



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

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

MATTER OF N- CORP., LTD.

DATE: SEPT. 27, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a technical sales and engineering services provider, seeks to extend the Beneficiary's temporary employment as its branch 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, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not established that: (1) the Beneficiary will be employed in a managerial or executive capacity for the U.S. entity; and (2) it had sufficient physical premises to accommodate its claimed employees.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that it has addressed the issues raised in the denial and that it has now hired additional staff to relieve the Beneficiary from performing non-managerial duties.

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.*

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 (I)(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 (I)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (I)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

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

The Director denied the petition, in part, finding that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity. The Petitioner does not claim that the Beneficiary will be employed in an executive capacity under the extended petition.

Therefore, we restrict our analysis to whether the Beneficiary will be employed in a managerial 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.

Further, “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.” *Id.*

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

A. Evidence of Record

The Petitioner filed the Form I-129, requesting to extend the Beneficiary’s temporary employment in L-1A classification, on November 21, 2014. On the Form I-129, the Petitioner indicated that it currently is in the process of hiring U.S. employees and that its gross annual income is “in investment stage.”¹

¹ The Petitioner stated on the Form I-129 that the Beneficiary would be working in a “new office” under the extended petition. The Petitioner’s previous petition on behalf of the Beneficiary was approved for a one year period commencing in January 2014. The Petitioner may not be granted a second “new office” L-1A petition approval under the regulations at 8 C.F.R. § 214.2(l)(3)(v). The regulations allow for a one-year period for the U.S. entity to commence doing business and develop to the point that it will support a beneficiary in a qualifying managerial or executive position. The only provision that allows for the extension of a “new office” visa petition requires the Petitioner to demonstrate that it is staffed and has been “doing business” in a regular, systematic, and continuous manner for the previous year. 8 C.F.R.

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The Petitioner indicated that it provides technical sales and engineering services to automotive companies including [REDACTED] and their tier one and tier two suppliers. The Petitioner stated that it also intended to establish business relationships with other international automotive companies with manufacturing operations in the southeastern region of the United States. The Petitioner's business plan identifies its products as a welding machine, elevator traction machine, and a compressor used in the automobile assembly line industry.

In a letter submitted in support of the petition, the Petitioner noted that the Beneficiary and an engineering support specialist have spent much of their time "visiting and working at project sites to negotiate and fulfill professional services contracts related to the design, installation, troubleshooting, and maintenance of specialized robotic equipment." The Petitioner asserted that the Beneficiary would continue to be responsible for establishing and developing the U.S. office, exercising authority to negotiate and enter into contractual agreements, and seeking out new opportunities for corporate partnerships. The Petitioner stated that the Beneficiary will also "provide guidance and direction to professional and supervisory staff at the company's headquarters in Korea who will perform the day-to-day, hands-on work related to Engineering, Technology, Finance and Accounting, and Administrative Support activities related to the newly-established branch office in the U.S." The Petitioner identified the Beneficiary's specific responsibilities and allocated the Beneficiary's time to those responsibilities as follows:

- Meet with executives and managers of [REDACTED] and [REDACTED] and Tier 1 and Tier 2 automobile parts manufacturers and suppliers to develop future business opportunities (20%);
- Direct and supervise the planning, implementation, and provision of [the Petitioner's] technical services to [REDACTED] and other major clients (15%);
- Manage and approve project and departmental budgets and schedules (10%);
- Monitor the implementation of the original business plan and make necessary changes according to business environment changes and implement business strategies (15%);
- Maintain and develop corporate wide administrative policies, protocols and standards, HR policies, general work procedures and internal regulations (5%);
- Establish employee benefits policies and standards and hire employees (5%);
- Negotiate and enter into contracts with major suppliers, customers, municipal governments, and professional consultants (10%);
- Supervise technology and personnel transfer from the parent company to the U.S. subsidiary (10%); and
- Control project expenditures and disbursement to subcontractors to maintain adequate cash-flow and working capital (10%).

