



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

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

MATTER OF V-H- CORP.

DATE: JULY 21, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a rental services and property development company, seeks to extend the Beneficiary's temporary 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 had not established that the Beneficiary will be employed in a managerial or executive capacity under the extended petition.

The matter is now before us on appeal.<sup>1</sup> In its appeal, the Petitioner asserts that the Director erred when making the decision.<sup>2</sup>

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 proposed 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.*

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<sup>1</sup> The Petitioner filed a motion to reopen and a motion to reconsider the matter and simultaneously filed an appeal for our consideration. Upon review of the motion, the Director determined that favorable action was not warranted and forwarded the matter to this office to consider the appeal.

<sup>2</sup> The Petitioner stated on the Form I-290B, Notice of Appeal or Motion, that it would submit a brief and/or additional evidence to this office within 30 days. The record reflects that the Petitioner has not submitted a brief or evidence and the record will be considered complete as presently constituted.

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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. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

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.

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. Evidence of Record

The Petitioner was incorporated on June 27, 2013, in the State of Florida and filed the Form I-129 on March 20, 2015.<sup>3</sup> On the Form I-129, the Petitioner indicated that it has one current employee in the United States, and a gross annual income of \$439,209.<sup>4</sup> The Petitioner claimed a qualifying affiliate relationship with the Beneficiary's foreign employer, [REDACTED], a company incorporated in Brazil.

In a letter submitted in support of the petition, the Petitioner stated that it "is a full vacation home services company" and that it provides "marketing, management and rental services in support to [sic] foreign investors and in support to [sic] guests vacationing in the [REDACTED] area." The Petitioner also noted that its "group is investing in the development of the [REDACTED] a gated community with sixty-six 1,600 foot vacation townhomes" and that its "group has already bought the necessary land" and is waiting for approval of its application for land use.<sup>5</sup>

The Petitioner stated that the Beneficiary will continue to "oversee the entire [Petitioner's] operations including management recruitment, analysis, and negotiation of contracts and setting financial goals and achieving profitability," "hir[e] the staff members and assign[] them their duties," and "direct[] the staff and coordinat[e] the activities of the areas of the company." The Petitioner indicated that the Beneficiary's specific duties as General Manager will include the following:

- **Formulate and determine the Goals, objectives and policies – 7.5%**  
Analyze external information to anticipate trends, directions and opportunities. Confer with the Board of Directors . . . . Set and permanently review strategy, vision and mission of the company. Define the markets to be reached and attended by the organization. Define the services to be offered by the company . . . . Coordinate the preparation and maintenance of the company's business plans.

<sup>3</sup> The Petitioner received approval for a new office petition [REDACTED] granting the Beneficiary L-1A status from March 21, 2014, to March 20, 2015.

<sup>4</sup> The Petitioner's IRS Form 1120, U.S. Corporation Income Tax Return, for 2014 shows the Petitioner's gross receipts or sales as \$161,114. In response to the Director's request for evidence, the Petitioner stated that the \$439,209 figure is an estimate for the first year of operations, June 1, 2014, to May 31, 2015.

<sup>5</sup> The Petitioner did not include direct documentary evidence of its ownership of this property, such as a certificate of deed. Public records show that this property is owned by [REDACTED]. The record does not evidence of the ownership of this limited liability company. Accordingly, we cannot ascertain if and how the Petitioner is affiliated with [REDACTED].

