



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

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

MATTER OF A-I- INC.

DATE: APR. 22, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a Texas corporation operating as a “holding company for 3 retail business[es] through two subsidiary operations,” seeks to extend the Beneficiary’s temporary employment as a Director/President under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in an executive or managerial capacity.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the Beneficiary has been and will be employed in a managerial or executive capacity under the extended petition. The Petitioner subsequently filed a combined motion to reopen and a motion to reconsider the Director’s decision. The Director granted the motion and subsequently affirmed her denial.

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief and asserts that the Director erroneously concluded that the Beneficiary was not eligible for the benefit sought.

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

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

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The sole issue addressed by the Director is whether the Petitioner established that the Beneficiary has been and will be employed in a qualifying managerial or executive capacity under the extended petition. *See* sections 101(a)(44)(A) and (B) of the Act.

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.

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1. Evidence of Record

The Petitioner filed the Form I-129 on July 18, 2014 and indicated that it operates as a “holding company for 3 retail business[es] through two subsidiary corporations” with 16 current employees and an approximate gross annual income of \$9,000,000.00. The Petitioner seeks to extend the Beneficiary’s employment as its Director/President. On the L Classification Supplement to Form I-129, where asked to describe the Beneficiary’s proposed duties in the United States, the Petitioner simply stated that the Beneficiary “will continue to be overall in charge of the company.” “[w]ill continue to set policies concerning all phases of the company’s operations.” “[w]ill continue [sic] to approve personnel matters [sic] and proposed budgets,” and “[r]eports directly to the parent company.”

In its letter of support, the Petitioner simply stated that “[the Beneficiary] will continue performing the same functions as approved for his L-1A status. The company is functioning as before except that we have grown to 16 employees.”

The Petitioner submitted its 2013 IRS Form 1120, U.S. Corporation Income Tax Return, indicating that it paid \$35,000 in compensation of officers and \$210,232 in salaries and wages during 2013. The Petitioner’s 2013 Form 1120 also identified two wholly-owned subsidiaries: [REDACTED] and [REDACTED], and indicated on Schedule K that it was engaged in retail sales pertaining to groceries and petroleum products.

The Petitioner did not submit any additional information pertaining to the nature of its business, its organizational structure, its staffing plan, or the Beneficiary’s duties in the United States.

The Director issued a request for evidence (RFE) advising the Petitioner that the record did not contain any documentation to establish its organizational structure, the Beneficiary’s duties, operation staffing, and financial operations. The Director instructed the Petitioner to submit evidence demonstrating that the Beneficiary’s proposed position in the United States will be in a managerial or executive capacity.

In response to the RFE, the Petitioner submitted a document titled “Employees of [the Petitioner]” listing the Petitioner’s employees and brief job duties for each, excluding the Beneficiary. The document included information on the Vice President, [REDACTED] Operations Managers (2); Retail Store Managers (3); Assistant Managers (3); and Clerks, Cashiers, Cook (5+). The document does not include the names of any employees other than the Vice President.

The Petitioner submitted its business plan indicating that it will operate as a convenience store, “fulfilling a need that will continue to exist into the future – 24 hour convenience store that is more like an enormous dispensing machine than the traditional store.” The Petitioner stated that it has three stores in Texas: [REDACTED] Texas; [REDACTED] Texas; and [REDACTED] Texas.

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The Petitioner's business plan outlined its personnel plan as follows:

Initially the company will only have a small staff including upper management, an operations technician and office manager. All other services, such as bookkeeping, will be outsourced.

Office Manager will be [the Beneficiary]. He will manage and supervise all three stores in Texas. And his salary will be divided equally in three portions and each portion will be paid by each of three locations.

The Petitioner submitted its 2013 IRS Form W-2, Wage and Tax Statement, indicating that it paid the Beneficiary \$20,000.00 in wages, tips, and other compensation.

The Petitioner submitted a lease agreement between [redacted] one of the Petitioner's subsidiaries, and the Petitioner, dated August 1, 2012, which commences on August 1, 2012 through July 31, 2015. The lease agreement states that [redacted] "leases to [the Petitioner] Convenience Store and Gas Station (the "Premises") located at [redacted] TX [redacted]

The Petitioner submitted a copy of Stock Certificate number two for its claimed subsidiary, [redacted] indicating that it issued 1,000 shares of stock to the Petitioner on [redacted] 2012. The Petitioner did not submit the Articles of Incorporation, a stock ledger, or a copy of Stock Certificate number one for [redacted]. The Petitioner also did not submit any ownership documentation for its second claimed subsidiary, [redacted], or the third claimed convenience store owned by one of the claimed subsidiaries.¹

The Petitioner did not submit any additional information pertaining to its organizational structure or the Beneficiary's duties in the United States.

