U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-R-O-C- LLC

DATE: APR. 25, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, which states that it operates a restaurant and bar, seeks to temporarily employ the Beneficiary as the chief executive officer/manager of its new office[1] under the L-1A nonimmigrant classification for intracompany transferees. 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 of the California Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity; (2) the Beneficiary will be employed in the United States in a managerial or executive capacity; and (3) the Beneficiary's prior education, training and employment qualifies him to perform the intended services in the United States.

On appeal, the Petitioner submits additional evidence and asserts that the evidence of record establishes that the Beneficiary has been employed abroad, and will be employed in the United States, in an executive capacity, and is fully qualified for the proposed U.S. position.

Upon *de novo* review, we will dismiss the appeal because the Petitioner has not established that the Beneficiary was employed abroad in an executive capacity or that he would be employed in an executive capacity in the United States within one year of approval of the petition. As the Petitioner has not satisfied these fundamental elements of eligibility, we will reserve the remaining issue regarding the Beneficiary's qualifications for the intended U.S. position.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for

[1] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). 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 or executive capacity. *Id.*

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. EMPLOYMENT ABROAD IN AN EXECUTIVE CAPACITY

The first issue to be addressed in this matter is whether the Petitioner established that the Beneficiary has been employed abroad in an executive capacity. The Petitioner does not claim that he has been employed abroad in a managerial capacity.

The term "executive capacity" is defined as an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

Beyond a petitioner's description of the beneficiary's duties abroad, we review the totality of the evidence when examining a beneficiary's claimed managerial or executive capacity, 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.

Accordingly, our analysis of this issue will focus on the Beneficiary's duties as well as the nature of the foreign entity's business, its staffing levels, and its organizational structure during his period of employment abroad.

A. Duties

The Petitioner must show that the Beneficiary has performed certain high-level responsibilities consistent with the statutory definition of executive capacity. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). In addition, the Petitioner must prove that the Beneficiary has been *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the foreign entity's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

At the time of filing, the Petitioner submitted a supporting letter which stated that the Beneficiary had been employed by its parent company in India since April 2013. The Petitioner referred to his position as both "Building and Sales Manager" and "Purchase and Sales Manager," and included a job description that listed the Beneficiary's responsibilities under the following headings:

1. Planning
2. Management
3. Financial Management
4. HR Management
5. Marketing and PR

The Petitioner attributed a broad set of duties to each area of responsibility, but did not provide specific information regarding what the Beneficiary does on a day-to-day basis within the foreign entity's business. Moreover, despite the Petitioner's statement that the Beneficiary has been serving in the role of either "building and sales manager" or "purchase and sales manager," the submitted description did not reflect his primary responsibility for building, sales, or purchasing activities. Most of the duties were very general and focused on his oversight of the company as a whole.

For example, the Petitioner stated that the Beneficiary's "planning" duties include working with the executive team to plan and develop company policies and procedures, evaluating management performance, developing company strategies, creating annual operating plans, managing "strategic relations," and defining and articulating the organization's vision. This portion of the description merely paraphrased the statutory definition of "executive capacity" and did not explain the specific tasks the Beneficiary performs within the context of the foreign entity's construction business. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *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); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The position description also included information regarding the Beneficiary's claimed subordinates that was inconsistent with the foreign entity's employee list and organizational chart submitted at the time of filing. Specifically, the Petitioner's letter states that the Beneficiary oversees "the Chief Financial Officer and her staff," a human resources manager, and a marketing director, but these positions that do not appear on the submitted organizational chart or employee list. For example, the foreign entity's organizational chart shows a "general manager for finance," a "manager" and a "sales and managing" employee lateral to the Beneficiary's position, but the only employees shown subordinate to him are an accountant, a head engineer, and a "supervisor #1."

Finally, there are anomalies in the Petitioner's supporting letter which suggest that the submitted job descriptions were derived from a template, and do not reflect the Beneficiary's actual duties within the petitioning organization. The phrase "INSERT Group" appears throughout the description submitted for the Beneficiary's proposed U.S. position, which is very similar in content to the description provided for his position abroad. For this reason, the information provided in the letter, specifically regarding the Beneficiary's duties in the U.S. and abroad, is lacking in probative value.

