U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N- INC.

DATE: JAN. 18, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, gas station and convenience store, seeks to temporarily employ the Beneficiary as its chief executive director 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 evidence of record did not establish that: (1) the Beneficiary had at least 1 continuous year of full-time employment abroad with a qualifying organization within the 3 years preceding the filing of the petition; (2) the Beneficiary was employed abroad in a managerial or executive capacity; and (3) the Beneficiary would be employed in a managerial or executive capacity in the United States.

The Petitioner filed an appeal, which we summarily dismissed after determining that the Petitioner did not submit a brief or statement of the basis for the appeal. We have since received a copy of the Petitioner's timely-filed brief and reopened the matter *sua sponte* in order to consider the merits of the appeal. Accordingly, we will reinstate the appeal in order to consider the Petitioner's brief and evidence.

However, upon *de novo* review, we will dismiss the appeal.

I. LAW

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.*

An individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

8 C.F.R. § 214.2(l)(3). An "intracompany transferee" is:

> An alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive *or* involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

8 C.F.R. § 214.2(l)(1)(ii)(A). A petitioner must provide "[e]vidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years *preceding the filing of the petition.*" 8 C.F.R. § 214.2(l)(3).

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

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

In addition, "[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)(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.

II. ANALYSIS

A. One Year Foreign Employment Requirement

The Director denied the petition, in part, based on a finding that the evidence of record did not establish that the Beneficiary had at least 1 continuous year of full-time employment abroad with a qualifying organization within the 3 years preceding the filing of the petition.

Upon review, the Petitioner has not established that the Beneficiary was employed by a qualifying organization abroad for at least 1 continuous year in the relevant 3-year period.

The Petitioner states that its claimed parent company, employed the Beneficiary in India from August 2000 until November 27, 2006. The record shows that the Beneficiary was admitted to the United States in F-1 nonimmigrant status on December 27, 2006, was granted a change of status to H-1B status on October 1, 2008, was the Beneficiary of two subsequent H-1B petitions and had been continuously maintaining H-1B status at the time the instant petition was filed on March 27, 2015. The Beneficiary's H-1B employers, and have no claimed relationship with the petitioning company or the foreign employer. The record shows that the Beneficiary was last admitted to the United States on December 7, 2009.

In denying the petition, the Director emphasized that the Beneficiary was not employed by the foreign entity for any period of time in the 3 years preceding the filing of this petition and in fact had not worked for the claimed foreign qualifying organization during the 8 years preceding the filing of the petition.

The Petitioner cites section 101(a)(15)(L) of the Act and a portion of 8 C.F.R.§ 214.2(l)(1)(ii)(A) in support of its assertion that USCIS should look to the 3-year period preceding the Beneficiary's admission to the United States:

> The [B]eneficiary's application for admission into the U.S. occurred in late 2006, and he was subsequently admitted. The evidence submitted, not challenged by USCIS, established that the beneficiary was working for a qualifying organization from August 2000 – November 2006. Therefore prior to the [B]eneficiary's application for admission into the U.S., he was working for a qualifying organization for over 6 years, enough to establish that this criteria has been established.
>
> In the plain language reading of the statute and the regulation, the USCIS' characterization of law that the employment must have occurred within three years of filing the current petition is inconsistent with the statute, regulation, and congressional intent. Moreover, it is inconsistent with the theory behind the plain language of the statute and regulation. The plain reading of the law allows for situations like the current petition, in that an employee may come to the U.S. for a period of time and later develop additional skills or education that would allow the beneficiary's prior employe[r] to rehire the beneficiary and avail themselves [sic] of the laws of the United States.

We do not agree with the Petitioner's assertion that USCIS should reach over the Beneficiary's December 2006 admission to the United States and subsequent stay of more than 8 years in determining whether he meets the 1 year of foreign employment requirement.

As noted, the language of the statute indicates that the relevant 3-year period to be used as a reference point in determining whether the beneficiary had 1 year of continuous full-time employment with a qualifying entity abroad is the 3 years "preceding the time of his application for admission into the United States." Section 101(a)(15)(L) of the Act. The statute, however, is silent with regard to those beneficiaries who have already been admitted to the United States in a different nonimmigrant classification.

The regulation at 8 C.F.R. § 214.2(l)(3)(iii) clearly requires that an individual petition filed on Form I-129 be accompanied by evidence that the beneficiary "has at least 1 continuous year of full time employment abroad with a qualifying organization within the 3 years preceding the filing of the petition." The definition of "intracompany transferee" also indicates that, if the beneficiary has been employed abroad continuously for 1 year by a qualifying organization within 3 years preceding the time of the beneficiary's "application for admission into the United States," the beneficiary may be eligible for L-1 classification. 8 C.F.R. § 214.2(l)(1)(ii)(A).

