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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF USH-T-, INC.

DATE: OCT. 30, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a Florida corporation, seeks to classify the Beneficiary as an L-1A nonimmigrant intracompany transferee. *See* Section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner states that it will be engaged in international trade as a new office established in The Petitioner indicates that it is a wholly owned subsidiary of , the Beneficiary's foreign employer located in China. The Petitioner seeks to employ the Beneficiary as its president for a period of three years.[1]

In denying the petition, the Director concluded that the Petitioner did not establish that the Beneficiary was employed with the foreign employer in a qualifying managerial or executive capacity. Further, the Director concluded that the Petitioner did not demonstrate that the Beneficiary would be employed in a qualifying managerial or executive capacity in the United States within one year of the approval of the petition.

On appeal, the Petitioner contends that the Director issued a vague decision that failed to articulate the deficiencies in the submitted evidence. The Petitioner asserts that it has submitted sufficient evidence to establish that the Beneficiary will act in a qualifying managerial or executive capacity.

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

[1] Pursuant to 8 C.F.R. § 214.2(l)(7)(i)(A)(*2*), if a beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

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.

II. THE ISSUES ON APPEAL

A. Managerial or Executive Capacity – Foreign Entity

The first issue addressed by the Director is whether the Petitioner has established that the Beneficiary is employed in a qualifying managerial or executive capacity with the foreign employer.

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.

1. Facts and Procedural History

The Petitioner filed the Form I-129 on December 4, 2014. The Petitioner submitted a support letter from the foreign employer stating "we have been in the industry of providing compressors and consulting service to private companies, construction companies for different projects." The foreign employer indicated that it earned over 8 million Chinese Yuan in 2013 and that it employs 45 individuals abroad.

The foreign employer explained that the Beneficiary has been working as general manager of the company since 2005. The foreign employer stated that the Beneficiary has "vast discretionary power including personnel decisions" and that she "is responsible for [the company's] implementation." The foreign employer indicated that the Beneficiary oversees 45 foreign employees and that she has three subordinate department managers, including a financial manager, a management manager, and a product department manager. The foreign employer described the Beneficiary's duties abroad as follows:

1) Having weekly meeting with 3 managers. She may also have special meeting with one of them alone. They discuss the operational result, business development, financial status, personnel decisions, marketing strategies, international operation etc. This will take about 8-10 hours/week. She may decide hiring/firing or promotion. She may also decide new marketing campaign based on the information.
2) [The Beneficiary] will study the report and data prepared by her subordinates. She reads newspapers and trade publications to get up-dated information and analyze the data that she receives. And she will make necessary decisions. For instance, it is she who decides whether or not and under what terms to sign an agreement for a large sale of compressors with a first-time purchaser. (about 4 to 6 hr /wk).
3) [The Beneficiary] visits factory sites to have an on-site understanding and promote the morale of our firm. She makes sure that our workers feel they belong to the entire enterprise family on the one hand, and have the opportunity to speak to their chief directly if they feel their voices are not otherwise heard. [the Beneficiary] will utilize the opportunity to reinforce company's culture-best quality-best service. (About 8 hours/wk). She believes her most important functions are to establish company's culture and direction. She may present awards/citations to recipients or make brief speechs [*sic*] to promote morale.
4) As product department is a major part of our enterprise with some 20 employees, [the Beneficiary] will visit that department. In addition to directly propel their morale, [the Beneficiary] also listens to their

opinions/suggestions, which helps her develop marketing and pricing strategies.

5) As chief representative of our firm, [The Beneficiary] participates at local and national associations to promote our publicity and public image. Under her direction, [o]ur firm has made some charitable donations and participate at educational events. As a result, we have established a distinguished reputation in [redacted] This endeavor takes about 4 hr/wk.
6) As our firm does not only domestic business, but is thinking developing internationally, [The Beneficiary] has to discuss relevant issues with outside consultants, and managers. She also has to take international business trips to explore our international opportunities. This time for the purpose is about a few weeks per year. [The Beneficiary] is the primary contributor to the establishment of our US entity. (About 4 hr/wk).
7) [The Beneficiary] will review all performance evaluation and make almost all personnel decisions regarding hiring, firing, promotion etc. (About 4 hr/wk).
8) [The Beneficiary] will report to (twice a year) Board of Directors and make budget and policy proposals. She is the sole decision maker of personnel decision of almost all employees. She makes the final decision of operation of entire company. (about 2 hr/wk)
9) Others (about 3 hr/wk).