- **Build the management team – 5.0%**  
Build the company's culture to attract and maintain high performers. Hire the managers of the company. Communicate strategy, vision and mission. Convey values through actions and reactions. Assign and delegate responsibilities to the managers. Evaluate the individual performance of managers. Fire underperforming managers.
- **Provide overall direction for the management – 12.5%**  
Set direction on how to make the company's strategies happen. Communicate the direction to the managers. Lead the managers for them to lead the rest of the company. Resolve differences between managers. Resolve conflicts amongst areas of the company. Motivate the managers to be an always winning team.
- **Plan the business – 12.5%**  
Set the capital allocation plans and projections. Set the marketing and sales plans. Direct the funding of the operations and projects which support the strategy. Set budgets and plans related to major expenditures. Set general plans to maximize investments and increasing efficiency.
- **Organize the Company – 15.0%**  
Delegate specific attributions to each subordinate manager. Define the interrelation amongst the areas of the company. Define limits for the responsibilities of each area of the company. Approve of specific plans and projects of each area of the company. Make decisions related to the management procedures. Enforce rules applicable to the management of the company. Change individual procedures of the managers and their departments.
- **Direct the management – 20.0%**  
Confer with the managers to communicate and to review procedures. Decide upon matters with problems or matters needing to take special decisions. Support and orient the managers with specific problems within each area. Perform full reviews of activities of the areas of the organization. Review documents and performance data to measure goal achievement. Determine areas needing changes or improvement. Make decision to change course, if needed, or to keep track of them.
- **Control the Organization – 20.0%**  
Approve contracts and agreements of the company with others [*sic*] entities. Review organization news, statements, documents, and reports. Analyze internal and external data to anticipate needed actions. Confer with the administrative and financial areas of the organization. Conduct the weekly general evaluation meeting with managers. Conduct other specific evaluation meeting with managers.

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- **Report Main Results – 7.5%**

Gather data, analyze information and prepare presentations. Coordinate the preparation of statements, reports and documents. Make presentations to Board of Directors. Join remote and electronic meetings with the management at the headquarters.

The Petitioner also included its business plan which provided the following hiring schedule: general manager (the Beneficiary's position) – June 2014; financial analyst – August 2014; marketing manager – January 2015; marketing specialist – January 2015; administrative assistant – February 2015; construction coordinator – August 2015; technology analyst – September 2015; engineer – November 2015; architect – February 2016. The Petitioner noted that the positions of construction coordinator, engineer, and architect were outsourced positions.

The Petitioner's organizational chart identifies the Beneficiary as general manager supervising an administrative assistant, a marketing manager, and a financial analyst. The chart depicts the marketing manager over a marketing specialist and a sales specialist (identified as an independent broker/realtor), with a customer care specialist listed as "to be hired," and three customer care specialists. Finally, the organizational chart shows various outsourced workers ultimately reporting to the Beneficiary through a separate entity, " [REDACTED] " including an engineer who works for [REDACTED] two architects who work for [REDACTED] and a construction coordinator who works for [REDACTED]. The chart shows that the Petitioner directly employs the individuals in the positions of administrative assistant, marketing manager, financial analyst, and marketing specialist.

The Petitioner provided evidence that the sales specialist/independent broker signed a letter of intent, dated March 13, 2015, indicating that the parties are waiting for approval of the final construction documents to execute a contract of purchase and sale for the units. In addition, the record included a proposal for services by an architectural firm dated June 2014, which was agreed to by the architectural firm in November 2014. The record further included a letter signed by a representative of [REDACTED] confirming its selection to build the [REDACTED] dated March 13, 2015. The initial record also included several letters addressed to a member of the [REDACTED] an engineering firm, dated March 12, 2015, but which related to Development Review Committee meetings occurring on March 24, 2014, for the [REDACTED] development project. The record also included subsequent letters related to the review of the project between the engineering firm and the Development Review Committee. The Petitioner also provided a July 2014 sales and marketing analysis proposal.<sup>6</sup> The Petitioner further submitted excerpts from its website, and pay slips and resumes for the Beneficiary and the individual in the financial analyst position.

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<sup>6</sup> In response to the Director's request for evidence (RFE), the Petitioner submitted a copy of the marketing analysis performed.