The Director initially denied the petition on March 9, 2015, concluding that the Petitioner did not establish that the Beneficiary has been and will be employed in a managerial or executive capacity under the extended petition. In denying the petition, the Director noted that the Petitioner claimed to be a holding company for two companies that are primarily quick stops/gas stations. The Director found that the record did not provide a description of the duties performed by the Beneficiary during the previous year of employment and did not provide a statement to describe the duties the Beneficiary will perform under the extended petition. The Director noted that the record provided evidence of the Beneficiary's position title, by way of a [redacted] report, and also indicated that some of the Beneficiary's subordinate employees are professional, by way of their education credentials. However, the Director found that such evidence was insufficient to establish that the Beneficiary's position was of a managerial or executive capacity.

¹ The Petitioner states that it operates as a holding company for 3 retail businesses through two subsidiary corporations but does not provide any information on the third retail business or which subsidiary owns it.

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The Petitioner filed a combined motion to reopen and motion to reconsider the Director's decision on March 30, 2015. In support of its combined motion, the Petitioner submitted a document titled "Job Description of [the Beneficiary] Director/President [of the Petitioner]" describing the Beneficiary's duties in the United States as follows:

[The Beneficiary] directs and oversees the overall operation of the corporation. Hires, trains, supervises, and fires top level Managers who, in turn, perform the same functions with respect to lower echelon employees. Interfaces with professional accountant and directs his activities with respect to preparation of financial statements and tax returns. Interfaces with Attorney and directs his activities in providing legal representation to the corporation.

He sets personnel policy. Directly supervises the Vice President of the company and supervises the Two (2) Operations Managers in conjunction with the Vice President. He spends about 60% of his time on this function.

[The Beneficiary] plans and implements the overall direction of the company. He reviews data on proposed sites for expansion of the retail operations of the company. He reports only to the foreign entity. Establishes financial relations. He spends about 20% of his time on this function.

[The Beneficiary] approves budgets submitted to him by the Operations Managers and resolves any disputes concerning personnel policies. He spends about 10% of his time on this function. He spends the remainder of [his] time in travel and in interfacing with the accountant and the Attorney for the company.

The Petitioner submitted its organizational chart depicting the Beneficiary as the Chairman of the Board of Directors and as the Director/President, reporting directly to [REDACTED] the foreign parent company. As the Director/President, the Beneficiary supervises a Secretary, to be hired; a Vice President, [REDACTED] who supervises unnamed Vendors; and, in conjunction with the Vice President, supervises an Operations Manager of [REDACTED], and an Operations Manager of [REDACTED]. According to the chart, the Operations Manager of [REDACTED] supervises two Managers, who supervise their own Assistant Managers, who supervise their own Head Clerk/Cashier, who supervise other Clerks/Cashiers; and the Operations Manager of [REDACTED] supervise a Manager, who supervises an Assistant Manager, who supervises a Head Cook, who supervises Clerks/Cashiers.

The Director granted the Petitioner's combined motion and, on June 8, 2015, affirmed her decision to deny the petition. In affirming her decision, the Director found that the job description submitted with the motion was vague and lacked the specificity needed to determine that the Beneficiary will be employed in a qualifying executive or managerial capacity. The Director noted that the filing of a motion afforded the Petitioner a third opportunity to describe the duties performed by the Beneficiary during the previous year of employment; however, the Petitioner still did not submit the

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documentation. The Director further found that the record did not establish the new operation's staffing, as it claimed to employ 16 individuals at the time of filing but did not submit documentary evidence to support such claims. The Director also found that the record did not establish the financial status of the U.S. operation at the time of filing, as financial documentation was not provided for that time period.

On appeal, the Petitioner does not directly address the Director's findings. The Petitioner explains that it provided an adequate response to each of the issues in the RFE and that the Director did not provide any reasons as to why the responses might be considered inadequate. The Petitioner contends that the Director seems to have placed a great weight on the technicalities of composing job descriptions, and the representative of the Petitioner and the Beneficiary states that he is not proficient in writing job descriptions. The Petitioner claims that the Beneficiary "is simply proficient in managing the business that he was hired to run."

