U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-E-, LLC

DATE: AUG. 1, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a company engaged in travel services, management consulting, and import and export activities, seeks to extend the Beneficiary's temporary employment as its managing member under the L-1A nonimmigrant intracompany transferee classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The 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 and affirmed the denial in response to the Petitioner's combined motion to reopen and reconsider. We dismissed the Petitioner's subsequent appeal. The Petitioner later filed a combined motion to reopen and reconsider which we denied. The matter is now before us again on another combined motion to reopen and reconsider. On motion, the Petitioner requests that we review each basis for our previous decision and submits additional evidence to support its assertions.

Upon review, we will deny the combined motion.

I. MOTION REQUIREMENTS

A. Overarching Requirement for Motions by a Petitioner

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement limiting a U.S. Citizenship and Immigration Services (USCIS) officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action:

> [T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly completed and signed, and accompanied by the correct fee), but the petitioner must also show proper cause for granting the motion. As stated in the provision at 8 C.F.R. § 103.5(a)(4), "*Processing*

motions in proceedings before the Service," "[a] motion that does not meet applicable requirements shall be dismissed."

B. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), "*Requirements for motion to reopen*," states: "A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence."

This provision is supplemented by the related instruction at Part 4 of the Form I-290B, which states: "**Motion to Reopen:** The motion must state new facts and must be supported by affidavits and/or documentary evidence that establish eligibility at the time the underlying petition or application was filed."[1]

Further, the new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

C. Requirements for Motions to Reconsider

The regulation at 8 C.F.R. § 103.5(a)(3), "*Requirements for motion to reconsider*," states:

> A motion to reconsider must [(1)] state the reasons for reconsideration and [(2)] be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must [(3)], [(*a*)] when filed, also [(*b*)] establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

These provisions are augmented by the related instruction at Part 4 of the Form I-290B, which states: "**Motion to Reconsider**: The motion must be supported by citations to appropriate statutes, regulations, or precedent decisions . . . ."

A motion to reconsider contests the correctness of the prior decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new facts. *Compare* 8 C.F.R. § 103.5(a)(3) and 8 C.F.R. § 103.5(a)(2).

[1] The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part: "Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission."

Here, the Petitioner has submitted new evidence to support a motion to reopen, and although it reiterates many contentions we have already addressed at length in our two previous decisions, its brief cites to applicable case law and regulations. While we will address the Petitioner's evidence and assertions below, the Petitioner has not established that our previous decisions were incorrect based on the evidence of record at the time of the initial decision and has not demonstrated that the petition warrants approval. Accordingly, we will deny the combined motion.

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

The sole issue before us is whether the evidence of record establishes that the Beneficiary would be employed in a qualifying managerial or executive capacity as of the date of the petition extension.[2]

As noted in our previous decision, 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 definitions of executive and managerial capacity have two parts. First, the Petitioner must show that the beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See, e.g.*, *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World, Inc. v. INS*, 940 F.2d 1533.

In dismissing the Petitioner's appeal, we concluded that the Beneficiary's duties reflected that he would more likely than not allocate a significant portion of his time to operational duties related to "routine sales and marketing activities" and providing the Petitioner's travel agent services. Further, we found that while the Petitioner's description of the Beneficiary's duties indicated that he would perform some managerial or executive duties, these duties were described in vague terms and did not identify his specific managerial or executive tasks or the amount of time he would spend performing these duties. We found that the Petitioner did not distinguish between the Beneficiary's qualifying and non-qualifying tasks as necessary to establish that he would primarily perform managerial or executive duties.

Later, we readdressed the Beneficiary's duties based on the Petitioner's assertions on motion, concluding that although his duty description was lengthy, it provided few details and little supporting documentation to substantiate his actual qualifying tasks. In addition, we pointed to the fact that the record included substantial evidence reflecting the Beneficiary's performance of non-qualifying operational tasks, including his arrangement of more than 30 travel bookings near and after the expiration of the new office petition and the inclusion of his name and contact information on shipping and invoicing documentation. We further emphasized that the Petitioner had provided little evidence to

[2] The Petitioner filed the Form I-129 on March 27, 2014, seeking extension of a new office petition that expired on May 9, 2014. The Petitioner must establish that it was able to support a managerial or executive position as of May 9, 2014, in order to qualify for an extension of the Beneficiary's status.

establish that the Beneficiary was delegating non-qualifying tasks to subordinates at the end of the Petitioner's initial year of business operations.

