



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

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

MATTER OF T-L- INC.

DATE: MAY 24, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR NONIMMIGRANT WORKER

The Petitioner, a shipping and logistics company, seeks to employ the Beneficiary as its manager – business development 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 has not established that it will employ the Beneficiary in a qualifying managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Beneficiary has submitted sufficient evidence which establishes his executive and managerial role with the prospective employer. The Petitioner further states that the director misinterpreted the facts concerning the size and scope of the Petitioner's business, misinterpreted the level of responsibility of the Beneficiary, and misapplied the law.

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. 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.

A. Evidence of Record

The Petitioner filed the petition on June 9, 2015. The Petitioner stated on Form I-129 that it is a shipping and logistics company with three employees and an undisclosed gross annual income. It seeks to employ the Beneficiary as its manager – business development. The Petitioner described the Beneficiary's duties, noting that the Beneficiary's duties "will include setting the demography of logistics, establish proper sources of distribution from gateway ports to all over the U.S.A. The duties will also include having agreements with the vendors for distribution and warehousing thus providing complete supply chain management to importers and exporters for efficient enhancement of their business." The Petitioner went on to state that the Beneficiary's main duties would fall into one of three categories: identifying vendors, implementation of IT software, and liaison with the industry.

The Petitioner also stated that the Beneficiary would supervise four positions, including two current positions, "Operations Head" and "Documentation and Customer Service," and two prospective positions, "Export Supervisor" and "Sales Executive. The subordinate positions were described as follows:

- Operations Head: "handles all rate negotiations with the steamship lines and vendors such that Trucking companies, Custom Brokers & Warehouse operators and overlooks the operations on a daily basis."

- Documentation and Customer Service: "liaison with all the clients for their documentation and scheduling of shipments."
- Export Supervisor: "responsible for liaison with exporters, custom brokers & warehouse vendors & provide efficient cost effective solutions for exports out of USA to clients."
- Sales Executives: "will be responsible to liaise with the Importers & Exporters to offer the transportation service to & from USA to worldwide destinations."

The Petitioner submitted an organizational chart that is undated. This chart shows the Beneficiary in the role of business development manager overseeing two direct reports: operations head and documentation and customer service. The positions of "sales executive" and "export supervisor" are not included on the chart. The chart also shows the Beneficiary reporting to the president.

The Director issued a request for evidence (RFE) requesting, in part, evidence of the Beneficiary's managerial role 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. 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.

In response, the Petitioner submitted a letter providing additional details to the previously enumerated duties. The RFE response described the following duties, broken down with the following percentage of time spent on each group of duties:

- Manage the establishment of a proper source of logistical distribution from Gateway ports in Southeast Asia to destinations throughout the United States. He will designate a supervisory employee of the Corporation for each city in which foreign entity has a designated office and this individual will report to him directly as well as manage functioning of each subsidiary port office and its employees. The beneficiary will interview the various candidates for each supervisory position and he will have the sole discretion to employ the individual, determine the parameters of his position, and his salary. 20%
- Negotiate and manage the signing of agreements with various vendors who can provide distribution and warehousing services in order to complete the supply chain management required by importers and exporters for efficient enhancement of the services. The beneficiary will accept bids from various vendors who wish to provide services Corporation as part of its delivery chain. Each of these vendors will be requested to demonstrate their liability, provide verifiable timetables for their services and most importantly, provide a schedule of fees for each service they intend to perform. The beneficiary will determine which vendors are to be utilized, and will incorporate their estimated expenses in his marketing package to prospective customers. 10%

- After located and interviewing prospective vendors for their integration within the petitioner's infrastructure, the beneficiary must also negotiate contracts, prices, timetables and deliver schedules. In addition, the beneficiary must thereafter authorize the utilization of services by customer brokers, container trucking companies, warehouse operators, and box truck operators, all of whom will play vital roles in the infrastructure of a supply chain from Southeast Asia to the United States. The applicant will negotiate prices with all of these vendors and sign all contracts on behalf of his employer. His signature on all of these contracts is binding in behalf of the employer. 30%
- The Beneficiary, as part of his business development manager responsibilities, will also manage and supervise the efficient implementation of IT software to facilitate and effectuate a successful supply chain management system. He will choose and designate the appropriate systems for each aspect of the delivery chain system and will liaise with vendors, importers, and exporters to incorporate their services within the supply chain infrastructure. 10%
- Will manage the development of effective business models and strategies designed to increase business. These models will incorporate estimates for various freight delivery scenarios involving rail, truck, shipping and air, and will provide perspective customers with an accurate estimate of the precise costs of the services and the time involved in transporting services to the US. This involves a constant management responsibility to upgrade and tweak the software that incorporates real-time delivery issues so that a vendor conducting business with a company Southeast Asia has a realistic estimate of the amount of time and expense in shipping goods to the US. The Beneficiary's sponsored abilities in being a liaison between the various shipping industries and the petitioner will facilitate growth, sales and the investment of additional infrastructure and manpower into the organization, when required. 30%

