



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

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

MATTER OF L-C-, INC.

DATE: APR. 28, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a Delaware corporation engaged in media and communications consulting, seeks to employ the Beneficiary as the vice president of its new office 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 it would employ the Beneficiary in the United States in a qualifying managerial or executive capacity within one year of commencing its operations.

The matter is now before us on appeal. In its appeal, the Petitioner submits an appellate brief asserting that the Director's conclusion was incorrect and that an entity with few employees is able to employ a beneficiary in a managerial capacity when that individual assumes the role of a function manager, rather than the role of a personnel manager.

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

I. THE LAW

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

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for 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.

In addition, the regulation at 8 C.F.R. § 214.2(l)(3)(v) states 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, 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. EVIDENTIARY STANDARD

As a preliminary matter, and in light of the Petitioner's references to the requirement that we apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

....

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

....

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceedings does not support the Petitioner's contentions that the evidence of record establishes eligibility for the benefit sought.

III. QUALIFYING EMPLOYMENT IN THE UNITED STATES

As indicated above, the Director denied the petition based on a finding that the Petitioner did not establish that it will have the ability to employ the Beneficiary in a qualifying managerial or executive capacity after its first year of operation.¹

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

¹ We note the Petitioner’s assertion on appeal that the Beneficiary will be employed in a primarily managerial capacity. However, the descriptions of the Beneficiary’s proposed duties in the record state that he will be the Petitioner’s “highest ranking officer” and refer to and rely upon the definitions of executive capacity; therefore, we will review the Beneficiary’s proposed position for eligibility under both criteria.

- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

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 into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

A. Facts

The record shows that the Form I-129 was filed on August 14, 2014. In support of the petition, the Petitioner submitted a cover letter stating that the Beneficiary, in his position as vice president, would be the Petitioner's highest ranking officer, responsible for establishing goals and policies, directing the management of the organization, making discretionary business decisions, "developing business relationships with key players in the pharmaceutical industry," hiring staff, and overseeing the operations and performance of the U.S. entity. The letter indicated that the Beneficiary would be "the main point of contact and decision maker for all matters affecting the initial operations of [the Petitioner]." The Petitioner further stated that it currently contracts "the services of a senior-level pharmaceutical executive, with over 40 years of experience in journalism, communications and the pharmaceutical industry [in order] to offer our U.S. clients high level communications coaching and meeting facilitation." The Petitioner expects that the Beneficiary's direct management of this contractor will lead to additional revenue for the U.S. office.

In addition, the Petitioner provided the following list of the Beneficiary's proposed job duties:

- Leading the development of the Company's strategy;
- Leading and overseeing the implementation of the Company's long[-] and short[-] term plans in accordance with its strategy;
- Ensuring that expenditures of the Company are within the authorized annual budget of the Company;
- Assessing the principal risks of the Company and ensuring that these risks are being monitored and managed;
- Ensuring effective internal controls and management information systems are in place;
- Ensuring that the Company has appropriate systems to enable it to conduct its activities both lawfully and ethically;
- Ensuring that the Company maintains high standards of corporate citizenship and social responsibility . . . ;
- Keeping abreast of all material undertakings and activities of the Company and all material external factors affecting the Company.

In addition to the initial cover letter, the Petitioner provided supporting documents, which included a business plan in which the Petitioner further indicated that the Beneficiary would assume the following roles after the Petitioner's first year of operation:

- His role as the 'recognizable face' of the company will be even more important. As he and the company become better known, this will be a crucial asset in continuing to grow the business.
- He will be in charge of consolidating existing clients and adding new ones. He will have responsibility for identifying new opportunities, whether with companies or individuals, and pursuing them.
- He will have overall responsibility to ensure the business is running smoothly and efficiently, with the right people, capabilities and technology to service clients' needs.
- He will increasingly be involved in delivering projects to senior industry leaders, e[.]g[.] personal coaching for major events, and advice for important announcements. This is a role where [the Beneficiary] has established a strong reputation in Europe, and he anticipates he will be able to develop over time in the U[.]S.

