U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-S- LTD.

DATE: APR. 30, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner,[1] whose U.S. subsidiary intends to sell, distribute, and service spas and swimming pools, seeks to temporarily employ the Beneficiary as chief executive officer (CEO) of a new office[2] 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 of the California Service Center denied the petition, concluding that the Petitioner did not establish, as required, that: (1) the new office would be able to support a managerial or executive position within one year of approval of the petition; and (2) the Beneficiary has been employed abroad in a managerial or executive capacity.

On appeal, the Petitioner submits additional evidence and asserts that the record now establishes that the Beneficiary has been employed abroad, and would be employed in the United States, in a managerial or executive capacity.

Upon *de novo* review, we will dismiss the appeal.

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 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.*

[1] The Petitioner in this matter, the Beneficiary's current employer, is the foreign parent company of the Beneficiary's proposed U.S. employer a company established in 2017.

[2] 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.

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. DEFINITIONS

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; 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; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

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.

Based on the definitions of managerial and executive capacity, the Petitioner must first 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 at 1533.

III. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

The first issue we will address is whether the Petitioner established that the Beneficiary has been employed abroad in a managerial or executive capacity.

When examining the managerial capacity of a given beneficiary, we will look to the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties performed by the Beneficiary and indicate whether such duties are in a managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, USCIS examines 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, we will discuss evidence regarding

the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure.

A. Duties

The Beneficiary has been employed in the United Kingdom as the Petitioner's president and CEO since 2008. The Petitioner described his current duties as follows:

- Implement the appropriate business rules governing the advertising, sales, and production and retail management aspects of the Spa industry.
- Manage a team of engineers responsible for pre-sales requirements gathering, determining and expressing the implementation details to the customers, delivery and fitting the spa or other equipment . . . while working on tight deadlines.
- Manage and direct the retail sales program including appointment and training of retail staff, and the effective management of the retail sales environments.
- Guide the interaction of all management programs including accounting programs and others.

In response to a request for evidence (RFE), in which the Director asked for a detailed description of the Beneficiary's typical duties and the amount of time spent on specific tasks, the Petitioner stated that he shares day-to-day decision making with the company's other director, and allocates his time to the following tasks on a weekly basis:

- Liaising with engineers to organi[z]e daily jobs 20%
- Answering emails and enquiries 15%
- Quoting and Estimating 20%
- Liaising with Managerial staff for day to day running 20%
- Sales and sales training 10%
- Organi[z]ing Marketing and future promotions 15%

The Director determined, and we agree, that the descriptions did not provide sufficient detail to establish what the Beneficiary has been doing on a day-to-day basis and therefore do not establish that his duties were primarily managerial or executive in nature. In fact, the latter job description suggests that the Beneficiary spends only 20 percent of his time overseeing managerial staff and performs a number of non-qualifying duties, such as responding to customer inquiries, providing quotes and estimates, sales duties, marketing, and training of sales staff, rather than allocating these duties to subordinate retail and technical staff charged with selling, installing, and maintaining spas for customers. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See, e.g.*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

On appeal, the Petitioner has submitted two additional lengthy descriptions of the Beneficiary's role as CEO. The first bears no resemblance to the duty descriptions provided previously and describes the Beneficiary's "accountabilities" as: legal compliance; mission, policy, and planning; management and administration; governance; financing; and community relations. This description, to the extent that it is inconsistent with those submitted previously, has limited probative value.

The Petitioner also submits a completely different lengthy position description that purports to further break down the duties submitted in response to the RFE, which, as noted, suggested that the Beneficiary performs primarily non-managerial functions. For example, the Petitioner now states that the Beneficiary's responsibility for "quoting and estimating" does not actually involve providing quotes and estimates but involves reading reports from banks, signing off on payments to vendors and suppliers, developing supply contracts, reviewing budget and expense reports provided by a "manager," directing the best use of supplies and personnel, setting standards for project estimates, and approving estimates prepared by the engineering and operations managers. In sum, the Petitioner indicates that subordinate managers and their staff actually perform the quoting and estimating duties that it previously attributed to the Beneficiary. However, as discussed further below, the Petitioner has not shown that it employed an engineering manager or other technical manager in the three years preceding the filing of the petition, so it is unclear who has been preparing quotes and estimates, if not the Beneficiary. In fact, many of the duties, as described on appeal, involve supervising, meeting with, and evaluating managerial staff that is not documented in the record.

