



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

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

MATTER OF F-, INC.

DATE: FEB. 5, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a Texas corporation engaging in “electronic business/online marketing,” seeks to extend the Beneficiary’s classification as an L-1A nonimmigrant intracompany transferee. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. ISSUES

The issues before us are whether (1) the foreign entity continues to do business abroad, and (2) the Beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

II. 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 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.

III. THE ISSUES ON APPEAL

A. Foreign Entity Doing Business

The first issue addressed by the Director is whether the Petitioner established that the foreign entity continues to do business abroad. Specifically, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines that term as:

Doing business means the regular, systematic and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

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1. Facts

The Petitioner filed the Form I-129 on January 23, 2014, and identified the Beneficiary's foreign employer as [REDACTED]. In its letter of support, dated January 20, 2014, the Petitioner described the foreign entity's business as follows:

Incorporated in [REDACTED], [the foreign entity] . . . is a Polish company primarily involving into LED display service. As a pioneer LED sign provider in Poland, [the foreign entity] provides sale, lease, installment and maintenance of LED display, as well as distribution of LED bulb, LED device and peripherals. . . . In addition to LED business, the company has expanded its business to online furniture store, e-ticketing and touring service in Poland and adjacent countries.

The company currently has over 20 official employees and hired seasonal employees to meet the demand in various LED projects. For 2013, the company's revenue was 3,127,247 Zloty (equal to about US\$1 million).

The Petitioner submitted a Current Extract from the Company Register of the National Court Register for the foreign entity, showing a "KRS registration date" of November 16, 2009. The Petitioner then submitted documents titled Income Statement and Balance Sheet for the foreign entity, both dated December 31, 2013.

The Petitioner also submitted an untranslated document and indicated that it is the foreign entity's income tax for 2013. The document is not translated, but there are annotations in the margins for company name, address, "\$1 million sales," cost, profit, tax rate, tax, and "US\$50,000." The Petitioner did not submit a proper translation for this document.

The Director issued a request for evidence (RFE) on June 26, 2014, advising the Petitioner that it had not provided sufficient documentary evidence to establish that the foreign entity is actively engaged in the regular, systematic, and continuous provision of goods and services. Specifically, the Director advised the Petitioner that the extract from the foreign entity's company register only demonstrated that it exists, and that the financial statements are unaudited and only show the financial position of the foreign entity. The Director instructed the Petitioner to submit evidence demonstrating that the qualifying foreign entity continues doing business in Poland.

In response to the RFE, the Petitioner submitted a letter, dated September 15, 2014, simply stating, "Please find the Registration of the foreign company to show current status of the foreign company." The Petitioner then re-submitted the same Current Extract from the Company Register of the National Court Register for the foreign entity. No further evidence was submitted to demonstrate that the foreign entity was continuing to do business abroad.

The Director denied the petition on October 31, 2014, concluding, in part, that the Petitioner did not establish that a qualifying foreign entity continues to do business abroad. In denying the petition, the

Director observed that the submitted extract of the foreign entity's company register demonstrated only that the foreign entity was registered in 2012. The Director found that the unaudited financial statements, which were based solely on management's representation without any outside scrutiny, showed only the claimed financial position of the foreign entity and lacked sufficient reliability and authority as evidence that the foreign entity is actively engaged in the regular, systematic, and continuous provision of services. The Director noted that, although she specifically requested that the Petitioner submit evidence to establish that the foreign entity remains actively engaged in doing business in the RFE, the Petitioner simply resubmitted a copy of the foreign entity's company register previously provided and declined to submit any additional documentary proof that the foreign entity is doing business.

On appeal, the Petitioner does not address this issue. The Petitioner does not provide any new information or refute the Director's findings.

2. Analysis

Upon review, and for the reasons stated herein, the Petitioner has not established that the qualifying foreign entity, the Beneficiary's foreign employer, continues doing business abroad.

In the instant matter, the Petitioner was put on notice of the deficiencies in the record and told, with specificity, that the documentation previously provided was not sufficient. The Petitioner did not adequately respond to the RFE and did not submit the requested evidence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the Petitioner has not addressed this issue or provided any evidence to demonstrate that the foreign entity continues to do business and is actively engaged in the regular, systematic, and continuous provision of goods and services. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Based on the deficiencies discussed above, the Petitioner has not established that the qualifying foreign entity, the Beneficiary's foreign employer, continues to do business abroad. For this reason, the petition cannot be approved.