When the definition of "intracompany transferee" is construed together with the regulation at 8 C.F.R. § 214.2(1)(3) and section 101(a)(15)(L) of the Act, the phrase "preceding the time of his or her application for admission into the United States" refers to a beneficiary whose admission or admissions were "for a branch of the same employer or a parent, affiliate, or subsidiary thereof" or for "brief trips to the United States for business or pleasure."

Therefore, according to the plain purpose of the Act and regulations, USCIS will not reach back to the 3-year period preceding the Beneficiary's admission as a nonimmigrant in all circumstances. Unless the authorized period of stay in the United States is either brief or "for" a qualifying employer, the period of stay will be interruptive. *See* 52 Fed. Reg. 5738, 5742 (Feb. 26, 1987) ("Time Spent in the United States Cannot Count Towards Eligibility for L Classification"). It logically follows that any non-qualifying period of stay in the United States that is longer than 2 years would prevent a Beneficiary from meeting the "one-in-three" requirement at 8 C.F.R. § 214.2(l)(3)(iii).

The principal focus of section 101(a)(15)(L) of the Act and 8 C.F.R. § 214.2(l) is on the continuity of the beneficiary's employment with the same international qualifying organization in the United States. The 3-year window established by the statute ensures that there will be no significant interruptions in employment within the same organization and is consistent with the purpose of this nonimmigrant classification. Allowing the "transfer" of employees who had worked outside of the organization for several years would be contrary to Congress' intent that international businesses will use this nonimmigrant classification solely to temporarily transfer their foreign executive, managerial, and specialized knowledge employees to their United States operations.

The Beneficiary in this case had been in the United States attending university and working for unrelated U.S. employers for more than 8 years at the time the Petition was filed. For the reasons discussed above, we find that the statute and regulations support a finding that only time spent in the United States working for a branch, subsidiary, affiliate, or parent of the foreign employer will be

deemed non-interruptive. Here, at the time the Petitioner filed the petition, more than 8 years had passed since his employment with the foreign entity had been terminated.

Therefore, we consider the Beneficiary's periods of stay as an F-1 nonimmigrant student and as an H-1B temporary worker for unrelated employers to be interruptive. Because none of the time he spent in the United States was spent working for a qualifying organization, we must look at the 3-year period preceding the filing of the petition and will not adjust or reach back over this period to the period that preceded his admission as an F-1 student. The Petitioner did not establish that the Beneficiary had 1 year of full-time, continuous employment with a qualifying foreign entity in the 3 years preceding the filing of the petition. *See* 8 C.F.R. § 214.2(l)(3)(iii).

B. Foreign Employment in a Managerial or Executive Capacity

In addition to finding that the Beneficiary did not meet the 1 year of foreign employment requirement, the Director also determined that, even if the Petitioner had established that the Beneficiary had 1 year of foreign employment in the 3 years preceding the filing of the petition, his employment was not in a managerial or executive capacity.

Upon review of the petition and evidence, including the Petitioner's brief and evidence submitted on appeal, we conclude that the evidence does not establish that the foreign entity employed the Beneficiary in a managerial or executive capacity.

When examining the managerial or executive capacity of the Beneficiary, we first review the Petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The definitions of executive and managerial capacity have two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). 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, e.g., Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World, Inc.*, 940 F.2d at 1533.

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

In support of the petition, the Petitioner provided a letter from the foreign entity, signed by a who stated that the company employed the Beneficiary as its executive marketing officer with responsibility for the following duties:

1. Plan, direct and evaluate the activities of sales departments in commercial, industrial, wholesale and other non-retail establishments.
2. Prepare reports of marketing regularly.
3. To advertise the product of company and direct and evaluate the activities of sales departments in commercial, industrial, wholesale and other non-retail establishments.
4. Initiate market research studies and analyze their finding.
5. Maintain records of all marketing in industry premises, distributor premises and at retail outlets.
6. Assist in product development and evaluate the marketing strategies.
7. To establish distribution networks for products and services and implement communication strategies and information programs, publicize activities and events.