The Petitioner's initial evidence also included the Beneficiary's resume, where he listed his job title with the foreign entity as "purchase and sales manager" and his current job duties as follows:

- Generate sales to reach the company's target.
- Interact and coordinate with sales team, marketing team and account.
- Planning and managing the relationship with particular clients.
- Grab new sales opportunities by maintaining relationship with client account manager.
- Material analysis and quality control by various tests.
- Material price control.
- Coordinate with construction team for surety of work and possession on time.

This description bears little resemblance to the duties described in the Petitioner's letter and does not support the Petitioner's claim that the Beneficiary's duties are primarily executive in nature. The supporting evidence does not establish that the foreign entity has a sales or marketing team, and without such evidence, it appears more likely than not that the Beneficiary himself is engaged in non-qualifying sales and client-facing activities rather than the vague higher-level duties attributed to him in the Petitioner's letter. Further, while the Beneficiary indicates in his resume that he "coordinates with" other staff within the company, the duties he lists do not describe a position with clear authority over subordinate staff.

Based on the foregoing, the evidence provided at the time of filing did not include a detailed, consistent, and credible account of the nature of the Beneficiary's position with the foreign entity. In a request for evidence (RFE), the Director advised the Petitioner that the initial description lacked sufficient detail and requested a letter from the foreign entity detailing the Beneficiary's typical duties and the percentage of time he spends on specific tasks.

In response, the Petitioner submitted an unsigned letter on the foreign entity's stationery, which is attributed to Mukesh Prajapati. The letter lists the Beneficiary's responsibilities as follows, without further explanation:

- Planning
- Purchase
- Sales
- Finance
- Authority

This letter was not responsive to the Director's request for a more specific description of the Beneficiary's actual duties, did not resolve the deficiencies and inconsistencies noted above, and was even less detailed than the job description submitted at the time of filing. We agree with the Director's determination that the Petitioner did not submit sufficient information regarding the Beneficiary's actual role and duties to establish that he primarily performs executive duties for the foreign entity as claimed.

Finally, we note that, on appeal, the Petitioner submits a statement from the Beneficiary who indicates that he has performed executive duties for the foreign entity as its "purchase and sales manager," with the following areas of responsibility:

A. Architectural
B. Planning
C. Construction
D. Materials
E. Accounting
F. Sales

Rather than describing his day-to-day job duties, the Beneficiary's statement primarily provides an overview of the staffing of the foreign entity, which we will discuss further below. However, he specifies that he has the following responsibilities:

- Responsible for arranging for architectural drawings and plans with the company's contracted architect, who works with the head engineer to discuss project requirements.
- Approve architectural and structural plans, prepare a schedule for making purchases based on the construction schedule, and rely on the accountant and office manager to purchase raw materials and supplies to build the structure.
- Review and approve proposed construction plans prepared by engineers and general contractors.
- Supervise a contracted chartered accountant.
- Head the sales office; conduct sales negotiations with customer and direct attorney to prepare the sales agreement.

The Petitioner does not attempt to reconcile this new description of the Beneficiary's duties with its previous claims that the Beneficiary's duties include oversight of a CFO, a marketing director, as well as responsibility for the foreign entity's overall organizational planning and policy-making. As noted, the Petitioner's description of the Beneficiary's duties abroad contained no references to building or construction activities. Further, this new statement from the Beneficiary is not consistent with the duties stated in his resume, which suggested that his primary duties are related to sales, rather than to oversight of construction activities. The Petitioner did not resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Even if we considered the Beneficiary's statement without regard to these inconsistencies, it is not sufficiently detailed to establish what he primarily does on a day-to-day basis and does not indicate that he has been primarily performing executive duties as defined in the statute. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co.*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's activities in the course of his daily routine.

While it appears that the Beneficiary likely has some authority over the foreign entity's operations as a director and minority owner, these facts do 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 actual duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. The Petitioner did not meet its burden to establish that the Beneficiary's duties abroad satisfied this eligibility requirement.

B. Staffing and Organizational Structure

The Petitioner's foreign parent company, a partnership with four owners, operates a construction company that appears to specialize in residential buildings. The only organizational chart provided for the foreign entity identifies the four partners in lateral positions as "building and sales manager" (the Beneficiary), "general manager for finance," "manager" and "sales and managing." The chart depicts a head engineer, an accountant, and a "supervisor #1" reporting to the Beneficiary, and does not include any other subordinate staff.

