U.S. Citizenship and Immigration Services

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

MATTER OF G- CORP.

DATE: FEB. 22, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a used car dealership, seeks to extend the Beneficiary's temporary employment as its president and chief executive officer under the L-1A nonimmigrant classification for intracompany transferees. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not established that the Beneficiary (1) had been employed abroad in a managerial or executive capacity, and (2) will be employed in the United States in a managerial or executive capacity.

The matter is now before us on appeal. On appeal, the Petitioner repeats previous assertions and contends that the evidence supports approval of the petition.

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

## I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a managerial or executive capacity, or in a specialized knowledge capacity, for 1 continuous year within 3 years preceding the Beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the Beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity. *Id.*

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, shall include evidence that the beneficiary worked full-time for a qualifying organization abroad in a managerial or executive capacity for at least 1 continuous year during the 3 years preceding the filing of the petition. The petitioner must also submit a detailed description of the services the Beneficiary will perform in the United States in an executive or managerial capacity.

For petitions seeking to extend the L-1A status of a beneficiary working for a new office, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) also requires a petitioner to submit a statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition, and a statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees.

## II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that: (1) the Beneficiary will be employed in a managerial or executive capacity; and (2) the Beneficiary was employed abroad in a managerial or executive capacity. The Petitioner does not claim that the Beneficiary worked abroad in an executive capacity. Therefore, we restrict our analysis of the Beneficiary's foreign employment to whether the Beneficiary was employed in a managerial capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as "an assignment within an organization in which the employee primarily":

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

Further, "[a] first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." *Id.*

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as "an assignment within an organization in which the employee primarily":

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

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

A. Foreign Employment in a Managerial Capacity

1. Duties

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

The definition of managerial capacity has two parts. First, the Petitioner must show that the Beneficiary 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 was *primarily* engaged in managerial duties, as opposed to ordinary operational activities. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

In a letter submitted with the petition, the Petitioner stated that the Beneficiary "served as [the parent company's] Administrative Manager from August 2011 until May 2015 when she was transferred to hold a temporary executive position in our U.S. Company." The Beneficiary signed the letter in her capacity as president of the petitioning company. The Petitioner also submitted a copy of a letter [redacted] the foreign entity's human resources manager, stating that the Beneficiary "has been employed by this company since August 01st, 2011, in the position of Administrative Manager." In addition, the initial evidence included an undated "payroll chart" for the foreign entity on which the Beneficiary was listed as "administration and marketing manager."

The Petitioner stated that the Beneficiary's duties as the foreign entity's administrative manager "included, but were not limited to the following":

- Ensured that business plans, policies and goals implemented by the Board of Directors were performed by the company's employees under her direct supervision. Coordinated operations between the Marketing Manager, Purchase Manager, and the

Accounting Manager under her direct supervision, who in turn supervised and directed the overall day-to-day operations of the Administrative Department and informed the Administrative Manager of the performance of other subordinates. ***(4 hours or 10% of her time per week)***;

- Was in charge of the administration of all business/commercial activities, marketing programs, inventory control, and accounting of the company. [The Beneficiary] supervised, revised and approved the proposals made by the Marketing Manager, Purchase Manager, and the Accounting Manager. Reviewed activity reports and financial statements with the President concerning the Company's business activity. Revised objectives and plans in accordance with the plans and directives set up by the President and Board of Directors. Also reviewed and approved the resubmission of plans and financial projections with a more detailed estimate of costs and a critical path. [The Beneficiary] also arranged the sales invoices and signed off all purchase ledger invoices to ensure strong cash-flow and that the company's obligations to the authorities were met each month. ***(6 hours or 15% of her time per week)***
- She planned, developed, and implemented methods for enhancing revenue sources and maximized profits generating new revenue sources for the company. Specifically, she created flow charts and analyzed the trends of productivity within the company to determine how to increase the productivity within the company to determine how to increase the productivity and therefore the gains. In this sense, she oversaw the planning and development of public relations policies designed to improve the company's image and relations with customers, employees and the public. ***(6 hours or 15% of her time per week)***
- [The Beneficiary] identified and met with contractors in order to better allocate the internal resources of the company. Also met with bankers, attorneys and the company's accountant. Especially with the company's accountant in conjunction with the Marketing Manager and the Purchase Manager in order to coordinate the formulation of financial programs to provide funding for new and continuing operations to maximize returns on investments. Also, ensured through the company's accountant that all the financial and tax documents of the company were complied with. ***(8 hours or 20% of her time per week)***
- Participated in the development and management of company's corporate policies, procedures, goals and annual budget; performed periodic cost and productivity analysis maintaining profit margins and controlling unnecessary expenditure which is a key component in the Company's healthy balance sheet. ***(4 hours or 10% of her time per week)***
- She was engaged in the signing of contracts and other documents to bind the company in legal contract agreements, such as entering into new agreements for new projects to be performed on behalf of the company, acquisition of office supplies and other services. She was also responsible for establishing important business contacts through meeting and attending industry related conventions and events. ***(8 hours or 20% of her time per week)***