In the current motion, the Petitioner again disputes our finding that the Beneficiary's duties were overly vague. The Petitioner also contends that we concluded in error that the Beneficiary was more likely than not engaged primarily in non-qualifying operational tasks. The Petitioner states that contrary to our previous conclusions, it has "provided a comprehensive description of the Beneficiary's duties sufficient to establish that his duties are primarily related to the management of senior professionals, and not to producing a product, providing a service, or performing other non-managerial functions." Further, the Petitioner indicates that the Beneficiary "regularly revisits the company's business plan," "reacts quickly to changing market needs," and notes that he is "responsible for all corporate decision making."

The Petitioner points to the Beneficiary's role in finalizing an "Online Office Agreement" and its subsequent renewal and the supporting documentation corroborating this work. The Petitioner emphasizes the Beneficiary's negotiation of contracts and business development, stating that he led high level negotiations to be appointed an "authorized representative" of and The Petitioner acknowledges that the Beneficiary was personally involved in a travel booking of $150,000, but disputes that this represents his involvement in the non-qualifying provision of goods and services, noting that the order was "expediently and correctly processed by his subordinate employees."

Further, the Petitioner explains that the Beneficiary has "forged four U.S. distributorships of two distinct [Petitioner] product lines." In support of this claim, the Petitioner submits two invoices from for Indian food products dated January 22, 2014 (for $219) and May 13, 2014 (for $353.25) and a May 30, 2014, email to the Beneficiary referencing the shipment of 670 cartons of spices from The Petitioner states that this order was addressed to the Beneficiary due to his normal inclusion in "all high level negotiations." The Petitioner provides evidence of an August 2015 email exchange between the Beneficiary and and invoices from this client for $13,464 and $11,484 during that month. The Petitioner also submits a "Customs Power of Attorney" dated December 2, 2013, executed by the Beneficiary and appointing him as a customs agent for and a supporting email from this vendor advising the Beneficiary of an over $3,000 outstanding balance on December 15, 2014. Likewise, the Petitioner provides a letter and agreement indicating that the company appointed as an agent for U.S. customs matters in November 2015.

In addition, the Petitioner submits a letter dated May 14, 2015, reflecting that it was approved for a $50,000 loan from noting that this substantiates the Beneficiary's development of "professional corporate relationships with two banks in the United States" and related negotiation related thereto. The Petitioner states that the Beneficiary further delegated the creation of the company's website to its former office manager, and provides emails indicating correspondence between and a contractor in June 2013. Similarly, the Petitioner submits emails between and an advertising agent from December 2013. The Petitioner contends

that this evidence reflects the "delegation of duties to subordinates" allowing the Beneficiary to spend a majority of his time on qualifying managerial duties. The Petitioner asserts that the Beneficiary "worked with the Marketing team to promote [Petitioner] branded products by directing and planning networking events" and provides an email from February 2014 reflecting his planned attendance at the ' in in June 2014. Lastly, the Petitioner provides two contracts executed by the Beneficiary, the first dated April 9, 2015 with " for the provision of travel agent services in Uzbekistan and another dated October 19, 2015 with also related to the Petitioner's provision of travel agent services. The Petitioner states that these agreements reflect the Beneficiary's performance of qualifying duties related to negotiation and his authority to bind the company.

Upon review of the additional evidence and assertions of the Petitioner on motion, we find that the Petitioner has not overcome our previous conclusion that it has not sufficiently articulated and documented the Beneficiary's qualifying duties as necessary to substantiate that he would primarily devote his time to qualifying duties when the new office petition expired on May 2014.

