



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-P-F-S- LLC

DATE: NOV. 16, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT VISA

The Petitioner, a Florida limited liability company engaged in central food production, seeks to temporarily employ the Beneficiary as its President and CEO under the L-1A nonimmigrant intracompany transferee classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director concluded that the Petitioner did not establish that the Beneficiary will be employed in the United States in an executive capacity.

On appeal, the Petitioner asserts that the Beneficiary will be employed in a qualifying executive capacity in the United States and contends that the Director erred by placing undue emphasis on the size of the petitioning company. The Petitioner submits a brief in support of the appeal.

I. THE LAW

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

Section 101(a)(44)(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.

II. THE ISSUE ON APPEAL

The sole issue addressed by the Director is whether the Petitioner established that the Beneficiary will be employed in the United States in an executive capacity.¹

¹ The Petitioner notes on the Form I-129, Part 9 that USCIS denied a prior petition filed on behalf of the Beneficiary which was based on the managerial position of "general manager." The Petitioner asserts that the prior petition did not accurately represent the Beneficiary's proposed duties, which the Petitioner claims are executive rather than managerial in nature. Accordingly, we will not consider whether the Beneficiary qualifies in the alternative under the statutory definition of "managerial capacity" at section 101(a)(44)(A) of the Act.

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A. Facts

The Petitioner filed the Form I-129 on June 30, 2014. On the Form I-129, the Petitioner stated that it engages in “central food production[,] manufacturing food products for [a] restaurant chain across [redacted] [Florida]” with eight current employees and a projected gross annual income of \$275,000. In its letter of support, dated June 12, 2014, the Petitioner described the Beneficiary’s proposed position in the United States as follows:

[The Beneficiary] will serve as our President and CEO, responsible for overseeing all aspects of our Company’s operations including: client relations, finances, team building, staff development. He will oversee and coordinate the planning, organizing, training and leadership necessary to achieve stated objectives in sales, costs, employee retention, client service and satisfaction, food quality, cleanliness and sanitation. He will also have to delegate responsibilities, organize complex projects, and establish priorities consistent with our company objectives.

- Developing a strategic plan to advance the company’s mission and objectives and to promote revenue, profitability and growth as an organization – 5%
- Planning, developing and establishing management, operations, sales and marketing policies and objectives of the organization by reviewing all activity reports, financial statements and market conditions – 7%
- Determining progress and status in attaining corporate goals by reviewing and revising objectives and plans in accordance with current market conditions – 8%
- Conferring with Manager of Operations and Sales Director to discuss operations and future plans – 5%
- Conferring with CPA to discuss financial reports, plans and reports – 5%
- Making decisions regarding major financial operations of the Company, including financial forecasts and future investments – 8%
- Overseeing the finance function of the Company, including establishing financial strategies, banking, risk management and credit arrangements – 7%
- Overseeing operations to ensure production efficiency, quality, service, and cost effective management of resources – 12%
- Planning, developing, and delegating the implementation of strategies for generating resources and/or revenues for the Company – 12%
- Approving Company operational procedures, policies, and standards – 11%
- Reviewing activity reports and financial statements to determine progress and status in attaining objectives, and review objectives and plans in accordance with current conditions – 13%
- Evaluating performance of operations manager and sales director for compliance with established policies and objectives of the Company – 2%
- Coordinating international strategic planning with the parent company in Brazil – 5%

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The Petitioner submitted its organizational chart depicting the Beneficiary at the top tier of the hierarchy as President and CEO, supervising the following positions/employees: "Market Analysis," [REDACTED] "Bookkeeping," [REDACTED] "CPA," [REDACTED] "Attorneys," [REDACTED] – Immigration and [REDACTED] – Corporate; an unnamed "Administrative Assistant"; an unnamed "Manager of Operations"; and an unnamed "Sales Director." The Manager of Operations position supervises an unknown number of "Food Suppliers," an unnamed "Purchasing/Dispatch Assistant," who supervises an unnamed Driver, and a "Senior Production Manager," [REDACTED] who supervises a "Production Worker," [REDACTED] and an "Assistant Production Worker," [REDACTED]. The Sales Director position supervises a "Marketing Firm for creation of packaging & marketing strategy for food products to be sold at supermarkets," and "Real Estate Brokers for Market Research and Feasibility Study for expansion into new U.S. markets."

