



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

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

MATTER OF M-G-USA LLC

DATE: JUNE 15, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a telecom service provider, seeks to temporarily employ the Beneficiary as its deputy 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 an executive or managerial capacity.

The Director, California Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the Beneficiary would be employed in a managerial or executive capacity. The Director also found that the evidence of record did not establish that the Beneficiary was employed abroad in a qualifying managerial or executive capacity for the requisite period.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred by denying the petition based on a lack of current U.S. employees, emphasizing that the Beneficiary receives administrative support from employees of the entity 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.

II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that: (1) the Beneficiary will be employed in a managerial or executive capacity; and (2) the Beneficiary has been employed abroad 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.

A. U.S. Employment in a Managerial or Executive Capacity

1. Evidence of Record

The Petitioner filed the petition on February 25, 2015. The Petitioner stated on the Form I-129 that it is a telecom service provider with one employee in the United States. It seeks to employ the Beneficiary as its deputy manager. In a letter dated February 24, 2015, the Petitioner noted that the Beneficiary would be responsible for increasing management capabilities for future business expansion including widening its business network, strengthening its customer relationship management, and increasing the efficiency of its services such as Data, VAS, and Media.

The Director issued a request for evidence (RFE) requesting evidence of the Beneficiary's managerial and/or executive role both at the entity abroad and for the Petitioner. The Director noted that the Petitioner did not submit sufficient evidence that the Beneficiary will supervise and control the work of other supervisory, professional, or managerial employees or that he will have the authority to hire and/or fire them. The Director requested a more detailed job description that outlines the specific duties that the Beneficiary will perform and the percentage of time spent on each individual duty, along with an explanation of who is a member of the Beneficiary's team, division or department, and their educational credentials. Finally, the Director requested an organizational chart showing the Petitioner's organizational structure and staffing levels and the State Quarterly Wage Reports for the 3rd and 4th quarters of 2014.

The Petitioner submitted a response to the RFE that included a more detailed description of the Beneficiary's proposed duties. The Petitioner indicated that the Beneficiary would supervise subordinates who are employees of the foreign entity and stated that the Beneficiary's proposed duties include:

1. Design marketing strategic plans with goals and objectives for North America market:

Percentage of time 35%

Making strategic plans on understanding North America market and identifying potential customers. The beneficiary will develop action plans to penetrate into the market. Meeting customers and partners in the U.S. as a senior level executive to build customer relationships and discuss further business proposition. Setting a sales goal monthly and quarterly. Identify short-term and long-term issues and create solutions.

2. Making budget planning, purchasing policies in accordance with marketing strategy:

Percentage of time: 45%

As Vice General Director of the parent company, the beneficiary has an authority of discretionary decision-making to identify, negotiate, and approve contracts with business partners and he will continue to have the same level of authority when he works for the petitioner.

The beneficiary has been discussing business terms with partners as a representative for the petitioner such as issuing petitioner's invoices and order forms to its customers. Therefore, it would be convenient for the petitioner and the petitioner will have a better advantage if the beneficiary can come to the U.S. and work directly with its business partners and enhance its customer relationships.

He will work at a senior level to make business ties with partners and customers and he will not be directly involved in operational activities of providing services to customers. Subordinates of the beneficiary in Vietnam will continue to support him with preparation and other paperwork.

The beneficiary has a rich working experience in sales and technical field of this industry, therefore, he can efficiently exercise a complete discretion in choosing competent suppliers, designing technical terms and negotiating prices. With a plan to expand petitioner's services to the North American market, he also has full authority to design pricing strategy to fit the market.

(b)(6)

Matter of M-G-USA LLC

3. Personnel decision-making including hiring, training, promoting and firing employees:

Percentage of time: 10%

In the beginning, he will continue to receive support from his oversea teams in Vietnam. When the workload increases, the beneficiary has the authority to hire, train more employees and he can fire unproductive employees when needed.

