



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

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

MATTER OF M- LLC

DATE: OCT. 28, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT

The Petitioner, a wholesaler and retailer of sporting goods, seeks to temporarily employ the Beneficiary as the president of its new office under the L-1A nonimmigrant classification. *See* Immigration and Nationality 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 determined that the evidence of record did not establish that the Beneficiary would be employed in the United States in a qualifying managerial or executive capacity within one year of the approval of the petition. The Director also determined that the evidence of record did not establish that the Beneficiary's foreign employer continued to do business, thus maintaining a qualifying relationship with the Petitioner. The Director further determined that the evidence of record did not establish that the Beneficiary had been employed in a qualifying managerial or executive capacity for the foreign entity.

On appeal, the Petitioner asserts that the Director's reasons for denying the petition were erroneous and contends that it has satisfied all evidentiary requirements.

For the reasons that will be discussed below, we find that the Petitioner has not established eligibility for the benefit sought. Accordingly, the Director's decision will not be disturbed. The appeal will be dismissed.¹

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

¹ We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the Beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the Petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

- (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
- (3) The organizational structure of the foreign entity.

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

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

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

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

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take

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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 ISSUES ON APPEAL

A. U.S. Employment in a Managerial or Executive Capacity

The first issue to be addressed is whether the Petitioner established that its new office will support an executive or managerial position within one year of the approval of the petition.

1. Facts

The Petitioner filed the Form I-129 on October 6, 2014, and requested that the Beneficiary be granted a one-year approval, from October 23, 2014 to October 23, 2015, to serve as its president. The Petitioner submitted evidence that it had registered as a foreign limited liability company in Connecticut on [REDACTED]. The Petitioner stated that it had one employee at the time of filing.

The Petitioner described the Beneficiary's proposed duties as follows:

- Act as the highest executive officer of the company;
- Open wholesale and retail locations to sell sporting goods, specializing in figure skating;
- Identify markets and customers. Sign purchase orders, contracts with vendors and suppliers;
- Conduct negotiations with manufacturers;
- Hire necessary personnel to handle daily non-managerial tasks;
- Contract supporting services such as import/export customs clearance agent, shipping, taxation, accounting, legal, business advisors;
- Direct daily operations of the enterprise;
- Support customer relations; assist with after sales services; arrange storage and logistic issues in the U.S.; collect payments;
- Facilitate import and export customs clearances for foreign-manufactured products and for international shipping;
- Perform any other action to further interests of the enterprise.

The Petitioner also submitted an undated document describing its business including its business model. The Petitioner noted that it will sell figure skating goods online and at a retail pro-shop in [REDACTED]. The Petitioner noted further that it represents a United Kingdom figure skating brand and that it has exclusive rights to sell certain figure skating brands in European markets. The Petitioner provided a copy of its lease, commencing on August 1, 2014, for the purpose of operating a figure skating wholesale and retail facility. The Petitioner also submitted the Beneficiary's bank statements for the months of February through May 2014 and copies of a liability insurance policy, dealership certificates, correspondence with vendors and two invoices, dated August 14, 2014.

In response to the Director's request for evidence (RFE) on the issue of the Beneficiary's employment in the United States in a qualifying managerial or executive capacity within one year of the approval of the petition, the Petitioner revised the Beneficiary's duties as follows:

Primary duty of the Beneficiary is to act in executive capacity to direct an essential function of all start-up operations of a new business. Beneficiary is functionally responsible for opening a new business, setting goals and targets, market research, securing assets, premises, sign contracts, execute agreements on behalf of the company and exercise full and free discretion in day-to-day operations.

The Petitioner added that "[o]nce the petition is approved and [the] new business is allowed to commence, the Beneficiary will hire, supervise and direct employees," and that she "will act as the highest authority in the company." The Petitioner stated that the Beneficiary "is currently a sole employee of the entity, for the time necessary to begin its operations." The Petitioner stated further that a purchasing manager's position would be filled shortly after operations commence and that it "will need employees almost immediately to handle [the] retail front location, internet store and the wholesale part of the business."