The Petitioner submitted its business plan explaining that "[t]he purpose of creating [the Petitioner] was to manufacture and sell the same type of products and services offered by [the foreign entity], namely semi-processed and pre-portioned products for the preparation of such and temaki rolls." The business plan describes the Petitioner's current staffing as follows:

- [REDACTED] . . . Senior Production Manager. While having responsibility for food preparation, [he] is further responsible for overseeing the daily operations of the food processing facility, including the negotiation and ordering of supplies. . .
- [REDACTED] . . . Production Worker. His primary responsibility is food preparation. He is also responsible for providing the necessary support to [REDACTED] in the daily operations of the kitchen.
- [REDACTED] . . . Assistant Production Worker. While responsible for food production, [he] also keeps tract [sic] of daily orders from restaurants, and coordinates the delivery of food products.

The business plan further lists four individuals and businesses contracted by the Petitioner, including an immigration attorney, a corporate attorney, an accounting firm that provides monthly bookkeeping and tax services, and a market research firm.

The business plan also describes the Petitioner's future expansion plans:

[D]ue to the opening of four (4) additional restaurants in [REDACTED] we will be hiring an Operations Manager to oversee our production facility. We will also hire a purchasing/dispatch assistant, who will assist with the incoming orders from 5 restaurants, and a driver, who will deliver the orders to the respective restaurants. The Operations Manager will also be responsible for dealing with the food suppliers, to ensure timely delivery of fresh products. . . . As more restaurants open, our projection is that we will hire approximately two (2) additional full-time employees per year to meet the new demand, reaching our projection of fourteen (14) full-time

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hires by the end of 2018. Further, we are planning to hire a director of sales and marketing, to manage the sales logistics of our expansion to the U.S. market

Further, the business plan states that the Petitioner's projected staffing for the 2014-2015 period is as follows:

Three (3) Production Workers (already hired)
Purchasing/dispatch Assistant
Administrative Assistant
Drivers (3)
Operations Manager
Sales Director

Further, the Company will make extensive use of independent contractors, suppliers and vendors that hold professional qualifications, including corporate attorneys, certified public accountants, and food suppliers, amongst others.

The business plan also includes the same list of job duties previously provided in the Petitioner's letter of support for the Beneficiary's position as well as job duties for the positions of Operations Manager, Sales Director, Senior Production Manager, Production Workers and Assistant Production Workers, Purchasing/Dispatch Assistant, and Administrative Assistant.

The Petitioner submitted its bi-weekly payroll statements for the period from October 20, 2013 to May 3, 2014, which show that the number of employees ranged from one to three. The instant petition was filed on June 30, 2014; the most recent payroll document shows that the Petitioner had three employees as of May 3, 2014: [REDACTED] each listed in the "Cook" department. The payroll documents indicate that [REDACTED] worked 40 hours per week and the other food production employees, who were hired in April 2014, worked 15 to 17.5 hours per week. The Petitioner's older payroll statements show that it employed [REDACTED] in the "management" department on a part-time basis through February 22, 2014.

The Petitioner submitted five IRS Forms W-9, Request for Taxpayer Identification Number and Certification for [REDACTED] dated May 29, 2014; [REDACTED] dated May 29, 2014; [REDACTED] dated May 30, 2014; [REDACTED], dated May 23, 2014; and [REDACTED], dated January 3, 2013. The Petitioner also submitted three 2013 IRS Forms 1099-MISC, Miscellaneous Income, showing that it paid \$10,940.00 in nonemployee compensation to the [REDACTED] \$2,150.00 in nonemployee compensation to [REDACTED], and \$1,950.00 in nonemployee compensation to [REDACTED]

The Director issued a request for evidence (RFE) on July 14, 2014, instructing the Petitioner to submit evidence that the Beneficiary's proposed position will be managerial or executive in nature.

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In response to the RFE, the Petitioner submitted a letter, dated September 8, 2014, emphasizing that the Beneficiary will be employed in an executive capacity and listing the same job duties previously submitted. The Petitioner went on to state that it “has hired sufficient direct employees to relieve the beneficiary from performing any non-executive duties” and that the Beneficiary “is not in charge of any logistics/ shipping/delivery activities, day-to-day operations activities, sales or marketing daily activities or performing any non-executive activities necessary to operate the company as there are other qualified employees as well as delivery service companies in charge of these services.” The letter also described the Beneficiary’s subordinates’ duties, including: Senior Production Manager, [REDACTED] Production Worker and Assistant Production Worker, [REDACTED] Accountant, [REDACTED] Corporate Attorney, [REDACTED] and Immigration Attorney, [REDACTED]

The Petitioner submitted an expert opinion letter from [REDACTED] Director of Graduate Studies and Senior Lecturer at the [REDACTED] dated August 5, 2014. In his letter, [REDACTED] stated that, “[a]fter examining the responsibilities of this President and CEO position for [the Petitioner] in detail, it becomes apparent that [the Beneficiary] will function in an Executive position for the company.” [REDACTED] letter indicates that he reviewed the same job description submitted to USCIS at the time of filing, although his letter does not list the percentages the Petitioner assigned to each listed duty.