The beneficiary has been exercising his discretion on reviewing performance of his subordinates, approving employments or termination of employment contracts in the parent company and he will continue to have this level of authority with the petitioner.

4. Report to and receive general directions from General Director of the parent company:

Percentage of time: 10%

Because [redacted] and [redacted] in Vietnam is the only shareholder with 100% ownership of [the Petitioner], the Beneficiary will report the company performance to and receive general directions from the Board of Directors of the parent company in Vietnam. Also, the Beneficiary, is in the Board of Directors as Vice General Director and he has the authority to discuss business strategy directly with the Board to maintain a consistent management policies.

The Petitioner also submitted its organizational chart dated June 9, 2015. This chart depicts the Beneficiary, as deputy manager, reporting to the manager. The chart states that 36 unnamed employees in the Department of Business and four unnamed employees in the Board of International Project report to the Beneficiary. According to the organizational chart, all 40 of the Beneficiary's subordinates are employees of the foreign entity.

The Petitioner also submitted 2014 IRS Forms W-2 for four employees, including the Beneficiary's manager noted on the organizational chart, along with quarterly reports indicating that three of the four employees were terminated during the second and third quarters of 2014. The Petitioner also submitted a quarterly report for the fourth quarter of 2014, indicating that the Petitioner had zero employees.

The Director denied the petition, noting that the evidence submitted did not establish that the Beneficiary will primarily perform executive or managerial duties. The Director explained that the Beneficiary's duties were mostly non-qualifying tasks related day to day operations. The Director also noted that the limited number of U.S. employees makes it questionable whether the Beneficiary will be able to primarily perform managerial or executive functions, and that the Petitioner did not

submit evidence of how the Beneficiary will be supported by employees of the foreign entity or what their specific duties will be under the Beneficiary's direction.

On appeal, the Petitioner contends that the Director erred in concluding that the Beneficiary's duties are not qualifying managerial or executive duties. The Petitioner states that the company's business is to purchase telecommunication products and provide them to customers. Therefore, it "does not require a high staff as it mainly focuses on services industry." The Petitioner further indicates that the employees of the foreign entity perform the day-to-day non-managerial tasks

2. 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.

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(1)(3)(ii). The Petitioner's description of the job duties must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are in 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.

Here, the Petitioner submitted a description of the Beneficiary's duties in response to the RFE which included a number of duties that would reasonably be associated with the management of a business; however, when these duties are examined more closely, it is clear that the duties enumerated also indicate that the Beneficiary will spend a portion of his time engaged in non-qualifying operational tasks. Specifically, the Petitioner states that the Beneficiary will be required spend 45 percent of his time "[m]aking budget planning, purchasing policies in accordance with marketing strategy." This includes non-qualifying duties such as choosing competent suppliers, designing technical terms and negotiating prices, working directly with its business partners, and issuing the Petitioner's invoices and order forms to its customers. Furthermore, the Beneficiary will spend 35 percent of his time "[d]esigning marketing strategic plans with goals and objectives for the North America market." This requires the Beneficiary to identify potential customers, develop action plans to penetrate into the market, and to meet customers and partners in the United States to build customer relationships. These duties, requiring developing direct relationships with the Petitioner's customers and negotiating sales deals, indicate that the Beneficiary will perform, rather than manage the sales and marketing activities.

On appeal, the Petitioner asserts that the Director “focused on minor sub-duties and overlooked the other duties of beneficiary which are clearly in executive or managerial capacity. Overall these other duties constitute a larger part of the beneficiary’s time.” While we agree that the duties as described by the Petitioner appear to include both qualifying and non-qualifying duties, the Petitioner did not delineate how the Beneficiary would split his time between qualifying and non-qualifying tasks associated with the generally described responsibilities. Absent a clear and credible breakdown of the time spent by the Beneficiary performing his duties, we cannot determine what proportion of those duties would be managerial or executive, nor can we deduce whether the Beneficiary is *primarily* performing the duties of a manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify a 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. Section 101(a)(44) of the Act. Here, the Petitioner has not shown how the Beneficiary’s duties would be 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 petitioner’s organizational structure, the duties of the beneficiary’s subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner’s business, and any other factors that will contribute to understanding of a beneficiary’s actual proposed duties and role in a business. Here, the totality of the evidence does not support the Petitioner’s claims that the Beneficiary will be employed in a qualifying managerial or executive capacity.