The Petitioner has now provided four different descriptions of the Beneficiary's duties, with the latest appearing to be incongruous with the nature, size and scope of the foreign entity's business, which has typically employed three to five employees in addition to the company owners according to its payroll records dating back to 2015. We cannot discern which, if any, of the submitted descriptions accurately reflects the Beneficiary's actual duties.

Even though the record demonstrates that the Beneficiary manages the business along with his spouse, the fact that he manages or directs the 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. 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; however, the broad and shifting position descriptions are insufficient to establish that his actual duties abroad have been primarily managerial or executive in nature.

B. Staffing and Organizational Structure

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) takes 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.

The Petitioner has provided copies of its quarterly "Employer's Tax Summary" for the period from July 2015 until June 2017, along with employment contracts for several employees. The Petitioner has employed the following individuals in the United Kingdom during this period:[3]

Name	Title
[Beneficiary]	CEO/Director
	Director/Retail Manager
	Operations Manager
	Service Technician (part-time) (hired May 2015)
	Trainee Engineer/Apprentice Electrician (hired March 2015)
	Apprentice spa technician (hired June 2017)
	Business Development Manager (hired July 2017 in anticipation of owners' transfer to the United States)

The Petitioner's organizational chart, submitted for the first time on appeal, shows that the Beneficiary supervises the retail manager, business development manager, and operations manager. The chart depicts a subcontracted maintenance services technician and a subcontracted sales associate reporting to the retail manager, and a subcontracted landscaper and grounds man reporting to the operations manager. However, the Petitioner has not provided evidence of payments to any subcontractors to substantiate its claim that it has staff to perform retail, landscaping and maintenance services.

The chart indicates that a senior technician, technician, apprentice technician, and apprentice electrician report to the newly hired business development manager. However, this position was newly created in July 2017 and the Beneficiary has not been supervising a business development manager for at least one year in the three years preceding the filing of the petition. It is unclear who was supervising these technicians previously, if not the Beneficiary, who possesses all the required industry certifications to perform this work.

The Petitioner maintains that the evidence is sufficient to show that the Beneficiary has been supervising subordinate managerial and professional employees. 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. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," 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."[4] Section 101(a)(44)(A)(iv) of the Act.

---

[3] The Petitioner's payroll records indicate that it previously employed and but both employees left the company in 2016.

[4] In evaluating whether a 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 U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term *profession*

The Petitioner provides position descriptions on appeal in support of its claim that the Beneficiary supervises managerial employees. However, the duty descriptions, while lengthy, are not consistent with the scope of the business. As noted, the Petitioner indicates that the retail manager supervises two subcontractors, but the record does not include evidence that these individuals have been working for the foreign entity or information regarding the nature of their duties. Without this information, the Petitioner has not established that anyone other than the retail manager is working in the Petitioner's store. If she is the store's only employee, then it is more likely than not that she is not required to perform primarily managerial or supervisory duties as claimed. Further, the Petitioner has previously stated that the Beneficiary and the retail manager (his spouse) equally share the responsibility for the day-to-day supervision of the business, so it is unclear to what extent he actually supervises his spouse and co-director in this retail management role.

In addition, the duties attributed to the operations manager are vague and it is difficult to determine what this employee actually does within the context of the foreign entity's business. The organizational chart indicates that this position supervises a landscaper and "groundsman" whose employment and duties are not documented in the record, but the job description suggests a broader, more senior role that involves long-term planning and strategy, "directing organization's financial and budget activities to fund operations," developing an operations budget, and developing policies goals and objectives, duties which appear to overlap with the Beneficiary's own duties. The Petitioner has not documented this employee's subordinates or submitted a credible description of the operations manager position in support of its claim that it is a managerial or supervisory position.