- Hired appropriate personnel and established personnel conduct, actions and activities such as determining their hierarchical position within the Administrative Department's organizational structure based on qualification. This, by definition, included decision-making as to promotion and termination. She was also responsible for setting-up typical managerial procedures as it relates to working hours, vacation time, health insurance, and so forth. In doing so, she necessarily exercised wide latitude in discretionary decision-making over overall company activities. ***(4 hours or 10% of her time per week)***

The Director issued a request for evidence (RFE), stating that "the listed duties indicate that the beneficiary was directly involved in the provision of services." The Director asked the Petitioner to submit more details about the Beneficiary's former position abroad, and information to show that the position met all the elements of the definition of a managerial capacity. The Petitioner responded by repeating the same job description and asserting that the Beneficiary "is clearly a manager that exercised her authority and supervised other professionals or managers who actually carried out the day-to-day function of the business. [The Beneficiary] spent 100% of her time in managerial functions."

The Director denied the petition, based in part on a finding that the Beneficiary's job description is too vague to show exactly what the Beneficiary did for the foreign company. On appeal, the Petitioner repeats the Beneficiary's foreign job description, with no further comment regarding the deficiencies identified by the Director.

Upon review, we agree with the Director's assessment that the foreign job description lacks detail. For example, the Petitioner has stated that the Beneficiary spent 8 hours per week meeting with various people inside and outside the company "in order to coordinate the formulation of financial programs." This provides little insight into the nature of the Beneficiary's active role in the formulation of those programs.

Likewise, we learn nothing of the Beneficiary's duties from the assertion that she "[e]nsured that business plans, policies and goals . . . were performed by the company's employees." This element of the job description essentially amounts to her authority over subordinates, but the Petitioner stated that it occupied only 4 hours in a typical week. Oversight over subordinates is a level of authority rather than an identifiable activity. Reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the Beneficiary's daily job duties. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The Petitioner has claimed that the Beneficiary spent another 8 hours per week signing contracts and attending conventions and events. These are different activities, grouped together under a single heading; the Petitioner did not specify how much time the Beneficiary devoted to each of these different functions. Also, the record does not show that the Beneficiary signed enough contracts or attended enough gatherings to account for (on average) 8 hours per week.

Beyond the general deficiencies in the Beneficiary's job description, the record contains discrepancies regarding the nature of the Beneficiary's work abroad. In response to the RFE, [redacted] stated that the Beneficiary "was given maternity leave for a year, starting on August 15th, 2014." The Petitioner also stated that the Beneficiary served as a function manager, "managing the administrative operations of the company." Specifically, the Beneficiary "maintained control of the overall U.S. Company's administrative activity," while "negotiating and entering into major business agreements on behalf of the U.S. Company." This statement appears to be inconsistent with the job duties stated above.

In the denial notice, the Director questioned how the Beneficiary could have overseen the Petitioner's administrative activity while working in Venezuela, when she left Venezuela on maternity leave in August 2014, several months before the Petitioner's establishment in December 2014, and was still in the United States when the Petitioner filed its petition on her behalf.

On appeal, the Petitioner does not address this significant discrepancy. The Beneficiary was never in Venezuela during the U.S. company's existence, and therefore could not have overseen the U.S. company's operations while working overseas for the foreign company. Also, any work that the Beneficiary did perform in the United States in visitor status, whether on behalf of the foreign company or not, would not have been qualifying foreign employment. *See* 8 C.F.R. § 214.2(l)(1)(ii)(A).