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The Petitioner continued by stating that the Beneficiary will establish its organizational structure, train and hire employees, and determine job responsibilities and assignments for the proposed positions. The Petitioner noted that the Beneficiary is responsible for hiring two local employees in the initial phase of its operations - a technical sales specialist and an engineering manager. The Petitioner indicated that the Beneficiary had already hired the engineering manager and was in the process of hiring the technical sales specialist.

The Petitioner then identified the Beneficiary's only subordinate, [REDACTED] as a "technical support specialist" (rather than engineering manager) and described his duties as follows:

- Provide technical guidance and direction to U.S.-based contractors responsible for configuring and modification of the company's custom-designed production machinery;
- Make appropriate determinations concerning engineering processes, production methods, and facility operations . . .
- Oversee the development and implementation of equipment and machinery maintenance policies, including preventive maintenance, combined with newly acquired machinery test-run and optimization.
- Develop and implement new and improved production and quality control processes for products and materials; and
- Manage and control expenses related to the production technology and machinery transfer [m]onitor quality control and assurance activities and provide training, technical guidance and oversight to U.S. workers regarding process studies and other deliverables.

The Petitioner also provided a position description for a "Sales & Customer Service Specialist" position and stated that the position was "to be hired."

The Petitioner submitted its organizational chart depicting the Beneficiary as the branch manager and listing his duties as overseeing the operations of the branch, hiring and supervising employees, contract negotiations, sales, purchasing, and customer service. The chart identified [REDACTED] as the [REDACTED] Tech Support Specialist" and described his duties as equipment installation - after-service, material management, negotiations, and equipment training. The organizational chart also showed that the Petitioner was in the process of recruiting a sales and customer service specialist, who would perform customer service and sales duties, as well as equipment installation - after-service, negotiating, purchasing, and material management. The Petitioner submitted its IRS Forms 941, Employer's Quarterly Federal Tax Return, for the first and second quarters of 2014, each showing the employment of two individuals. The record also included [REDACTED] resume and the resumes of individuals who have applied for the sales and customer service specialist position.

On January 27, 2015, the Director issued a request for evidence (RFE) instructing the Petitioner to submit more information regarding the Beneficiary position and the structure of the company.

In response, the Petitioner repeated the information submitted in its initial letter in support of the petition. The Petitioner reiterated that the technical support specialist has a bachelor's degree in business management and 25 years of experience in technical support roles. The Petitioner noted that the sales and customer service specialist was still to be hired.

The Petitioner submitted 2014 IRS Forms W-2, Wage and Tax Statement, for the Beneficiary, the technical support specialist, and for a third individual whose position was not identified. The Petitioner's third quarter IRS Form 941, for 2014, shows the employment of one individual and the fourth quarter IRS Form 941, for 2014, the quarter in which the petition was filed, shows the employment of two individuals.

The Director denied the petition, determining that the Petitioner had not established that it has staff to relieve the Beneficiary from performing day-to-day non-managerial duties. The Director acknowledged the Petitioner's assertion that the foreign entity's employees would perform work related to engineering, technology, finance and accounting, and administrative support, but questioned who provided the Petitioner's information to the foreign entity staff and who answered the phones and performed the administrative duties that could not be performed by the staff in Korea. The Director found that the Petitioner had not established who would perform the technical support and the sales for the U.S. office.

On appeal, the Petitioner asserts that it has since hired a service technician and is now using an accounting service to handle payroll, employment records, and tax matters. The Petitioner claims that it is in the process of hiring an interpreter/translator and another service technician. The Petitioner requests that the denial be overturned or that the Petitioner be given an additional three months to complete the staffing plan.

B. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, the Petitioner has not established that the Beneficiary will be employed in a managerial capacity under the extended petition.

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

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 has submitted a broad overview of the Beneficiary's duties. For example, the Petitioner indicated that the Beneficiary would "[m]onitor the implementation of the original business plan and make necessary changes according to business environment changes and implement business strategies." Similarly, the Petitioner does not clearly explain the Beneficiary's involvement in supervising technology and personnel transfer from the foreign entity to the Petitioner. These responsibilities do not convey an understanding of the Beneficiary's actual tasks. Reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. The 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).