The Petitioner stated that the Beneficiary "will be responsible for managing a professional team of individuals who have their designated job responsibilities will delineated, and it will be his responsibility to make choices and decisions and confirm the overall functioning of the US office." The Petitioner submitted a second organizational chart indicating that the Beneficiary will have two subordinates: sales and operations manager (high school) and documentation and customer service assistant (high school). It is not clear whether the "high school" designation means that the position requires a high school diploma, or if that is the highest educational level achieved by the individuals currently in the position.

The Director denied the petition on August 31, 2015, noting that the duties and percentages of time spent on each duty in the prospective position did not establish that the Beneficiary will primarily perform executive or managerial duties. The Director explained that the Beneficiary's duties appear to be primarily non-qualifying tasks related to providing the goods and services of the business instead of overseeing these functions. 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 functions.

On appeal, counsel for the Petitioner contends that the Director erred in concluding that the Beneficiary spends the majority of his time performing non-managerial functions. The Petitioner asserts that, although the size of the U.S. office is small, it “serves as an international nerve center for the Petitioner’s parent corporation and the Beneficiary will actually be managing the activities of remote managers in sub-offices around the world.” The Petitioner asserts that the Director did not take these facts into account.

B. Analysis

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

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. 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.*

Here, the Petitioner submitted a lengthy description of the Beneficiary’s duties in response to the RFE, which included a number of non-qualifying operational duties. According to the Petitioner, one of the Beneficiary’s main duties, one he will devote 30 percent of his time to, will be to “locate and interview[] prospective vendors for their integration within the petitioner’s infrastructure,” and “negotiate contracts, prices, timetables and delivery schedules.” The Petitioner also states that the Beneficiary will devote 10 percent of his time to “[n]egotiate and manage the signing of agreements with various vendors who can provide distribution and warehousing services in order to complete the supply chain management required by importers and exporters for efficient enhancement of the services.” However, when examining the details of this job duty, it becomes clear that the Beneficiary will in fact spend his time researching the individual vendors, reviewing their fee schedules and incorporating these costs into marketing materials for prospective customers. It is reasonable to assume that this level of involvement working directly with vendors, importers and exporters, marketing the business to prospective customers, and involvement in the minutia of arranging daily timetables and delivery schedules for a global shipping company is performing the main function of the business, rather than managing it. As such these are non-qualifying duties and the provided job description does not support the Petitioner’s claim that the Beneficiary will be engaged primarily in managerial or executive duties. 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). 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.

Other duties assigned to the Beneficiary appear that they may generally fall within the statutory definition of managerial or executive capacity, but the detailed explanation of these responsibilities along with the description of subordinate staff, do not support the Petitioner's assertion that the Beneficiary would in fact perform managerial or executive duties. Specifically, the Petitioner asserts that the Beneficiary would devote 30 percent of his time to "manage the development of effective business models and strategies designed to increase business. These models will incorporate estimates for various freight delivery scenarios involving rail, truck, shipping and air, and will provide perspective customers with an accurate estimate of the precise costs of the services and the time involved in transporting services to the US." However, the Petitioner does not appear to have staff to develop the cost modeling or perform the supply chain functions that the Beneficiary claims to manage. The Beneficiary is also purported to spend 10 percent of his time to manage and supervise the "efficient implementation of IT software to facilitate and effectuate a successful supply chain management system;" however, the Petitioner has not stated who, other than the Beneficiary, will be responsible for performing the daily IT functions of the business. According to the descriptions provided, none of the Petitioner's other employees would be responsible for providing IT service and support, such that the Beneficiary would be able to manage, rather than perform this activity.

Moreover, although the Petitioner asserts that the Beneficiary will not be involved in sales, the statements made in the record reflect that the Beneficiary will perform sales duties himself, rather than assigning them to the company's employees, as the sales staff has not yet been hired. Specifically, the Petitioner has stated that it employed three employees as of the date of filing. Initially, the Petitioner claimed to employ an "operations head" and "documentation and customer service" positions. At the time of filing, the Petitioner did not claim to employ an export supervisor or sales executives; rather it stated that it would fill these positions at a later date. In response to the RFE, the Petitioner changed the position titles but did not update or amend the job descriptions to include sales or marketing responsibilities. While the job descriptions for the subordinate positions do indicate that these individuals perform certain operational and administrative tasks, it does not appear that their role is to relieve the Beneficiary from performing the non-qualifying tasks identified above; such as IT functions, developing cost estimates and supply chain models, identifying vendors and suppliers, meeting with vendors, and performing marketing sales functions. It is evident from the description provided that the Beneficiary himself, and not the other staff, will be responsible for performing these non-qualifying duties. As such, we cannot conclude that the Petitioner has the staff necessary to relieve the Beneficiary from performing these non-qualifying duties, such that the Beneficiary would be able to devote his time primarily to managerial or executive duties.

