U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-Q-W-T- LLC

DATE: FEB. 5, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a travel agency, seeks to temporarily employ the Beneficiary as the chief executive officer of its new office[1] 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 Beneficiary has been employed abroad in a managerial or executive capacity; (2) the Beneficiary would be employed in the United States in a managerial or executive capacity within one year of approval of the petition; (3) the Petitioner has a qualifying relationship with the Beneficiary's foreign employer; and (4) the Petitioner has secured sufficient physical premises to house the new office.

On appeal, the Petitioner asserts that the Director did not consider all of the evidence submitted in support of the petition, which resulted in an erroneous denial.[2]

Upon *de novo* review, we will withdraw the Director's finding that the Petitioner did not show that it had secured sufficient physical premises for its new office.[3] However, as the Petitioner has not overcome the remaining grounds for denial, we will dismiss the appeal.

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[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.

[2] The Petitioner provided a short statement in support of the appeal and indicated it would submit a supplementary brief within 30 days. The record contains no further submissions from the Petitioner.

[3] Although the Director expressed concern over the lack of evidence showing the exact square footage of the Petitioner's leased space, we find that the Petitioner met this requirement by a preponderance of the evidence by submitting a complete lease agreement, floor plan, photographs of its location, evidence of rent payments, and evidence that it has commenced business activities from the location listed on the petition.

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification for 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. Section 101(a)(15)(L) of the Act. The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

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).

"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.

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.

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

The Director determined that the Petitioner did not establish that its new office would be able to support a managerial or executive position within one year of approval of the petition.

The Director acknowledged the Beneficiary's proposed position description, but found that the Petitioner did not submit a sufficiently detailed business plan or information regarding its proposed staffing and organizational structure. The Director determined that, since it was unclear how many and what types of positions would be filled during the initial year, the Petitioner did not establish that the company would hire sufficient staff to relieve the Beneficiary from having to perform non-executive and non-managerial tasks. Further, the Director determined that the business plan did not contain sufficient information about the size of the U.S. investment or the new office's first year operating expenses to establish that the company was ready to commence operations and likely to develop to the point where it would support the Beneficiary in a managerial or executive capacity.

On appeal, the Petitioner asserts that its business plan was sufficiently detailed and further supplemented by information submitted in response to the Director's request for evidence (RFE) and Notice of Intent to Deny (NOID). The Petitioner also states that it provided an organizational chart, detailed plans for the office, and a long-term hiring plan. Finally, with respect to the size of the investment, the Petitioner notes that it provided revenue statements showing that it has already booked $187,000 worth of travel "with a first-year investment of $213,000."

In the case of a new office petition, beyond the description of a beneficiary's proposed job duties, we review 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. Projected Staffing and Business Plan

The Petitioner has consistently stated that it intends to operate a travel agency that will focus on Muslim religious tourism to holy sites in Saudi Arabia, as well as offering general travel services. The Petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that it had four employees at the time of filing in December 2016. In its supporting letter, it explained that the Beneficiary has selected [redacted] to oversee its office as general manager, and noted [redacted] would supervise four employees (sales, travel, and booking agents) who would be "responsible for developing a customer base and ensuring delivery of travel services."

The initial evidence included the Petitioner's 13-page business plan. The business plan indicates that the Petitioner expects to achieve net profit of at least $300,000 from Hajj pilgrimage tourism alone, but does not include any other financial projections for the first year of operations. This projection is premised on the Petitioner's estimate that it will be able to acquire at least 300 Hajj visas from Saudi Arabian authorities.[4] The business plan indicates that the company would have an

[4] The Petitioner explained that approximately 15,000 Hajj visas are granted to Americans, and are distributed directly from the Saudi Arabian government to approximately 30 American businesses.

initial $100,000 investment in working capital, noting that it would supplement that amount with funds generated by its foreign affiliate. The Petitioner identified $50,490 in total start-up expenses, which includes furniture, equipment, a sign, trips and meetings, professional memberships, and legal expenses.

