



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

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

MATTER OF K-, INC.

DATE: JAN. 6, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an import and export company, seeks to extend the Beneficiary's temporary employment as its chief operating officer under the L-1A nonimmigrant classification. *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 the evidence of record establishes: (1) that the Beneficiary will be employed in a qualifying managerial or executive capacity in the United States; and (2) that the Beneficiary was employed abroad in a qualifying managerial or executive capacity, in accordance with the applicable statutory and regulatory provisions.¹

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.

¹ We reviewed the record in its entirety before issuing our decision. We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see also* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989). We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a "new office" petition must submit 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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

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

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

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

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

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

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

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

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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 Petitioner filed the Form I-129 on September 26, 2014. The record shows that USCIS approved a previous L-1A classification filed on behalf of the Beneficiary that was valid from September 27, 2013 until September 26, 2014. In a support letter, the Petitioner stated that its mission is to “import food from Brazil to the US and to export pharmaceutical products from the US to Brazil.” The Petitioner explained that it would also export “containers for storage of medical materials, intravenous bags, and catheters” for sale to its parent company, [REDACTED] a Brazilian entity engaged in pharmaceutical sales.

The Petitioner stated that it experienced “unexpected delays” during its first year, including “obstacles in obtaining FDA licenses,” a delay in the issuance of L visas for the Beneficiary’s family at the U.S. Consulate in Brazil, and the Beneficiary “transitioning and settling her family in the United States.” The Petitioner noted that the Beneficiary had taken the month of November to “settle into a new house” and that the holiday season created additional delays. The Petitioner explained that it shipped coffee samples to the United States in March 2014, but that these goods were “placed on hold” by the United States Food and Drug Administration (FDA) and not received by the company until early May 2014, more than six months after the approval of the Beneficiary’s new office petition. The Petitioner stated that the Beneficiary “was able to assign sales representatives (contractors working under sales commissions) to visit potential clients,” but noted that these representatives “were unsuccessful due to the lack of products samples and FDA approval.” The Petitioner explained that due to the above referenced delays that it “has not received or been able to hire employees” and that “the foreign parent company made monetary contributions to [the Petitioner] to keep the US subsidiary financially viable and operations continue.”

Further, the Petitioner explained that the company, despite delays in its development, had “signed new contracts” for the distribution of its products in the United States and that it had entered into “strategic partnerships” with various companies for the distribution of various products in the United States. For instance, the Petitioner stated it entered into a contract with [REDACTED] to be the exclusive representative of its brand in the United States and that it is negotiating with [REDACTED] to sell its ginger products in the United States, with [REDACTED] to sell spices and salsas, and with [REDACTED] to distribute heart catheters. The Petitioner stated that “our expectations for our second year of operations are very positive” and that it is “in the process of hiring new employees.” The Petitioner indicated that it would begin to export products to its parent company in Brazil during the second year and projected that it would hire five to nine employees and earn over \$1 million in revenue. The Petitioner explained that it has now received authorization from the FDA to sell its coffee products in the United States and that “revenues are expected to substantially increase” during the second year. Finally, the Petitioner stated that it had two employees, the Beneficiary and a newly hired sales/marketing manager.

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The Petitioner briefly explained the Beneficiary's duties as chief operations officer as follows:

[The Beneficiary's] duties are and will continue to be 100% executive in nature. She will report to no one higher than herself and the President of the U.S. business

She will continue to set the goals and policies for the U.S. operations and direct the management of the organization and the major functions of the organization. She will continue to have wide discretionary decision-making authority. She will continue to make all decisions relating to the U.S. facilities, hiring and firing of management personnel and overseeing the hiring and firing of support staff personnel. Upon their hiring, she will directly oversee and supervise the Financial Manager, the Assistants, and the support staff and give guidance to decisions relating to the operations of the business.

She will also continue to review all financial reports and banking reports to determine if the company is profitable.

The Petitioner stated in an additional support letter, dated September 18, 2014, that it had already hired a sales manager and that it planned to "build a team of Sales Associates and other staff." The Petitioner provided a business plan in which it stated that the company relies on a warehouse contractor in [REDACTED] "as well as [the vendor's] Warehouse Manager and Warehouse Workers."