2. Analysis

Upon review, and for the reasons stated herein, the Petitioner has not established that the Beneficiary has been and will be employed in a managerial or executive capacity in the United States under the extended petition.

As a preliminary matter, we will address the Petitioner's ownership and control of the two claimed subsidiaries in the United States: [REDACTED] and [REDACTED]. As the Petitioner claims to operate as a "holding company" of convenience stores through these subsidiary companies, and the Beneficiary's position is dependent on the U.S. company's ownership of these subsidiaries, this matter is relevant to these proceedings. Here, the Petitioner claims that the U.S. company owns 100% of both companies, and in support of this claim, it submits 2013 tax documentation and a single Stock Certificate for [REDACTED]. The Petitioner did not submit all of the ownership information for [REDACTED], or any ownership information for [REDACTED].

First, according to the 2013 Schedule K for the Petitioner, [REDACTED] is listed as a wholly-owned subsidiary. According to the supplemental information contained in the 2013 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for [REDACTED] the supporting statement of its Schedule K-1 lists [REDACTED]. The Petitioner did not submit a copy of [REDACTED] 2013 Schedule K-1. The Petitioner did submit a copy of [REDACTED] Stock Certificate number two, dated [REDACTED], 2012, issuing the Petitioner 1,000 shares of stock, or 100% ownership of the company. However, the Petitioner did not submit any additional evidence, such as Stock Certificate number one, a stock ledger, or the company's Articles of Incorporation. Given the lack of corroborating evidence and the reference to [REDACTED] on the company's 2013 tax return, we cannot determine the actual ownership of [REDACTED].

Second, according to the 2013 Schedule K for the Petitioner, [REDACTED] is listed as a wholly-owned subsidiary. However, the Petitioner did not submit any evidence pertaining to the company's actual existence and ownership, such as Articles of Incorporation, a stock ledger, or stock

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certificates. Therefore, the actual ownership and control of [REDACTED] remains unknown.

Here, the record simply does not add up and the Petitioner has not established that the U.S. company owns and controls the two subsidiaries in the United States. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *See id.* at 591-92.

Even if the Petitioner had established that it owned the claimed subsidiaries, it has not demonstrated that the Beneficiary has been or will be employed in an executive or managerial capacity for the following reasons.

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.* Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (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.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 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. 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)(2). 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. *See* 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The Petitioner first characterized the Beneficiary's role as the Director/President of its U.S. company and provided a vague description of the Beneficiary's duties, noting that he will continue to be in charge of the company overall, continue to set policies concerning all phases of the company's operations, and continue to approve personnel matters and proposed budgets. The Petitioner also noted that the Beneficiary will report directly to the parent company.

In response to the RFE, the Petitioner did not provide any additional evidence or documentation directly addressing the Beneficiary's job duties or position description. In support of the joint

motion to reopen and motion to reconsider, the Petitioner provided a job description of the Beneficiary's position, noting, in part, that he will direct and oversee the overall operation of the corporation; hire, train, supervise, and fire top level managers who, in turn, perform the same functions with respect to lower level employees; interface with a professional accountant; interfaces with an Attorney; set personnel policy; directly supervise the Vice President of the company and two Operations Managers in conjunction with the Vice President; plan and implement the overall direction of the company; review data on proposed sites for expansion of the retail operations of the company; establish financial relations; approve budgets; and resolve disputes concerning personnel policies.

Although the Petitioner provided lump sum percentages of time the Beneficiary would devote to some duties, it did not provide any additional details about the Beneficiary's actual duties or how much time he will devote to each of them. The Petitioner's description of the Beneficiary's job duties does not establish what proportion of the Beneficiary's duties in the United States will be managerial in nature, if any, and what proportion will be non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). These general statements do not offer any clarification as to the Beneficiary's actual proposed duties in the United States, and fall considerably short of demonstrating that the Beneficiary will primarily manage the organization and supervise and control the work of other supervisory, professional, or managerial employees. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The Petitioner has not provided any detail or explanation of the Beneficiary's 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, the Petitioner's business plan explicitly states that the Beneficiary will also be the office manager who will "manage and supervise all three stores in Texas." and further indicates that "his salary will be divided equally in three portions and each portion will be paid by each of three locations." This is significant because it is different from the other position descriptions or job duties contained in the record² and is not considered in the percentages of time spent of the clusters of duties calculated by the Petitioner. Once again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *See id.* at 591-92.