Finally, the business plan includes a "personnel report" showing the Petitioner's current staff "as well as needs for the next five years." The listed staff included: [redacted] (office manager); [redacted] (application processing, data tracking); [redacted] (customer relations); and open positions for a booking agent and "interagency coordinate." The Petitioner stated that within five years, it would require "back-office" staff, including two regional managers, a controller, billing clerk, human resources representative, payroll clerk, and marketing coordinator.

In the RFE, the Director acknowledged the business plan, but found it did not provide a detailed timeline for hiring staff, the number or types of employees to be hired within one year, and the duties of the proposed subordinates. The Director also questioned whether the listed startup expenses were accurate, as the figure stated in the business plan did not include employee salaries. The Director suggested additional evidence to address these deficiencies.

In response, the Petitioner provided the following employee list with annual budgeted salaries for subordinate staff:

- [redacted] – Office manager (Also serves as interagency coordinator until the U.S. operation grows); $55,000
- [redacted] – Travel Agent/Customer Relations: $36,000
- [redacted] and [redacted] (both part-time) – Booking Agent: $36,000
- [redacted] – Application Processing / Data Tracking: $36,000

The Petitioner explained that the two part-time workers would assume full-time roles after the first year. The Petitioner also stated that it hopes to have a second office opened within a year, which would employ a similar number of employees. The Petitioner did not provide job descriptions specific to the U.S. employees[5] or directly address the Director's comments regarding start-up costs, other than noting that it had already spent $50,000 in "basic start-up costs."

Finally, the Petitioner submitted bank statements for the period September 2016 through February 2017. The Petitioner had $19.45 in its checking account at the end of December 2016. The Petitioner also submitted a statement showing tickets purchased through '[redacted]' and '[redacted]' for the period November 8, 2016, through December 15, 2016. This document appears to show that the Petitioner purchased $19,017 in air tickets during this period, and sold these tickets for $23,360. The Petitioner also provided client statements issued by [redacted] showing that it had also booked travel through this company.

[5] The Petitioner did provide job descriptions for the same positions in its description of the foreign entity's staffing.

In the NOID, the Director acknowledged the Petitioner's response to the RFE, but noted that the record still did not include a proposed organizational chart, a business plan with a timetable for each proposed action during the initial year, or details regarding the company's operating expenses. The Director also found that the evidence did not show that the Petitioner had received a sufficient investment to develop the new business.

In response to the NOID, the Petitioner pointed to its RFE response and to the job descriptions provided for the various travel agency positions. The Petitioner also provided a new chart showing that it would staff a second branch within the first year which would employ a general manager, travel agent, booking agent, customer service employee, application/data tracker, interagency coordinator/trader, for a total of 12 positions to be filled within one year.

In response to the Director's concerns regarding the size of the investment, the Petitioner asserted that it previously submitted bank statements that showed "funding of over $187,000 from November 2016 through February 2017" and emphasized that such funding "is nearly sufficient to cover the total operating cost of over $213 thousand estimated for the first year, including salaries (not including travel expenses and [the Beneficiary's] salary." The Petitioner stated that additional revenues would be sufficient "to bring the $187 thousand over the $213 thousand." Finally, the Petitioner stated that "the level of detail in business planning is in line with industry standards for a travel agency."

Upon review, we agree with the Director that the Petitioner did not submit sufficiently detailed information to establish how it would grow to support a managerial or executive position within one year.

First, with respect to the new office's intended staffing, the Petitioner stated that it had four current employees on the Form I-129 and later identified five employees by name. The Petitioner stated the employees would be earning combined annual wages of $167,000 initially. While the Petitioner is not required to establish that it is already staffed at the time of filing, the record appears to indicate that the company is already doing business, and that at least some employees must already be working for the company. The Petitioner's bank statements, however, do not clearly show any payroll expenses or associated tax payments. It is unclear whether the company is already staffed and paying the claimed starting salaries to four or more staff.

Further, we agree with the Director that the record does not sufficiently demonstrate how the Petitioner would support the projected workers, much less support a second branch office, during the first year of operations. The Petitioner's financial projections were limited to a statement that the company expected to achieve $300,000 in net profits derived from Hajj religious tourism. The business plan does not include financial information beyond a brief list of start-up costs, and is inadequate to show the company's expected financial objectives for the first year of operations or the actual amount of the investment.