The Petitioner indicated on the Form I-129 that it has one employee in the United States.¹ In its RFE response, the Petitioner indicated that the Beneficiary will be relieved from the day-to-day tasks of the business by his subordinates employed by the foreign entity. However, the Petitioner has not specifically identified which foreign entity employees will directly support the Beneficiary in his position in the United States, nor has the Petitioner provided detailed descriptions of the subordinates’ duties. The lack of detail regarding the duties of the claimed subordinate staff precludes us from determining that the Petitioner has sufficient employees to relieve the Beneficiary from performing the non-qualifying duties associated with the work he claims to oversee. The Petitioner has also not submitted evidence of wages or other payments made to the foreign entity subordinate employees to establish their employment. As such, we cannot conclude that the Petitioner has sufficient staff to relieve the Beneficiary from performing the non-qualifying operational and day-to-day sales, marketing, and customer service duties described above.

¹It is unclear who was employed by the Petitioner at the time of filing. It appears that the Beneficiary was not in the United States at the time of filing and the Petitioner’s quarterly tax returns indicate that it had zero employees in the fourth quarter of 2014.

The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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. If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 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 this case, although the Petitioner states that the Beneficiary has the authority to hire, fire, and recommend compensation adjustments as necessary for his claimed direct reports located with the company or parent company, the information provided by the Petitioner does not clearly identify the Beneficiary’s direct reports, nor does it provide evidence of this authority. As the current claimed subordinates are employees of the foreign entity, it is unclear how the Beneficiary, as an employee of the Petitioner, would manage their personnel actions. Having subordinates who are employed by a related company is not necessarily disqualifying; however, the Petitioner must explain the reporting structure and provide evidence that such direct lines of management in personnel matters do exist between the Beneficiary and the positions in question. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The Petitioner also states that the Beneficiary will continue to supervise subordinates with the foreign entity and, “when the workload increases, the Beneficiary has the authority to hire, train more employees and he can fire unproductive employees when needed.” Regarding the prospective, U.S. subordinates, we note that the Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg’l Comm’r 1978). Thus, we will only consider the Beneficiary’s personnel management role with regard to his subordinates at the time of filing. And, as noted above, the Petitioner has not established that the Beneficiary will manage the claimed subordinates from the foreign entity and as such, we cannot conclude that the Beneficiary will perform personnel management duties.

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.

The Petitioner asserts on appeal that the Beneficiary’s position is “related to direct management of the function of the Petitioner’s business.” The fact that the Beneficiary has control over all aspects or functions of the business does not establish that he qualifies as a function manager. While such authority is consistent with the statutory definition of managerial capacity, it is not sufficient to establish that the Beneficiary is employed in a managerial capacity. Whether the Beneficiary is a “function” manager turns in part on whether the Petitioner has sustained its burden of proving that his duties are “primarily” managerial. The actual duties themselves 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).

Here, the Petitioner has not established that the Beneficiary’s actual duties are within a managerial capacity. Most of the duties listed are related to the actual sales function of the organization rather than management of the sales function. For example, the Beneficiary is required, in part, to make strategic plans, identify potential customers, and develop action plans to penetrate into the market. He is also required to meet customers and partners in the United States to build customer relationships. While it does appear that the Beneficiary will also have some discretion over goal setting and policy making, the record does not establish the Beneficiary is managing the marketing and sales function, rather than performing the duties associated with the function himself. Also, as noted above, the record does not demonstrate that the Petitioner employs a sufficient staff to relieve the Beneficiary from performing the non-qualifying duties, such that he would manage, rather than perform the function. For these reasons, the Petitioner has not established that the Beneficiary will be employed as a function manager.