The Petitioner also provided a letter dated September 3, 2014 from [REDACTED] Director of Operations for [REDACTED] the franchisor of [REDACTED] restaurants in the United States. He explained the franchise’s expansion plans and emphasized that the Beneficiary is not being transferred to the United States to oversee a single food production facility with three employees. [REDACTED] stated that “[h]is transfer will also be to preside over the expansion of the business to other geographic locations of the country. In these efforts, he is assisted by legal counsel and accounting experts to assist him in this planned expansion.”

The Petitioner submitted its IRS Form 1065, U.S. Return of Partnership Income, indicating that it paid \$17,334.00 in salaries and wages during 2013.

The Director denied the petition on September 22, 2014, concluding that the Petitioner did not establish that the Beneficiary will be employed in the United States in an executive capacity. In denying the petition, the Director noted that the Petitioner has three employees and contracts additional staff for specific tasks or services, such as legal and accounting, who are not involved in the duties necessary to provide a service or produce a product of the business. The Director found that the Petitioner did not establish that the Beneficiary will primarily engage in executive rather than operational and administrative tasks of the U.S. company. The Director further found that the duties described and the percentages of time allotted to those duties, do not appear consistent with the current scope and structure of the U.S. entity.

On appeal, the Petitioner contends that the Director focused primarily on the size of the Petitioner in rendering her decision. The Petitioner asserts that it has documented that more than half of the

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Beneficiary's time is spent performing the duties required as President and CEO, which are executive duties. The Petitioner lists the same job duties previously submitted for the Beneficiary's position and reiterates that it has three regular employees and four contracted employees, an Accountant, two Attorneys, and a Market Analyst. The Petitioner further states that an expert within the field of Business, [REDACTED], has "reviewed the underlying filing as well as the position description and duties to be performed by the Beneficiary . . . and then submitted a 5 page professional opinion . . . detailing why the position offered is 'Executive' in capacity." The Petitioner re-submits copies of all previously submitted evidence in support of the appeal.

B. Analysis

Upon review, and for the reasons stated herein, the Petitioner has not established that the Beneficiary will be employed in a qualifying executive capacity in the United States.

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

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 establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

In the instant matter, the Petitioner consistently characterized the Beneficiary's role as President and CEO and provided a list of job duties with percentages of time devoted to each duty. However, the listed duties are repetitive and are stated in very general terms, and therefore provide little insight into what the Beneficiary will actually do on a daily basis. For example, the Petitioner states that the Beneficiary will allocate 5% of his time to "developing a strategic plan" to promote revenue and profitability, and an additional 11% of his time to planning, developing and implementing strategies to generate revenues, but did not further elaborate as to how these are separate job duties. Similarly, the Petitioner states that the Beneficiary will spend 7% of his time planning, developing and establishing policies and objectives, and 11% of his time "approving" company policies and standards. Further, the petitioner states that the Beneficiary will allocate 8% of his time "[d]etermining progress and status in attaining corporate goals by reviewing and revising objectives and plans in accordance with current market conditions" and 13% of his time "determin[ing] progress and status in attaining objectives and plans in accordance with current conditions." The

Petitioner indicates that the Beneficiary will spend 8% of his time “making decisions regarding major financial operations,” and 7% of his time “overseeing the financial function.” In each instance the Petitioner did not offer specifics that would differentiate between these apparently overlapping duties.

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. Many of the listed duties merely paraphrase portions of the statutory definition of executive capacity. Further, given the amount of repetition, it is unclear whether the assigned percentages accurately reflect the Beneficiary's intended allocation of time to these responsibilities. 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).

As noted by the Director, the Petitioner stated that an additional 7% of the Beneficiary's time would be spent conferring with and evaluating the performance of the “Manager of Operations and Sales Director,” two positions that are not staffed. While these duties account for only a small portion of the Beneficiary's time, we concur with the Director that these and other duties are not consistent with the current structure and scope of the company, and do not provide insight into what the Beneficiary will be doing on a day-to-day basis as the President of the petitioning food production company. The Petitioner states that it will hire those positions, along with a Purchasing/Dispatch Assistant, an Administrative Assistant, and three Drivers during “2014-2015,” but does not provide a specific timeline, and had not hired any additional employees as of the date the appeal was filed. The Beneficiary's oversight of employees who have not yet been hired cannot be considered in these proceedings. 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).