Further, the business plan does not mention the second office that the Petitioner claims it will open within one year and the Petitioner did not provide an updated or revised business plan in response to

the RFE or NOID. The Petitioner mentioned additional U.S. offices in its letter in support of the petition, but indicated that the Beneficiary would have to evaluate the success of the first U.S. office in order to determine the parameters for establishing additional offices. Although opening a second office is not required, there is no evidence supporting the Petitioner's claim that it will have more than one office during the initial year.

Although the Petitioner maintains that the limited detail provided in its business plan is standard in its industry, the Director reasonably found the plan insufficient to show how the new office would support an executive or managerial position within one year, as it did not include the required information regarding the scope of the entity, its organizational structure and financial goals, or the size of the United States investment. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). Further, the Director has the discretion to request any additional evidence deemed necessary for the adjudication of the L-1 petition. 8 C.F.R. § 214.2(l)(3)(viii). The Petitioner's claim that its business plan is typical in its industry does not exempt it from submitting additional evidence in support of the regulatory requirements for a new office petition.

The Petitioner stated that its bank statements show "funding" of over $187,000, but many of the deposits and credits recorded on the Petitioner's bank statements are actually transfers between the company's two accounts and do not appear to be investment funds. It remains unclear how much money has been invested into the new office to support start-up operations and first-year expenses.

Finally, even if the Petitioner did establish that it would hire all the projected staff members on a full-time basis, the Petitioner indicates those staff will relieve the Beneficiary only from the day-to-day tasks of handling individual customer transactions, booking individual trips, and directly supervising agents who perform these tasks. The Petitioner has not identified staff to perform the office's administrative, financial/bookkeeping, or marketing functions. The Petitioner indicates it would hire a billing clerk, controller, payroll clerk, and marketing coordinator by the fifth year of operations, but does not state who will perform these duties prior to that date. As discussed further below, the record indicates that the Beneficiary would be responsible for networking, marketing, and promotion of the business for the first year and beyond.

Overall, the Petitioner's business plans and other supporting evidence do not provide a complete timeline for hiring or sufficient financial information to establish that the company could realistically carry out the staffing plan depicted in either iteration of its proposed first-year staffing. In addition, the Petitioner's business plan does not include sufficient financial projections for sales and operating expenses. Accordingly, the record does not sufficiently establish the proposed nature, scope, or staffing of the company within one year. Without this evidence, the Petitioner has not supported a claim that the organization will grow to the point where it can support a managerial or executive position within that timeframe.

B. Duties

The Petitioner provided a broad description of the Beneficiary's duties and indicated that he would be employed in a qualifying managerial or executive capacity. Specifically, the Petitioner stated that

he would be responsible for managing all aspects of the company's operations, setting its priorities and strategic goals, establish its basic operational parameters, hiring and training staff, supervising the general manager, approving personnel decisions, and overseeing the day-to-day operations. While these duties indicate the Beneficiary's authority over the new office, the description was not sufficiently detailed to establish that he would be performing primarily managerial or executive duties within one year.

In fact, the Petitioner's statements suggested that the Beneficiary would be spending a significant amount of his time on marketing and promotional functions once the staff are hired and trained, and the general manager assumes responsibility for the routine management of the business. The Petitioner explained that the Beneficiary would then be able to focus on the development of the customer base and explore growth opportunities. The Petitioner stated that he would "build the international travel network of vendors, suppliers, and industry connections," and build the Petitioner's brand. The Petitioner also emphasized that the Beneficiary, who is also an imam, travels throughout the U.S. making connections with religious leaders and communities and speaking on religious topics in major U.S. cities. The Petitioner noted that the Beneficiary will continue to "use his role as a religious leader to promote the benefits of Hajj and Omra travel." The Petitioner's business plan emphasizes the importance of the Beneficiary's networking and public relations activities, noting that he would continue to pursue mosque speaking tours, promotional events, and developing relationships with Muslim organizations. While all of these activities may be necessary to the Petitioner's growth, the Petitioner did not establish that they would involve executive or managerial functions.