The record in response to the Director's RFE also included copies of two contracts signed by the Beneficiary for the Petitioner to supply goods to its counterparts in Russia and Lithuania, invoices for legal and accounting work and store supplies and equipment, and copies of rent checks.

The Director denied the petition, concluding that the evidence of record did not establish that the Petitioner would support a managerial or executive position within one year of the approval of the petition.

On appeal, the Petitioner asserts that the documentation submitted, including the lease agreement, registration documents, distribution and dealership contracts, and merchandise purchase orders, were negotiated and signed by the Beneficiary in her executive capacity. The Petitioner reiterates that it will create the position of purchasing manager shortly after the approval of the petition. The Petitioner asserts that the Director implicitly requires that the new office be fully staffed and operational and that an executive must have employees, supervisors, and managers. The Petitioner asserts that there are no such requirements in the regulations.

2. Analysis

Upon review, and for the reasons discussed herein, the Petitioner has not established that the new office will support a managerial or executive position within one year.

The "new office" regulations allow a newly established Petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position. *See* 8 C.F.R. 214.2(l)(3)(v)(C). Accordingly, if a Petitioner indicates that a Beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business

immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The Petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the Beneficiary and commence doing business in the United States. *Id.*

Here, while the Petitioner has established that it has acquired sufficient physical premises and established the size of the financial investment in the United States, it has not provided sufficient probative evidence regarding the company's proposed staffing and has not established how the Beneficiary would be relieved from performing non-managerial and non-executive duties within one year.

When examining a Beneficiary's executive or managerial capacity, 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 either in an executive or managerial capacity. *Id.* Beyond the required description of the job duties, we review the totality of the record when examining the claimed managerial or executive capacity of a Beneficiary, including the Petitioner's proposed organizational structure, the duties of any proposed subordinate employees, the Petitioner's timeline for hiring additional staff, the presence of others to relieve the Beneficiary from performing operational duties at the end of the first year of operations, 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.

In the instant matter, the Petitioner described the Beneficiary's proposed position in very general terms, noting that she will "[a]ct as the highest executive officer of the company," "[h]ire necessary personnel to handle daily non-managerial tasks," and "[d]irect daily operations of the enterprise," as well as set goals and targets and exercise full and free discretion in day-to-day operations. While these broadly described responsibilities indicate the Beneficiary's senior level of authority within the company, they offer little insight into what she will actually do within the context of the petitioning business on a day-to-day basis during the first year of operations and beyond.

However, while several of the broadly-drawn duties attributed to the position would generally fall under the definitions of managerial or executive capacity, the lack of specificity in the record as a whole raises questions as to the Beneficiary's actual proposed responsibilities. We do not doubt the Beneficiary's authority to make decisions, establish policies, hire employees, or her senior role in the new company; however, the record does not establish how the Beneficiary would perform primarily managerial or executive duties within one year. Whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that his or her duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

As noted above, a position description alone is insufficient to establish that the Beneficiary's duties would be primarily in a managerial or executive capacity, in the case of a new office petition where much is dependent on factors such as the Petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the Beneficiary in the intended managerial or executive capacity. The Petitioner has established that the Beneficiary would have the appropriate level of authority over the business, but the record does not establish what she would actually do on a day-to-day basis after one year. The actual duties themselves 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).

Here, the Petitioner has explained that it will open wholesale and retail locations to sell sporting goods, specializing in figure skating and that performing this task will be one of the Beneficiary's duties. However, the record does not include a business plan which includes detailed hiring plans demonstrating how and when the Petitioner will hire additional staff to relieve the Beneficiary from performing operational duties at the end of the first year of operations. Rather, the Petitioner states that it is the Beneficiary who will identify potential markets, sign purchase orders and contracts with vendors and suppliers, conduct negotiations with manufacturers, and contract with supporting services. Additionally, she will assist with after sales services, arrange storage and logistic issues in the U.S., collect payments, perform market research, and facilitate import and export customs clearances. The Petitioner does not identify any potential positions that will be filled within the year to relieve the Beneficiary from performing these operational duties. The Petitioner has not provided a timeline for hiring staff and the Petitioner's limited information on its financial projections does not account for any payments to additional employees. 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'l Comm'r 1972)). Although the Petitioner claims that the Beneficiary will primarily perform in an executive capacity, the record does not include sufficient probative evidence that the Beneficiary will be relieved from performing primarily non-executive functions by the end of the one-year time frame.