At the time of filing, the Petitioner also provided a list of 21 employee/contractor names and job titles, which included an accountant, two managers, an assistant manager, a head engineer, two assistant engineers, two supervisors, an assistant supervisor, various construction contractors, a carpenter, plumber, electrician, and a security manager, but did not provide job duties for the staff, evidence of their employment, or indicate how these individuals fit into the submitted organizational chart. As noted above, the Petitioner's descriptions of the Beneficiary's duties at the time of filing and in response to the RFE did not indicate his supervision of workers engaged in designing or building the foreign entity's construction projects.

In the RFE, the Director advised the Petitioner that the submitted organizational chart did not include sufficient detail to reflect the foreign entity's staffing levels and structure, and asked for a more detailed chart, as well as a list of all employees in the Beneficiary's division by name, job title, summary of job duties, education level, and salary. The Petitioner's response to the RFE did not include this requested evidence.

On appeal, the Petitioner submits an employee list that resembles the list provided at the time of filing, and the Beneficiary states that employees or contractors under his direct or indirect supervision include an engineer and assistant engineer, general contractors and their subcontractors, an office manager, and a supervisor. His statement also provides a general description of the flow of work in the company's building and construction areas. However, the information provided on appeal does not resolve the noted inconsistencies in the record regarding the Beneficiary's job title, level of authority, areas of responsibility, and job duties. As discussed, none of the position descriptions submitted prior to the denial of the petition indicated the Beneficiary's responsibility over the company's building projects and the Beneficiary's own resume lists his title as "purchasing and sales manager." While the Beneficiary states on appeal that he "heads the Sales Office," the Petitioner has not identified a sales department or division or any sales employees working under his supervision, and the details regarding his actual role with the foreign entity remain unclear.

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. 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 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. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Here, the Petitioner has not met its burden to establish that the Beneficiary primarily focuses on the broad goals and policies of the foreign entity. It has not provided a detailed, consistent account of the Beneficiary's actual day-to-day duties or provided consistent and complete information regarding his subordinate staff in support of its claim that he is relieved from significant involvement in non-executive tasks. Accordingly, the Petitioner has not established that the Beneficiary has been employed abroad in an executive capacity.

III. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The Director also denied the petition based on a finding that the Petitioner did not establish that it would employ the Beneficiary in an executive capacity in the United States.

In the case of a new office petition, we review a beneficiary's proposed job duties as well as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the intended managerial or executive capacity. A petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the evidence must be considered in analyzing whether the proposed managerial or executive position is plausible considering a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).[2]

A. Duties

In the denial decision, the Director focused on the Beneficiary's job duties, emphasizing that the Petitioner did not provide a sufficiently detailed description of his proposed duties as CEO/manager of the intended restaurant business. The Director further found that the Petitioner did not adequately respond to the RFE with respect to the Beneficiary's U.S. job description, noting that the Petitioner provided a materially different, but still vague, list of proposed job duties in its response.

[2] The Director's decision does not address the Petitioner's business and hiring plans or its proposed staffing and structure, although evidence related to these new office requirements was requested in the RFE. We will address this evidence in our analysis below.

We agree with the Director's determination that the Petitioner's descriptions of the Beneficiary's duties were insufficient to establish what he would be doing on a day-to-day basis by the end of the company's initial year of operations. The Petitioner's initial letter in support of the petition included three different descriptions of the Beneficiary's proposed duties. One of the descriptions was nearly identical in content to that provided for his position for the foreign entity and indicated that he would be responsible for "Planning," "Management," "Financial Management," "HR Management" and "Marketing and PR." This description was overly broad, contained no references to the type of business operated by the Petitioner, and indicated that the Beneficiary would supervise positions that do not appear on the Petitioner's organizational chart. The second description in the Petitioner's letter, as noted above, appears to have been prepared from a template, as it contains the phrase "INSERT Group" in five different instances.[3] Nevertheless, it was similar to the first description and we cannot determine that either one accurately reflects the Beneficiary's actual proposed day-to-day duties.

The third description of the Beneficiary's proposed position listed the following duties:

- Direct, plan or implement policies, objectives, or activities or organizations or businesses . . . . (25%)
- Direct human resources activities, including the approval of human resource plans or activities, the selection of high level staff. (15%)
- Analyze operations to evaluate performance of the company or its staff in meeting objectives . . . (10%)
- Review reports submitted by staff members to recommend approval or to suggest changes. (15%)
- Negotiate or approve contracts or agreements with contracts or agreements with suppliers, distributors, federal or state agencies or other organizational entities. (15%)
- Confer with board members, organizational officials, or staff members to discuss issues, coordinate activities, or resolve problems. (10%)
- Appoint department heads or managers and assign responsibilities to them (10%).

