



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

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

MATTER OF L-R-S- LLC

DATE: JULY 21, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a car rental company, seeks to extend the Beneficiary's employment as its general manager 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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the Beneficiary would be employed in a qualifying managerial or executive capacity under the extended petition.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by not considering evidence establishing that the Beneficiary would be employed in a qualifying managerial or executive position.

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)(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.

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 Beneficiary will be employed in a 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 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.

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A. Evidence of Record

The Petitioner filed the Form I-129 on June 26, 2015. On the Form I-129, the Petitioner indicated that it has five current employees in the United States and a gross annual income of \$117,550.

In a letter of support submitted with the initial petition, the Petitioner stated that it finalized operations in [REDACTED] and is currently “negotiating to open our operations in [REDACTED] FL and the city of [REDACTED] FL.” The Petitioner stated that the Beneficiary, as general manager, is responsible for the “coordination, implementation and contracts of our commercialization and expansion plans.” The Petitioner provided a description of the Beneficiary’s duties as follows (verbatim):

[H]e directs and coordinated the activities to obtain efficiency and economy of operations and maximize profits. He also plans and develops organization policies and goals. [The Beneficiary] has proven to be an excellent General Manager to direct our operations in the United States. In this capacity, [the Beneficiary] has authority to hire and fire personnel and to plan, develop and establish policies and objectives of business organization. [The Beneficiary] is also responsible for the development and financial aspects of our projects.

We look forward to continue with [the Beneficiary’s] presence in the U.S. Company to serve as General Manager for one more year in order to complete the our expansion plans to [REDACTED] FL and [REDACTED] FL. Among his duties as General Manager, he is in charge of overseeing the whole operation. He hired the employees that are involved in the implementation of our operations which will be the same as the one in Venezuela. He takes care of licensing and processing of proper documentation necessary under the regulations of the State of Florida. Once all the necessary documentation is approved he will implement the projects that are forecast for our new two offices in [REDACTED] and [REDACTED]. He will review the new contracts with our clientele, establish the budget, and direct the departments financially and administratively, having the full and sole authority of the management of the company.

The Petitioner further provided a percentage of time spent performing duties as follows (verbatim):

[The Beneficiary] percentage of time in his duties is relatively 75% in duties pertinent to taking care of the licensing and the administrative and processing of proper documentation necessary under the regulations of the United States Government, implementing projects for the market requirements, reviewing contracts, directing all departments financially and administratively; leaving the remaining time for non-executive functions such as having the authority to hire and fire personnel and develop and expand policies for the company as he finds them necessary and having the responsibility to hire the employees that will be involved in the implementation of our operations.

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The Petitioner submitted its 2014 IRS Form 1065, U.S. Return of Partnership Income, indicating that it paid \$0 in salaries and wages during 2014. The Petitioner submitted its IRS Form 941, Employer's Quarterly Federal Tax Return, for the third and fourth quarters of 2014, as well as first quarter of 2015, indicating that it had one, five, and six employees respectively. The Petitioner also submitted pay stubs and payroll through May 15, 2015. As of May 15, 2015, the Petitioner employed the Beneficiary, [REDACTED] and [REDACTED] all at 80 hours per two week pay period.

The Director issued a request for evidence (RFE) on July 10, 2015, instructing the Petitioner to submit evidence that the Beneficiary will be employed in a managerial or executive capacity in the United States.

In response to the RFE, the Petitioner submitted a letter describing the Beneficiary's duties and new office staffing, an organizational chart, and payroll documents. In the letter submitted in response to the RFE, the Petitioner stated that the Beneficiary will perform duties such as the following in his position as general manager:

- Manager in general and marketing strategies
- Projection of opening new branch offices
- Coordinate the creation or update of the system or administrative rental platform
- Strategy of seasonal and corporate rates
- Planning of purchases and sales of vehicles
- Strategies for growth and expansion of the company in the State of Florida
- Creates commercial partners with hotels, tourism wholesalers, etc.
- Offer services in key tourist-exporting countries to Florida
- Promote vacation rentals
- Customer Service
- Supervision of personnel in general
- Oversee and train operators to offer the best treatment to the public
- Supervise banking consolidations
- Approve payments to suppliers and personnel
- Decision making under conditions of high workload

The Petitioner also provided a position description of the supervisor, operator, and driver positions including salaries. The Petitioner stated that "[REDACTED] has been given more hours than [REDACTED]". The Petitioner stated that the supervisor's duties include: supervising operators, preparing daily closures to "pass to the Presidency for its consolidation," opening and closing contracts, reviewing entry and exit of vehicles, and serving the public. The Petitioner also stated that the operators will perform activities including: "opening and closing contracts"; "review entry and exit of vehicles"; and "service the public."