The Petitioner also claimed that it has identified a U.S.-based executive with over 20 years of work experience in the pharmaceutical industry, who would develop a marketing database, launch a marketing campaign in the United States, use his own contacts to arrange meetings and conferences, attend meetings with potential clients, write articles to raise awareness of the Petitioner in the industry, find the most advantageous places to advertise and market the Petitioner's services, assist the Beneficiary in developing and making pitches, serve as the first point of contact for U.S.-based businesses, and take charge of the Petitioner's budget in agreement with the Beneficiary.

The business plan further stated that the Petitioner's foreign parent entity will assume financial responsibility of funding the Petitioner's operating expenses, including the Beneficiary's salary, setup costs, marketing and advertising, travel expenses, and incidentals, such as printing, stationery, rent of virtual office, phone, and IT costs.

After reviewing the Petitioner's initial submissions, the Director determined that the Petitioner did not establish its eligibility. Accordingly, the Director issued a request for evidence, advising the Petitioner of various evidentiary deficiencies. Among the issues addressed was that of the Beneficiary's proposed position with the petitioning entity and the Petitioner's ability to support the Beneficiary in a qualifying managerial or executive capacity within one year of the petition's approval. The Director found that the Petitioner did not provide sufficiently detailed information about its staffing, nor did it discuss what the Beneficiary would be overseeing or any plans to employ a sales staff. The Director suggested that the Petitioner may be able to meet its evidentiary burden by providing an organizational chart of its proposed staffing and an explanation of how the Petitioner plans to recruit and use its independently contracted staff. The Director suggested that the Petitioner should submit a letter from the foreign entity explaining the need for the new office, the number of planned employees and the types of positions they will hold, and the amount of the U.S. investment, accompanied by proof of the foreign entity's capital contributions, such as initial wire transfers, canceled checks, deposit receipts, and/or bank statements. The Director also asked for the

submission of any feasibility or market research study used by the foreign entity to determine the Petitioner's ability to support a managerial or executive position within one year of operation.

In response, the Petitioner provided a statement, dated October 16, 2014, indicating that the Petitioner's initial staff would include the Beneficiary along with "one professional trainer/consultant and 2-3 independent consultants/contractors, who will be working remotely." The Petitioner stated that the Beneficiary would manage all trainers and consultants remotely from the Petitioner's Connecticut office and further explained that the foreign entity's client services manager and financial controller would provide the Petitioner with administrative and payroll services during the Petitioner's first year of operation. The Petitioner further stated that it uses the services of three trainers/consultants and indicated that it paid a combined total of \$44,780 for those services to date and "over \$68,700 (US)" to its trainers/consultants in 2013.² The Petitioner did not provide a feasibility or market research study, but rather listed the factors that served as grounds for the decision to open an office in the United States, relying heavily on the foreign entity's existing U.S.-based business, which constitutes approximately 10% of the foreign entity's revenue, as a chief basis for this decision. The Petitioner stated that the Beneficiary's job duties would include setting company direction and determining strategy, controlling hiring and firing of personnel, setting financial and budgetary targets and taking responsibility for ensuring that the targets are met, and controlling new business activities and pitching.

The Petitioner also provided bank records documenting the foreign entity's transfer of a total of \$4,580 to the Petitioner's bank account in March and April 2014. In addition, the Petitioner provided a copy of the foreign entity's organizational chart, depicting the Beneficiary as the chief executive at the top of the organizational hierarchy.

On December 17, 2014, the Director issued a decision denying the petition based on the conclusion that the Petitioner did not provide sufficient evidence to support the contention that it would be able to support the Beneficiary in a qualifying managerial or executive capacity after its first year of operation.

On appeal, the Petitioner contends that the Director's conclusion was erroneous, and submits a brief in support of this contention.

B. Analysis

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that

² The Petitioner provided the same dollar amounts on appeal.

the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). 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.

In the present matter, the Petitioner did not provide sufficient evidence of the United States investment, the Petitioner's proposed staffing structure, or a description of the job duties the Beneficiary would perform after the Petitioner's first year of operation.