The Petitioner submitted a profit and loss statement for the months of January through June 2014 reflecting that the company had earned \$867 in sales income, paid just over \$20,000 in wages, and earned -\$96,398.40 in net income during this period. The Petitioner provided documentation confirming that the foreign entity made several financial contributions totaling over \$250,000 between July 2013 and August 2014.

The Petitioner provided documentation indicating that it would attend a food and beverage conference in [REDACTED] in October 2014. The Petitioner submitted a proposed organization chart reflecting that the Beneficiary had one current subordinate, the sales/products manager, and that she would have three other subordinates, including a financial manager, an executive assistant, and a marketing manager, who would be hired during the company's second year of operations. The chart further indicated that the sales/products manager would supervise an "importer broker" and a sales representative, that the financial manager would oversee an accountant, and that an administrative assistant would also be hired during the second year.

The Petitioner further submitted a listing of the Beneficiary's proposed duties during the second year of operations, along with percentages of time she would spend on each task, as follows:

1. Plan, develop, and implement strategy for operational management and development so as to meet agreed organizational performance plans within agreed

- budgets and timescales (covering relevant areas of operation within our company's organization structure) (10%);
2. Establish and maintain appropriate systems for measuring necessary aspects of operational management and development (5%);
 3. Monitor, measure, and require reports from other managers on operational issues, opportunities and development plans and achievements within agreed formats and timescales (5%);
 4. Manage and develop directly-reporting management staff (5%);
 5. Manage and control corporation expenditure within agreed budgets (5%);
 6. Liaise and meet with other employees so as to understand all necessary aspects and needs of operational development, and to ensure they are fully informed of operational objectives, purposes and achievements (5%);
 7. Maintain awareness and knowledge of contemporary operational development theory and methods and provide suitable interpretation to managers within the organization (5%);
 8. Contribute to the evaluation and development of operational strategy and performance in cooperation with the President (5%);
 9. Ensure activities meet and integrate with organizational requirements for quality management, health and safety, legal stipulations, environmental policies, and general duties of care (5%);
 10. Execute the responsibilities of a company director according to lawful and ethical standards, liaising with bankers, clients, and government agencies in name of the company (5%);
 11. Identify, develop, and direct the implementation of the business strategy (5%);
 12. Plan and direct the organization's activities to achieve stated/agreed targets and standards for financial and trading performance, quality, culture, and legislative adherence (5%);
 13. Recruit, select, and develop executive team members (5%);
 14. Maintain and develop organizational structure, delegate tasks and duties to management and analysis of management reports about overall operations (5%);
 15. Report to foreign parent company on organizational plans and performance (5%);
 16. Formulation of strategy (10%);
 17. Deal with outside professionals that work for the company, such as accountants, attorneys, etc. (5%);
 18. Attend industry-related trade shows and conferences (5%).

In addition, the Petitioner provided job duty descriptions for the positions of financial manager, sales/products manager, marketing/logistics manager, sales representative, administrative assistant, and "owner." The owner's duties overlapped significantly with those proposed for the Beneficiary. The Petitioner stated that its other current employee, the sales/products manager, is responsible for maintaining and developing a computerized customer and prospect database, responding and

following up on sales inquiries, planning and managing internal communication systems, maintaining reporting and planning systems, recruiting direct reports, and liaising with order processing staff. The Petitioner submitted a payroll summary indicating that it had been paying the Beneficiary since March 2014, while the aforementioned sales/products manager was hired in August 2014.

On October 21, 2014, the Director issued a request for evidence (RFE) advising the Petitioner that its description of the Beneficiary's duties was too vague to establish that she performs primarily managerial or executive duties. As such, the Director requested that the Petitioner provide a job duty description for the Beneficiary reflecting her typical managerial or executive duties and decisions and/or an explanation of how the Beneficiary directed the management of the company and established its goals and policies. Further, the Director noted that the evidence reflected that the Petitioner has only two employees, including the Beneficiary, and the record did not establish that the Beneficiary would be relieved from performing operational tasks, such that she would be free to focus primarily on managerial or executive duties.

