetings (the General Manager will do it in the absence of the President).
- Coordinate together with the Planning and Investment Manager the company planning, development, and implementation of strategies for generating resources and/or revenues for the company
- Project implementation, product development and implementation of all programs.
- The execution of bonds, credits and other instruments requiring seal on behalf of the company.
- Sign Certificates of Stock (the General Manager will do it in the absence of the President).
- Managing the short and long term financial planning of the company.
- Representing all the business and interests of the company.
- Personnel planning, recruitment of the best human resources and materials for the available positions, having discretionary authority to hire and fire personnel and apply disciplinary measure when needed.

- Establishing general guidelines and procedures, this must be followed and executed by employees.
- Putting into effect all directions and resolutions of the Board of Directors.
- Supervise and authorize pre-approved purchases orders of supplies, machinery, equipment and others, deemed needed or convenient for the Company's proper functioning and development.
- Represent the company before public and private agencies.
- Promote the company to local, regional and national constituencies.
- Present company report at Shareholders' and Board of Directors' meetings.

The petitioner included a copy of the business plan for the United States organization. The plan includes projected financials and a projected personnel plan through 2018. The projections for 2014 show anticipated gross sales of \$980,000 and a staff of eight employees, including the beneficiary. The positions include the following: President, General Manager, Office Manager, Export/Import Manager, Executive Assistant, Sales Coordinator, and Administrative Assistant/Receptionist.

The petitioner provided a statement entitled "Definitive Statement for United States Entity," which described ten of the beneficiary's duties as President and Chief Executive Officer and included a list of these duties with the amount of time to be spent performing each duty. The ten duties were also included in the petitioner's supporting letter as discussed above. The duties with hourly breakdowns of time were listed generally as follows: identify new business opportunities and develop and coordinate strategies for organizational objectives (3 hours); meet with the general manager, planning and investment manager, operations and financial division manager, and marketing and sales department manager to evaluate their respective departments (4 hours); direct the marketing efforts (3 hours); coordinate commercial operations for the company and subcontractors (3 hours); personnel planning and recruitment (4 hours); review and approval of procedures, policies, and standards (3 hours); promote the company to local, regional, and national constituencies (4 hours); present company report at Annual Stockholder's and Board of Director's meetings (4 hours); Supervise and authorize purchase orders (3 hours); represent the company before public and private agencies (2 hours); and develop plans to control costs and expenses and coordinate implementation with the General Manager (3 hours).¹

The petitioner also provided a second document that included a breakdown of the number of hours the beneficiary devoted to the claimed duties on a weekly basis. The breakdown includes many of the same duties as provided in the other documents, but with a slightly different breakdown of time. The petitioner also included a sample day for the proposed position.

In addition, the petitioner submitted an overview of the positions of the beneficiary's subordinates, which included a similar breakdown of hours devoted to their duties on a weekly basis. The petitioner also included

¹ We note that the petitioner concludes that these duties encompass a total of 40 hours; however, a review of the petitioner's breakdown of these duties demonstrates that they total only 36 hours. No explanation for this discrepancy has been provided.

a copy of its organizational chart for all proposed positions, showing that the positions of Sales Coordinator and Office Manager are currently occupied.

According to the petitioner, the Sales Coordinator is responsible for the following:

[The] development and performance of all sales activities. Establishes plans and strategies to expand the customer base in the marketing area and contributes to the development of training and educational programs for clients executives. (40 hours).

The duties for the position of Office Manager are identified as follows:

In charge of managing all office matters, supervision of sales, customer service, customer assistance (15 hours), marketing (5 hours), managing all corporate accounts (10 hours). Elaboration of payroll, (6 hours). Preparation of reports, (4 hours).

We note that, while both the Office Manager and Sales Coordinator show employees reporting to them on the organizational chart, none of the subordinate positions are shown as currently occupied.

The director issued two requests for additional evidence ("RFEs"), on March 27, 2014 and April 21, 2014, respectively. In the first request, the director asked the petitioner to clarify whether the beneficiary was coming to the United States to open a new office, and requested additional documentation pertaining to the petitioner's business operations.

In response to the first RFE, the petitioner submitted a number of documents pertaining to the corporate status and business operations of the petitioner, including a copy of its commercial lease and color photos of its offices. In addition, the petitioner submitted a timetable of the petitioner's proposed actions in the United States beginning in September 2013 and extending for a one-year period. The document specifically stated that the beneficiary would supervise two professional employees, the office manager and the sales coordinator, who would relieve her from performing the day-to-day operations of the business.

Upon review of the petitioner's response, the director issued a second RFE requesting clarification regarding the nature of the beneficiary's proposed position. Specifically, the director noted that the initial evidence indicated that the beneficiary would assume an executive role, but the response to the RFE suggested she would instead be employed in a managerial capacity. The director also noted that, since the proposed position will take place in an established company, it is expected that the petitioner could support a position in a managerial or executive capacity at the time of filing, and additional evidence to support this determination was also requested.