Furthermore, the Petitioner's claim to "manage the activities of remote managers in sub-offices around the world," is not supported by evidence in the record. The Petitioner has not provided evidence of the employment or engagement of this staff, nor has it provided evidence of or a

description of the duties performed by this staff, such that we could conclude that this staff would relieve him from performing the non-qualifying operational and day-to-day duties noted above. We also note that the Beneficiary is said to spend 20 percent of his time performing the following: "He will designate a supervisory employee of the Corporation for each city in which foreign entity has a designated office and this individual will report to him directly as well as manage functioning of each subsidiary port office and its employees. The Beneficiary will interview the various candidates for each supervisory position and he will have the sole discretion to employ the individual, determine the parameters of his position, and his salary." We note that while the Beneficiary may be responsible for growing the US infrastructure of the company and hiring subordinate employees, the Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

The fact that the Beneficiary manages or directs 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, 8 U.S.C. § 1101(a)(44). Here, while the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possesses the requisite level of authority with respect to discretionary decision-making, the position description alone is insufficient to establish that his actual duties, as of the date of filing, would be primarily managerial or executive in nature.

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.

Here, although the Petitioner states that the Beneficiary has two direct subordinates in the United States, it is unclear which duties articulated by the Petitioner relate to management of the claimed subordinates. There is no mention in the job description of the Beneficiary's role in managing the subordinates listed below him on the organizational chart. Even if the Petitioner had established that the Beneficiary's duties did encompass supervision of these two subordinates, the Petitioner has not established that these positions are supervisory, managerial or professional. The Petitioner does not assert that either subordinate position has supervisory or managerial duties. The Petitioner has also

not established that the subordinate positions are professional. Rather, the Petitioner indicated that the level of education associated with these two positions was “high school.”¹

Furthermore, although the Petitioner states that the Beneficiary has the authority to hire, fire, and recommend compensation adjustments as necessary for his claimed prospective direct reports located with the company or parent company, at “sub-offices around the world,” the information provided by the Petitioner does not clearly identify the Beneficiary’s direct reports, nor does it provide evidence of this authority. Also, given that these subordinates appear to be prospective employees of the parent company, it is unclear how the Beneficiary, as an employee of the Petitioner, would be managing 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. Comm’r 1972)). Thus, the Petitioner has not established that the Beneficiary will perform personnel management duties.

The Petitioner has also not established, in the alternative, that the Beneficiary would be employed 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 fact that the Beneficiary has managerial 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”

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.”

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 identified a specific function that the Beneficiary will manage. Rather, the Petitioner focuses on his overall level of authority. As discussed, the duties assigned to the Beneficiary indicate that the Beneficiary is required to work with vendors to negotiate contracts, prices, timetables and delivery schedules. The Beneficiary is also responsible for various IT functions, developing cost estimates and supply chain models, identifying vendors and suppliers, meeting with vendors and performing marketing sales functions. These duties are indicative of the daily responsibilities involved providing the services of a global shipping company rather than the management of an essential function of such a company. 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 any specific function, rather than performing the duties associated with the marketing, operational, IT, and sales functions himself. Further, as noted above, the record does not indicate that the Petitioner's other staff relieves the Beneficiary from performing the non-qualifying duties. For these reasons, the Petitioner has not established that the Beneficiary will be employed as a function manager.

The Petitioner has also not established that the Beneficiary would 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 has not specifically described the Beneficiary's qualifying executive duties and the record 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. 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 Beneficiary's claimed subordinates, 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 section 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 (2d Cir. 1990)(per curiam); *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).

In this case, there is a noted absence of employees who would perform several of the non-managerial and non-executive operations of the shipping business. While the job descriptions for the subordinate positions do indicate that these individuals perform certain operational and administrative tasks, it does not appear that their role is to relieve the Beneficiary from performing the non-qualifying tasks identified above; such as IT functions, developing cost estimates and supply chain models, identifying vendors and suppliers, meeting with vendors and performing marketing sales functions. An individual will not be deemed a manager or executive under the statute simply because they have a managerial title. To qualify as a manager or executive, a beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise.

Therefore, for the reasons discussed, we find that the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity.

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 entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of T-L- Inc.*, ID# 16479 (AAO May 24, 2016)