In response, the Petitioner largely reiterated the same assertions it had offered at the time of filing, namely, that the company had not developed as planned due to a number of delays which it claimed were beyond its control. The issues mentioned by the Petitioner included an error on the Beneficiary's spouse's passport, the Beneficiary's settling into a new home in the United States, the Beneficiary buying new furniture for her home, the Beneficiary entertaining family during the holidays, the Beneficiary visiting tourist attractions in Florida, and the Beneficiary caring for her children while they were home for the holidays. Based on these delays, the Petitioner suggested that it should be able to "recapture" the month of November.

The Petitioner further stated "from the incorporation of [the Petitioner] in June 2013, it has now been more than six (6) months and the US enterprise still did not have any sales." The Petitioner explained that the Beneficiary had spent the last year purchasing furnishings and office equipment for the new office, placing a work order for internet services at her home, and purchasing coffee from Brazil. In addition, the Petitioner stated that the Beneficiary had assigned contracted sales representatives to visit potential clients. The Petitioner explained that its sales manager had attended a conference in September where she presented coffee samples and that the Beneficiary has been selling the Petitioner's coffee products to Brazilian supermarkets in Florida. The Petitioner provided photographs of the Beneficiary displaying its coffee product in a local supermarket. The Petitioner stated that it "continues to increase its revenue and its plans to hire two (2) additional employees in the middle of 2015 and five (5) employees by the middle of 2016." The Petitioner submitted financial projections indicating that it expected to earn over \$1.2 million in revenue and to pay over \$300,000 in wages in 2015.

In denying the petition, the Director found that the evidence did not establish that the new office was sufficiently operational to support the Beneficiary in a qualifying managerial or executive capacity. The Director pointed to the Petitioner's admitted delays in establishing the new office and a lack of evidence to demonstrate that the Beneficiary was primarily performing qualifying executive tasks.

On appeal, the Petitioner asserts that it has submitted extensive and detailed evidence to demonstrate that the Beneficiary will be employed in a qualifying executive capacity. The Petitioner states that the Director's decision included a "pointless discussion" regarding the delays the company experienced during startup and a conclusory determination that the Beneficiary would perform operational tasks. The Petitioner contends that, in reaching this conclusion, the Director ignored the substantial support provided by its parent company in Brazil, which has 300 employees, and the Petitioner's own plans to employ at least nine workers by the end of 2015.

B. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the evidence of record does not establish that the Beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition.

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 performs the high-level responsibilities that are specified in the definitions. Second, the Petitioner must prove that the Beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In the RFE, the Director requested that the Petitioner submit a more detailed listing of job duties for the Beneficiary to establish that she is primarily performing managerial or executive duties. We concur with the Director that the Beneficiary's claimed qualifying responsibilities are overly vague and therefore have limited probative value with respect to identifying her day-to-day tasks. For instance, the Petitioner states that the Beneficiary will be responsible for "implementing a strategy for operational management," "establishing and maintaining appropriate systems," managing the company within agreed upon budgets, directing the implementation of business strategy, planning and directing activities to achieve agreed targets, and selecting executive team members. The Beneficiary's stated duties could apply to any executive within any company and offer little insight into the actual qualifying duties of the Beneficiary. Further, in response to the Director's direct request for a more detailed description of the specific tasks the Beneficiary performs, the Petitioner resubmitted the same description accompanied by a conclusory assertion that the Beneficiary's duties are "100% executive in nature." The Petitioner did not describe the support systems the Beneficiary has established, corporate strategies she has implemented, targets she has set and met, or executive team members she has hired. 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)).

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.

Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Indeed, to the extent the Petitioner makes assertions regarding the Beneficiary's duties over the last year or submits supporting evidence related thereto, this evidence indicates that the Beneficiary spends a significant amount of her time performing non-qualifying operational duties. For instance, the statements of the Petitioner and the related evidence demonstrate that the Beneficiary has arranged for internet at her home for the business, purchased furniture, bought coffee samples and arranged for their shipment, and has been showcasing coffee products at local supermarkets. 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. However, it is the Petitioner's burden to establish that the company has developed to the point where the Beneficiary is performing primarily managerial or executive duties at the end of the initial one-year period of approval. Here, the evidence does not support the Petitioner's claim that the Beneficiary's duties are "100% executive" nor does it support a finding that her duties were primarily executive in nature at the time this petition was filed.

Beyond the required description of the job duties, United States Citizenship and Immigration Services (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 staff 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.