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.* Here, the Petitioner has not established that the Beneficiary would be relieved from focusing on the day-to-day operations of

the newly established business within one year, such that she could focus primarily on the goals and policies of the organization.

The Petitioner does not appear to claim that the Beneficiary will primarily perform in a managerial capacity, however, we have reviewed the totality of the record to determine whether the record would support such a claim.² In that regard, we acknowledge that the Petitioner has stated that the Beneficiary will have the authority to hire and fire employees, that it plans to hire a purchasing manager, and that it will need staff to handle sales at the retail location, Internet store and the wholesale part of the business. However, the record does not include evidence of the potential duties for any of these employees or a timeline indicating when such employees would be hired. The Petitioner has not established that any future subordinate employees hired during the initial year of operations would be managers, supervisors, or professionals. The initial evidence contained no information regarding these positions, and the Petitioner did not respond to the Director's request for position descriptions for any of the Beneficiary's proposed subordinates. Nor does the record include the proposed organizational structure of the company. Absent information regarding the Petitioner's proposed organizational structure and the actual duties to be performed by the Beneficiary's subordinates, we cannot determine whether the Beneficiary's subordinates will perform duties that are managerial or supervisory, or whether they are professionals.³

Nor has the Petitioner provided probative evidence of a proposed organizational structure that would be sufficient to relieve the Beneficiary from performing non-qualifying duties within one year. As discussed above, the Petitioner has not submitted a proposed organizational chart fully corroborated by a business or hiring plan and relevant financial projections or any other evidence in the record demonstrating that it can or intends to hire employees or contractors to perform the operational and administrative tasks of its business. Without descriptions of the duties to be performed by any potential employees, we cannot determine how work will be allocated within the company or whether these employees will relieve the Beneficiary from direct involvement in its routine, day-to-

² The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(4). If a Beneficiary directly supervises other employees, the Beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

³ In evaluating whether the Beneficiary manages professional employees, we evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

day activities. For example, the Petitioner has not identified any proposed staff who would be responsible for marketing or selling the company's products and services to customers, a function that would reasonably require a substantial amount of time, particularly for a new business with a limited customer base. Nor has the Petitioner identified potential employees who will handle the import/export functions of the Petitioner's proposed business, or who will conduct routine negotiations with manufacturers, vendors, and suppliers.

The Petitioner here also has not established that the Beneficiary will be employed primarily as a function manager within the one-year time requested on the petition. The term "function manager" applies generally when a Beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. However, if a Petitioner claims that the Beneficiary is managing an essential function, the Petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the Beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the Petitioner's description of the Beneficiary's daily duties must demonstrate that the Beneficiary manages the function rather than performs the duties related to the function. 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 International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

In this matter, the record does not establish that the Beneficiary will primarily manage an essential function. In response to the RFE, the Petitioner stated that the Beneficiary will "direct an essential function of all start-up operations of a new business," but it did not explain how the Beneficiary, in her general oversight of the company's start-up operations, would perform primarily managerial duties, nor did it articulate how such duties qualify as an essential function.

Upon review of the totality of the evidence submitted, including the general job description provided for the Beneficiary, the Petitioner's insufficiently documented business and hiring plans for the first year of operations, and the lack of information regarding the proposed organizational hierarchy, the Petitioner has not established that it would support a managerial or executive position within one year. For this reason, the appeal will be dismissed.

B. Foreign Employment in a Managerial or Executive Capacity

The next issue to be addressed is whether the Petitioner established that Beneficiary has been employed by the Beneficiary's foreign employer in an executive or managerial capacity for one continuous year in the three year period preceding the filing of the petition. See 8 C.F.R. § 214.2(l)(3)(v)(B).