In response, the petitioner specifically requested treatment as a new office, stating, "We are requesting to be treated as a **NEW OFFICE**' L-1 visa to facilitate a "ramp up period" for a new U.S. office of a foreign entity." (Emphasis in original). The petitioner further clarified that the beneficiary would be employed in the United States in an executive capacity, and that the evidence of record satisfied all four of the required criteria for this classification.

The petitioner also submitted a letter from the U.S. office manager dated May 28, 2014. The letter described the proposed duties for the beneficiary as President and Chief Executive Officer as follows:

[The beneficiary] will be responsible of all aspects that pertain to all projects of the company in the U.S. She will be managing the short and long term financial planning of the company, setting the company strategy and vision, setting the direction of marketing efforts to determine which markets will the company enter, against which competitors, with what product/services lines and ultimately how will the company differentiate itself.

[The beneficiary] will decide, set budgets, form networks and plan partnerships, and shape the business short and long term staffing plan to steer the company accordingly. In summary, she will be representing all the business and interests of the company.

With respect to the ramp-up of operations described by the petitioner, it claimed that the beneficiary will be responsible for such tasks as directing the setup of the U.S. office and defining the strategic plans to launch the company's new services.

In addition to the beneficiary's proposed duties, the petitioner also submitted documentation that described the scope of the beneficiary's authority, provided the weekly breakdown of hours to be devoted to each of the proposed job duties, and included an example of the weekly distribution of the beneficiary's hours. We note that most of this documentation was highly similar, if not identical, to the documentation previously submitted in support of the petition.

The petitioner provided additional documents including recent policies and authorizations issued by the beneficiary; the same business plan submitted in the initial petition; a timetable of activities and goals for the organization; the same letter describing the staffing of the U.S. operations as submitted with the initial petition; the same letter describing the beneficiary's duties, decisions, and percentage of time spent on each as submitted with the initial petition; and the same organizational chart for the U.S. petitioner as submitted with the initial petition.

The director denied the petition on June 20, 2014, finding that the petitioner had not established that the beneficiary will be employed in a managerial or executive capacity. The director noted that the petitioner does not qualify for new office classification in order to "facilitate a 'ramp up' period." The director determined that based on the organizational structure described, the beneficiary would be assisting in the day-to-day, non-supervisory duties of the business. The director also stated that the description of the beneficiary's position contained a number of duties relating to the supervision of employees who had not been hired as of the date of filing. Finally, the director noted that the size of the company does not support the need for both a managerial subordinate and executive level position for the beneficiary.

On appeal, the petitioner again asserts that the beneficiary's position is primarily executive in nature, and reiterates that the petition should be treated as a petition for a new office. The petitioner further states that the proposed duties of the position are executive in nature and that the beneficiary will have a sufficient staff to support such a position within one year of approval. Finally, the petitioner claims that the documentation

submitted corroborates the claim that the organization is currently operating at such a level as to support a position that is primarily managerial or executive.

III. ANALYSIS

A. New Office

As a preliminary matter, we find that this petition shall not be given new office treatment. The regulation at 8 C.F.R. § 214.2 (l)(1)(ii) defines a new office as follows:

- (F) *New office* means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

On the L Supplement to the Form I-129, the petitioner checked the box "No" in Section 1, Question 12, in response to the following question: "Is the beneficiary coming to the United States to open a new office?" The petitioner also stated in an addendum attached to the form that the beneficiary was not coming to the United States to open a new office. The petitioner states, however, that the foreign entity "is in the process of increasing their expansion plans" and became the sole shareholder of the petitioner on November 1, 2013.

As previously noted in this decision, the director issued an RFE on March 27, 2014 instructing the petitioner to submit evidence clarifying whether the beneficiary was coming to the United States to open a new office. In response, the petitioner did not clearly state whether it was requesting new office treatment, but stated simply that the U.S. entity "has been doing business in the United States through its Parent, for less than a year."

The director issued a second RFE on April 21, 2014, noting that an established business was expected to submit evidence demonstrating that a position in a primarily managerial or executive capacity existed for the beneficiary at the time of filing. In response, the petitioner definitively stated that the beneficiary was coming to the U.S. to open a new office, and requested appropriate treatment under the regulations.

The director denied the petition, finding that the beneficiary would not be employed in the United States in a primarily managerial or executive capacity. The director also noted that the petitioner did not qualify for new office classification under 8 C.F.R. 214.2(l)(1)(ii).

On appeal, the petitioner asserts that it should be treated as a "New Office," noting that although the U.S. entity was incorporated in 2009, the foreign employer did not become the sole owner of the petitioner until November 1, 2013. The petitioner states that, until that time, the totality of its shares "belonged to a third party."

As evidence of ownership of the U.S. entity, the petitioner submitted a stock certificate issued by [REDACTED] to [REDACTED] for 100 shares. The certificate was issued on July 2, 2009 and was labeled "Number 01." A second share certificate dated November 1, 2013 was issued from the petitioner to [REDACTED] (the foreign employer) for 100 shares. The petitioner also

provided a copy of the Shares Purchase Agreement and stock ledger confirming the transfer of these 100 shares to the foreign employer.