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. Section 101(a)(44)(A)(iv) of the Act. Here, although the Petitioner indicates that the Beneficiary will oversee one managerial or supervisory employee, the Petitioner did not establish how much time he would allocate to such supervision and did not establish that he would primarily be acting as a personnel manager.

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.

The Petitioner indicates that the Beneficiary will have executive-level authority over the new office, but did not establish that he would be primarily focused on the broad goals and policies of the

company within one year, or that the company would hire sufficient staff to relieve him from performing a number of non-qualifying duties. Rather, the Petitioner indicates that the Beneficiary will be heavily involved in networking to market and promote the company's services. Further, as noted, the Petitioner did not establish that it would hire lower-level staff to assist with marketing, administrative, or day-to-day financial functions during the first year of operations.

The Petitioner has consistently stated that the Beneficiary will occupy the senior position in the new office, but has not submitted a job description or 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.

III. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director determined that the Petitioner did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. The Director found that the Beneficiary's foreign job description included a number of non-qualifying duties and did not reflect how much time he would actually allocate to qualifying managerial or executive duties. The Director further determined that it is not clear who the Beneficiary actually supervises and whether he primarily supervises a subordinate staff of managers, supervisors, or professionals.

On appeal, the Petitioner objects to the Director's finding that the Beneficiary's duties are too general and asserts that the Beneficiary performs the same duties attributed to "Chief Executives" in the U.S. Department of Labor's (DOL's) O*Net Online occupational classification resource. The Petitioner also maintains that it submitted clear evidence that the Beneficiary oversees subordinate supervisors. The Petitioner maintains that the Beneficiary performs both managerial and executive duties and that the statute does not require that his duties be exclusively one type or the other.

When examining the managerial or executive capacity of a given beneficiary, we will review the petitioner's description of the job duties. *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 foreign entity's business and its staffing levels.

A. Duties

Based on the definitions of managerial and executive capacity, the Petitioner must first show that the Beneficiary has performed 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 has been *primarily* engaged in managerial or executive duties, as opposed to ordinary

operational activities alongside the company's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

In its letter in support of the petition, the Petitioner correlated the Beneficiary's duties with the foreign entity to the statutory definition of "managerial capacity," noting that he is responsible for the overall management of the organization and establishing its goals; supervises the work of two subordinate supervisors and controls the most vital functions of the business; has final authority on personnel actions, and exercises discretion over the day-to-day operations, while delegating most routine supervision to subordinate general managers. However, the Petitioner also emphasized that the Beneficiary is the company's spokesperson at international meetings, trade shows, and professional gatherings, and that he seeks and negotiates international opportunities by connecting with hotels and hospitality and other tourism agencies, local guides and attractions, and transportation resources. Therefore, the initial description of the Beneficiary's duties indicated that he performed a mix of managerial duties and non-qualifying duties associated with the company's marketing and promotion, and as well as tasks that are directly related to the foreign entity's provision of services.

Although the Director asked for additional details, such as a letter describing the percentage of time the Beneficiary spends on specific tasks, the Petitioner's response to the RFE did not include additional detail regarding the Beneficiary's managerial or executive duties, nor did it provide the requested breakdown of how the Beneficiary spends his time. The Petitioner emphasized the Beneficiary's role as the "top-level executive" and noted that he has been traveling to arrange "the highest level business negotiations and deals," interacting with the Saudi Arabian government to secure tourist visas for the Hajj and Omra seasons, and establishing relationships with hotels and other services internationally. The Petitioner also noted the Beneficiary responsibility for branding the business. The Petitioner did not establish why such duties should be considered managerial or executive in nature. The Petitioner emphasized that most of the day-to-day travel agency operations were running without the Beneficiary's direct involvement in their oversight, which raises question as to how much time the Beneficiary spent on marketing and vendor relations as opposed to the claimed managerial or executive functions.

In the NOID, the Director noted the Beneficiary's operational tasks and provided the Petitioner with another opportunity to explain how he is performing primarily managerial or executive duties, rather than the tasks necessary to provide the foreign entity's services. In response, the Petitioner emphasized that the Beneficiary is the foreign entity's owner and highest-level employee, and therefore meets the requirements as an executive or manager. The Petitioner also disagreed with the Director's finding that the Beneficiary's responsibility for business negotiations and establishing relationships with hotels and other services are non-qualifying duties. The Petitioner noted that such duties correlate to activities attributed to "Chief Executives" in the DOL's O*Net Online resource.