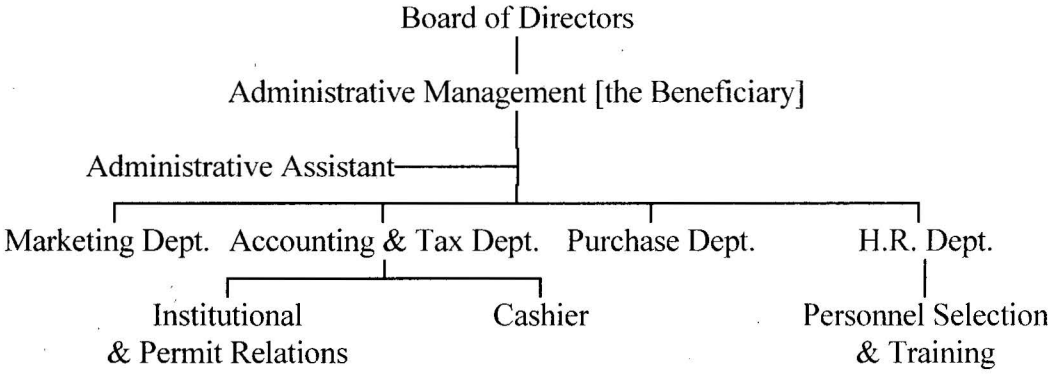
Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). In this case, the Petitioner has asserted that the Beneficiary's duties abroad included responsibilities over the U.S. company, when that company did not yet exist. In the denial notice, the Director specifically advised the Petitioner of this discrepancy, but the Petitioner, on appeal, has not resolved or even acknowledged this issue.

The Director's unrebutted finding that the submitted descriptions of the Beneficiary's foreign job duties lack both consistency and sufficient detail, in conjunction with a review of the totality of the evidence, as discussed below, does not permit us to find that the Petitioner has provided sufficient, credible information regarding the Beneficiary's former employment abroad.

2. Staffing

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial capacity of a beneficiary, including the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

An organizational chart for the foreign company includes the following information about the components subordinate to the Beneficiary:




A separate part of the chart, "Operations Management," showed an unspecified number of additional employees:

- Operations Management
- Production Supervisor
- Lab and Quality Control
- Distribution Supervisor
- Security Supervisor
- Security
- Workers
- Fleet

In all, the foreign company's organizational chart has 21 sections, some of which have labels such as "workers" that indicate or suggest multiple employees within a particular category. The company payroll chart submitted at the time of filing included 20 employees identified by name, job title, hire date, and level of education. Of these, 11 employees were identified as holding the position of "worker." Additional employees included a general manager, a director, a supervisor, a distribution manager and a maintenance supervisor. The remaining employees were the Beneficiary (identified as administration and marketing manager), a human resources and institutional relations manager an administrative coordinator/accounting and tax and a cashier Like the organizational chart, the payroll chart did not list any subordinate employees in the marketing or purchase departments.

The Petitioner also submitted payroll and social security records listing 17 employees (including the Beneficiary) at the foreign company throughout 2015. The lists did not show their job titles or duties, or specify how many of those employees worked under the Beneficiary's authority rather than under Operations Management.

In the RFE, the Director asked the Petitioner for evidence that the Beneficiary had managerial authority over professionals, managers, or supervisors. The Director also noted that the foreign company's 17 listed employees are not enough to fill all the positions in the organizational chart. In response, the Petitioner stated that the Beneficiary "supervised other professionals or managers," and listed her immediate subordinates as: the accounting and tax manager; the marketing manager; the purchase manager; and the human resource manager.

The Petitioner also stated that the Beneficiary served as a function manager, "managing the administrative operations of the company." The Petitioner did not address the Director's observation that the foreign company did not show enough employees to account for the positions and departments shown on the organizational chart.

The Director, in the denial notice, found that the Beneficiary's immediate subordinates, though identified as managers, had significant operational duties; that the company's small size did not appear to warrant a significant expenditure of the Beneficiary's time on personnel matters; and that the Petitioner had not provided enough information about the Beneficiary's subordinates. In this regard, the Director repeated her finding that the employee list is not compatible with the organizational chart, adding that the chart shows no subordinates below the marketing manager or the purchase manager.