Furthermore, the Petitioner stated that the Beneficiary had made certain executive decisions including "setting up initial directions with focuses on international market," "establishing partner companies in China," and establishing the new U.S. subsidiary.

The Petitioner submitted an organizational chart for the foreign employer reflecting that the Beneficiary supervised a product department, management department, and a financial department. The Petitioner provided duties for the managers of these departments, indicating that the financial department manager was responsible for developing strategies, capital operation, making the annual budgets, formulating and maintaining financial procedures, and monthly payroll. Further, the Petitioner explained that the "management manager" was in charge of management of administration and logistics service, establishing manuals for document management, drafting regulations and systems, reporting marketing strategies and campaigns, and handling training and negotiations. Lastly, the Petitioner indicated that the product manager was responsible for "overall daily production and administrative management of the product department," formulating production plans and safety codes, directing technicians, and formulating and implementing company regulations.

In addition, the Petitioner provided an organizational chart for the foreign entity reflecting the product department manager supervising a delivery and on site team, a technical support team, and a purchasing/quality control of products team. The management manager was shown to oversee "operation and support" and marketing and development, while the financial manager was reflected as supervising "management accounting" and "financial accounting." The Petitioner did not specify the positions making up these teams and departments or identify any of the employees of the

company by name. The Petitioner submitted payroll documentation relevant to the Beneficiary and the chairman of the board of directors from February 2013 through December 2013, but did not provide payroll evidence for any of the other foreign employees.

The Director later issued a request for evidence (RFE) stating that the Petitioner had submitted insufficient evidence to establish that the Beneficiary had been employed abroad in a qualifying managerial or executive capacity. The Director requested that the Petitioner submit a more specific description of the Beneficiary's duties with the foreign employer. The Director further indicated that the organizational chart provided for the foreign employer did not contain adequate detail. As such, the Director asked the Petitioner to provide an additional organizational chart reflecting the entirety of its staffing, including all employees by name, job title, duties, education levels and salaries. The Director requested that the Petitioner specify the Beneficiary's typical managerial or executive duties, including how she makes decisions regarding the foreign entity's daily operations, how she directs the management of the company, and/or how she established the goals and policies of the company.

In response, the Petitioner submitted the same foreign duties for the Beneficiary as those provided in support the petition. The Petitioner asserted that the Beneficiary acts in a qualifying executive capacity abroad. The Petitioner further submitted the same job duties for the Beneficiary's subordinates and did not submit an updated or more specific foreign organizational chart.

In denying the petition, the Director stated that the Petitioner has submitted overly vague duties related to the Beneficiary's asserted employment abroad, noting that the Petitioner did not respond to the Director's request for more detailed foreign job duties. Due to this lack of detail, the Director concluded that the Petitioner had not established that the Beneficiary was employed in a qualifying position abroad.

2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the Petitioner has not established that the Beneficiary is employed in a qualifying managerial or executive capacity with the foreign employer.

When examining the executive or managerial capacity of the beneficiary, we 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 have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In the current matter, the Petitioner has submitted overly vague duties with respect to the Beneficiary's foreign employment that fail to demonstrate that she devotes her time primarily to qualifying managerial or executive tasks. For instance, the Petitioner states that the Beneficiary

decides marketing strategies, makes necessary decisions after reviewing reports and data, negotiates terms with compressor purchasers, reinforces the company's culture and service, presents awards and citations, develops pricing strategies, participates in national associations, discusses issues with outside consultants, makes all personnel decisions, and makes budget policy proposals. However, the Petitioner fails to articulate in detail marketing campaigns the Beneficiary has created and implemented, specific executive decisions she has made, pricing strategies she has set, national associations she has participated in, consultants she has worked with, personnel decisions she has made, or budget or policy proposals she has made. Given that the Petitioner asserts that the Beneficiary has been working abroad in her capacity as general manager since 2005, it is reasonable to expect that it would have provided some detail regarding the Beneficiary's decisions and accomplishments over the last ten years. In addition, the Petitioner has submitted no supporting documentation to reflect that the Beneficiary's performance of qualifying executive duties, such as evidence demonstrating her setting of goals and policies for the organization. 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. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Beyond the required description of the job duties, United States Citizenship and Immigration Service (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The Director requested that the Petitioner submit a more detailed organizational chart for the foreign entity reflecting each of the employees of the foreign company, including their names, specific titles, duties, education levels and salaries as necessary to substantiate the Beneficiary's asserted executive position. However, the Petitioner did not provide this evidence. The Petitioner merely submitted a vague organizational chart reflecting the duties of the Beneficiary's three claimed managerial subordinates, but thereafter, only reflects general departments overseen by these managers. In addition, the Petitioner has not identified the Beneficiary's claimed managerial subordinates by name, indicated their salaries, or education levels to substantiate the existence of these employees. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Likewise, the Petitioner has only submitted payroll documentation relevant to the Beneficiary and the chairman and the board of directors and otherwise provides no other supporting documentation to corroborate the existence of the Beneficiary's subordinates or the other asserted employees of the foreign employer. In sum, the Petitioner has not provided sufficient evidence to support a conclusion that the Beneficiary has sufficient subordinates to support her in a qualifying executive capacity.