We note that the Petitioner continues by indicating that the Beneficiary will attend meetings to develop future business opportunities and negotiate and enter into contracts with major suppliers, customers, municipal governments, and professional consultants. We cannot ascertain from these broadly stated tasks, whether these duties encompass primarily managerial duties or are ordinary operational tasks to continue the Petitioner's routine operations. The Petitioner does not provide the necessary detail or explanation of the Beneficiary's actual activities in the course of his daily routine. Again, without detailed information regarding the Beneficiary's actual duties, the record is insufficient to establish the true nature of his employment. *See id.*

The Petitioner also refers to the Beneficiary managing and approving budgets and schedules, and controlling project expenditures and disbursement to subcontractors to maintain adequate cash-flow and working capital. These budgetary and financial tasks appear to include more operational tasks than managerial tasks, especially in light of the Petitioner's limited number of employees. The record does not include evidence that the technical support specialist, the only other employee when the petition was filed, will perform the tasks associated with the Petitioner's budget and finances. Although the Petitioner claims that the Beneficiary will continue to direct and offer guidance to the foreign entity's finance and accounting department, among others, the Petitioner does not explain the nature or scope of any services provided by the foreign entity. Moreover, the Petitioner has not further explained who or what the Beneficiary will schedule and has not submitted evidence that it routinely employs subcontractors or has specific projects that require expenditure control. Again, it is not possible to ascertain the tangible duties that will engage the Beneficiary from the general description provided. There is insufficient detail and supporting documentation to conclude that he will perform managerial duties.

Further, the Petitioner's organizational chart indicates that the Beneficiary will be responsible for sales, purchasing, and customer service activities, tasks which were not included in its breakdown of the Beneficiary's duties. The record does not include probative evidence of who will promote, negotiate, sell, interact with customers, and perform any duties necessary to implement the Petitioner's expansion into the U.S. market, other than the Beneficiary. The only other individual

employed when the petition was filed, the technical support specialist, installs equipment, provides after installation services, trains equipment users, and engages in negotiations and material management. His duties do not involve sales or purchasing, direct contract negotiations, or customer service other than training and providing technical guidance relative to the Petitioner's product. While the Petitioner's organization chart indicates that the proposed sales and customer service specialist position would perform purchasing, sales, and customer service functions, this position had not yet been filled at the time of filing or as of the date of the appeal. Thus, it is reasonable that the Beneficiary would be the individual performing the actual purchasing, sales, marketing, contract negotiations, and customer service functions of the business and that such duties would likely require a significant portion of his time until he is able to assign them to a subordinate.

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 a managerial or executive 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, the position descriptions alone are insufficient to establish that his actual duties are primarily managerial 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.

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

To determine whether the Beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Cf. 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term

profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”

The Petitioner’s description of the Beneficiary’s duties does not state that he would be primarily supervising other employees. The Petitioner references the Beneficiary spending five percent of his time establishing employee benefits and hiring employees and another five percent of his time maintaining and developing HR policies, general procedures, as well as internal regulations and corporate wide-administrative policies. It is not clear from the record whether these duties pertain to the U.S. entity’s prospective employees or the Beneficiary’s continuing responsibility for employees in Korea who provide the Engineering, Technology, Finance and Accounting, and Administrative Support work in support of the U.S. branch. However, as the Petitioner has allocated only ten percent of the Beneficiary’s time to these general duties, these duties are not the Beneficiary’s primary duties. The Petitioner also states that the Beneficiary will spend 15 percent of his time directing and supervising the planning, implementation, and provision of technical services. However, as the Petitioner had only one other employee when the petition was filed, it is not clear who else the Beneficiary would direct and supervise or that it would take this amount of time to perform this task.

Although the Beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the Petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* section 101(a)(44)(A)(ii) of the Act. We have reviewed the Petitioner’s organizational chart which also indicates that the Beneficiary hires and supervises employees. However, when the petition was filed in November 2014, the Petitioner’s IRS Form 941 shows that it employed only two individuals. The only individuals the Petitioner identifies as employees are the Beneficiary and the technical support specialist.² While the Petitioner planned to hire additional employees, such plans do not demonstrate eligibility when the petition was filed. 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). Upon review of the record, the Petitioner has not established that the Beneficiary’s duties encompass primarily supervising or managing other employees.