Finally, the Petitioner indicates that the Beneficiary will be employed as an executive. The statutory definition of the term “executive capacity” focuses on a person’s elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person’s authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to “direct the management” and “establish the goals and policies” of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and

the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they “direct” the enterprise as the owner or sole managerial employee. The beneficiary must also exercise “wide latitude in discretionary decision making” and receive only “general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.” *Id.*

Here, the Petitioner emphasizes that the Beneficiary’s roll as deputy manager is evidence of his performance of qualifying executive duties. However, we do not evaluate a position based on job title alone, and as discussed above, the Petitioner’s description of the Beneficiary’s duties, considered within the totality of evidence, does not support a finding that the Beneficiary will primarily focus on the broad goals and policies of the organization, rather than on the day-to-day operations.

We acknowledge that the Beneficiary is one of the highest-level employees of the Petitioner; however, as noted above, this alone is not sufficient to establish that he will be *primarily* employed in an executive or managerial capacity. The designation hinges on whether or not the Petitioner demonstrates that it has the requisite level of subordinate staff capable of carrying out the duties associated with the day to day operation of the business. In this case, incorporating our earlier discussion of the deficiencies of the job description provided and the lack of evidence regarding the claimed subordinate job descriptions, we find that the Petitioner has not established that the U.S. business has an organizational structure sufficient to elevate the Beneficiary to a position that is primarily executive in nature or that the Petitioner has sufficient subordinate staff to relieve the Beneficiary of non-qualifying duties. For the reasons discussed above, we find that the Petitioner has not established that Beneficiary will be employed as an executive.

As noted by the Petitioner, 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 to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS “may properly consider an organization’s small size as one factor in assessing whether its operations are substantial enough to support a manager.” *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F. 2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42; *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company’s personnel size, 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., Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Here, the Petitioner’s size is not determinative; rather, it is the absence of evidence of employees to relieve the Beneficiary from performing non-managerial or non-executive duties that is being considered.

(b)(6)

Matter of M-G-USA LLC

The record, taking into account the totality of the evidence presented, does not establish that the Beneficiary will be employed as a manager or executive.

B. Foreign Employment in a Managerial or Executive Capacity

In order to establish eligibility, the Petitioner must demonstrate that the Beneficiary was employed abroad for one continuous year in the three years preceding the filing of the petition and that the employment was in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(iii)-(iv)

1. Evidence of Record

The Petitioner indicates on the Form I-129 that the Beneficiary has been employed with the foreign entity, [REDACTED] and [REDACTED] since 2011.² As evidence of his employment, the Petitioner submitted labor contracts showing employment from April 1, 2011, to March 31, 2014, and income verification showing wages paid for 2014.

On the L Classification Supplement, the Petitioner provided the following employment history for the Beneficiary since 2011:

- Deputy Sales Manager of [REDACTED] and [REDACTED] and Vice Director of the branch in [REDACTED] – From 2011 to 2014
- Vice General Director of [REDACTED] and [REDACTED] – From 2014 to present

The Petitioner also submitted a series of notices and labor contracts appointing the Beneficiary to the following positions:

<u>Position Title</u>	<u>Dates of Appointment</u>
• Executive Officer [REDACTED] Branch	April 1, 2011 – April 30, 2011
• Expertise	May 1, 2011 – April 30, 2012
• Expertise	May 1, 2012 – April 30, 2013
• Deputy Head of Business Department and Vice Director of Branch in [REDACTED]	April 1, 2013 – March 31, 2014
• Deputy Manager of Business Dept. cum Deputy Director of Branch	May 1, 2013 – April 30, 2014
• Head of Business Department	September 1, 2013 – August 31, 2014
• Vice Director of [REDACTED]	Effective September 19, 2013
• Vice General Director of [REDACTED]	March 26, 2014 – March 26, 2015
• Deputy General Director cum Manager of [REDACTED]	Effective May 1, 2014