First, we note that the regulations require, *inter alia*, evidence that the intended U.S. operation will support an executive or managerial position within one year, which is supported by information regarding the "proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals." 8 C.F.R. § 214.2(l)(3)(v)(C)(1). In the RFE, the Director noted the "insufficiently detailed" business plan and listed evidence the Petitioner could submit such as a feasibility or market study that the foreign entity used to determine the probability that the Petitioner would support a manager or executive within one year of the approval of the petition. Based on information provided in the RFE response statement from the Petitioner, the foreign entity's decision to open an office in the United States was based on the percentage of U.S.-based revenue the foreign entity had previously generated. The Petitioner did not provide any evidence to show that any research had been conducted beyond this basic assessment determining what portion of the foreign entity's revenue was derived from clientele in the United States.

Next, we note that despite the RFE requesting the Petitioner to provide evidence of the foreign entity's capital investments such as wire transfers, canceled checks, deposit receipts, or bank statements originating in the United States, the only evidence the Petitioner provided consisted of two wire transfer receipts showing that the foreign entity transferred a total of \$4,580 into the Petitioner's attorney's bank account for legal fees in March and April 2014.

Further, the Petitioner's business plan indicates that the Petitioner expects to generate \$350,000 in sales during its first year of operation and that this amount would be sufficient to cover the \$285,000 in first-year start-up costs. However, this plan does not explain how the Petitioner would cover the initial start-up expenses, including legal, incorporation, and accounting costs as well as incidental office costs, such as rent, utilities, and office equipment, all of which the Petitioner would need to fund prior to commencing any revenue-generating business activity. While the Petitioner's RFE response states that the foreign parent entity "has agreed to underwrite the costs and expenses of [the Petitioner] until that office is fully independent," the Petitioner did not provide evidence, other than the previously submitted wire transfer receipts, to show the foreign entity's contribution towards this expense. 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)).

Also, the Petitioner did not provide a summary of the job duties assigned to its proposed positions. While the Petitioner's previously submitted business plan indicates that the Petitioner would employ

a U.S.-based executive and a “part-time PA/administrator,” the Petitioner’s October 16, 2014, RFE response indicates that in addition to the Beneficiary, the U.S. operation “will initially include a staff of one professional trainer/consultant and 2-3 independent consultants/contractors who will be working remotely.” The Petitioner did not explain what is meant by the term “initially” to establish a precise timeline for hiring these trainers and consultants, nor did the submitted organizational chart clarify this point. Furthermore, the Petitioner did not address the discrepancy between the newer claims made in its RFE response and the information offered in the Petitioner’s originally submitted business plan, where the only employees the Petitioner identified were the “U.S.-based executive” – presumably the Beneficiary – and a part-time PA/administrator. The Petitioner has not resolved this inconsistency with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In the present matter, the Petitioner neither acknowledges nor provides evidence to resolve this inconsistency, which precludes us from conducting a meaningful evaluation of the Beneficiary’s proposed position within the scope of the Petitioner’s organizational hierarchy after its first year of operation. In light of the lack of consistent reliable information pertaining to the Petitioner’s staffing hierarchy after its first year of operation, it is unclear how the Petitioner plans to support the Beneficiary in a qualifying managerial or executive capacity where the Beneficiary would allocate his time primarily to managerial- or executive-level tasks.

Moreover, the Petitioner did not provide job descriptions explaining what tasks the Beneficiary’s subordinates would perform. Such information is critical to the issue of the Beneficiary’s eligibility as it would allow us to determine which operational tasks would be assigned to the Beneficiary’s subordinates, thus relieving the Beneficiary from having to perform those tasks himself. While a beneficiary is not required to allocate 100% of his time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to the proposed position. An employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int’l*, 19 I&N Dec. 593, 604 (Comm’r 1988). Merely establishing that a beneficiary would perform tasks at a professional level is not sufficient unless those tasks rise to the level of managerial or executive capacity.

Further, we find that the job descriptions the Petitioner provided with regard to the proposed position do not establish that the Beneficiary would be employed in a qualifying managerial or executive capacity after the Petitioner’s initial year of operation. 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). “Specifics are clearly an important indication of whether [a beneficiary’s] duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations.” *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990).