The Petitioner's reliance on the generic duties listed under the "Chief Executives" occupation on O*Net Online is not persuasive. The regulations require the Petitioner to provide a detailed description of the Beneficiary's actual duties within the context of the foreign entity's day-to-day operations. His duties should be reasonable in light of the nature, scope, and purpose of that

organization. Accordingly, comparing his job description to a general listing of job duties within a broad occupational classification does not assist us in understanding whether his actual duties have been primarily executive in nature according to the statutory definition of "executive capacity." The evidence suggests that the Beneficiary spends a significant amount of his time single-handedly marketing the foreign entity's services and making arrangements with other entities which allow the foreign entity to provide its services. It has not demonstrated how these duties qualify as executive under section 101(a)(44)(B) of the Act.

The Petitioner still has not provided the requested breakdown of the Beneficiary's duties or indicated how he divides his time between oversight of the foreign entity's travel agency and his other activities. Therefore, we are unable to determine whether the claimed managerial duties constitute the majority of the Beneficiary's duties, or whether the Beneficiary primarily performs non-qualifying duties. Although the Director specifically requested the information, the Petitioner's description of the Beneficiary's job duties does not establish what proportion of the duties is managerial or executive in nature, and what proportion is non-managerial or non-executive. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

The fact that the Beneficiary manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in an 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" executive in nature. Sections 101(A)(44)(B) of the Act. Even though the Beneficiary may exercise discretion over the foreign entity's day-to-day operations and with respect to discretionary decision-making, the position descriptions alone are insufficient to establish that his actual duties have been primarily managerial or executive in nature.

B. Staffing

At the time of filing, the Petitioner stated that the foreign entity employed 10 individuals at two locations, noting that the payroll documents it was providing did not reflect additional hires. According to the Petitioner's business plan, the foreign entity has a main branch in [redacted] Algeria with six employees (general manager, application processing, travel agent/customer relations, travel agent assistant, travel/booking agent, and interagency coordinator). The Petitioner indicated that the second branch is in [redacted] Algeria and employs four people, including a general manager.

The supporting evidence included the foreign entity's 2014 Wages Annual Declaration, filed with the Algerian National Social Security Fund. This document showed that the foreign entity paid the six main branch workers named in the record. However, one of these employees (travel agent assistant) had left the company in March 2014, so it is unclear why the Petitioner included this worker in the foreign entity's employee listing. It is possible that additional employees had also left the company between 2014 and 2016, and the Petitioner did not otherwise corroborate the employee list in its business plan. In fact the foreign entity's Algerian Declaration of Turnover for the year ended on December 31, 2016, was left blank where the company was asked to indicate the "number of employed persons" and "staff wages." This evidence raises questions regarding the foreign entity's current staffing levels and its ability to support a managerial or executive position.

With respect to the foreign entity's branch office, the Petitioner explained that the Beneficiary had acquired a travel agency from a previous owner "more than a year ago" but none of the supporting evidence, which includes various tax documents, confirms that the foreign entity has two offices. The Petitioner pointed out that the above-referenced 2014 wage declaration was filed in 2016 and that, at the time of filing, it had not yet filed a similar document for the branch office which it had acquired "more than a year" before filing the petition, presumably some time in 2015. However, it is reasonable to believe that some other evidence should be available to establish that the second office exists. For example, the Petitioner provided photographs of the main office and the rent deed for its premises, but did not provide comparable evidence for the branch office.

In addition, we note that the Beneficiary last entered the United States in February 2016 and was still here at the end of that year. If the branch office was acquired after February 2015, then the Beneficiary did not oversee two offices for an entire year prior to coming to the United States. For these reasons, our analysis of the foreign operations will focus on the main office in Algiers. The main office staffing is similar to the Petitioner's claimed projected staffing, and therefore, much of our discussion from above applies to the Beneficiary's foreign employment.