As noted in our previous decision, the Petitioner submitted a position description for the Beneficiary, approximately five pages in length. The stated qualifying tasks included establishing and implementing "corporate policies," "actively engaging in new business development opportunities," closing "corporate contracts," assigning projects, "setting corporate goals," "financial planning," establishing "marketing schemes," leading "business development efforts," and "setting goals and objectives for team members," amongst other generally-described qualifying tasks. However, we found that the additional explanations and evidence provided on appeal did not substantiate that the Beneficiary would primarily devote his time to these qualifying tasks at the time of the proposed extension.

On motion, little of the newly submitted evidence is relevant to the date of the requested extension in May 2014. For instance, the Petitioner submits evidence of the Beneficiary's delegation of operational tasks to in June and December 2013. However, left the company soon after the petition was filed and prior to May 2014, and she would not be available to relieve the Beneficiary from performing non-qualifying duties under the extended petition. Further, the Petitioner provides evidence of agreements for travel services executed in 2015, well after the relevant May 2014 time period. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

As such, we do not concur with the Petitioner's assertion on motion that we have only focused on the "initial steps" the company took. Rather, we have correctly analyzed the duties being performed by the Beneficiary as of the date of the requested extension, which have been continually indicative of the Beneficiary's substantial performance of non-qualifying operational duties. Otherwise, the Petitioner provides little supporting evidence to substantiate his primary performance of qualifying duties or his delegation of operational tasks as of the date of the extension. The Petitioner states on

motion that the Beneficiary was involved in "high level negotiations," but provides little evidence to substantiate that these negotiations required a significant part of his time or that he was delegating operational tasks to his claimed subordinates. The Petitioner provides certain evidence suggestive of qualifying tasks, such as an approval for a $50,000 corporate card and lease agreements signed by the Beneficiary, but does not indicate or document how much of the Beneficiary's time was allocated to these tasks. Indeed, both of these duties would appear to be largely one off events, not indicative of the Beneficiary's primary duties. We note that the Petitioner previously stated that the Beneficiary had negotiated contracts with "all USA major hotel chains," but has not offered any documentation in support of this claim, despite our previous finding that this was uncorroborated in the record. In sum, the Petitioner has provided little supporting documentation to substantiate his primary performance of qualifying tasks.

In fact, much of the evidence submitted on motion only further supports a conclusion that the Beneficiary was primarily involved in non-qualifying operational tasks as of the date of the extension request. As noted, the Petitioner provides emails reflecting the Beneficiary's direct involvement with the shipment of 670 cartons of spices from in May 30, 2014, his arrangement of orders from during this period, and his receipt of an email from regarding a $3,000 outstanding balance on December 15, 2014. Likewise, the Petitioner provides evidence on motion reflecting the Beneficiary's appointment as a "customs agent" for By comparison, none of the evidence indicates that the Beneficiary was delegating these duties to his subordinates as of the date of the extension as asserted by the Petitioner. Further, the Petitioner does not adequately address previous evidence provided on the record suggesting the Beneficiary's significant involvement in non-qualifying operational tasks. For instance, the Petitioner previously submitted invoices listing the Beneficiary as the representative booking travel for customers, including one as recent as July 2014, several Petitioner invoices and shipping documents reflecting his email and contact information, and a spreadsheet suggesting his involvement in more than thirty travel bookings in April and May 2014. Furthermore, the Petitioner submitted a letter from dated May 20, 2014, stating that the Beneficiary "has shown an impressive record of booking upscale luxury travels for our Indian marketplace."

On motion, the Petitioner offers insufficient explanation and other evidence to overcome this substantial evidence suggesting that he was significantly involved in operational tasks as of the date of the requested extension. The Petitioner merely states that the Beneficiary's name was included on invoicing and shipping documentation to engender confidence with customers and that he was involved with a large $150,000 booking due to its size and importance. However, these claims are not only unsupported, but they also do not fully address the many other apparent instances of the Beneficiary's involvement with non-qualifying tasks near or after the date of the proposed extension. More importantly, the Petitioner provides no supporting documentation to reflect the significant delegation of these tasks to his claimed subordinates. 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) (quoting *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

As indicated in our previous decision, the Petitioner need not demonstrate that the Beneficiary would be performing entirely qualifying tasks as of the date of the extension, but we would expect to see evidence that non-qualifying tasks would be only tangential to his position by the end of the first year of operations and evidence that he would delegate these non-qualifying tasks, along with evidence that he is actually performing the stated qualifying managerial or executive duties. Here, the Petitioner has submitted little evidence to support these requirements. 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).