While these duties suggest that the Beneficiary may have had some authority over planning or managing sales activities, the description is too general to establish that the Beneficiary primarily performed managerial or executive duties associated with the company's sales and marketing functions. The description lacked specific details regarding the Beneficiary's responsibilities for planning and directing departments and activities, lacked information regarding the strategies he developed or implemented, and did not reflect that the Beneficiary supervised any subordinate personnel in carrying out his duties. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Further, the position description included a number of duties which, without further explanation, appear to be non-qualifying sales, marketing and administrative tasks, such as preparing marketing reports, advertising the company's products, initiating and analyzing market research studies, maintaining company records, assisting in product development, and publicizing activities and events. Whether the Beneficiary is a managerial or executive employee turns on whether the Petitioner has sustained its burden of proving that their duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the Petitioner did not document how the Beneficiary allocated his time between qualifying and non-qualifying duties.

In a request for evidence (RFE), the Director advised the Petitioner that this list of duties was too general and did not provide sufficient detail to establish whether the Beneficiary's duties were primarily managerial or executive in nature. The Director requested a more detailed description of the Beneficiary's managerial or executive duties and the percentage of time he spent on specific tasks as well as a detailed organizational chart for the foreign entity depicting the Beneficiary's position and the names, job titles, job duties, educational levels, and salaries of any employees he supervised.

In response, the Petitioner re-submitted [redacted] letter and provided no further information regarding the Beneficiary's job duties. As a result, based on the current record, we are unable to determine whether the claimed managerial duties constituted the majority of the Beneficiary's duties, or whether the Beneficiary primarily performed non-qualifying administrative or operational duties related to the marketing and sale of the foreign entity's products. Although the Director specifically requested this information, the foreign entity's description of the Beneficiary's job duties does not establish what proportion of the duties was managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Further, in reviewing the totality of the evidence, the record contains no information regarding the foreign entity's staffing levels or organizational structure during the Beneficiary's period of employment abroad, despite the Director's specific request for this evidence. In response to the RFE, the Petitioner provided an employee list dated "11-05-2015" which provides the names, titles, salaries, and duties of employees as of that date.[1] The Petitioner did not provide the requested evidence of the foreign entity's staffing levels or structure during the relevant time period. As a result, the record does not show that the foreign company actually had a "sales department," or any subordinate sales or marketing staff to support the Beneficiary's claimed managerial or executive position.

On appeal, the Petitioner refers to [redacted] letter and states "[i]t's hard to imagine that the duties listed in the letter are not executive in their nature as the duties listed carry with them an executive nature." It further contends that "[i]t is oxymoronic to require an executive to provide a letter with '*sufficient detail*' of another executive's responsibilities."

Again, we emphasize that simply 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 Petitioner has not provided any detail or explanation of the Beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros.supra*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990). An individual will not be deemed an executive under the statute simply because the individual has an executive title.

A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. *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 Chawathe*, 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. Here, the Petitioner's claims that the Beneficiary was employed in a qualifying managerial or executive capacity abroad rest entirely on a general job description that includes a number of non-managerial duties.

[1] The 2015 employee list includes a president, a manager, a supervisor, two workers, and an accountant; the company did not appear to employ anyone in the Beneficiary's former position of "executive marketing officer" or otherwise employ any sales and marketing staff.

Accordingly, based on the deficiencies addressed above, the Petitioner has not established that the Beneficiary's employment with the foreign entity was in a managerial or executive capacity.

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

The Director also denied the petition based on a finding that the Petitioner did not establish that the Beneficiary will be employed in the United States in a managerial or executive capacity. The Petitioner does not claim that the Beneficiary will be employed in a managerial capacity. Therefore, we restrict our analysis to whether the Beneficiary will be employed in an executive capacity.

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has not established that the Beneficiary will be employed in the United States in an executive capacity.

When examining the managerial or executive capacity of the Beneficiary, we first review the Petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii).

In support of the petition, the Petitioner submitted a job offer letter indicating that the company, which operates a gas station and convenience store in Oklahoma, plans to expand into other regions of Oklahoma and Texas under the Beneficiary's leadership. It described his proposed duties as chief executive director as follows:

1. Evaluate our product lines, budgets, expenditures, and providing profit/loss projections; 8%
2. Provide direction to the company Certified Public Accountant for company goals, investment projects, and staffing; 2%
3. Immediately put current expansion ideas into practice, including expansion into north and northwestern Texas, and western and southwestern Oklahoma; 20%
4. Develop relationships and attend meetings with current and prospective investors, bank management and leadership personnel, and community organizations; 15%
5. Establish community ties with local chambers of commerce, leadership and community service organizations such as schools, and other community event and planning organizations; 5%
6. Attend charity, fundraising, and business development seminars, events, and business education workshop; 5%
7. Research new development projects; 8%
8. Select and hire advertising and marketing agencies for billboard, television, and radio advertisements; 8%
9. Select and hire contractors for development projects; 2%
10. Attend job sites to ensure timely and efficient production; 1%
11. Coordinate marketing activities, such as participation in local events and functions; 3%