Finally, the business development manager is a recent hire who has been recruited for a newly created position in preparation for the Beneficiary's planned transfer to the United States. The Petitioner must show that the Beneficiary primarily performed managerial or executive duties for at least one year in the three years preceding the filing of the petition. Therefore, the Beneficiary's supervision of this new employee is not relevant to our analysis.

The Petitioner has not shown that the Beneficiary has been supervising supervisory or managerial employees. Further the Petitioner has neither claimed nor provided evidence that any of the Beneficiary's subordinates have bachelor's degrees or that their positions require completion of such a degree to qualify as professional employees. For these reasons, the Petitioner has not established that the Beneficiary has been employed abroad as a personnel manager.

The Petitioner also claims that the Beneficiary manages an essential function, but has not identified what that function is. 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. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must

---

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

demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." *Matter of G- Inc.*, Adopted Decision 2017-05 (AAO Nov. 8, 2017). In support of its claim that the Beneficiary manages an essential function, the Petitioner simply states that he qualifies because he "is responsible for making sure the Managers of each department are fulfilling their duties," a claim that is indistinguishable from its claim that he supervises subordinate managers. As such, the Petitioner has not demonstrated how the Beneficiary qualifies as a function manager.

Finally, the Petitioner has not shown that the Beneficiary has been employed abroad in an executive capacity. 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 organization must have a subordinate level of managerial employees for a beneficiary to direct and they 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.

Based on the Petitioner's documented structure and staffing levels and the Petitioner's inconsistent description of the Beneficiary's duties, the evidence is insufficient to show that the Beneficiary has been primarily focused on the broad goals and policies of the organization, and that the company has sufficient staff to relieve the company owners from significant involvement in the day-to-day operations of the organization.

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 denying a visa petition for classification as an intracompany transferee in a managerial or executive capacity. *See* section 101(a)(44)(C) of the Act. 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. *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).

Here, the Petitioner's operations abroad involve retail sale, installation and maintenance of spas, hot tubs and pools. The Petitioner's documented employees for the last two years include the two company owners, a part-time technician, a trainee/apprentice engineer, and an operations manager whose duties have not been well-defined. The Petitioner claims that a number of functions are performed by contractors, but has not documented these workers or the nature or scope of the duties they perform. Based on the evidence submitted, the Petitioner did not establish how the Beneficiary would be relieved from participating in the sale of products and provisions of services, or how the

company supports him in a position in which it requires him to perform primarily managerial or executive duties. Accordingly, we will dismiss the appeal.

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

The remaining issue is whether the Petitioner established that the new office would be able to support a managerial or executive position within one year of approval of the petition.

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).

A. Business Plan and Projected Staffing

The Petitioner indicates that its U.S. subsidiary will sell, install, and maintain spas, hot tubs, and swimming pools and will generate most of its revenue by operating a retail storefront. At the time of filing in September 2017, the U.S. company was renting an office that could accommodate one person, had approximately $12,000 in its bank account, and had not yet registered to do business in the State of Washington, where it plans to operate. The initial evidence did not support a finding that the Petitioner's subsidiary was ready to commence business and expand to the point where it would reasonably need a managerial or executive employee within one year.

According to the U.S. company's business plan, the company will employ "3 to 7" staff members during the first year, and would open its retail store within "6 to 12 months." The Petitioner did not provide a timeline for hiring staff, provide proposed salaries for its employees, or explain how it could support a managerial or executive position within one year if it may require 12 months to open its store. Given the labor-intensive nature of the proposed business, the difference between a staff of three employees and seven employees is significant and the projected range of staff does not assist us in determining whether the Beneficiary would have sufficient staff to relieve him from performing non-qualifying duties within one year.

