



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

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

MATTER OF W-C- LLC

DATE: JULY 8, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a digital creative agency, seeks to temporarily employ the Beneficiary as the creative partner of its new office under the L-1A nonimmigrant classification for intracompany transferees. See Immigration and Nationality Act (the Act) section 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 a managerial or executive capacity.

The Director, California Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity within one year of approval of the new office petition.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred because the Beneficiary will be performing the same executive duties he currently performs in his position abroad.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a 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. Section 101(a)(15)(L) of the Act. 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. *Id.*

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)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

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

The Director denied the petition based on a finding that the Petitioner did not establish that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity within one year of approval of the new office petition.

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 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. Evidence of Record

The Petitioner filed the Form I-129 on September 14, 2015. On the Form I-129, the Petitioner indicated that it has 20 employees in the United States and a gross annual income of £1,006,471.¹ On the L Classification Supplement to Form I-129, where asked to describe the Beneficiary's proposed job duties in the United States, the Petitioner stated:

Creative Partner – will be responsible for establishing the new office in the US and managing the office. He will manage the two major US accounts they currently have and will be responsible for obtaining new accounts and all areas of business development. Will source and manage new staff as well [as] train, inspire, and nurture their development with the company.

In its letter of support, the Petitioner stated that the Beneficiary will occupy the same position he held at the foreign entity and described his proposed duties as follows:

In this position, [the Beneficiary] will be responsible for expanding, organizing, directing, and developing the company. . . .

As Creative Partner, [the Beneficiary] will introduce the North America client base to [the organization's] solutions establishing a support structure through hiring US nationals to support target clients. His position will be split into: externally managing the reputation of the company and internally upholding the quality of the work. He will be responsible for all North American operations overseeing quality control, creative direction, new business and sourcing staff. . . .

His principal job duties are similar to the position he held with our company abroad, in that he is still part of the management team and continues to have responsibilities for setting corporate goals in the areas in which he oversees. In this position as a key senior level manager, he will continue to exercise wide latitude in discretionary decision-making, with principal responsibilities as follows:

- Strategic Planning;
- Client Management;

¹ Although the Form I-129 specifically asks for this information as it pertains to the petitioning U.S. entity in the United States, based on the Petitioner's letter of support and other evidence in the record, it appears that the Petitioner has provided responses relevant to the foreign entity.

(b)(6)

Matter of W-C- LLC

- Hiring, training and supervision of support personnel;
- Budgeting and revenue forecasting;
- Quality Control;
- Marketing and Public Relations; and
- Revenue generation for the USA target market.

The Petitioner submitted its business plan, dated August 9, 2015, stating that the Petitioner “will be using local freelancers to begin with and when needed and have support from the [REDACTED] office.” The business plan states that the U.S. company “will have access to the [REDACTED] production team until they have a reliable team of freelancers in place.” The business plan did not include a staffing plan or timeline for hiring employees in the United States.

The Director issued a request for evidence (RFE) advising the Petitioner that the business plan submitted did not indicate the proposed number of employees and types of positions they will hold, or how the U.S. office will support a managerial or executive capacity position within one year. The Director further advised the Petitioner that it did not provide an organizational chart for the U.S. company, which is necessary to demonstrate what the proposed staffing of the U.S. company will be. The Director instructed the Petitioner to submit evidence that the Beneficiary will be employed in a managerial or executive capacity in the United States within one year of approval of the new office petition.

In response to the RFE, the Petitioner submitted Board Meeting Minutes for the foreign entity, dated June 1, 2015, discussing its work with client [REDACTED] and the Beneficiary’s concern with the time difference between [REDACTED] and [REDACTED]. The document concludes that “therefore the first hire for the U.S. company will need to be an Account Manager to assist [the Beneficiary] with the [REDACTED] account.”

The Petitioner submitted its organizational chart depicting the Beneficiary as the Creative Partner, under the main heading of “Partners.” Underneath the partners, there is a Bookkeeper, under the main heading of “Admin”; an Account Manager, under the main heading of “Account Management”; and a Senior Designer, under the main heading of “Creative.” The listed positions do not include the names of any individuals occupying those positions, nor does the organizational chart illustrate actual chain of command as there is no indication of supervisors and subordinate employees.

The Director denied the petition on December 2, 2015, concluding that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity in the United States within one year of approval of the new office petition. In denying the petition, the Director found that the Petitioner did not provide a timetable for each proposed action of the U.S. company during its first year of operations, other than a brief statement about using local freelancers and receiving support from the [REDACTED] office at the start. The Director found that the U.S. company would not have a sufficient organizational structure, within one year of the approval of the petition, to alleviate the Beneficiary from primarily performing the day-to-day duties necessary to produce

(b)(6)

Matter of W-C- LLC

the products or provide the services of the U.S. company. The Director further found that the Petitioner did not provide a description of the proposed duties or educational requirements for the Beneficiary's proposed subordinates with the U.S. company.