² The foreign entity states that [REDACTED] and [REDACTED] was formerly known as [REDACTED]

(b)(6)

Matter of M-G-USA LLC

- | | |
|----------------------------------|---------------------------------------|
| Business Dept | |
| • Manager of Business Department | September 1, 2014 – September 1, 2015 |
| • Head of International Project | Effective October 1, 2014 |

The October 1, 2014, notice also identifies the Beneficiary as “Vice General Director of the Company.” The Petitioner further submitted a document dated April 14, 2014, entitled, “notification of workload allocation of directors-general.” This document indicates that the Beneficiary is a “Deputy Director-General” and lists a few of his very general responsibilities including representing the company in southern Vietnam, performing business activities, and international business projects.

The Petitioner indicated that the Beneficiary, as deputy general director, was responsible for “data and media business, managed International Project Unit and doing business with key customers in [REDACTED] Cambodia, Thailand, Malaysia and USA.” The Petitioner submitted an organizational chart for the foreign entity dated January 30, 2015, depicting a board of management with a subordinate “General Director” and three subordinate “Deputy General Directors.” The Beneficiary is listed as one of the three deputy general directors and there are 14 departments reporting to the board of management generally.

The Director issued a request for evidence (RFE) requesting additional evidence that the Beneficiary performed in a managerial or executive role for the foreign entity. The Director requested a more detailed statement from the foreign entity describing the position in detail, along with a description of the duties of any subordinate employees.

In response, the Petitioner provided a job description of the Beneficiary’s position of deputy general director, including the percentages of time devoted to each duty. Some examples of completed projects provided by the Petitioner have not been included below.

1. Update reports on business activities, rate of progress of offices and departments and deliver decision: 35%
 - a. These reports would help [the Beneficiary] to update the current situation, consider if it’s got the aim or not, and define work performance of employees. Thence, [the Beneficiary] would connect and speed up employees to suggest some solutions and resolve occurred problems. This connection can be made in form of: telephone, email, document or direct meeting.
2. Arrange travel schedule and meet partners: 25%
 - a. [The Beneficiary] is a Deputy General Director, be responsible for business field, he can be on behalf of [REDACTED] and represent the Company to discuss sign contracts and choose partners or customers. Therefore, [the Beneficiary] usually meets, contacts with customers and participates in local conference, seminar or abroad.
3. Read draft contract which is going to be signed with customers and suggest some necessary adjustments: 10%
4. Meet with the Board of Directors to verify strategies, plans to operate: 10%

(b)(6)

Matter of M-G-USA LLC

- a. [The Beneficiary] is responsible for reporting to the Board of Directors and exchanging, orient strategies in the future to specify suitably target value program. Form of connection and exchange: telephone, email or meeting.
5. Meet with offices and departments to deploy the program and schedule: 10%
6. Sign documents, minutes in term of contract with customers: 5%
7. Sign documents of employees evaluation: 5%
 - a. [The Beneficiary] can sign and judge the employee's capacity in each term of working. [The Beneficiary] is responsible for appointing members to suitable position such as: promote, transfer, dismiss or recruit.

The Petitioner also submitted an organizational chart depicting the Beneficiary in two roles. First, as deputy general manager overseeing six departments, and second as chief, department of business, overseeing 36 direct reports. As deputy general manager, the Beneficiary is depicted as managing the board of international project (4 employees), branches in [REDACTED] (54 employees), the Petitioner, [REDACTED] in Singapore and [REDACTED] in the Czech Republic. (each depicting one "Director" employee). The Petitioner also provided a list of the subordinate positions, including position titles, employee educational requirements, and the annual salary for each position.

The record also includes copies of employee performance evaluations signed by the Beneficiary in his capacity as head of department, reports from the business department to the Beneficiary regarding customers, along with copies of the minutes of meetings of the board of directors dated April 2015 in which the Beneficiary signs as deputy general director and reports made by the Beneficiary to the board of directors dated March 2015. Finally, the Petitioner submitted performance assessments of the Beneficiary from 2011 until 2014.