Further, as we noted in our previous two decisions, beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the 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.

At the time of filing the Form I-129 on March 27, 2014, the Petitioner stated that it had two employees working subordinate to the Beneficiary – a management accountant, and a senior travel agent, The petition indicated that the Petitioner employed three employees at the time of filing and its IRS Form 941 Employer's Quarterly Federal Tax Return from the first quarter of 2014 indicated that it had two employees. The Petitioner submitted an organizational chart reflecting the Beneficiary, and the following proposed positions as "to be hired": director of travels, sales and marketing director, accounts manager, sales and marketing associate, and two junior travel agents.

In response to the RFE, and now again on motion, the Petitioner contends that it recruited "additional professionals" later in 2014. The Petitioner claimed an entirely different organizational structure and staff only two months later when it responded to the Director's RFE in May 2014. The new organizational chart submitted at that time reflected that the Beneficiary would oversee an office manager, who would supervise four employees, including a director of travels, management accountant, and two sales and marketing managers for the Mid-Atlantic and Northeast regions. The aforementioned and were shown as no longer employed by the company as of April 30, 2014. The chart showed that the director of travels had been working remotely from India since December 2013 despite the Petitioner's previous claim that this position was vacant at the time the petition in March 2014 and that it was "aggressively looking to fill this key position of Director of Travels."

The new organizational chart provided in response to the RFE was accompanied by evidence that the Petitioner paid two workers, the individuals identified as office manager and one of the sales and marketing managers, during the two-week pay period that ended on May 15, 2014. The sales and

marketing manager for the Mid-Atlantic region was paid for 43 hours of work and the office manager was paid for 66 hours of work. The Petitioner provided evidence that the director of travels was employed by the foreign entity as "Director of Travels and Promotions" as of May 2014. The Petitioner also provided a copy of a check dated May 5, 2014, issued to the accountant with the memo "Payroll for April 2014," but this individual did not appear on the company's payroll journal in April 2014.

The Petitioner asserted that the director of travels is responsible for booking all travel for the company's customers thereby relieving the Beneficiary of these duties, and that he is being compensated by the Petitioner's affiliate in India. The Petitioner claimed that it hired its office manager and two sales and marketing managers on April 1, April 21, and May 5, 2014, respectively, and that these employees handle the operational duties related to the import and export business line.

In our previous decision, we emphasized that the Petitioner did not provide supporting documentation to support recruitment and hiring of its asserted employees, their performance of duties for the company, or tax documentation confirming their employment. Based on these deficiencies, we concluded that the Petitioner did not establish who was actually working for the company as of May 9, 2014, when the new office petition expired. We found that despite the Petitioner asserting that it employed twelve different employees during the first year, it did not submit any documentation reflecting the Beneficiary's subordinates performing their claimed operational duties, such as evidence corroborating that the director of travels handles all travel booking remotely to relieve the Beneficiary from these non-qualifying tasks, which other evidence suggested he was performing.

On motion, the Petitioner contends that the Beneficiary acts as a personnel manager by virtue of his supervision of professional subordinates, specifically, the management accountant, director of travels, office manager, and sales and marketing manager. The Petitioner states that we accepted in our original dismissal that the asserted management accountant who was employed at the time of filing qualified as a professional employee. The Petitioner contends that the overhaul of its organizational structure between the filing of the petition and the date of its RFE response should not be considered a material change to the petition, but "additional information or evidence . . . to clarify and amplify the statements made in the original petition."