On appeal, the Petitioner repeats the assertion that the Beneficiary "supervised other professionals or managers" but does not address the Director's specific concerns. The Petitioner states that the organizational chart shows that the foreign company "employs 21 individuals in Venezuela," but does not explain why the lists of employees show only 17 and 20 names, respectively. Furthermore, the organizational chart does not show 21 employees, but rather 21 blocks, several of which are either departments or refer to multiple unspecified "workers."

Upon review of the record, we agree with the Director that the Petitioner has not provided enough credible information about the Beneficiary's subordinates to show that she primarily oversaw supervisors or managers. The 20-name payroll chart does not show that any of the Beneficiary's claimed subordinates completed college degrees or work in fields statutorily defined as professions, and therefore the record does not show that any of those subordinates are professionals.[1] The Petitioner has provided incomplete and conflicting information about the foreign company's personnel, compounded by the other documented credibility issues we have already discussed.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are

[1] To determine whether the Beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

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

The record also supports the Director's finding that the identified managers performed operational duties. For example, the Petitioner stated that its accounting and tax manager "prepared tax returns and other tax documents" and "carried out the accounting of assigned projects," tasks for an accountant rather than an accounting manager. As another example, the Petitioner stated that the marketing manager "[p]repared and developed marketing plans," but the record does not identify any subordinate staff to actually perform the marketing tasks. The four departments said to have been under the Beneficiary's management appear to have been staffed by a total of three employees, including a cashier.

Furthermore, the Petitioner has provided conflicting information about several job titles, including the Beneficiary's. In response to the RFE, the Petitioner stated that [redacted] serves as both purchase manager and accounting and tax manager; this individual was previously listed as "administrative coordinator/accounting and tax" on the foreign entity's payroll list. The Petitioner stated that [redacted] serves at the marketing manager, but she was listed as a cashier on the payroll list, which listed the Beneficiary herself as the marketing manager. The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. at 591-92. For all of these reasons, the record does not support a finding that the Beneficiary supervised subordinate managers or supervisors.

Although the Petitioner has, throughout this proceeding, maintained that the Beneficiary supervised managers abroad, the Petitioner has also asserted that the Beneficiary primarily served as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that a beneficiary will manage an essential function, a petitioner must clearly describe the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary's daily duties dedicated to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, a petitioner's description of a beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform the duties related to the function.

The only essential function that the Petitioner identified was the Beneficiary's claimed oversight of the administration of the petitioning U.S. company. As explained above, this claim does not hold up to

scrutiny, because the Beneficiary never worked in Venezuela while the U.S. company existed. Also, while the U.S. company is an automobile dealership, the foreign company sells bottled water. The Petitioner has not defined any plausible connection between the management of the two companies.

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that the Beneficiary was employed in a managerial capacity abroad.

B. U.S. Employment in a Managerial or Executive Capacity

1. Duties

The Petitioner initially stated that the Beneficiary would serve in an executive capacity under the extended petition. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and a 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 an owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

The Beneficiary's full job description fills more than three pages and is too long to reproduce here in full. The main elements of the description are as follows:

- Planning [25% of her time per week]
- Financial Management [25%]
- Management [20%]
- Marketing and Sales [20%]
- Human Resources Management [10%]

The Petitioner stated that the Beneficiary would be responsible for "[p]lanning, establishing, directing, and controlling" each of the above elements.

In the RFE, the Director stated that the Beneficiary's job description consists largely of "vague and general terms" such as "establishing goals and policies," combined with non-executive functions such as "locate and remove or correct possible errors in information provided by the administrative and logistical systems that could impact the business operations." In response, the Petitioner repeated the assertion that the Beneficiary's functions are entirely executive in nature. The Petitioner did not address the specific examples of non-qualifying duties that the Director had cited

in the RFE. Instead, the Petitioner stated that the Director did not specify what was unsatisfactory about the job description.

In the denial notice, the Director stated that the percentages of time allocated to various duties "do not appear to be realistic when considered in conjunction with the scope and capacity of [the Petitioner's] retail used car operation, and it is unclear how many of the task[s] described can be deemed to be executive in nature."