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In response to the Director's RFE, the Petitioner stated that "[m]ost of the services that [it is] currently offering, in this first year of operation, are being done in the management of our group's [redacted] project, as [it is] creating, imagining, controlling and orchestrating the entire process of development, from the purchase of the land up to building, marketing, sales and rent of the townhomes units." The Petitioner provided the same hiring plan and included 2014 IRS W-2s, Wage and Tax Statements, showing salaries paid to the Beneficiary and the financial analyst. The record also included the Florida Department of Revenue Employer's Quarterly Report for the first quarter of 2015, showing that in February 2015, the Petitioner employed individuals it identified as in the positions of financial analyst, marketing manager, marketing specialist, administrative assistant, and the Beneficiary's position of general manager.

The Petitioner also submitted a revised list of proposed duties for the Beneficiary under the requested extension petition as follows:

- Oversee construction site and perform inspections during construction; 9%
- Implement company objectives and policies by communicating them with staff and providing staff with detailed instructions on how to accomplish the objectives and policies; 7%
- Serve as the company's point of reference at meetings with customers, government, community organizations; 7%
- Present reports of company and staff performance to the company's Board of Directors; 7%
- Prepare and submit necessary permits to relevant governmental entity; 7%
- Coordinate with contractors to provide accurate plans, drawings, and information to the City; 6%
- Select and close subcontractor agreements; 6%
- Make personnel decisions (i.e. scheduling, salary decisions, promotions, grant leave authorizations); 6%
- Conduct staff evaluations and training, ensuring company objectives and policies are being met and followed; 6%
- Conduct staff meetings, presenting general reviews of staff performance[;] 6%
- Direct the staff, assign each staff member duties and responsibilities; 5%
- Maintain the image of the company by ensuring compliance with all legal requirements; 5%
- Determine marketing strategies by reviewing company performance; 5%
- Exercise discretion over daily function of the company and staff activity; 5%
- Make staffing hiring and firing decisions; 4%
- Oversee the signing of all sales documents with the company's sales team; 4%
- Coordinate and monitor engineers and architects with respect to site development during all stages of [redacted] construction; 3% [and]
- Coordinate and direct all subcontractors of the [redacted] project 2%

The record also included photographs, a marketing analysis for the townhome project, and a pricing schedule.

Upon review of the totality of the record, the Director determined that the Beneficiary's proposed job description is vague and that the Petitioner had not established that it had sufficient staff to relieve the Beneficiary from performing the company's day-to-day tasks alongside its other workers. The Director found that the record did not include sufficient information establishing the duties of the Beneficiary's subordinate employees or documentary evidence of the number of outsourced resources it used. The Director concluded that the Petitioner had not submitted sufficient detailed evidence to establish the Beneficiary would be employed in a managerial or executive capacity.

On appeal the Petitioner asserts that the description of the Beneficiary's duties is specific enough to establish that the position would be in a managerial capacity and that it had sufficient staff at the time of filing to support its operations.

#### B. Analysis

Upon review of the petition and the evidence of record, 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 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 Petitioner's description of the job duties must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.*

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 Petitioner initially submitted a broad overview of the Beneficiary's duties that included such vague categories as "provide overall direction of the management," "plan the business," "organize the company," "direct the management" and "control the organization." The Petitioner did not provide the context in which the Beneficiary would perform the duties, relying instead on a recitation of general job responsibilities and broadly-cast business objectives. The Petitioner also did not provide any detail or explanation of the Beneficiary's activities in the course of his daily routine as those duties would relate to the operation of the Petitioner's actual business. 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).

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In response to the RFE, the Petitioner submitted, without explanation, a revised description and breakdown of the Beneficiary's duties that included overseeing the construction site and performing inspections during construction, preparing and submitting permits to governmental entities, coordinating with contractors regarding plans, drawings and information for the City, selecting and closing subcontractor agreements, overseeing the signing of sales documents, coordinating and monitoring engineers and architects with respect to site development, and coordinating and directing subcontractors. We note that the Petitioner only references the specific [REDACTED] project in the last two tasks, but as the record does not include evidence of other ongoing construction or business deals, it appears that these tasks relate to the [REDACTED] project.