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1. Facts

On the Form I-129 Supplement L, the Petitioner described the Beneficiary's duties for the foreign entity as:

Beneficiary is a 100% owner of the foreign employer. Act as the highest authority for the company. Make all business decisions for the company. Sign purchase orders, contracts with vendors and suppliers.

Conduct negotiations with manufacturers. Identify customers. Support customer relationship.

Direct all business activities of the enterprise. Facilitate collection of payments, hire or contract supporting personnel.

In response to the Director's RFE on this issue, the Petitioner stated:

For over one year as an owner of 100% of the foreign entity and its sole employee, the beneficiary acted in executive capacity, who directed the company. She received no supervision and supervised no one. She directed the business function of the organization and there was no one else to perform such duties. As indicated, the enterprise specialized in sales, and such enterprise does not require large resources, facilities or hard manual labor. Directing of the enterprise can be performed through many modern amenities, such as via telephone or internet, conducted out of relatively small premises.

Her primary functions were to develop the enterprise, make all major business decisions for the company. She established financial goals for the organization, developed suppliers, placed orders, signed contracts and made decisions to establish other entities.

Based on the limited information in the record, the Director determined that the Petitioner had not established that the Beneficiary had been employed in a qualifying managerial or executive capacity for the foreign entity.

On appeal, the Petitioner asserts that an executive position does not require management of other employees. The Petitioner also withdraws its statement in response to the service center's RFE that the Beneficiary was the foreign entity's sole employee. The Petitioner claims that the foreign entity appointed a company director and that this individual will direct the foreign entity while the Beneficiary is temporarily absent. The Petitioner emphasizes that the record includes sufficient evidence that the Beneficiary performed primarily executive duties while at the foreign entity. The Petitioner re-submits the foreign entity's "Resolution of Subscriber to Appoint the First Director(s)." This document dated February 1, 2013 identifies the company director as: [REDACTED] with an address in [REDACTED] Connecticut. In a document, also dated February 1, 2013, the

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company director resolves to allocate and issue 50,000 shares of registered voting shares to the Beneficiary, located at the same address in [REDACTED] Connecticut.

2. Analysis

The record in this matter does not include sufficient probative evidence establishing that the Beneficiary has been employed by the foreign employer in an executive or managerial capacity for one continuous year in the three year period preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(B).

The record in this matter shows that the foreign entity was established in Belize on [REDACTED]. The Petitioner does not submit evidence, such as payroll records, or other documentary evidence demonstrating that the Beneficiary actually worked at the foreign entity. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Further, even if the Beneficiary has been paid as an employee of the foreign entity, the evidence of record reflects that she has been physically present in the United States continuously since December 22, 2012 and therefore could not have acquired one year of qualifying employment with a foreign entity established in February 2013. Periods of time spent in the United States shall not be counted toward a beneficiary's fulfillment of the one year of continuous period abroad requirement. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A).

Neither does the record include a detailed description of the duties the Beneficiary performed even if employed at the foreign entity. The Petitioner again paraphrases the elements of the statutory definition of "executive capacity" without describing what duties the Beneficiary actually performed. Moreover, duties such as developing suppliers, placing orders, and signing contracts are the operational and administrative tasks necessary for the foreign entity to conduct business and thus are non-qualifying duties.

We reiterate that 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. 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. 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.* Here, the Petitioner has not established that the Beneficiary, whether as the sole employee or one of two employees, was relieved from performing primarily non-qualifying duties.⁴ The record does not include probative

⁴ The record does not include evidence of the duties of the company director. Neither does the record include documentary evidence corroborating the Petitioner's claim that the company director was actually employed by the

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evidence establishing the foreign entity's organizational hierarchy, if any. The record does not include evidence demonstrating that the foreign entity employed or contracted with anyone to relieve the Beneficiary from primarily performing the day-to-day business of the foreign entity. Accordingly, the record is insufficient to establish that more likely than not the Beneficiary was employed for one continuous year of full-time employment abroad in a managerial or executive capacity for the foreign entity.

C. The Foreign Entity Continuing to Do Business

1. Facts

The last issue in this matter is whether the Petitioner established that the foreign entity is doing business and will continue to do business as a qualifying organization abroad.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as "the regular systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad."