Overall, the Petitioner has not provided sufficient detail or explanation of the Beneficiary's proposed activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. 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 petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Here, the Petitioner consistently stated that it directly employs three workers: a senior production manager, a production worker, and an assistant production worker. The Petitioner further indicated that the senior production manager reports to the Operations Manager and the production workers report to the senior production manager. However, as noted, the Petitioner has not hired an

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Operations Manager to oversee the Senior Production Manager; therefore, it appears that the Beneficiary will be his direct supervisor. The Petitioner also stated that the Beneficiary supervises the work of contracted employees, including an accountant, two attorneys, and a market analysis firm, and provided brief descriptions of their work for the Petitioner. However, it did not submit copies of any contracts or agreements with these firms or individuals or provide recent evidence of payments to them to establish the scope of their services. Regardless, their work would consist of very specific tasks or functions that would not relieve the Beneficiary from performing the day-to-day routine duties associated with providing the Petitioner's services.

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

In response to the RFE, the Petitioner submitted an expert opinion letter, in which [REDACTED] states that he believes the Beneficiary's position in the United States to be executive in nature. It appears that [REDACTED] analyzed the same list of job duties the Petitioner presented with the instant petition but he does not state whether he reviewed any other documentation. Rather he states that he considers "the nature of the position's responsibilities along with the position title." He referenced the elements of the statutory definition of "executive capacity" and opined that the listed job duties satisfy the requirements of the definition. However, it is unclear whether [REDACTED] analysis considered that the Beneficiary's only subordinates are cooks and contractors for accounting, legal advice, and market analysis, or whether he may have based his analysis on projecting staffing levels. [REDACTED] analysis did not take into account the fact that the Beneficiary does not have any subordinates to take over the sales, marketing, customer service, and other administrative duties in order to relieve the Beneficiary from performing those tasks. Rather, his entire opinion appears to be based on the Petitioner's job description, which, as discussed above, is written in general and repetitive terms and does not correlate to the current scope of the Petitioner's business.

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We may, in our discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, we are ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* Where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l.*, 19 I&N Dec. 791, 795. Because [REDACTED] review was evidently limited to a review of the Beneficiary's job title and broadly described job duties, and our review is based on the totality of the evidence in the record, the opinion has less probative value. 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 sole managerial employee.

As noted above, the Petitioner did not submit a detailed description of the Beneficiary's position sufficient to establish that his daily routine will consist of primarily executive duties. Further, the Petitioner has not submitted evidence that the Beneficiary's subordinate employees and independent contractors will relieve him from performing non-qualifying operational and administrative duties at the U.S. company. Therefore, the Petitioner has not demonstrated that the Beneficiary's duties will primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations. Although the Petitioner may not be required to demonstrate that the Beneficiary has subordinate managerial, supervisory or professional employees who will assist him, it is necessary to demonstrate that someone other than the Beneficiary will carry out the day-to-day routine duties required to continue operations. The Petitioner has not shown that there are sufficient employees to carry out such duties as of the date of filing the instant petition.

We note that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). It is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The Petitioner contends, on appeal, that the Director focused on the size of the company and number of employees in coming to the adverse decision. As discussed, the Petitioner states that it engages in central food production, manufacturing food products for a restaurant chain with one current location in [REDACTED], Florida and plans to open as many as three additional Florida restaurants by the end of 2014. The Petitioner demonstrated that it employed one full-time and two part-time employees to produce its food products at the time the petition was filed. The Petitioner also claims that it employs contracted staff for accounting, legal advice, and market analysis. However, the Petitioner does not provide any evidence of employees to carry out administrative duties, sales, customer service, marketing, invoicing, purchasing, delivering, or other employees who would provide the services of the company or assist the Beneficiary with administrative, operational, and other routine

matters, including those that would be associated with the company's expansion plans. As such, the record reflects that, the Beneficiary, as the sole employee who is not involved in the preparation of food products, would be involved in these non-qualifying functions. Whether the Beneficiary is employed in a qualifying executive capacity turns in part on whether the Petitioner has sustained its burden of proving that his duties are "primarily" executive. Here, the Petitioner has not met that burden and instead relies on its expansion plans as evidence to support the Beneficiary's executive position. However, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

Based on the foregoing discussion, the Petitioner has not established that the Beneficiary will be employed in an executive capacity. Accordingly, the appeal will be dismissed.

III. CONCLUSION

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

ORDER: The appeal is dismissed.

Cite as *Matter of M-P-F-S- LLC*, ID# 14563 (AAO Nov. 16, 2015)