(b)(6)

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The Petitioner provided an organizational chart, showing the Beneficiary as general manager. Reporting to the Beneficiary is a supervisor, [REDACTED]. Reporting to the supervisor are two operators, [REDACTED] and [REDACTED] and a driver, [REDACTED]. The Petitioner also provided IRS Form 941, Employer's Quarterly Federal Tax Return for the quarter of filing showing five employees on payroll.

The Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity under the extended petition. In denying the petition, the Director found that the Beneficiary's duties were vague and did not seem consistent with the current scope and structure of the U.S. business operations. Additionally, the Director stated that it was not evidenced that the Beneficiary was sufficiently relieved from performing non-qualifying activities by subordinate personnel.

On appeal, the Petitioner submits a brief and additional evidence including; a copy of the letter submitted in the initial new office petition, a copy of the letter submitted in support of the current petition, a revised organizational chart, a revised list of duties including achievements by the Beneficiary to date, and a contract for office space. The revised list of duties for the Beneficiary is as follows:

- Hiring and firing of personnel;
- Approve and mobilize payments by check or wire transfers on behalf of the company;
- Create investment plans of the subsidiary;
- Plan future operations for the subsidiary;
- Negotiate and create connections with wholesalers/tourists to create business alliances;
- Approve the purchase and sale of the vehicle fleet used for car rentals;
- Open new branches and create partnerships with hotels; and
- General supervision of subsidiary staff.

The revised organizational chart submitted on appeal shows the Beneficiary as CEO/President. Reporting to the Beneficiary are an unnamed general supervisor and unnamed administrator. Reporting to the general supervisor is a station manager, [REDACTED]. Reporting to the station manager is a principal operator, [REDACTED] driver, [REDACTED] and maintenance worker. Reporting to the principal operator is an operator, [REDACTED].

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 under the extended petition.

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.

The position description initially submitted by the Petitioner is insufficient to establish that the Beneficiary in this matter will be primarily performing qualifying duties. The Petitioner provided a number of duties that are only generally or vaguely described. Duties such as "directs and coordinates the activities to obtain efficiency and economy of operations," "responsible for the development and financial aspects of our projects," "overseeing the whole operations," and "establish the budget, and direct the departments financially and administratively," do not provide a description of what duties the Beneficiary will actually perform as general manager of a rental car company. 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 did not provide any detail or explanation of the beneficiary's activities in the course of her/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).

The Petitioner provided additional details in response to the RFE, but the description provided is insufficient to establish that the Beneficiary in this matter will be primarily performing managerial or executive duties. Specifically, the RFE description included duties such as "[c]ustomer service," "[p]lanning of purchases and sales of vehicles," "[p]romote vacation rentals," "[o]ffer services in key tourist-exporting countries to Florida" that are the tasks used to produce the product and provide the services of the company, rather than managerial or executive duties. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Furthermore, the Petitioner has not established any definite distinctions between the proposed qualifying and non-qualifying duties of the Beneficiary. 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. The Petitioner stated that the Beneficiary will spend 75 percent of his time "in duties pertinent to taking

care of the licensing and the administrative and processing of proper documentation necessary under the regulations of the United States Government, implementing projects for the market requirements, reviewing contracts, directing all departments financially and administratively.” This grouping of duties includes nonqualifying duties (reviewing contracts, processing documentation, taking care of licensing) along with responsibilities that could be considered managerial or executive (“directing departments financially and administratively”), but does not delineate how the Beneficiary would split his time among the duties. The description, therefore, does not document what proportion of the Beneficiary’s duties would be managerial functions and what proportion would be non-managerial. For this reason, we cannot determine whether the Beneficiary is primarily performing the duties of a manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

On appeal, the Petitioner expanded the Beneficiary’s duties, adding items such as: open new branches and create partnerships with hotels, create business alliances, and plan future operations. Notably, the Petitioner removed a number of the non-qualifying duties assigned to the Beneficiary in response to the RFE. In sum, the initial description appeared to have the Beneficiary performing primarily non-qualifying operational duties, while the second duty description has the Beneficiary tasked with more managerial tasks. On appeal, a Petitioner cannot offer a new position to the Beneficiary, or materially change a position’s title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The Petitioner must establish that the position offered to the Beneficiary, when the petition was filed, merits classification as a qualifying managerial or executive position. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1998).