The Petitioner submits a Maryland Unemployment Insurance Quarterly Contribution Report for the first quarter of 2014 reflecting that the company employed as many as three individuals, including the Beneficiary, and another for the second quarter of 2014 indicating that it employed two persons during each month throughout the quarter. The Petitioner provides an IRS 941 Employer's Quarterly Federal Tax Return for the second quarter of 2014 indicating that it employed two individuals and paid $9419 in wages. The Petitioner provides bi-weekly internal payroll documentation indicating that it paid the office manager and sales and marketing manager for the mid-Atlantic region. The Petitioner submits checks reflecting the payment of $3000 in the months of April through June 2014 to the asserted sales and marketing manager for the northeast region. The Petitioner provides an IRS Form W-2 from 2014 indicating that it paid the office manager

$22,700 and the sales and marketing manager mid-Atlantic region $6828 during that year. The Petitioner submits an IRS Form 1099 Miscellaneous Income indicating that it paid $24,000 to the asserted sales and marketing manager, northeast region during that year. The Petitioner continues to assert that the director of travels works remotely, employed by its affiliate in India, and that he completes "all the ticketing and sales remotely through his staff in India."

First, upon review of the totality of the evidence, the record does not establish that the Petitioner had developed sufficiently to support the Beneficiary in a managerial capacity. As previously noted, the Petitioner completely turned over its staff during the approximately two months between the original petition and the RFE. The Petitioner further indicates that the Beneficiary and management accountant decided to no longer receive a salary. The Petitioner now contends on motion that these changes are not reflective of a material change to the petition, but due to the aggressive recruiting of professionals. However, the Petitioner's inability to pay the Beneficiary and its asserted management accountant leaves question as to its ability to support the Beneficiary in a qualifying managerial capacity. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, as noted, the Petitioner asserts that the Beneficiary acts as a personnel manager by virtue of his supervision of professional subordinates, specifically, the management accountant, director of travels, office manager and sales and marketing manager. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act. If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

In addition, in evaluating whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

Here, we do not find that the Petitioner has provided sufficient additional evidence on motion to establish that the Beneficiary was primarily tasked with supervising professional employees as of the date of the proposed extension. First, we do not concur that we ever acknowledged that the Petitioner's former employee [redacted] qualified as a professional according to the regulations.

Regardless, even if [redacted] was a professional, she was not employed by the Petitioner as of May 2014 by the Petitioner's own admission. Further, we do not find persuasive the Petitioner's assertion that the management accountant was employed by the company on a voluntary basis without receiving any compensation. If USCIS finds reason to believe that an assertion of fact stated in the petition is not true, USCIS may reject that assertion. *See, e.g.*, Section 204(b) of the Act, 8 U.S.C. § 1154(b); *Anetekhai v. INS*, 876 F.2d 1218, 1220 (5th Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

In addition, it is noteworthy that the Petitioner has not provided any supporting evidence to reflect the performance of duties by the management accountant, nor any of the Beneficiary's asserted professional subordinates. Indeed, the Petitioner claims that the director of travels, along with a team in India, books all the travel necessary for its business. However, it has provided no documentation to substantiate the performance of these tasks by employees of the foreign entity. In fact, as previously discussed in our decisions and herein, the Petitioner has provided substantial evidence, including additional evidence in support of this motion, suggesting that the Beneficiary was engaged in the performance of non-qualifying operational tasks at the time of the requested extension. It is reasonable to expect that the Petitioner would have submitted some evidence to counter our conclusion that the Beneficiary has been providing travel services. Again, the Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Furthermore, the Petitioner does not provide supporting documentation to substantiate that the Beneficiary's asserted subordinates have professional level degrees requiring an advanced level of knowledge. In fact, three of these positions do not appear to be those typically requiring a specific baccalaureate level degree, namely, the two sales and marketing manager positions and the office manager claimed to be processing travel service orders. The only employee which may appear to require such a professional level degree would be the management accountant position, and the Petitioner provides no evidence that this employee received payment for his services, nor any evidence to substantiate that he ever performed any duties for the company. Further, the Petitioner does specifically indicate why the Beneficiary's subordinates qualify as professionals consistent with the regulations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (quoting *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Therefore, although the Petitioner has provided some tax documentation to suggest the employment of subordinates, the Petitioner has not provided sufficient additional evidence to corroborate their employment, such as actual evidence of their performance of duties in supervisory or professional capacities. The preponderance of the evidence does not establish that the Beneficiary would be employed as a personnel manager as the record does not establish that he would be primarily overseeing and controlling professional, supervisory, or managerial subordinates.