Upon review of these tasks, however, it is not possible to conclude that these duties are managerial or executive duties. That is, it is not possible to ascertain whether the Beneficiary's involvement in these tasks will be primarily that of an investor in the project or whether the Beneficiary will be the individual performing the operational tasks relating to these duties. For example, it appears that it is the Beneficiary that will inspect and monitor the work of the outside contractors, will prepare and submit the necessary permits, and will coordinate and schedule the subcontractors. However, the record here does not include a contract between the Petitioner and the engineering firm spearheading the property development.<sup>7</sup> Without the contract setting out the duties and responsibilities of each party, it is not possible to ascertain the nature of the Beneficiary's involvement in this project. As referenced above, the record does not include direct evidence establishing that the Petitioner owns the land that is under development or has a specific interest in the limited liability company that owns the land under development. "[G]oing 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 Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

We have reviewed the remaining portion of the Beneficiary's duties and also are unable to determine the nature and scope of the Beneficiary's activities for the Petitioner. For example, we note that the Beneficiary will conduct meetings with staff, provide detailed instructions to staff, evaluate staff and make personnel decisions, as well as direct the staff and exercise discretion over the daily function of the company and the staff activity. However, the Petitioner has not described the Beneficiary's subordinates' tasks or indicated the amount of time they spend on specific tasks. There is insufficient information in the record to make an informed decision on the Beneficiary's role within the organization in relation to its internal personnel. Without a description of their duties, it is not possible to conclude that any of the subordinates' will perform primarily managerial, supervisory, or professional duties.

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<sup>7</sup> We note here the dates of the initial letters to the engineering firm which reference the Development Review Committee meetings to be held on March 24, 2014. The letters, however, are dated in March 2015. It is unclear why the letters announcing a meeting are dated subsequent to the date of the meeting. 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).

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’s descriptions of duties include insufficient detail to determine whether the duties are managerial, executive, administrative, or operational tasks. We cannot determine from the information provided whether the Beneficiary is primarily performing qualifying or non-qualifying duties for the Petitioner. *See e.g. IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

We have reviewed the Petitioner’s claim on the Form I-129 that it employs only one individual which conflicts with the Petitioner’s Forms W-2 identifying the employment of two individuals in 2014 and its Florida employer’s quarterly report for the quarter in which the petition was filed which identifies five employees. It is unclear why the Petitioner identified the employment of only one individual on the Form I-129 if it employed at least two individuals in 2014.

We have also reviewed the Petitioner’s plans to hire additional employees as its business grows. However, the Petitioner is not a “new office” and thus must demonstrate that it would be able to support a managerial or executive position when the petition is filed. The business must have the necessary staffing to sufficiently relieve the Beneficiary from performing primarily operational and administrative tasks to establish eligibility for this visa classification. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition and must continue to be eligible for the benefit through adjudication. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978). The Petitioner’s plans to hire additional employees in the future do not establish the managerial or executive capacity of the Beneficiary when the petition was filed.

Moreover, the fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be “primarily” of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act. While the Beneficiary may exercise discretion over the Petitioner’s day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, including personnel decisions and investments, the position descriptions alone are insufficient to establish that his actual duties are primarily managerial or executive in nature.

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.

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As a preliminary issue, we find a lack of clarity in the record regarding the nature of the Petitioner's business and its sources of income as of the date of filing. In its letter in support of the petition, the Petitioner described itself as a "full vacation home services company" that provides "marketing, management and rental services in support to foreign investors and in support to guests vacationing in the [redacted] area." The Petitioner submitted excerpts from its website suggesting that it was offering such services using the name "[redacted]". The Petitioner stated at the time of filing that it had invested in the development of the [redacted] project "to speed up the increasing of available homes," but it never further explained or documented its provision of vacation home services, and later stated that its business is focused entirely on the [redacted] project, leaving question as to how it has been generating income. As a result it is difficult to determine the nature and scope of the business and its reasonable staffing needs.

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."<sup>8</sup> 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).