As evidence of ownership of the foreign entity, the petitioner submitted a copy of the foreign entity's Articles of Incorporation showing that the beneficiary owns 50 shares of the foreign entity and the beneficiary's spouse, [REDACTED] owns 450 shares of the foreign entity. The evidence in the record demonstrates that no other shares of the foreign entity have been issued.

Upon review, we concur with the director's finding that the petitioner should not be considered a new office.

Despite its assertions to the contrary, the petitioner does not qualify for new office treatment due to the ownership change on November 1, 2013. The foreign entity and the petitioner were both previously owned and controlled by the same individual, [REDACTED] and were thus affiliates. The foreign employer and the U.S. petitioner, therefore, have been doing business as affiliates since the formation of the U.S. entity in 2009. The change in relationship from affiliates to parent-subsidary occurring on November 1, 2013, does not qualify the petitioner for new office treatment. The organization has been doing business in the United States as an affiliate of the foreign entity since 2009, and subsequently as a subsidiary of the foreign entity since 2013, and therefore cannot be considered a new office as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

B. Managerial or Executive Capacity

We will now address whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity in the United States.

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.

We acknowledge the petitioner's repeated assertions, both in response to the second RFE and again on appeal, that the position offered to the beneficiary is primarily executive in nature. However, in order to perform a thorough adjudication, we will evaluate the position under the criteria governing both managerial and executive capacity.

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The definitions of executive and managerial capacity 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 functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary manages a business or a component of 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").

We will first address the petitioner's claim that the proffered position is primarily executive in nature.

Upon review, we find that the petitioner's organizational structure does not support an executive level position. 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.*

At the time of filing, the petitioner's organizational structure shows the beneficiary, as President/CEO, will directly oversee a general manager, who will in turn oversee three departments, namely: operations, administration, and channel and marketing. However, as previously discussed, only the office manager and the sales coordinator had been hired at the time the petition was filed, thereby demonstrating that the petitioner's organizational structure did not yet possess a level of complexity that would support the employment of the beneficiary in a primarily executive capacity. 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 shown how its organizational structure at the time of filing qualifies as "complex" in order to support a finding that the position is executive in nature. Nor has it established that the beneficiary will be engaged in primarily executive duties. As discussed above, the petitioner's 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. The petitioner has not established that the beneficiary will be employed in a primarily executive capacity.

We will now examine whether the petitioner has established that the beneficiary will be employed in a primarily managerial capacity.

When examining the managerial or executive capacity of a beneficiary, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

The position descriptions the petitioner submitted at the time of filing and in response to the RFEs are insufficient to establish that the beneficiary will be primarily performing managerial duties. Specifically, duties such as "identify and lead new business develop opportunities;" "coordinate the company planning, development, and implementation of strategies;" "representing all the business and interest of the company;" "establishing general guidelines and procedures;" and "promoting the company to local, regional, and national

constituencies" are vague and do not convey a specific understanding of what duties the beneficiary will perform as a manager at a company providing import/export and related services. 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 has not provided sufficient detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Even though the petitioner claims that the beneficiary directs and manages the business operations, it does not claim to have anyone on its staff to actually perform the daily first-line managerial duties of its operations. Rather, based on petitioner's organizational chart, the positions of Export/Import Manager; Market/Product/Cost Analyst and Channel & Marketing Manager are vacant. Aside from the Sales Coordinator, who will ultimately report to the Export/Import Manager, the respective subordinate positions of these yet-to-be hired employees are also vacant. 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.

Although the beneficiary is not required to supervise personnel, if it is claimed that her 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.

Again, at the time of filing, the petitioner employed a Sales Coordinator and an Office Manager. Neither of these individuals supervised subordinate employees as of the date of filing. Additionally, based on the position descriptions provided, neither of the two positions are professional-level positions. Furthermore, the position descriptions submitted for these employees in the initial petition and in response to the RFEs are vague and inconsistent, and thus we are unable to determine the true nature of the duties associated with these positions.

Finally, based on the petitioner's organizational structure and staff members at the time of filing, it is not clear who will perform the work under the expanded office plan, which includes purchasing agent and brokerage shopping services, consulting, and providing assistance in business ventures. While the petitioner plans to hire additional staff, it has not established that it employed sufficient staff to perform all day-to-day non-managerial functions of the business and expanded product lines when the petition was filed.

As required by section 101(a)(44)(C) of the Act, 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.

At the time of filing, the petitioner was a five-year-old import and export company that claimed to have a gross annual income of approximately \$645,000. The petitioner employed a sales coordinator and an office manager, and sought to employ the beneficiary as its president and CEO. The petitioner did not submit evidence that it employed any subordinate staff members who would perform the actual day-to-day, non-managerial operations of the company. Based on the petitioner's representations, it does not appear that

the reasonable needs of the petitioning company might plausibly be met by the services of the office manager, sales coordinator, and the beneficiary as president. 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, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

It appears that the beneficiary will be performing the first-line management functions, or the day-to-day operational tasks of the business. 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 *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Based on the foregoing discussion, the petitioner has not established that it will employ the beneficiary in a primarily managerial or executive capacity.

IV. CONCLUSION

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, 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.