In the RFE, the Director advised the Petitioner that it did not provide sufficient detail regarding the actual duties the Beneficiary would perform and requested a more specific account of his proposed tasks and the amount of time to be spent on each. In response, the Petitioner submitted a different list of broadly cast duties that included "leading the development and implementation of the overall organization's strategy," directing the work of "other executive leaders including presidents, vice presidents, and directors, depending on the organization's reporting structure," "evaluating the success of the organization," "formulating and implementing the strategic plan," and "demonstrating the leadership necessary to make the organization's mission a success." This description was not responsive to the Director's request for a more detailed description of the Beneficiary's proposed duties. It does not provide insight into what the Beneficiary would do on a day-to-day basis within the context of the Petitioner's restaurant business, which will not employ subordinate presidents and vice presidents as referenced in the list of duties. Again, conclusory assertions regarding the

[3] For example, the description reads, in part: "While working in the U.S., another executive will be in charge of the INSERT Group's day-to-day operations, although [the Beneficiary] will be in charge of the INSERT Group in a variety of capacities."

Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

On appeal, the Petitioner simply repeats one of the position descriptions from its initial letter that was already found to be deficient, and also includes a reference to the Beneficiary's oversight of a "chief operating officer" that does not appear on the proposed organizational chart, and management of "client development" and "distribution of supplies," duties that appear to be inconsistent with the Petitioner's operation of a restaurant.

The Petitioner has not provided a detailed, probative description of the Beneficiary's proposed duties in the United States. The Petitioner's vague and inconsistent lists of duties are insufficient to establish that the Beneficiary's duties will be in an executive capacity. Further, as this is a new office petition, much is dependent on factors such as the company's business and hiring plans and evidence that the business will grow sufficiently to support a beneficiary in the proposed position. The Petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the evidence must be considered in analyzing whether the proposed duties are plausible considering a petitioner's anticipated staffing levels and stage of development within a one-year period. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

B. Business Plans and Proposed Organizational Structure

The Petitioner states that it operates a full-service restaurant and bar pursuant to a franchise agreement with and stated on the Form I-129 that it had 34 employees at the time of filing, with $1 million in gross annual income.[4] The Petitioner was established in 2017 and it states that its restaurant opened in 2018, two months before the petition was filed.

The Petitioner's initial evidence included an organizational chart and an employee list. The organizational chart depicted the Beneficiary as CEO/Manager supervising three shift managers and one head chef. The chart identified a total of 13 employees by name subordinate to the Beneficiary, including the shift managers, chef, and nine kitchen and bar employees reporting to the "Shift Manager (breakfast)." The chart appeared to identify ten additional positions that would report to the head chef and other shift managers, but did not identify any additional position titles or employees names.

The concurrently-submitted employee list included 21 positions, but did not include the three shift managers who were identified on the chart as the Beneficiary's direct subordinates. Notably, all positions identified on the employee list and the organizational chart are kitchen positions (sous chef, breakfast chef, pizza cook, dessert chef, and various kitchen assistants); the Petitioner did not identify

[4] The Petitioner stated that it has a franchise agreement and submitted a fictitious name statement indicating that it is doing business as However, the only franchise agreement submitted is a "Master Franchise Agreement" between and a Florida limited liability company called which appears to be owned by the Petitioner's minority owner, Although requested by the Director, the Petitioner did not provide a copy of its agreement with the master franchisee or the franchisor.

any servers, dishwashers, hosts, or back office staff. Also, we note that not all employees named on the organizational chart appeared on the concurrently submitted employee list.

The Petitioner also submitted an "Agreement to Provide Staff" between the Petitioner and [redacted] which indicated that [redacted] would recruit restaurant staff for the Petitioner. The Petitioner did not provide evidence of payments made to [redacted] or wages paid directly to its claimed employees, nor did it provide a business plan explaining how the company intends to expand and develop during its first year of operations.

In the RFE, the Director requested: a more detailed organizational chart; a copy of the Petitioner's business plan describing the company's hiring plans, projected structure and financial objectives; and evidence of wages paid to employees who had already been hired.