On appeal, the Petitioner submits a brief continuously referring to the Beneficiary's position in the United States as executive and stating that the Beneficiary currently manages the entire U.S. organization, along with all of the international operations of the foreign entity. The Petitioner states that the Beneficiary will perform the tangential duties of establishing new business contacts and negotiating and finalizing contracts, which are necessary for a new office. The Petitioner states that the Beneficiary has the sole authority to make hiring and firing decisions, as well as decisions on the types of roles involved in the organization and who will manage them. The Petitioner states that the Beneficiary "is in the unique position of training subordinates not only in the philosophy of the company, but in the layout and plan of expansion." The Petitioner states that the Beneficiary will hire an Account Manager, Senior Designer, and Studio Manager/Bookkeeper within the first year of business operations. The Petitioner further noted that one employee will be managing all client accounts, one will be in charge of the design direction and concept of each project, and one will be dealing with general office administration.

In support of the appeal, the Petitioner submits a copy of the same organizational chart for the U.S. company previously submitted in response to the RFE, along with a hierarchy breakdown listing the educational requirements and job duties for each of the Beneficiary's subordinates' positions. According to the listing, the Bookkeeper/Studio Manager should have a degree in Accounting and three or more years of agency experience, the Account Manager should have a degree in Communications and four or more years of agency experience, and the Senior Designer should have a degree in Graphic Design and five or more years of agency experience. The Bookkeeper/Studio Manager will be responsible for day-to-day accounts, invoicing, payroll, studio management, general administration, and resource management and scheduling; the Account Manager will be responsible for client management, attending client briefings, conducting client debriefs and post mortems, creating statements of work, project management, and timelines and budgeting; and the Senior Designer will be responsible for design direction, overseeing and briefing freelancers, communicating briefs with [REDACTED] office, UI/UX Design, and digital display concept and design.

The Petitioner submits a new portion of its Business Plan, dated December 22, 2015, now listing a timeline for hiring staff during the first year. The business plan states that the Petitioner will hire a Bookkeeper during the first quarter, an Account Manager during the second quarter, and upgrade to a four-person office and hire a Senior Designer during the third quarter of its first year in operation.

The Petitioner also submits a letter, dated December 21, 2015, stating that its business has changed significantly as it has acquired more business than previously anticipated. The Petitioner states that it will need at least another 3-4 employees during the first year: a Creative Director, a Project Manager, a Designer, and possibly a Motion Graphics Designer. Its revised timeline shows that the Petitioner will move into an 8-person office, hire a Bookkeeper, hire an Account Manager, and hire a Creative Director during the first quarter, hire a Senior Designer and a Project Manager during the

second quarter, and hire a Motion Graphics Designer and a Designer during the third quarter of its first year in operation.

B. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity in the United States within one year of approval of the new office petition.

The one-year “new office” provision is an accommodation for newly established enterprises, provided for by USCIS regulation. When a new business is first 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 low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial/executive responsibility cannot be performed in that first year. The “new office” regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a “new office,” it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally* 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a “new office,” a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

When examining the managerial or executive capacity of the Beneficiary, we will look first to the Petitioner’s description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The Petitioner’s description of the job duties must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *Id.*

The definitions of managerial and executive capacity each 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 Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

As a preliminary matter, we note that the Petitioner does not clarify whether the Beneficiary claims to be engaged in managerial duties under section 101(a)(44)(A) of the Act, or executive duties under

section 101(a)(44)(B) of the Act. In fact, the Petitioner first referred to the Beneficiary's position as managerial in its initial letter of support and later refers to the Beneficiary's position as executive on appeal. The Petitioner must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are either in an executive or managerial capacity. The Petitioner must demonstrate that the Beneficiary's responsibilities will meet the requirements of one or the other capacity.

The Petitioner characterized the Beneficiary's role as the Creative Partner of its new office in the United States, and stated that he would be performing in the same role he occupies at the foreign entity. In its initial letter of support, the Beneficiary referred to the Beneficiary's proposed position as managerial, but in response to the RFE and on appeal, it referred to the proposed position as executive. The Petitioner described the Beneficiary's proposed position in very general terms, noting that he will be responsible for strategic planning, client management, managing personnel, budgeting, quality control, and marketing and public relations. While these broadly described responsibilities indicate the Beneficiary's senior level of authority within the company, they offer little insight into what he will actually do within the context of the petitioning business on a day-to-day basis during the first year of operations and beyond. Further, the Petitioner did not provide information specific to indicate the amount of time the Beneficiary would devote to each duty or how he would spend his time at the U.S. company.

Although the Director observed that the Petitioner's description of the Beneficiary's proposed duties was too general, the Petitioner has not provided any additional information regarding his actual duties on appeal, or acknowledged the Director's finding that the submitted description was insufficient. Instead, the Petitioner asserts that it has provided sufficient evidence to establish that it will support a managerial or executive position within one year of filing the petition.