While the Petitioner indicates that the Beneficiary has a subordinate manager or supervisor who is in charge of the foreign office's day-to-day operations, it has not specified how much of the Beneficiary's time has been spent on personnel supervision as opposed to marketing and promoting the business and making agreements with vendors and other partners who allow the foreign entity to provide its services. Accordingly, the record does not establish that the Beneficiary has been employed abroad primarily as a personnel manager.

In addition, even though the Beneficiary has the appropriate level of authority, the Petitioner has not established that he has been primarily concerned with the foreign entity's broad goals and policies, that all day-to-day management rested with a subordinate tier of management, or that the foreign entity's staff was sufficient to relieve him from substantial involvement in the day-to-day operations of the business. The foreign entity's claimed staffing levels, if adequately corroborated in the record, would likely be sufficient to relieve the Beneficiary from having to book travel for customers and from overseeing staff who perform these routine tasks. However, the foreign entity does not have subordinate staff members who perform marketing duties, administrative tasks, or routine activities associated with managing the company's finances.

The Petitioner has consistently stated that the Beneficiary occupied the senior position in the foreign entity, but has not submitted a job description or supporting evidence sufficient to demonstrate that he primarily performed executive duties.

IV. QUALIFYING RELATIONSHIP

The remaining issue is whether the Petitioner established that it has a qualifying relationship with the foreign entity.

To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

"Affiliate" means: (1) One of two subsidiaries, both of which are owned by the same parent or individual, or (2) one of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The Petitioner claims that it is an affiliate of the foreign entity, noting on the Form I-129 that the Beneficiary wholly owns and controls the foreign entity, while the U.S. entity is majority-owned and wholly controlled by the Beneficiary.

The Petitioner provided sufficient evidence to establish that the foreign entity is a sole proprietorship business owned by the Beneficiary. However, the record lacks primary evidence establishing the Petitioner's ownership and control.

The Petitioner submitted the certificate of organization for its limited liability company but did not provide evidence of the company's ownership. The certificate of organization identifies the Beneficiary and [redacted] as the organizers but does not identify the members of the company. As general evidence of a petitioner's claimed qualifying relationship, a certificate of formation or organization of a limited liability company (LLC) alone is not sufficient to establish ownership or control of an LLC. LLCs are generally obligated by the jurisdiction of formation to maintain records identifying members by name, address, and percentage of ownership, and written statements of the contributions made by each member, the times at which additional contributions are to be made, events requiring the dissolution of the limited liability company, and the dates on which each member became a member. These membership records, along with the LLC's operating agreement, certificates of membership interest, and minutes of membership and management meetings, must be examined to determine the total number of members, the percentage of each member's ownership interest, the appointment of managers, and the degree of control ceded to the managers by the members. Additionally, a petitioning company must disclose all agreements relating to the voting of interests, the distribution of profit, the management and direction of the entity, and any other factor affecting control of the entity. *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986). Without full disclosure of all relevant documents, we are unable to determine the elements of ownership and control.

The Petitioner's supporting letter included a statement from [redacted] who stated that the Beneficiary has full operational control of the company and that he "will relinquish any and all claim to any current ownership stake resulting from my 50%/50% establishment of the LLC under Minnesota Secretary of State registration." He further explained that the Beneficiary would establish sole ownership once approved to work in the United States. Elsewhere, the Petitioner submitted statements indicating that the Beneficiary solely owns the Petitioner. However, these conflicting and unsupported statements are not sufficient to establish the Petitioner's ownership and control at the

time of filing, and cannot take the place of the company's articles of organization, operating agreement, membership certificates, and other relevant primary evidence of ownership.

Accordingly, we concur with the Director's finding that the Petitioner did not provide sufficient evidence to establish the claimed affiliate relationship.

V. CONCLUSION

The Petitioner has not established that the Beneficiary has been employed abroad in a managerial or executive capacity, that he would be employed in the United States in a managerial or executive capacity within one year, or that it has a qualifying relationship with the Beneficiary's foreign employer.

ORDER: The appeal is dismissed.

Cite as *Matter of A-Q-W-T- LLC*, ID# 879659 (AAO Feb. 5, 2018)