As stated, the Petitioner asserts that the Beneficiary acts in a qualifying executive capacity with the foreign employer. 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 demonstrated with sufficient evidence that the Beneficiary acts in a qualifying executive capacity. As discussed, the Petitioner has submitted a general job description for the Beneficiary that does not adequately reflect her actual day-to-day tasks. The Petitioner provides no detail regarding the Beneficiary's executive decisions or accomplishments over the last ten years while she was claimed to be acting in an executive capacity with the foreign employer. As such, it cannot be determined whether the Beneficiary has been devoting a majority of her time to directing the management of the foreign employer or to setting its goals and policies. Indeed, the Petitioner does not provide a single specific example of a goal or policy formulated by the Beneficiary over the last ten years. Furthermore, the Petitioner has not substantiated that the Beneficiary has managerial subordinates necessary to support her in an executive capacity, as it has not submitted a detailed organizational chart or other supporting evidence to corroborate the existence of these employees. Therefore, the Petitioner has not established that the Beneficiary acts in a qualifying executive capacity with the foreign employer. For this reason, the appeal must be dismissed.

B. Managerial or Executive Capacity (United States)

The next issue addressed by the Director is whether the Petitioner has established that the Beneficiary would be employed in a qualifying managerial or executive capacity in the United States within one year of approval of the new office petition.

1. Facts and Procedural History

In a support letter, the Petitioner indicated that it was established in the United States to "identify and export high quality compressors to China to meet the need of our corporate parent" and to export "high quality American automobile tires to China." The Petitioner stated that it expected to earn over $1 million in revenue in 2015 and over $3 million in 2016.

The Petitioner stated that the Beneficiary will "take the leadership position and serve as president for our firm," noting that she will have "great latitude of discretionary power" and "be the sole decision maker of virtually everything relating to our business operation," including hiring and firing, setting policies, goals, and budgets, and seeking expansion of the business. The Petitioner explained the Beneficiary's duties as follows:

1. CEO/President: a) Set General Goals and Objectives for the company, b) Approve company rules and regulations, c) Review and approve Expenses Budget, Review Financial statements; d) Formulate company structure, Approve hiring and firing of staff of higher level e) Coordinate with executives of other companies or participate at important trade conferences, f) assume full profit and loss responsibilities for the US company and report to corporate parent. Utilize the expertise of outside expert such as financial consultant. About 7 hours for each itemized duties...

   The focus of job duties are [*sic*]:

   - Overall successful development of the company's business. The US petitioner is now at threshold of a prosperous international operation, the president has to make sure that the company is developing toward the right direction. In addition to assistance from manager and senior assistance, she has to consult with outside consultants, establish relationship connection with local and national commerce/trade association and even local community to build up public relationship.
   - Maintain and further develop our current core revenue in exporting high-quality American compressors. This is the area that has already in good control. Facing a relatively uncertain future perspective, the president has to lead a team to maintain and further develop our business in this market.
   - Explore, expand and diversify our merchandises and revenue. With profound market knowledge of construction engineering products in China, [the Beneficiary] will lead manager and marketing specialist to identify, select and export high quality products to China. Those which are currently in the list include automobile tires and other accessories.