In the present matter, the Petitioner has offered a vague job description that lacks a clear delineation of the actual job duties the Beneficiary would be expected to perform daily after the Petitioner's initial year of operation. Broadly claiming that the Beneficiary would lead strategy development, oversee the implementation of the Petitioner's long- and short-term goals, stay "abreast of all material undertakings and activities," and ensure that expenses stay within budget, proper controls and management systems are in place, business is conducted lawfully and ethically, and that the Petitioner maintains social and corporate responsibility, is not synonymous with a detailed description of the Beneficiary's daily tasks. Reciting a 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. *See* 8 C.F.R. § 214.2(l)(3)(ii). The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. While the Petitioner's job description focused on the Beneficiary's discretionary authority and his elevated placement at the top of the organizational hierarchy, the Petitioner did not provide any detail or explanation of the Beneficiary's activities in the course of his daily routine after the Petitioner's first year of operation.

While the Petitioner provides a supplemental job description on appeal, this description is virtually identical to the one the Petitioner provided earlier in support of the petition. The only additional information included in the updated job description is that the Beneficiary will be responsible for "meeting the targets" and "[b]e in overall control of new business activities and pitching." The Petitioner did not provide clarification of the previously submitted broadly stated job duties or specify the degree to which the Beneficiary would be directly involved in "pitching" to potential clients, which indicates that the Beneficiary may have an active role in actually selling the Petitioner's services for an undetermined amount of time. As stated above, 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.

Lastly, on appeal, the Petitioner contends that the Director should not focus on the company's staffing size in characterizing the nature of the Beneficiary's proposed position. The Petitioner further asserts that the Director should consider the regulations that pertain to a function manager, who would manage an essential function rather than subordinate personnel. However, neither of the Petitioner's assertions have merit within the scope of the evidence that the Petitioner has provided in support of the instant petition. The Petitioner correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa petition for classification as a multinational manager or executive. *See* section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g., Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

In the present matter, the Petitioner has not provided sufficient evidence about the support staff it plans to have in place after its initial year of operation. This precludes us from gaining a meaningful understanding of the Petitioner's ability to relieve the Beneficiary from having to allocate his time primarily to operational and administrative tasks. The fact that the Petitioner claims to generate revenue from selling its services to clients necessarily implies that the Petitioner would require individuals to carry out the sales tasks. However, the inconsistent and deficient evidence regarding the support staff the Petitioner plans to have in place after its first year of operation precludes us from concluding that the Petitioner has the means to relieve the Beneficiary from having to allocate his time to non-qualifying operational tasks.

Further, the Petitioner did not provide sufficient evidence to support the claim that the Beneficiary would assume the role of 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 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.

As noted previously, an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l*, 19 I&N Dec. at 604. In this matter, not only has the Petitioner provided a deficient job description that lacks sufficient information about the Beneficiary's proposed daily tasks, but it has also neglected to provide sufficient information about its proposed staffing hierarchy establishing precisely how it would support the Beneficiary in a managerial or executive capacity. Here, it appears that the Petitioner uses the function manager claim as a default mechanism, based on its inability to provide reliable supporting evidence to establish how it would support the Beneficiary in a primarily managerial role.

Finally, the Petitioner has not, in the alternative, established that the Beneficiary would be employed in a primarily executive capacity by the end of the first year of operations. 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 a beneficiary to direct and a beneficiary must primarily focus on the broad goals and policies of the organization rather than the

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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. A 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 asserted in its initial letter of support that the Beneficiary, in the role of vice president of the company, would be the Petitioner’s highest ranking officer and would be responsible for duties such as establishing the company’s goals and policies, directing the management of the organization, and making discretionary business decisions. Aside from the assignment of an executive title to the Beneficiary’s proposed position, the Petitioner has provided no evidence to establish that the Beneficiary would be employed in a primarily executive capacity. Although the Petitioner vaguely claimed that the Beneficiary would perform executive duties in its initial description of the Beneficiary’s position, no evidence to support these assertions was submitted. Conclusory assertions regarding the beneficiary’s employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. For this reason, we cannot conclude that the Beneficiary would alternatively be employed in a qualifying executive capacity by the end of the first year of operations.

In light of the deficiencies noted above with respect to the Petitioner’s business plan, projected staffing, and the Beneficiary’s job description, we find that the Petitioner has not established that it would support the Beneficiary in a qualifying managerial or executive capacity within one year of commencing its U.S. business operation. For this reason the petition cannot be approved.

IV. CONCLUSION

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of L-C-, Inc.*, ID# 16352 (AAO Apr. 28, 2016)