B. Employment in a Managerial or Executive Capacity in the United States

The second issue addressed by the Director is whether the Petitioner established that the Beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

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:

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

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

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

1. Facts

The Petitioner, established in November 2012, claims to be a subsidiary of [REDACTED] the Beneficiary's foreign employer, located in Poland. It seeks to continue to employ the Beneficiary as its President/General Manager for a period of three years.

On the Form I-129, the Petitioner indicated that it engages in an electronic business and online marketing with four current employees and a gross annual income of \$141,613.00. In its letter of support, dated January 20, 2014, the Petitioner described the Beneficiary's proposed managerial position in the United States as follows:

Due to his special understanding of our LED business and oversea [*sic*] market development, [the Beneficiary] will head our U.S. company as General Manager. As the general manager of our company, the duties of [the Beneficiary] will include:

1. Determine to hire, fire head of department, and other staff in the company; supervise, and envalue [*sic*] the day-to-day performance of employees; decide to contract sales representatives, regional agents and other outsource professions (e.g. CPA, financial advisors, attorneys); direct activities of contractors, agents and professions, and decide extension or termination of contract or representation. (Timeshare 25%)
2. Direct and coordinate activities of affiliant [*sic*] supplier concerned with order placing, pricing, sales, or distribution of products. [C]onfer with foreign affiliate company to determine product order and importation. (Timeshare 25%)
3. Direct and supervise the implement of sales strategy and sales policy; review financial report to monitor profitability of subdivisions[.] (Timeshare 15%)
4. Carry out development plan of subdivision and evaluate feasibility of creation, extension, or termination of products. (Management, Timeshare 15%)
5. Identify potential market, and carry out and implement long-range exploration objectives in Mexico; analyze strategies carrying out by its competitors; determine our progress toward set goals and objectives. (Managerial, Timeshare 20%).

In the same letter of support, the Petitioner described the Beneficiary's proposed executive position in the United States as follows:

In addition, [the Beneficiary] is also in charge of the executive position in the company. As the president of the company, [the Beneficiary] occupies the highest managerial position in the office, he exercises wide latitude in discretionary decision making to entire gamut of the petitioner's operation. His executive job duties include:

1. Formulate and administrate the company's business policies, including pricing, administration, and employment policies[.] (Timeshare 15%)

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2. Create Annual operation [*sic*] report to members meeting, and execute resolutions made by the members. (Timeshare 10%)
3. Develop and implement enterprise strategy; determine the structure and establishment of the company. (Timeshare 25%)
4. Envalue [*sic*] performance of current strategies; review financial and budget report; and determine the establishment of subdivision. (Timeshare 35%)
5. Direct and manage all aspects of operations of our company, manage marketing, cost control, transactions and administration activities. (Timeshare 15%)

The Petitioner submitted its IRS Form 941, Employer's Quarterly Federal Tax Return, for the second, third, and fourth quarters of 2013, indicating that it had four employees and paid \$14,752.00 in wages, tips, and other compensation in the second quarter; two employees, paying \$11,348.75 in wages, tips, and other compensation in the third quarter; and three employees, paying \$30,180.25 in wages, tips, and other compensation in the fourth quarter.

The Petitioner submitted its 2013 IRS Form W-3, Transmittal of Wage and Tax Statements, indicating that it paid a total of \$56,281.00 in wages, tips, and other compensation in 2013. The Petitioner also submitted an Employee List, dated January 10, 2014, listing the following employees:

[REDACTED]

[REDACTED] and the Beneficiary. The Petitioner then submitted 2013 IRS Forms W-4, Employee's Withholding Allowance Certificate, for some of the listed employees.

The Petitioner submitted the Beneficiary's 2013 IRS Form W-2, Wage and Tax Statement, showing that he received \$30,000.00 from the Petitioner in wages, tips, and other compensation.

The Petitioner did not submit any additional information about the Beneficiary's proposed position or job duties in the United States or the proposed organizational structure of its U.S. company.

In the RFE, the Director advised the Petitioner that the information provided, pertaining to the Beneficiary's proposed position in the United States, was insufficient. The Director instructed the Petitioner to submit evidence that the Beneficiary's proposed position in the U.S. will be in a managerial or executive capacity.