On motion, the Petitioner suggests that we reassess an expert opinion from of who states he is a professor of Computer Science at However, as stated in our last decision, the previously provided expert opinion merely reiterates the Petitioner's assertions and offers little additional probative information regarding the nature of the Beneficiary's duties. does not reference the applicable statutory definitions of managerial or executive capacity and does not claim to have any expertise in the Petitioner's industry. appears to have accepted the Petitioner's organizational chart as evidence of the Petitioner's management structure; however, as discussed, the Petitioner has not corroborated the staffing levels or structure illustrated in its chart. Moreover, as noted, the record contains evidence of the Beneficiary's performance of non-qualifying duties, such as booking travel and arranging shipments, which are not included in his job description and it is not clear whether such evidence was made available to

Furthermore, the Petitioner again cites a number of cases on motion as persuasive authority to grant this motion and overturn our previous decision in this matter. The Petitioner cites *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570, 1573 (N.D. Ga. 1988) and states that the size of its business is not a relevant factor in determining the Beneficiary's eligibility. However, as articulated in our previous decision, we do not find the Petitioner's citation to *Mars Jewelers* persuasive. The Petitioner indicates that this decision establishes that we are not permitted to take into account the size of the Petitioner's business when determining a beneficiary's eligibility for L-1A classification. Here, neither we nor the Director unduly considered the size of the Petitioner in denying the petition. In fact, none of our decisions make reference to the size of the company as a determining factor, but instead justifiably reference the lack of evidence to support the Beneficiary's primary performance of qualifying duties and a notable lack of evidence to support the Petitioner's claim that the Beneficiary would be relieved from these tasks by supervisory and professional subordinates. We have discussed several insufficiencies and discrepancies in the record including the Beneficiary's performance of operational tasks, vague qualifying duties, a lack of supporting evidence indicating the Beneficiary performance of managerial tasks, and a lack of evidence showing that subordinates would relieve him from performing non-qualifying tasks.

As discussed, we have found, and continue to find, that the totality of the evidence indicated that the Petitioner had not developed sufficiently during the first year to support the Beneficiary in a qualifying capacity. As such, our consideration of the size of the business was ancillary to our analysis of whether the Petitioner has provided sufficient evidence to demonstrate that the Beneficiary was primarily performing qualifying managerial or executive tasks. As such, we do not find the Petitioner's reliance on *Mars Jewelers, Inc.* persuasive.

The Petitioner again references non-precedent decisions issued by this office where we sustained appeals filed for L-1A managers or executives. Again, we note that while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Regardless, although there appear to certain similarities in these cases to the current matter, this does not demonstrate the Beneficiary's eligibility. As addressed at length in this decision, and in our two previous decisions, the totality of

the evidence does not indicate that the Beneficiary would more likely than not act in a managerial capacity. Thus, in adjudicating each petition pursuant to the preponderance of the evidence standard, we 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. As such, some similarity between this matter and other non-precedent decisions we may have sustained does little to establish the Beneficiary's eligibility.

We have now discussed our basis for dismissing the appeal and denying the petition at length in three decisions. The Petitioner has not sufficiently articulated or documented the Beneficiary's performance of qualifying duties, and it has submitted evidence reflecting his significant involvement in performing non-qualifying operational tasks at the end of the Petitioner's initial year of operation. The Petitioner has provided evidence reflecting that it did not have sufficient operational employees to relieve the Beneficiary from performing non-qualifying tasks associated with operating three separate lines of business as of May 2014. Based on the Petitioner's descriptions of the Beneficiary's job duties, the evidence in the record showing his involvement in non-qualifying duties, and the uncertainty regarding the Petitioner's staffing levels and structure at the end of its first year, the record as a whole does not support a finding that the Beneficiary was more likely than not performing primarily managerial job duties by the end of the Petitioner's initial year of operations.

In sum, the Petitioner has not established by a preponderance of the evidence that the Beneficiary will be employed in a managerial capacity under the extended petition. For this reason, the combined motion will be denied.

III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the combined motion will be denied and our previous decision will not be disturbed.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of U-E-, LLC*, ID# 17670 (AAO Aug. 1, 2016)