The Petitioner further indicated that the Beneficiary would have six subordinates, including a manager who would be responsible for implementing company policies, business promotion, and marketing strategies, daily supervision of operations, and training of staff. The manager was shown to oversee a senior assistant devoted to daily operations and carrying out assignments of the Beneficiary, a bookkeeper responsible for preparing financial documents, and a marketing specialist responsible for conducting market surveys and collecting information from competitors. The Beneficiary was also shown to oversee a business consultant focused on establishing business strategies and financial development. The senior assistant was shown to oversee a quality/inventory control specialist, devoted to checking the quality of exported products and communicating with

Chinese importers, and an assistant. The Petitioner stated that it would hire three additional employees in the first quarter of 2015 and that it would employ seven professionals by August 2015.

The Petitioner submitted a bank letter dated in November 2014 indicating that the petitioner had an available balance of $200,100 as of that date. The Petitioner asserted that the foreign employer had provided $200,000 as initial capital to launch the new business in the United States.

In the RFE, the Director noted that the Petitioner had not provided appropriate specifics to support the proposed development of the business, including a business plan detailing timetables for the establishment of the business and hiring of staff. The Director stated that the Petitioner's plans were not explained with sufficient specificity. The Director also indicated that the duty descriptions for the Beneficiary's proposed subordinates were overly vague. As such, the Director requested that the Petitioner submit an organizational chart reflecting the company's proposed positions, with job titles, expected education levels and salaries. The Director asked the Petitioner to explain how the proposed venture would support the Beneficiary in a qualifying managerial or executive capacity within one year. The Director asked the Petitioner to submit a business plan explaining the start-up of the business, including timetables for each proposed action during the first year.

In response, the Petitioner described the Beneficiary's proposed duties in the United States as follows:

- To set goals and objectives for the company. The beneficiary is responsible for the overall successful development of our firm's business. The US petitioner is not at the threshold of a prosperous international operation. The president has to make sure that the company is developing toward the right direction. She has to read articles, consult outside experts, review financial and marketing documents, participate local/regional chamber to make herself up-dated with current development and future trend and make necessary adjustments (about 8 hr/wk on weekly basis).
- Meet with manager and senior assistant to discuss and evaluate performance, and make personnel decisions including hiring, firing, promotion, demotion, as well as assignment of job duties. Exercise appropriate discipline skills and prompt moral. Be comply [*sic*] with federal and state regulations in term of demotion and lay-off (about 8 hr/wk).
- Meet with manager, (occasionally outside expert and marketing specialist included) regarding marketing strategies and campaigns. Identify select, negotiate and export high quality American compressors to China which is currently the core revenue of our corporate parent. In addition, [the Beneficiary] will lead the team to expand and diversify our merchandise[], currently on targets are American automobile tires and car accessories (about 8 hr/wk).
- To review financial documents and approve expense and budget (2 hr/wk)
- Meetings with manager/outside consultant to review, adjust and approve company rules and regulation (4 hr/wk).

- [The Beneficiary] will coordinate with executives of other companies and/or participate at important trade publications to promote the publicity and public image of our firm (4 hr/wk).
- [The Beneficiary] will report to and communicate with corporate parent whenever necessary. For instance, if US petitioner needs additional funding from corporate parent or has major business proposals, she will contact corporate parent. He also provides reports to corporate parent twice a year (about 2 hr/wk).
- Others (about 4 hr/wk). As president of our firm, [the Beneficiary] is overall responsible. Her working hours may exceed (40) per week. She will not directly supervise the day-to-day operation. She has manager and senior assistant who will take care of the day-to-day supervision and enable [the Beneficiary] to focus on her executive duties.

The Petitioner submitted the same list of proposed employees, job duties, salaries and required experience and education that had been provided in support of the petition.

The Petitioner provided a four-page business plan stating that "about thirty percent (30%) of customer who are willing and able to pay much higher price for high-quality foreign-reported compressors." The Petitioner noted that its plan to export American compressors was a "win-win strategy" for both the United States and China. The Petitioner explained that the outlook for U.S. tire manufacturers was "slightly optimistic" and that it represented a "good opportunity to export American high-quality tires to China." The Petitioner provided a "feasibility and market plan" within the business plan indicating that the "focus is to identify, and select high-quality American compressors" and noted that "we are in a better position to negotiate a better term with American manufacturers." The Petitioner stated that it "has also established connections with merchants in the tire and car accessories industry" and that this "would be a great area of potential[] for future development." The Petitioner asserted that it planned on having seven employees on the payroll by August 2015 and ten to twelve employees by the end of 2016. The Petitioner indicated that it foresaw earning $1.4 million in 2015 "with little or no profit" and $2.8 million in 2016. The Petitioner also provided two general online articles, one relevant to air and gas compressor manufacturing in the United States and another related to "U.S. tire market concerns."