The Director denied the petition, finding that the description of the duties provided for the position abroad is insufficient to demonstrate that the Beneficiary was primarily performing managerial or executive tasks and not routine operational activities.

2. Analysis

Upon review, and for the reasons stated below, we find that the Petitioner has not established that the Beneficiary's position abroad was in a qualifying managerial or executive capacity for at least one continuous year within the three years preceding the filing of the petition.

As noted earlier, when determining whether a beneficiary will be employed in a managerial or executive capacity, we 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 either in an executive or managerial capacity. *Id.* A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108, *aff'd*, 905 F.2d 41. We will then consider this information in light of other relevant factors, including (but not limited to) job descriptions of the beneficiary's subordinate employees, the nature

(b)(6)

Matter of M-G-USA LLC

of the business conducted, and any other facts that may contribute to a comprehensive understanding of the beneficiary's actual duties and role in a petitioner's organizational hierarchy.

In this case, the Petitioner has submitted evidence indicating that the Beneficiary held several different roles with the foreign entity during the time period in question. As described above, the Petitioner submitted a series of labor contracts and corporate notices indicating the Beneficiary's various position titles with the foreign entity and the dates that he held each position. At various places throughout the record, the foreign entity has stated that the Beneficiary qualifies as a manager or executive based on his role as "Vice General Director," "Deputy General Manager," "Manager of Business Department," and "Deputy Head of Business Department." We are unable to determine the exact dates of the Beneficiary's employment in each position or understand the nature of each position because the Petitioner has referred to the Beneficiary's titles interchangeably without specifically describing the dates that he held each position or the duties associated with each role, and the titles noted above do not correspond to the labor contracts submitted. For example, in the initial filing, the Petitioner states that the Beneficiary "has been working for the parent company since 2011. He is a Vice General Director at the parent company in Vietnam, [REDACTED] and [REDACTED]. He was also appointed as Deputy Manager for the Petitioner but remained in Vietnam." In response to the RFE, the Petitioner submitted the foreign entity's organizational chart depicting the Beneficiary's position as "Deputy General Manager." On appeal, the Petitioner states that the Beneficiary qualifies as a manager abroad based on his position as "Deputy General Director." Because the Petitioner has referred to the job titles interchangeably without clarifying when the Beneficiary held each position or what his respective duties were in each role, we are unable to determine that the Beneficiary held a primarily managerial or executive role for the requisite one year prior to filing.

Even if we were to determine, as stated on appeal, that the Beneficiary held the deputy general director position for the required one year period, the job description submitted for that role does not adequately explain how the Beneficiary will be relieved of performing the non-qualifying day to day tasks of the organization. As noted above, the Petitioner provided a job description for the deputy general director position, along with examples of how the Beneficiary reports to the board of directors, his oversight of the business department along with international projects and representative offices abroad. While it appears from the description provided that the deputy director position could reasonably be considered an executive position, we agree with the Director that the Petitioner has not submitted sufficient evidence to establish that the foreign entity had sufficient staff to allow the Beneficiary to primarily perform executive duties rather than operational tasks. Specifically, the Petitioner did not describe the Beneficiary's claimed subordinates' positions to indicate how they support the Beneficiary's work nor did the Petitioner provide evidence, such as pay receipts or tax statements to document the actual employment of the claimed subordinates.

The Petitioner has not submitted evidence describing the Beneficiary's job duties for his prior roles with the foreign entity, aside from deputy general director. Without additional detailed position descriptions, along with descriptions of the Beneficiary's subordinates in each role and their respective duties, we cannot determine whether the Beneficiary held a managerial or executive position for the requisite period. The record, taking into account the totality of the evidence

Matter of M-G-USA LLC

presented, does not establish that the Beneficiary was employed in a managerial or executive capacity with the entity abroad for the required one year.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-G-USA LLC*, ID# 16867 (AAO June 15, 2016)