While we acknowledge that several of the broadly drawn duties attributed to the position would generally fall under the definitions of managerial or executive capacity, the lack of specificity in the record as a whole raises questions as to the Beneficiary's actual responsibilities. We do not doubt the Beneficiary's senior role in the new company, or his authority to make decisions, establish policies, and hire employees; however, the record does not establish how the Beneficiary would perform primarily managerial or executive duties within one year. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

Here, the Petitioner's description of the Beneficiary's job duties does not establish what proportion of the Beneficiary's duties will be managerial or executive in nature, and what proportion will be non-managerial or non-executive. *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. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The Petitioner has not provided any detail or explanation of the

Beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, the position description alone is insufficient to establish that the Beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the Petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the Beneficiary in the intended managerial or executive capacity. The Petitioner has established that the Beneficiary would have the appropriate level of authority over the business, but the record does not establish what he would actually do on a day-to-day basis after one year. Absent a detailed description of the Beneficiary's actual managerial or executive duties, and evidence to show that his subordinates will relieve him from performing non-qualifying operational and administrative tasks, the record does not establish that the Beneficiary will be employed in a qualifying managerial or executive capacity in the United States. Although afforded a second opportunity to provide the deficient information, the Petitioner did not provide any detail or explanation of the Beneficiary's activities in the course of his daily routine. 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 California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

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 a beneficiary's subordinate employees, the presence of other employees to relieve a 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.

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. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. The statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(4). If a petitioner claims that a beneficiary directly supervises other employees, those subordinate employees must be supervisory, professional, or managerial, and the beneficiary must have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Sections 101(a)(44)(A)(ii)-(iii) of the Act; 8 C.F.R. §§ 214.2(l)(1)(ii)(B)(2)-(3).

To determine whether the 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.”

In the instant matter, the Petitioner’s organizational chart and new business plan, submitted on appeal, indicate that it will hire at least three positions subordinate to the Beneficiary within its first year in operation. Then, also on appeal, the Petitioner indicates that it will hire three more employees in addition to its initial projections, along with an undefined and unknown number of “freelancers.” However, its financial projections do not account for any payments to additional employees. The Petitioner’s budget forecast for its first year in operation assumes that the company will pay \$13,000 in salaries during each month of its first year, which amounts to the Beneficiary’s stated salary of \$156,000² and indicates no increase in staff. Not until the third month of year three does the budget forecast increase the amount of salaries from \$13,000 to \$19,666, and not until the first month of year three³ does the budget forecast begin to include \$5,000 for freelancers.

The Petitioner initially stated that the U.S. company will hire freelancers and work with employees of the foreign entity during its first year in operation; however, the Petitioner did not provide any information pertaining to the “freelancers” or what their roles would be at the U.S. company, nor did it provide any information pertaining to the foreign employees that would perform work on behalf of the U.S. company. 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.

On appeal, the Petitioner submits an organizational chart and educational requirements along with brief job duties for each of the Beneficiary’s proposed subordinate employees. The listed duties for each of the subordinates’ proposed positions are not indicative of positions that are managerial, supervisory, or professional in nature. The listed duties do not indicate that any of the subordinates are managerial or supervisory, regardless of the word “manager” in their titles, and the duties themselves, as described, do not appear to require professional degrees. Although the Petitioner states that degrees and significant experience are required for each of the positions, the brief job duties listed are not sufficient to establish that the positions themselves require such levels of education and experience.⁴ Although it appears that the Beneficiary will have the authority to hire, fire, and supervise the proposed employees, the Petitioner has not demonstrated that the Beneficiary’s duties will primarily focus on the management of the organization and the supervision of qualifying managerial, professional, or supervisory employees, rather than on producing a product or providing a service of the U.S. company. As noted above, the Petitioner did not submit a detailed

² The Petitioner indicated on the Form I-129 and in its letter of support that the Beneficiary’s wages for the proposed position are \$156,000.

³ We note that the business plan does not include the financial projections for its second year in operation; there are two copies for its third year.

⁴ The possession of a bachelor’s degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above.

description of the Beneficiary's proposed position or those of his subordinates sufficient to establish that the Beneficiary's daily routine will consist of primarily managerial duties. The Petitioner has not submitted evidence that the Beneficiary's subordinate employees will relieve him from performing non-qualifying operational and administrative duties at the U.S. company.

The Petitioner has not established, in the alternative, that the Beneficiary 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. The term "essential function" is not defined by statute or regulation. If a petitioner claims that a beneficiary will manage an essential function, a petitioner must clearly describe the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary's daily duties dedicated to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, a petitioner's description of a beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform the duties related to the function.

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

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. *See* section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial. As discussed herein, the Petitioner's vague description of the Beneficiary's proposed duties at its U.S. company falls short of establishing that such duties are primarily managerial in nature.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and a beneficiary must primarily focus on the broad goals and policies of the organization rather than the 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 an owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary

decision making” and receive only “general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.” *Id.*

On appeal, the Petitioner asserts that the Beneficiary will be employed in an executive capacity; however, the Beneficiary’s proposed position has not been shown to be executive in nature, and the Petitioner has not demonstrated that the Beneficiary’s proposed duties will primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations. As noted above, the Petitioner did not submit a detailed description of the Beneficiary’s proposed position sufficient to establish that the Beneficiary’s daily routine will consist of executive duties, rather than on providing the services or producing the products of the organization.

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a managerial or an executive capacity in the United States within one year of approval of the new office petition.

III. CONCLUSION

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of W-C- LLC*, ID# 17300 (AAO July 8, 2016)