At the time of filing, the Petitioner provided the following evidence relating to the foreign entity:

- Certificate of Incorporation showing that [REDACTED] was incorporated in Belize on [REDACTED]
- Sales Order dated August 29, 2014, showing that the foreign entity purchased vinyl backpacks from a New York seller for shipment to Finland;
- Invoice No. 1978, dated August 28, 2014, showing that the foreign entity purchased clothing items from [REDACTED] located in the United Kingdom;
- Invoice No. 1855, dated November 10, 2013, showing that the foreign entity purchased clothing from [REDACTED] and
- Invoice No. 1833, dated October 2, 2013, showing that the foreign entity purchased clothing from [REDACTED]

In the RFE, the Director requested that the Petitioner provide additional evidence that the foreign entity is doing business, such as an annual report, foreign tax documents, audited financial statements, purchase orders, invoices, or contracts.⁵

In response, the Petitioner asserted that the Director was mistaken and that it had provided "15 pages of detailed purchase orders/invoices conducted by [REDACTED] (Belize) throughout 2013-

foreign entity. The record does not include payroll records, tax records, or other documentation substantiating that this individual worked for the foreign entity.

⁵ The Director stated in the RFE that all invoices submitted at the time of filing were "for the U.S. entity." As noted, the Petitioner's initial evidence included one "sales order" and three invoices, all of which listed the foreign entity as the purchaser.

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2014.” The Petitioner stated that it was re-submitting those documents and providing evidence of more recent transactions.

The Petitioner provided copies of two additional invoices issued to the foreign entity by [REDACTED] [REDACTED] dated November 10, 2014 and November 19, 2014. The Petitioner also provided a contract dated November 1, 2014 between the foreign entity and a Lithuanian company under which the foreign entity would supply figure skating apparel and accessories.

The record also included evidence that the foreign entity’s registered agent, [REDACTED] is located at [REDACTED] Belize. The Petitioner uses this same address as its business address on all documentation submitted.

In denying the Petition, the Director emphasized the Petitioner’s claim that the Beneficiary is the foreign employer’s sole employee, and noted that there was insufficient evidence that the company would remain operational after her transfer to the United States. Specifically, the Director found that “the lack of employees and a feasible plan for the foreign entity’s further operation casts doubt on the prospect of the foreign business’ ability to continue to do business during the validity date of an approved L petition.”

On appeal, the Petitioner emphasizes that the foreign entity has a “company director” who will continue to direct the business while the Beneficiary is in the United States. As noted, this company director is identified as [REDACTED], who is the Beneficiary’s spouse.

2. Analysis

Upon review, the Petitioner has not established that the foreign entity is or will be doing business as a qualifying organization abroad.

The Petitioner claims that the Beneficiary and her spouse have been operating the foreign entity in Brazil since it was established in [REDACTED]. The record shows that both the Beneficiary and her spouse have been in the United States continuously since December 22, 2012, and they have both requested a change and extension of their nonimmigrant status from B-2 to L-1A and L-2, respectively. Therefore, the Petitioner’s claim that [REDACTED] will be managing the foreign entity so that it can continue its business operations during the requested validity of the Beneficiary’s stay as an L-1A nonimmigrant is not credible.

Further, the fact that the only claimed employees of the foreign entity have been physically present in the United States during the entire lifespan of the company raises doubts as to whether the company has actually been doing business as defined in the regulations. The evidence submitted to document the foreign entity’s business operations consists solely of purchase invoices and a single contract. The Petitioner did not provide evidence of any sales transacted by the foreign entity, tax or bank records, a lease agreement, or other evidence to establish that it has more than a mere agent or office in Belize. Accordingly, the record does not establish that the foreign entity has been or would

be doing business as a qualifying organization abroad, and, for this additional reason, the petition cannot be approved.

III. CONCLUSION

When we deny a petition on multiple alternative grounds, a Petitioner can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1037 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, 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.

Cite as *Matter of M- LLC*, ID# 14389 (AAO Oct. 28, 2015)