It has been noted in the record that at the time of filing there was only four other employees working at the United States office, and that the Beneficiary maintains a full-time position. There is no mention in the record of any subordinate employee on staff to perform marketing work, operations work including fleet management, financials, and administrative work that the Beneficiary claims to oversee. Without staff to perform these duties, it appears that the Beneficiary will perform rather than manage these day-to-day operational tasks. Furthermore, the Petitioner claims that it is in the planning process of opening two new locations. In response to the RFE, the Petitioner submitted a copy of a lease for a new office location. The Petitioner did not identify any employees responsible for assisting the Beneficiary with the non-qualifying duties associated with opening the new locations. Collectively, this brings into question how much of the Beneficiary’s time can actually be devoted to managerial or executive duties. As stated in the statute, the Beneficiary must be primarily performing duties that are managerial or executive. *See sections 101(a)(44)(A) and (B) of the Act.* Furthermore, the Petitioner bears the burden of documenting what portion of the beneficiary’s duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Given the lack of these percentages, the record in this matter does not demonstrate that the Beneficiary will function primarily as a manager or executive.

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).

The evidence must substantiate that the duties of a beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

The Petitioner claims that the Beneficiary oversees a team of four subordinates, including a first-line supervisor. The Petitioner has not, however, shown that the organizational structure supports a first-line supervisor. Specifically, the Petitioner claims that the subordinate supervisor oversees two operator positions. Payroll documents show that the two positions are paid at an hourly rate of 80 hours per pay-period. In response to the RFE, however, the Petitioner claims a difference in pay rate between the two positions because one position works more hours than the other. This discrepancy calls into question whether the Petitioner actually employs two full-time operator positions. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Without evidence substantiating the hours and staffing levels of the operator positions, it is not clear that the petitioner needs a supervisor position, or alternatively, that the supervisor will not be spending a majority of her time engaged in the duties normally performed by the operator positions. In fact, the duties attributed to the supervisor and the operator are largely the same, with the exception of the supervisor's duty of supervising the operators. Therefore, we are unable to determine whether the first-line supervisor will be primarily performing operator duties. Without sufficient evidence to support a finding that the supervisor position is not actually performing

operator duties, it is likely that the Beneficiary himself will perform the supervisor's duties. As such, he would be acting as a non-qualifying first-line supervisor. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988). We note that none of the position descriptions submitted for the Beneficiary's subordinates establish that the positions are qualifying professional level positions.¹

On appeal, the Petitioner shows a revised organizational chart with three unfilled positions including a general manager, maintenance worker, and administrator. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the intended United States 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 the necessary staffing after one year, to sufficiently relieve the Beneficiary from performing operational and administrative tasks, the Petitioner is ineligible by regulation for an extension.

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 assert that the Beneficiary will be employed as a function manager. Furthermore, the Petitioner did not describe an essential function to be managed by the Beneficiary or provide a breakdown of the Beneficiary's job duties to support such a claim. As such, the record does not establish that the Beneficiary will be employed as a function manager.

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

¹ 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."

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.*

In this case, the organizational structure does not support the claim that an executive-level position exists for the Beneficiary. At the time of filing, the Petitioner stated that the Beneficiary managed four subordinate employees. The Petitioner has not shown how this structure would support a finding that the position is executive in nature. As noted above, the record also does not demonstrate that the Petitioner has sufficient staff to relieve the Beneficiary from performing non-qualifying duties. Therefore, incorporating our earlier discussion on the discrepancies in the Petitioner’s staffing and the deficiencies in the position description, along with the lack of a sufficient organizational structure to elevate the Beneficiary to an executive position, we cannot find that the Beneficiary would be employed in a qualifying executive capacity.

We note that a company’s size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa petition for classification as a multinational manager or executive. See section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company, or a “shell company” that does not conduct business in a regular and continuous manner. See *e.g.*, *Family Inc.*, 469 F.3d 1313; *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. See *Systronics*, 153 F. Supp. 2d at 15. Here, it is not the Petitioner’s size, but rather the absence of staff to relieve the Beneficiary from performing nonqualifying duties, along with the noted inconsistencies and deficiencies regarding the position description, that are determining factors.

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 a 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 primarily managerial or executive capacity.

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a primarily managerial or executive capacity, or that the Petitioner has grown to the point where it will require the services of a manager or executive.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above reason. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains 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 L-R-S- LLC*, ID# 17343 (AAO July 21, 2016)