Although the Petitioner has allocated the Beneficiary's duties amongst several different categories, it is not possible to conclude that he will spend the majority of his time managing or supervising other employees or subcontractors. Additionally, the Petitioner has not provided a description of duties for its employees so that we may assess whether their duties incorporate managerial, supervisory, or professional duties. Similarly, the Petitioner has not sufficiently identified the outsourced individuals or teams the Beneficiary will work with, if any, in terms of their responsibilities in support of the Petitioner's operations. The record does not include sufficient documentary evidence to assess the Beneficiary's role as a personnel manager and whether the Beneficiary will primarily supervise and control other supervisory, managerial, or professional employees. 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

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<sup>8</sup> 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."

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We have also considered whether the record includes sufficient evidence to establish that in the alternative, the Beneficiary will primarily perform 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 attributed 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’s general descriptions of the Beneficiary’s duties do not include sufficient information regarding what the Beneficiary will actually do, such that we may conclude that the Beneficiary will manage a specific function. It appears that the Petitioner’s business primarily involves the construction and sale of the townhomes in the [REDACTED] project. However, the Petitioner has not articulated and the record does not include sufficient evidence, establishing the Petitioner’s role in this development. The Petitioner has not expressed specific objectives or functions on the Petitioner’s part in the development with any specificity. The record does not include sufficient probative evidence establishing who will perform the actual routine operational tasks associated with monitoring the Petitioner’s investment, thereby relieving the Beneficiary from performing non-qualifying duties.

Upon review of the totality of the record, the Petitioner has not developed the Beneficiary’s position or that of its other employees and subcontractors so that we may understand the Beneficiary’s actual duties and role in the business. The Petitioner has not adequately described and ascribed the duties required to support the day-to-day operational needs of the Petitioner while it is in the process of buying, selling, and developing rental properties. The record does not identify who the Beneficiary will rely on to accomplish the non-executive and non-managerial duties in the Petitioner’s continued operations. Given the overall purpose of the organization and the organization’s stage of development, the Petitioner has not established a reasonable need for a senior-level employee to manage its operations. Accordingly, we cannot conclude that the Beneficiary primarily performs managerial duties.

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

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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.*

A review of the totality of the record reveals that the Beneficiary does not have a subordinate level of managerial employees to direct. Although the Petitioner identifies a marketing manager the Petitioner does not describe this individual’s duties. Likewise, as noted above, the Petitioner does not include information on the duties of any of its employees or outsourced subcontractors.<sup>9</sup> Thus, we cannot ascertain if these individuals primarily manage personnel or specific functions. Again, we are unable to determine if the Petitioner employs sufficient personnel or subcontractors to perform the operational and administrative tasks required to support the Petitioner’s business.

Upon review, the Petitioner has not provided a detailed description of the Beneficiary’s duties demonstrating that he will perform tasks primarily in an executive capacity. The Petitioner has not credibly identified a subordinate level of managerial employees for the Beneficiary to direct. The record does not demonstrate that the Beneficiary will primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise

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. v. USCIS* 469 F.3d 1313 (9<sup>th</sup> Cir. 2006); *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 does not believe that the facts asserted are true. See *Systronics*, 153 F. Supp. 2d at 15.

We acknowledge that the Petitioner was established for a little over a year when the petition was filed. However, upon close review of the record, including the descriptions of the Beneficiary’s duties and the lack of information in the record regarding the subordinate staff’s duties for the business, the record is insufficient to establish that the Petitioner’s organization is sufficiently developed to support a managerial or executive position as statutorily defined. Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity.

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<sup>9</sup> We have reviewed the biographies of the principals of the [REDACTED] but do not find the information provided sufficient to establish that these individuals are under the direct supervision and control of the Petitioner or the Beneficiary. The duties and responsibilities to be performed by [REDACTED] and other subcontractors would be defined in contracts, which have not been submitted for the record.

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### III. CONCLUSION

The petition will be denied and the appeal dismissed for the above reason. The burden is on the Petitioner to show 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 V-H- Corp.*, ID# 17749 (AAO July 21, 2016)