In response to the RFE, the Petitioner submitted a letter, dated September 15, 2014, describing the Beneficiary's duties and the new operation staffing as follows:

The Beneficiary's duties for the extended term will be exactly same as his duties for the first year. He will be president and general manager of the company. The job duties has been provided in the petition letter.

...

The company currently has 4 employees including the beneficiary. Please find the list of all employees worked for the company, and the W-3 forms for current employees.

The Petitioner then submitted a copy of the same Employee List previously submitted and additional 2013 IRS Forms W-4, Employee's Withholding Allowance Certificate, for some of the listed employees. The Petitioner also submitted the same IRS Forms 941 for the second and third quarters of 2013.

The Petitioner, again, did not submit any additional information about the Beneficiary's proposed position or job duties in the United States or the proposed organizational structure of its U.S. company.

The Director denied the petition concluding, in part, that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity in the United States. In denying the petition, the Director found that the description of the Beneficiary's duties provided was overly vague and only identified generic responsibilities and broad-based business objectives. The Director also found that the record did not contain any evidence of the sales activities performed by the organization or evidence of the existence of the claimed sales representatives, regional agents, and other outsourced professionals that the Petitioner claimed contributed to the company's business operations. The Director found that the company's staffing level and current organizational structure of four employees, including the Beneficiary, did not appear to support a primarily executive or managerial position.

The Director further noted that, although she specifically requested that the Petitioner submit additional details and documentary evidence of the Beneficiary's duties for the previous year and the day-to-day activities he will perform, the Petitioner merely referred back to the position description submitted in the initial filing, stating that "[t]he Beneficiary's duties for the extended term will be exactly [the] same as his duties for the first year." As such, the Director found that it appeared the Petitioner declined to address the previously identified deficiencies, and also declined to provide additional information with sufficient specificity regarding the Beneficiary's position in the U.S. Finally, the Director noted that the Petitioner had not supplemented the record with sufficient evidence to establish that its current staffing level is sufficient to relieve the Beneficiary from performing primarily non-qualifying duties, as requested in the RFE.

On appeal, the Petitioner submits a letter stating that the Beneficiary is a function manager, managing the essential function of the Petitioner's laundry business. The Petitioner specifically states:

The Petitioner has two business line, internet market and self-served laundry business. Because the internet market business was unable to process because the

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business is heavily relied on internet market platform, and the platform was unable to process because technical difficulty, the Petitioner's business is more relied on auto-served laundry business. Laundry business then become essential business of the Petitioner at this time. The Beneficiary is the manage [sic] of the store supervising other 3 non-managerial employees. The beneficiary manage day-to-day operation of the laundry business, and he is the only person making decision to the business. Thus he is qualified manager in charge of essential function of the company.

...

Because the primary business plan was unable to implemented [sic], the Petitioner has to open the secondary business to support itself. Number of employees is determined by business necessity of the company. Once it internet market business takes off, the Petitioner will staff more employees in the coming years.

Conclusively, the will [sic] primarily perform managerial duties in his president/general manager position, he is managing an essential function of the company.

2. Analysis

Upon review, and for the reasons stated herein, the Petitioner has not established that the Beneficiary will be employed in a qualifying managerial or executive capacity, or as a function manager, in the United States.

As a preliminary matter, we will address the Petitioner's statement concerning a robbery at its business address. In response to the RFE, the Petitioner stated that "[t]he company was robbed this [redacted] and they lost many important document in their office. For this reason the company is unable to provide more document." The Petitioner then submitted a copy of a card from the [redacted] Police Department, dated [redacted] 2014, and listing the incident number, title, address, date, officer's name, and unit number. The Petitioner did not submit the actual Police Report or Incident Report specifically stating what had happened and what had been robbed from the specific location. The copy of the card does not specify the name of the Petitioner's business, and the address listed is not the address listed for the Petitioner's business nor is it the address identified in the lease agreement for the Petitioner's laundromat. In denying the petition, the Director acknowledged the Petitioner's claim of the robbery and specifically stated that the Petitioner did not identify what specific documents were lost or explain why it was not able to replace the lost documents. On appeal, the Petitioner does not address this particular issue and does not submit any documentation pertaining to the robbery or documentation robbed.

When examining the executive or managerial capacity of the beneficiary, U.S. Citizenship and Immigration Services (USCIS) looks first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(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, 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 an understanding of the beneficiary's actual duties and role in a business.