In denying the petition, the Director stated that the evidence submitted did not provide a clear picture of how the Petitioner will conduct its proposed business, including its business plans, as necessary to demonstrate that it will develop to support the Beneficiary in a qualifying managerial or executive capacity after one year. The Director indicated that the Petitioner was asked to submit timetables for the start-up of the business, targets, and financial projections, but did not provide this evidence in its RFE response. As such, the Director concluded that the explanations and evidence provided by the Petitioner left an overly vague picture of the company's prospects for the first year.

On appeal, the Petitioner points to the Director's conclusion that its business plans are vague, but notes that the Director failed to explain why she reached this conclusion. The Petitioner states the foreign employer has made a substantial investment in the U.S. venture and submitted "substantial"

documentation to support that it will develop sufficiently during the first year to support the Beneficiary in a qualifying managerial or executive capacity.

2. Analysis

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

When examining whether a beneficiary is employed in a managerial or executive 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 definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

To the extent that the Petitioner describes qualifying proposed duties for the Beneficiary, these examples lack specificity and supporting evidence to establish that she would devote her time primarily to these duties within one year. For instance, the Petitioner states that the beneficiary will "set the goals and objectives of the company," "make sure the company is developing toward the right direction," "consult outside experts," "exercise appropriate discipline skills and principles," meet with managers regarding marketing strategies and campaigns, and approve expenses and budgets. However, in each case, the Petitioner has not explained the nature of these duties with appropriate detail, including goals and objectives the Beneficiary will likely set, how and what is involved with developing the company in the right direction, experts with whom she will consult, discipline skills and principles she will promote, or marketing strategies, campaigns and budgets she will establish. The Petitioner did not describe with specificity the typical managerial or executive decisions the Beneficiary will make or how she will direct its management and set its policies and goals. 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. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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).

Overall, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly 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 the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the

petitioner's anticipated staffing levels and stage of development within a one-year period. See generally, 8 C.F.R. § 214.2(l)(3)(v)(C).

In the RFE, the Director requested that the Petitioner submit a business plan setting forth the basis upon which the Petitioner believes that the company will grow sufficiently during the first year to support the Beneficiary is a qualifying executive capacity, including timetables for each action the company will take to launch the business. However, the Petitioner did not submit this evidence, but merely made unsupported conclusory statements regarding the company's plans. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

For instance, the Petitioner stated that buying American compressors is a "win-win strategy," that the U.S. tire manufacturer outlook was "slightly optimistic," and that it had a good opportunity to export American tires to China. However, the Petitioner failed to explain the basis of these conclusions or support this with projections or other documentary evidence. Further, the Petitioner failed to explain why it is "in a better position to negotiate a better term with American manufacturers," identify its "established connections in the tire and car industry, or sufficiently describe or support its "great areas of potential future development." In addition, the Petitioner provides revenue targets for the first and second years of the business, but does not indicate how these targets will be reached or similar projections for its start-up costs or anticipated operating expenses. Without this financial information, and a detailed hiring plan, we cannot determine if the Petitioner could feasibly hire up to seven employees during the first year of operations as projected. In addition, the Petitioner submits articles on the air and gas compressor market and U.S. tire industry, but does not state how these articles support the development of its business during the first year.

In addition, the Petitioner provided evidence that it received $200,000 from the foreign entity, but it does not describe how these funds will be used to launch the business within the first year, nor has it identified its anticipated start-up costs. The Petitioner did not articulate milestones it expects to reach during the first year or relevant financial projections. As noted, the Petitioner does not mention any projected dealers or clients by name to substantiate that it is likely to develop within the first year. Therefore, in sum, the Petitioner has not established with sufficient evidence that it will be adequately operational within the first year to support the Beneficiary in a qualifying executive capacity.

For the reasons set forth above, the petitioner has not demonstrated that the Beneficiary will be employed in a qualifying managerial or executive capacity within one year. Therefore, the appeal will be dismissed.

III. CONCLUSION

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

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

ORDER: The appeal is dismissed.

Cite as *Matter of USH-T-, Inc.*, ID# 14316 (AAO Oct. 30, 2015)