The business plan also includes "Business Projections" for year one, but this financial information did not provide further insight on when the company anticipates opening its store or the number of staff it will hire in the first year. For example, the business projection shows that the U.S. company anticipates making its first retail sales in "month 4" and shows an increase in monthly rent from $400 to $1400 during that month. However, this projection appears to be inconsistent with the Petitioner's statement that it will not open a store for 6 to 12 months. Further, the record does not demonstrate that an additional rent expense of $1000 would be sufficient to lease a commercial retail property. The Petitioner later provided evidence indicating that the Beneficiary had identified

potential properties (each with monthly rental rates significantly higher than $1000) and stated that U.S. company anticipated a May 2018 store opening, but it did not provide revised financial projections.

The information provided regarding employee salaries is similarly vague, with the business projections showing $2000 paid to employees in month three, and $9000 per month by the end of the first year. Without information regarding projected salaries for individual employees, we cannot determine which or how many staff could feasibly be hired during the initial year of operations.

Finally, the business plan and the record as a whole lack information regarding the company's projected start-up costs and whether the U.S. company will have sufficient funds to commence operations. The first year projections do not include, for example, any projected expenses related to the remodeling or opening of a store, and account for minimal inventory purchases and expenses. As noted, the U.S. company had approximately $12,000 in its bank account at the time of filing. The Petitioner states that it will provide financial support to its subsidiary, but this general statement does not meet the Petitioner's burden to establish that the U.S. company has sufficient funding to commence operations. Overall, the evidence is insufficient to establish that the store would likely be open and fully staffed within one year.

Nevertheless, we will discuss the Petitioner's claims regarding the company's proposed staff, as the Director addressed this evidence in some detail. Despite indicating that it may employ only three employees during the first year, the business plan also states that the U.S. company intends to employ four full-time and two part-time staff within 12 months. The Petitioner listed the staff as follows:

> 1 CEO [the Beneficiary]
> 1 Retail Manager – Management of the retail premises, staffing, staff training, retail supplies & stock
> 1 Engineering Manager – Management of the spa fitting in both residential and commercial premises, obtaining zoning and building permits, on-site project management and customer relationships
> 2 part-time retail staff – serving customers and enabling sale in the retail store and at exhibitions
> 1 technician – measuring the site, fitting the spas and leaving the work site clean and restored to customers' satisfaction.

The Petitioner indicated that its subsidiary would sub-contract service and maintenance technicians, along with electricians, plumbers, and landscapers. The Petitioner has projected $1,750 in monthly contract labor expenses by the end of the first year.

In response to a request for evidence (RFE), the Petitioner stated that the U.S. company expects to hire "2 managers with 1 technician and 1 laborer" during the first year. The Petitioner indicated that it would interview for a manager and laborer in March 2018 and a sales manager and technician by August 2018. The Petitioner did not mention the retail staff positions that appeared in the business

plan and earlier proposed organizational chart, or clarify whether the "manager" and "sales manager" referred to the "engineering manager" and "retail manager" positions mentioned previously.

The Petitioner maintains that the evidence is sufficient to show that the Beneficiary will supervise professional and managerial staff within one year. However, as discussed above, it is unclear how many staff the U.S. company will actually hire during its first year as the Petitioner has indicated at times that it may employ as few as three employees. Even assuming that the U.S. company may hire both a retail manager and an engineering manager, the record does not support a finding that either employee will be acting in a managerial or supervisory capacity within 12 months. The "first year plan" submitted in response to the RFE did not identify any subordinate retail sales staff to be hired during the first year. Further, while it appears that the engineering manager would oversee the work of a technician, the job description provided at the time of filing was too brief to demonstrate that this employee would be a supervisor and would not be directly involved in installing spas. The Petitioner has indicated that the U.S. company does not require that either position be filled by an employee with a bachelor's degree. Rather, the Petitioner indicates that both positions require five years of sales and marketing experience, and that the U.S. company prefers a "degree level education." For these reasons, we agree that with the Director that the Petitioner did not establish that the Beneficiary would act as a personnel manager within one year.