In the current matter, the totality of the evidence indicates that the Petitioner has not developed sufficiently during the first year to allow the Beneficiary to be primarily engaged in qualifying executive duties. The evidence presented reflects that, as of the date of the filing of the petition, the Petitioner had only one employee, other than the Beneficiary, and that it has generated only approximately \$800 in revenue during the first year. The Petitioner states numerous times on the record that it has not developed sufficiently to support the Beneficiary in a qualifying executive capacity, but that this development will happen during the next year.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. §

214.2(l)(14)(ii)(D).² 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 significant involvement in operational and administrative tasks, the Petitioner is ineligible by regulation for an extension.

As noted previously, the evidence relevant to the Beneficiary's duties indicates that she is significantly involved in the non-managerial, day-to-day operations of the company. Further, the evidence reflects that the Petitioner has only hired one other employee. Although the Petitioner mentions that it assigned contracted sales representatives and that it uses contracted warehouse staff to support its business, it has not provided supporting documentation to substantiate this assertion. Furthermore, the Petitioner has not submitted supporting evidence to corroborate its assertion that it has established relationships with various vendors to sell their products in the United States. Again, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

A Petitioner is required to demonstrate when filing a petition as a new office that it is ready to commence business immediately upon approval of the petition. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). Here, the Petitioner provides various reasons for the delays in the development of its business and indicates that these factors were beyond the reasonable control of the company. We agree with counsel that assessing whether delays are within the control of a Petitioner is irrelevant. As stated, the regulations do not afford a Petitioner another year as a new office. A Petitioner seeking the extension of a petition involving a new office must demonstrate that it is sufficiently operational after one year to support the Beneficiary in a qualifying managerial or executive capacity. Therefore, the company's future business and hiring plans will not be considered in adjudicating the instant appeal. 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).

The Petitioner further suggests that we should consider the continued support of the Petitioner's foreign parent company. However, the foreign employer's financial support is of little relevance in determining whether a new office has developed sufficiently over the first year to support a

² Following the enactment of section 101(a)(44)(C) of the Act in 1990, the former Immigration and Naturalization Service (INS) recognized that that managerial capacity could not be determined based on staffing size alone and deleted reference to "size and staffing levels" at 8 C.F.R. § 214.2(l)(3)(v)(C)(3) (1990), setting out the evidentiary requirements for initial new office petitions. *See* 56 Fed. Reg. 61111, 61114 (Dec. 2, 1991). However, the INS chose to maintain the review of the new office's staffing, among other criteria, at the time that the new office seeks an extension of the visa petition. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D).

Beneficiary in a qualifying capacity. While the Petitioner also emphasizes on appeal that the foreign entity has 300 employees, the Petitioner has not specifically claimed or provided evidence that the foreign entity's staff contribute to the day-to-day operations of the U.S. company, that they relieve the Beneficiary from significant involvement in marketing and selling products in the local market, or that they have been performing other non-managerial functions needed to operate the U.S. company.

As noted above, the Petitioner has claimed that the Beneficiary is employed in an executive capacity and that her duties are "100% executive" in nature. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The evidence of record does not establish that the Beneficiary is employed in a qualifying executive capacity. As previously discussed, the Petitioner has not provided evidence to establish that the Beneficiary is performing primarily executive tasks or that other staff are available to allow her to focus primarily on the goals and policies of the company, rather than on its day-to-day operations. In fact, the Petitioner states directly that it has not developed as anticipated and that it has earned almost no revenue during the first year. While the Petitioner emphasizes that it intends to expand and hire subordinate managers and employees during its second year, 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).

Based on the foregoing, the Petitioner has not established that the Beneficiary is employed in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

IV. FOREIGN EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The next issue addressed by the Director is whether the Petitioner established that the Beneficiary was employed by the Petitioner's foreign parent company in a qualifying managerial or executive capacity prior to her transfer to the United States.