The Petitioner characterized the Beneficiary's role as President/General Manager of its U.S. company and provided a very vague description of his proposed managerial position that does not establish that he will be primarily employed in a managerial capacity, noting, in part, that he will decide to contract sales representatives, regional agents, and other outsourced professions, direct activities of contractors, agents, and professionals, direct and coordinate activities concerning order placement, pricing, sales, and distribution of products, direct and supervise the implementation of sales strategy and sales policy, identify potential markets, carry-out and implement long-range exploration objectives in Mexico, and analyze strategies carried out by competitors. The Petitioner did not provide any additional information about the Beneficiary's duties or how much time he will devote to each duty within the clusters of duties provided for his managerial and executive roles. Although the Petitioner provided percentages of time the Beneficiary will devote to clusters of duties, we note that these percentages amount to 200% of total time.

Based on the current record, we are unable to determine whether the few claimed managerial duties would constitute the majority of the Beneficiary's duties. The Petitioner's description of the Beneficiary's job duties does not establish what proportion of the Beneficiary's duties will be managerial in nature, 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).

In response to the RFE, the Petitioner did not provide any clarification or additional information pertaining to the Beneficiary's duties and simply referred to the previously submitted list of duties. Absent a detailed description of the Beneficiary's actual managerial duties, and evidence to show that his subordinates will relieve him from performing non-qualifying operational and administrative duties, the record does not establish that the Beneficiary will be employed in a qualifying managerial capacity in the United States.¹ Although afforded a second opportunity to provide the deficient

¹ We again note the Petitioner's claim in response to the RFE that the robbery in July 2014 precluded the Petitioner from

information, the Petitioner did not provide any detail or explanation of the Beneficiary's activities in the course of his daily routine. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(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).

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.

Here, the Petitioner stated in its letter of support that the Beneficiary will hire, fire, and supervise personnel, but did not include any information pertaining to the specific staff supervised by the Beneficiary. Although the Petitioner submitted a list of employees as of January 10, 2014, it did not submit an organizational chart, position titles, position descriptions, or job duties for the Beneficiary's proposed subordinates in the U.S. that would establish that the subordinate employees are supervisory, professional, or managerial. See section 101(a)(44)(A)(ii) of the Act. As the record does not include probative information regarding the duties of the subordinate employees, we cannot ascertain that these individuals hold managerial, supervisory or professional positions.

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

providing additional documentation. However, it is unclear why the Petitioner was unable to provide additional details or descriptions of the Beneficiary's actual duties and the manner in which his subordinate staff would relieve him from performing non-qualifying duties.

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, for the first time on appeal, the Petitioner states that the Beneficiary will be a function manager. The Petitioner states that the Beneficiary will manage the laundry service function of the Petitioner as its primary business is not active and the laundry service has become essential for the business to remain open. However, the Petitioner did not articulate the Beneficiary's proposed duties at the U.S. company 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. As this claim is made for the first time on appeal, it appears that the Petitioner is attempting to make the Beneficiary eligible by any means and is changing its description of the Beneficiary's position. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

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 does not establish that such duties are primarily managerial 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 provided a very vague description of the Beneficiary's proposed executive position that does not establish that he will be primarily employed in an executive capacity, noting, in part, that he will formulate and administer the company's pricing, administration, and employment policies, develop and implement enterprise strategy, determine the structure and establishment of the company, envalue [*sic*] performance of current strategies, determine the establishment of the subdivision, and manage marketing, cost control, transactions, and administration activities. The Petitioner did not provide any additional information about the Beneficiary's duties or how much time he will devote to each duty within the clusters of duties provided for his managerial and executive roles. Again, the Petitioner provided percentages of time the Beneficiary will devote to clusters of duties, amounting to 200% of total time. 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 focus on the broad goals and policies of the organization rather than on its day-to-day operations. The vague description of the Beneficiary's proposed position with the Petitioner do not demonstrate that the Beneficiary will focus the majority of his time on executive duties rather than the day-to-day operations of the business.

Further, in the present matter, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" 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 does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, 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 predominantly managerial or executive position.

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a qualifying managerial or executive capacity, or as a function manager, in the United States. Accordingly, the appeal will be dismissed for this additional reason.

IV. 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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of F-, Inc.*, ID# 14119 (AAO Feb. 5, 2016)