In response, the Petitioner submitted a revised organizational chart which depicts the Beneficiary as CEO/Manager directly supervising a newly added "manager" position, the head chef, and the shift manager for the lunch shift. The chart shows that the manager supervises the dinner shift manager, who supervises the breakfast shift manager, who, in turn, supervises eight lower level employees (a breakfast chef, pizza cook dessert chef, barista, bartender, and three assistants). The chart lists 14 employees by name, including the Beneficiary.

The Petitioner identified its minority owner [redacted] as the "manager" and provided a job description for him (as well as a separate and completely different description for a "manager" position in the same document). The duties attributed specifically to [redacted] are vague (such as "communicate company strategy to the board of directors" and "preside over operations") and do not describe his duties in the context of the Petitioner's restaurant business. The Petitioner also provided separate descriptions for the positions of "assistant manager" and "cashier," which do not appear on either version of the Petitioner's organizational chart. The Petitioner indicates that the "cashier" will "sell tickets," "stock shelves" and "process merchandise returns," duties that are inconsistent with the nature of the business.

Although the Petitioner submitted a business plan, it does not include a personnel or hiring plan, identify the total number of workers to be hired during the initial year of operations, nor does it identify salaries and wages as a projected operating expense of the business. As such, the record does not sufficiently establish the anticipated structure or staffing levels of the company.

Further, because the Petitioner claimed that it was already well-staffed with as many as 34 employees at the time of filing, it was reasonable for the Director to request evidence of wages paid to any employees already hired. The Petitioner did not respond to this request. On appeal, the Petitioner states that it has "over 20 employees," "over 30 employees," and "over 36 employees," but still has not submitted payroll or comparable documentation in support of any of these claimed figures.

The Petitioner also introduces a third description of its organizational structure on appeal. In his statement, the Beneficiary states that he will supervise two shift managers and one head chef. He states that five servers and two bartenders report to the shift managers, while the head chef supervises two sous chefs/line cooks, three pastry chefs, and two pizza chefs, for a total of 17 employees. Based

on this description of the restaurant's staffing, it appears that the Beneficiary would be responsible for acting in the capacity of restaurant manager, rather than in an executive capacity as claimed by the Petitioner. In fact, in response to the RFE, the Petitioner described a "manager" position that would be responsible for placing orders with suppliers, scheduling delivery of foods and beverages, resolving customer complaints about food quality and service, monitoring actions of staff, maintaining employee and records, preparing payroll, paying bills, monitoring bookkeeping records, tracking staff schedules, performing record keeping tasks, checking the quality of deliveries, arranging for maintenance and repairs at the facility, totaling and balancing receipts against sales, and other administrative and operational duties necessary for the operation of the restaurant. Based on the evidence submitted, we cannot determine that the Petitioner intends to hire anyone to relieve the Beneficiary from performing these duties during its first year.

The Petitioner correctly observes that we must take into account the reasonable needs of the organization and that a company's size alone may not be the only factor in determining whether the Beneficiary would be employed in a managerial or executive capacity. S*ee* section 101(a)(44)(C) of the Act. However, it is appropriate 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. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record. *See Systronics*, 153 F. Supp. 2d at 15.

Here the Petitioner has claimed to employ somewhere between 13 and 36 employees, but it has neither documented its current staffing levels nor provided a consistent or detailed description of its anticipated staffing levels and structure at the end of its first year of operations. Based on the omissions and inconsistencies in the record, the Petitioner has not met its burden to demonstrate that it will support the Beneficiary in an executive position, or that it will have a reasonable need for him to perform primarily executive duties within one year.

Finally, we acknowledge the Petitioner's claim that the Director's denial of this petition "violates" a non-precedent AAO decision, a copy of which is provided with the appeal submission. Since the referenced decision was not published as a precedent, it does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. The Petitioner states that the facts of this case are similar to those in the non-precedent decision because "the beneficiary will be working with the Board of Directors and the Chief Executive Officer of the India parent organization" and "continue to rely on the support of the parent company's well-documented international team." While the Petitioner correctly states that it is reasonable to consider a beneficiary's role within the wider qualifying organization, the Petitioner has not previously claimed that the foreign entity's staff, who are engaged in the operation of a construction company, will "support" the day-to-day operations of the Petitioner's bar and restaurant. The Petitioner's new claim is not sufficiently supported by other evidence in the record and it has not established how the foreign entity's staff would relieve the Beneficiary from performing non-executive tasks in the United States.

IV. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed

Cite as *Matter of T-R-O-C- LLC*, ID# 3094687 (AAO Apr. 25, 2019)