² We have reviewed the descriptions of duties for the technical support specialist position and note the Petitioner’s claim that the position requires a bachelor’s degree. However, the Petitioner does not sufficiently develop the duties of this position to support this claim. The Petitioner does not sufficiently explain and the record does not demonstrate what duties the individual in the technical support position performs that require a business degree. Based on the current record, this position is not a professional position. Additionally the record does not show that the individual in the technical support position primarily supervises or manages others. The record does not include evidence of any contractors the technical support position oversees. Thus, even if the Beneficiary spent the majority of his time supervising this employee, the record is insufficient to establish that the position supervised is managerial, supervisory, or professional in nature.

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 did not articulate a claim that the Beneficiary would primarily manage an essential function. Further, we note here that 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 expects the Beneficiary to generally develop the Petitioner’s business including negotiating and entering into contractual agreements, seeking out new opportunities for corporate partnerships, and providing sales, purchasing, and customer service. However, the record lacks evidence regarding who will perform the duties necessary to implement the Petitioner’s objectives regarding its business development, to perform its sales, purchasing and customer service, other than the Beneficiary. The Petitioner has not established how the Beneficiary’s one subordinate employee or the claimed overseas staff would relieve him from performing non-qualifying duties. Moreover, the Petitioner has not provided a specific allocation of the Beneficiary’s time to daily duties attributed to managing an essential function.

We note that a company’s size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa petition for classification as a multinational manager or executive. *See* section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company, or a “shell company” that does not conduct business in a regular and continuous manner. *See, e.g., Family Inc.*, 469 F.3d 1313; *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

On appeal, the Petitioner claims that it has hired a service technician and a contracted accounting service. The Petitioner does not detail the duties of the service technician or identify his placement on the organizational chart. While the new accounting service may assist the Beneficiary in human resource administrative functions and providing tax service, the accounting service provider does not perform the sales, marketing, customer service, or other functions. Of most significance, as stated above, the Petitioner must establish eligibility when the petition is filed. Again, a visa petition may not be approved based on speculation of future eligibility or after the Petitioner or Beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249.

A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Further, as the present matter involves a request for an extension of a “new office” petition, the regulations require USCIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the “new office” operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If a “new office” does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, then it is ineligible by regulation for an extension. In the instant matter, the Petitioner has not reached the point that it can employ the Beneficiary in a primarily managerial or executive capacity. Absent evidence of employees or outside contractors who perform the non-qualifying duties associated with the U.S. entity’s operations, we cannot conclude that the Petitioner would have a reasonable need for the Beneficiary to perform primarily managerial or executive duties, rather than being involved in the day-to-day operational and administrative functions of the business.

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a managerial capacity under the extended petition.

III. PHYSICAL PREMISES

The Director also denied the petition, in part, finding that the evidence of record did not establish that the Petitioner maintained sufficient physical premises to operate its business.

In the Petitioner’s initial letter in support of the petition, it noted that it subleased an office for its exclusive use and had access to a reception area, conference room, break room, and rest room, as well as to office resources, such as phone and fax lines, Internet, and a copy machine. The Petitioner submitted a copy of the lease and a letter from the lessor confirming the terms, the approximate size of the premises, and the Petitioner’s continuing occupancy. The Director did not request further evidence on the sufficiency of the Petitioner’s physical premises to accommodate its employees. Upon review of the record, however, the Director determined that the 250 square feet of office space was insufficient to house the Petitioner’s current employees, its anticipated employees, and to conduct business.

On appeal, the Petitioner noted that it had acquired additional square footage of its initial space rented and submitted a copy of photographs of the office space.

Upon review of the totality of the record, the Petitioner has established the sufficiency of its physical premises. We will withdraw the Director’s determination on this issue.

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IV. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated 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 N- Corp., Ltd.*, ID# 11150 (AAO Sept. 27, 2016)