On appeal, the Petitioner does not offer any new information or argument as to how the Beneficiary's position is that of an executive. Instead, the Petitioner repeats the initial job description and states that "[t]he evidence overwhelmingly supports the conclusion that the Beneficiary meets all of these criteria and, therefore, can easily be deemed a functional manager, as more fully set forth above." The assertions preceding this paragraph, however, concerned executive capacity rather than that of a function manager. Prior to the appeal, the Petitioner did not claim that the Beneficiary will serve as a function manager, and the appeal articulates no coherent claim in that regard.

The Beneficiary did not show that her claimed duties will be primarily managerial. The Director's stated objections apply equally to claims of a managerial and executive capacity; the asserted duties lack detail and corroboration, and do not realistically correspond to the organization as described. For example, the Beneficiary's job description identified one of her duties as "[n]etworking with other executives," but the company has no other executives. As another example, the job description did not list either sales or purchasing among the Beneficiary's duties. But the record contains copies of several invoices identifying the Beneficiary as a "salesperson," and others identifying her as the purchaser of used cars for resale by the Petitioner. The Beneficiary's documented involvement in the purchase and sale of these cars is neither managerial nor executive, and the Petitioner did not disclose this important information in the job description. Therefore, the job description is not a credible representation of the Beneficiary's true responsibilities and duties with the Petitioner.

2. Staffing

The Petitioner indicated that it outsources transport, repairs, and related functions. The Petitioner added that the Beneficiary "has employed a staff to undertake the management of [the Petitioner's] operations since 100% of her time will be spent in executive duties."

On Form I-129, the Petitioner indicated that it had four employees in the United States. That number is consistent with the Petitioner's IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2016. The Petitioner identified the employees as follows:

- President [the Beneficiary]
- Operations Manager
- Sales and Marketing Manager
- Salesperson

The Petitioner stated that the Beneficiary's only immediate subordinate, the operations manager, "oversees the planning, development and establishment of policies and objectives of the U.S. organization," and "keeps the records of the personnel . . . [and] manages the personnel matters," among other duties. The Petitioner listed all other employees as being subordinate to the operations manager.

The Petitioner indicated that the operations manager is also the purchase manager, but the Petitioner identified no staff to perform the purchasing functions, and the operations manager's job description did not specify his purchasing duties.

In the RFE, the Director found that some of the operations manager's duties are administrative rather than managerial, and that other duties "overlap with those of the beneficiary." In response, the Petitioner stated that the duties do not overlap, because the Beneficiary establishes corporate policies and the operations manager implements those policies. This amounts to a revision of the prior claim that the operations manager "oversees the planning, development and establishment of policies and objectives" – a phrase that indicates that the operations manager not only implements, but also creates, those policies.

In denying the petition, the Director repeated the deficiencies first described in the RFE, and found that the Petitioner had not shown that any of the Beneficiary's subordinates qualify as managers. The Director stated that the Petitioner had not shown who performs various key functions of the company. Although the Petitioner had claimed that it outsources some functions to contractors, the Director found that the Petitioner had documented only minimal use of those contractors (for example, $625 spent on legal and professional fees). The Director found that the submission of assorted invoices did not suffice to show that the Petitioner engaged the contractors' services regularly, rather than occasionally or intermittently. A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof, particularly when supporting documentary evidence would reasonably be available. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *see also Matter of Chawathé*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

On appeal, the Petitioner offers no substantive response to this ground for denial. As noted before, the Petitioner repeats the Beneficiary's job description from its initial letter, adding a passage at the end that "[t]he evidence overwhelmingly supports" approval of the petition. The Petitioner does not explain or elaborate, and the bare assertion that the Beneficiary qualifies for the benefit sought cannot overcome the specific grounds that the Director set forth at length in the denial notice.

The evidence submitted does not provide enough information about the role each employee plays in the Petitioner's operation of a used car dealership. For example, no job description includes the operational and administrative tasks involved in purchasing cars for resale, but those tasks are fundamental and indispensable to the operation of a car dealership. The Beneficiary's own name appears on some of the purchase documents and indicates that the Beneficiary herself performs these

functions at times. Therefore, this evidence both points to the Beneficiary's performance of non-qualifying duties and illustrates that her job description is inaccurate or at least incomplete.

Based on the deficiencies discussed above, the Petitioner has not established that it will employ the Beneficiary in a managerial or executive capacity under the extended petition.

## III. CONCLUSION

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of G- Corp.*, ID# 188320 (AAO Feb. 22, 2017)