A. Facts

In its letter in support of the petition, the Petitioner stated that its Brazilian parent company has been in operation since 1986 “specializing in the manufacture, sale and distribution of pharmaceutical products such as injectables, antiseptics, and intravenous solutions.” The Petitioner explained that the foreign employer earned over \$16 million in 2013 and that it employs approximately 300 employees. The Petitioner stated that the Beneficiary acted as the executive technical director from January 2012 to October 2013 and that she had been working in various other managerial roles with the company since 2000. The Petitioner stated that prior to her transfer to the United States, the Beneficiary “was directly responsible for overseeing one third of the operations” and that she supervised “two (2) Divisions, who in turn control several departments and dozens of employees, including professional researchers, product developers, manufacturing workers, and many more.” The Petitioner explained the Beneficiary’s duties abroad as follows:

- [The Beneficiary] made all decisions relating to hiring and firing management personnel and overseeing the hiring and firing of support staff personnel.
- She set policies for the business operations of technical product development divisions.
- She oversaw professional researchers, product developers, manufacturing staff, and gave guidance to decisions relating to the operations of the business.
- She reviewed all financial reports and banking reports within her division to determine if her division was operating profitably.
- She reported to no one higher than herself except for the President and Vice President of the Brazilian company.

The Petitioner provided the foreign entity’s organizational chart from January 2014 reflecting various managerial positions. However, the chart was not relevant to the Beneficiary’s time of employment with the foreign employer and did not include her former title of technical executive director.

In the RFE, the Director stated that the evidence submitted by the Petitioner was insufficient as it included only vague and generalized statements regarding the Beneficiary’s former position abroad. As such, the Director requested that the Petitioner submit copies of the Beneficiary’s training, pay, or other personnel records. The Director asked the Petitioner to provide a job duty description reflecting the Beneficiary’s typical managerial or executive duties abroad and decisions and/or an explanation of how the Beneficiary directed the management of the company and established its goals and policies, including percentages of time she spent on each of her tasks. Further, the Director requested that the Petitioner provide the foreign entity’s organizational chart reflecting the Beneficiary’s former place therein and the Beneficiary’s subordinates, their duties, titles, salaries and education levels.

In response, the Petitioner provided no further explanations or evidence related to the Beneficiary’s employment abroad. In denying the petition, the Director noted this, and concluded that the

Petitioner had not established that the Beneficiary was employed in a qualifying managerial or executive capacity abroad.

On appeal, the Petitioner asserts that it demonstrated that the Petitioner acted in qualifying executive capacity based on a lengthy cover letter, a submitted resume for the Beneficiary and "substantial other evidence of her foreign employment."

B. Analysis

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

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

Beyond the required description of the job duties, United States Citizenship and Immigration Services (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.

In the RFE, the Director requested that the Petitioner submit a more detailed listing of job duties for the Beneficiary to corroborate that she was primarily performing qualifying managerial or executive duties while employed abroad. The Petitioner states that the Beneficiary was responsible for making all decisions relating to hiring and firing management personnel, overseeing the hiring and firing of support staff personnel, setting policies for the business, and overseeing professional researchers, product developers, and manufacturing staff. However, in each case, the Petitioner has not submitted any specifics as to her hiring decisions, employees she oversaw or policies she set, despite asserting that she worked for this company for approximately thirteen years. In addition, the Petitioner was asked to submit supporting documentation to corroborate the Beneficiary's foreign employment including personnel records and the Petitioner did not provide this evidence. It is reasonable to expect that the Petitioner would have been able to submit some evidence of the Beneficiary's long employment with the company and some detail relevant to her specific duties and accomplishments.

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Furthermore, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Likewise, the Petitioner was asked to submit the foreign entity's organizational chart substantiating the Beneficiary's former position, including her listed subordinates, and their duties, titles, salaries and education levels. However, again, the Petitioner did not provide this evidence in response to the RFE. Although the Petitioner asserts that the Beneficiary formerly supervised "two (2) Divisions, who in turn control several departments and dozens of employees, including professional researchers, product developers, manufacturing workers, and many more," it has not provided evidence to substantiate this assertion. Once again, 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Therefore, since the Petitioner has submitted limited evidence relating to the Beneficiary's foreign employment despite having multiple opportunities to supplement the record, it has not established that the Beneficiary was employed abroad in a qualifying executive or managerial capacity prior to her assignment to the United States. For this additional reason, the appeal will be dismissed.

V. CONCLUSION

The appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of K-, Inc.*, ID# 15055 (AAO Jan. 6, 2016)