We acknowledge that the Petitioner has prepared lengthy descriptions for the engineering and retail managers in support of the appeal. Both descriptions appear to incorporate duties not contemplated by the brief summary of duties provided earlier, and appear to be inconsistent with the proposed size and nature of the U.S. company's business. For example, the Petitioner states that the engineering manager will focus on new business development, client retention, business development planning, management, and team management, with duties that include "set up meetings between client decision makers and company's practice leaders" and "present business development training and mentoring to internal staff." The Petitioner indicates that the U.S. company's client's will primarily be residential homeowners and the company itself will not have "practice leaders." The description also suggests that the engineering manager would supervise a sizeable team with their own business development duties, rather than the single technician and/or laborer mentioned in the company's hiring plans. The retail manager position description indicates that this employee would direct departments of the business that do not exist, such as "advertising and purchasing." For these reasons, the newly submitted job descriptions do not appear to present a credible picture of the duties to be performed by these employees within one year.

Overall, based on the vague business projections, and the lack of a consistent timeline and plan for hiring, the Petitioner has not established that its subsidiary would employ sufficient staff to relieve the Beneficiary from significant involvement in non-qualifying duties within one year. The Petitioner has consistently stated that the Beneficiary will occupy the senior position in the new office, but has not submitted supporting evidence sufficient to demonstrate that he would primarily engage in managerial or executive duties, or that the new office would support a managerial or executive position, after the initial year of operations.

B. Duties

At the time of filing, the Petitioner stated that the Beneficiary would perform the following duties as CEO of the U.S. company:

1. Direct the company in keeping with the vision outlined for the company by the Directors
2. Lead the team to develop the new USA branch
3. Find and secure suitable premises for both retail and office use.
4. Find, train and partner with high-level officers to grow the company, strengthen it and ensure its sustainability
5. Represent the company as required, including attendance of important functions, industry events and public meetings.
6. Work closely with the [CFO] to prepare annual budgets, complete risk analysis, and advise the Directors with regard to investment risk and return
7. Work closely with Directors regarding hiring practices, payroll and benefit disbursement
8. Oversee quality control throughout the company, establishing goals for each department in partnership with division managers.
9. Oversee the development and opening of further new retail outlets throughout the USA.

As noted by the Director, this description indicates that the Beneficiary will have managerial or executive authority over the new office, but did not provide insight into the nature of his expected day-to-day duties during the first year of operations and beyond. The Petitioner has not indicated that the U.S. subsidiary will employ a CFO, and the company directors referenced in the description appear to be the Beneficiary himself and his spouse.

On appeal, the Petitioner submits a chart detailing the Beneficiary's proposed U.S. duties for the first 6 months of operations, and a separate breakdown for months 7 through 12. The Petitioner indicates that he will spend the first six months identifying a suitable storefront, recruiting and hiring managers and staff, finding and hiring ancillary support services, negotiating contracts with vendors and suppliers, and finding subcontractors. The Petitioner indicates that the Beneficiary will allocate his time during the second half of the initial year of operations to 24 responsibilities broken down into 67 different tasks. As with the job descriptions provided for the retail and engineering managers on appeal, this new position description does not appear credible in light of the company's expected nature, scope, and staffing within one year. The Petitioner indicates that the U.S. company will employ as few as three employees during the first year, but this newly submitted description assumes that the Beneficiary will oversee managers with their own fully-staffed departments who would relieve him from involvement in any retail or spa installation operations. While we do not doubt that the Beneficiary will hire and oversee staff, control the company's finances, and establish policies and operational guidelines for the company, we cannot determine that these higher level duties will be his primary duties at the end of the initial year of operations.

As discussed above, the Petitioner has not credibly established the number or type of employees its subsidiary would hire during the first year of operations or provided a reliable prediction of when it will open its retail store and commence operations. As such, the Petitioner's claim on appeal that the Beneficiary would be removed from any significant involvement in the U.S. business' day-to-day operations within one year is not adequately supported in the record. The Petitioner has not established that it would support a managerial or executive position within one year.

V. CONCLUSION

The Petitioner has not established that the Beneficiary was employed abroad in a managerial or executive capacity or that its U.S. subsidiary would employ the Beneficiary in a managerial or executive capacity within one year.

ORDER: The appeal is dismissed.

Cite as *Matter of C-S- Ltd.* ID# 1214510 (AAO Apr. 30, 2018)