Although the Beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the Petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

² For example, here, the Petitioner indicated that the Beneficiary will be directly involved in the operations of individual convenience stores, where previously, the Petitioner stated that the Beneficiary will be involved in the management of the corporation.

Here, the Petitioner claimed that it manages two subsidiary companies with 16 current employees. Its organizational chart shows that the Beneficiary directly supervises a Secretary, a Vice President, and two Operations Managers. The Petitioner provided brief job duties for the Vice President, Operations Manager, Retail Store Manager, Assistant Manager, and Clerks, Cashiers, and Cooks. However, the brief lists of job duties for these subordinate positions do not indicate that those positions will relieve the Beneficiary from performing non-qualifying operational and administrative duties. The Petitioner has not demonstrated that the Beneficiary's duties will primarily focus on the management of the organization and the supervision of qualifying managerial, professional, or supervisory employees, rather than on producing a product or providing a service of the U.S. company. As noted above, the Petitioner did not submit a detailed description of the Beneficiary's proposed position or those of his subordinates sufficient to establish that the Beneficiary's daily routine will consist of primarily managerial duties. The Petitioner has not submitted evidence that the Beneficiary's subordinate employees will relieve him from performing non-qualifying operational and administrative duties at the U.S. company.

Further, the Petitioner has not established that it actually employs the claimed subordinates. The Petitioner did not provide any evidence of their actual employment such that it could demonstrate that they may relieve him from performing non-qualifying duties. To establish that the petitioner has staffed the new operation in the previous year, the petitioner must submit a description of staffing, including the number of employees and the types of positions, as well as evidence of the wages paid to the employees. 8 C.F.R. § 214.2(l)(14)(ii)(D). In the absence of such evidence as pay stubs and payroll records, the Petitioner has not established that it employs a subordinate staff that would relieve the Beneficiary from performing non-qualifying duties.

The Petitioner has not established, in the alternative, that the Beneficiary has been and will be employed primarily as a "function manager." 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. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a position description that describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes 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.

Here, the Petitioner did not indicate that the Beneficiary qualifies as a function manager. The Petitioner did not articulate how the Beneficiary's proposed duties at the U.S. company qualify him as a function manager and did not provide a breakdown indicating the amount of time the Beneficiary will devote to duties that would clearly demonstrate that he will manage an essential function of the U.S. company.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. *See* section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial. As discussed herein, the Petitioner's vague description of the Beneficiary's proposed duties at its U.S. company falls short of establishing that such duties are primarily managerial in nature. The Petitioner's business plan specifically stated that the Beneficiary will be the Office Manager and will manage and supervise all three stores in Texas, which would each pay a portion of his salary. In the instant matter, the Petitioner has not demonstrated how this description of the Beneficiary's position is managerial or executive in nature.

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. *See* 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.

Here, the Petitioner has not demonstrated that the Beneficiary's duties for the previous year and his proposed duties in the United States will primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations. The job duties provided for the Beneficiary's proposed position in the United States do not demonstrate that the Beneficiary focuses the majority of his time on executive duties rather than the day-to-day operations of the business.

On review, the record as presently constituted is not persuasive in demonstrating that the Beneficiary has been and will be employed in a primarily managerial or executive capacity. The Petitioner indicates that it plans to hire additional managers and employees in the future. However, 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business is not sufficiently

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operational after one year, the petitioner is ineligible by regulation for an extension. In the instant matter, the Petitioner has not reached the point that it can employ the Beneficiary in a primarily managerial or executive position.

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary has been and will be employed in a managerial or executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

III. INELIGIBLE FOR REQUESTED EXTENSION

Since the identified basis for denial is dispositive of the Petitioner's appeal, we need not address another ground of ineligibility we observe in the record of proceeding. Nevertheless, we will briefly note it here. Specifically, the petition was filed after the expiration of the petition it sought to extend. *See* 8 C.F.R. § 214.2(l)(14). In this matter, the petition that the petitioner sought to extend (EAC 13 047 50669) expired on July 17, 2014. The instant petition was filed on July 18, 2014, one day after the original petition's expiration. For this additional reason, the petition cannot be approved.

IV. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reason. 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 A-I- Inc.*, ID# 16212 (AAO Apr. 22, 2016)