12. Report to [the foreign entity's] ownership monthly and at such times discussed by the Chief Executive Director and ownership, as well as providing information to consultants; 3%
13. Compile our service and product data and convert the data into a workable marketing plan; 3%
14. Review sales staff reports by the store managers and advise and direct the management via teleconferences and in-person meetings; 4%
15. Evaluate company management on a semi-monthly basis, including discretionary termination and commencement as needed; 3% and,
16. Devise company goals and policies to ensure the direction, scope and continuity of [the foreign entity] and [the Petitioner]. 10%

The definitions of managerial and executive capacity each have two parts. First, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities. *Champion World, supra*, 940 F.2d 1533. 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., supra*, 469 F.3d at 1316; *Champion World*, 940 F.2d 1533.

Here, the Petitioner indicates that the Beneficiary would be responsible for overall management of the petitioning company and overseeing its expansion to include other locations. However, the Petitioner has not provided sufficient detail regarding the Beneficiary's proposed day-to-day duties to establish that such duties will be primarily executive in nature. For example, the Petitioner states that the Beneficiary will allocate 20 percent of his time to "put current expansion plans into practice" but it does not describe the actual executive tasks he would perform in pursuit of these plans nor has it submitted a business plan or other information providing details of the planned expansion or current stage of planning and investment. Similarly, the Petitioner states that he will spend 10% of his time devising company goals and policies but has not further explained this broad responsibility or identified the goals and policies he will implement. Specifics are an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise, meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros., supra*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In addition, several of the Beneficiary's duties, without further specifics, appear to involve research analytical and marketing tasks, rather than executive-level tasks. For example, the Petitioner indicates that the Beneficiary will be evaluating product lines, budgets and expenditures, researching new development projects, compiling service and product data and converting this data into a marketing plan, coordinating marketing activities, participating in local events and functions, and working with advertising and marketing agencies. These non-executive duties account for another 30 percent of the Beneficiary's time. Although the Director noted deficiencies with the submitted position description and provided an opportunity for the Petitioner to supplement the record to establish that the Beneficiary would be employed in an executive capacity, it did not submit additional evidence in response to the Director's request and instead simply stated that it had already

provided "a probative explanation of the duties and need for [the Beneficiary] to work in an executive capacity."

Overall, while the Petitioner provided a list of duties with percentages of time to broad areas of responsibility, the combination of overly vague and non-qualifying duties included in the list prevents us from concluding, based on the job description alone, that the Beneficiary's actual duties would be primarily executive in nature.

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

At the time of filing, the Petitioner submitted a proposed organizational chart depicting the Beneficiary's proposed position within the company hierarchy. The chart shows that, as chief executive director, the Beneficiary would report to the owner and supervise an administrative assistant position (currently vacant), and the company's contracted CPA. The chart also depicts the store staff and identifies two store managers (and who supervise a total of five cashiers. As evidence of wages paid to its employees, the Petitioner provided pay statements for the period ending January 31, 2015, which appears to be a one-week pay period. The Petitioner documented payments to four of the five cashiers listed on the organizational chart, and payments to four part-time workers who did not appear on the chart. Of the four cashiers who received wages, one worked 21 hours, two worked 25 hours, and one worked 39 hours. The Petitioner did not provide evidence of wages paid to the store managers or to the fifth cashier depicted on the chart. As noted, the Petitioner declined to submit additional evidence pertaining to the Beneficiary's proposed U.S. employment in response to the RFE, in which the Director had requested additional evidence regarding the Beneficiary's duties and the Petitioner's staffing and structure.

Based on the limited evidence submitted, the Petitioner has documented its employment of one full-time and three part-time cashiers and has not established how this staff would relieve the Beneficiary from involvement in the day-to-day operations of the Petitioner's existing gas station and convenience store or support his employment in an executive capacity. The Petitioner has not submitted evidence that it employs or as its store managers or otherwise sufficiently corroborated the information provided in its organizational chart. 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 Chawathe*, 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.

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 the individual has an executive title or because the individual "directs" the enterprise as the owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Here, despite the Beneficiary's job title of "chief executive director," the record does not contain sufficient information regarding his actual proposed job duties, documentation of the Petitioner's planned expansion, or evidence of the company's staffing and structure as of the date of filing. Without this information, we cannot determine that the Beneficiary's would be primarily focused on the broad goals and policies of the organization rather than on the day-to-day operations of the business.

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary would be employed in the United States in an executive capacity.

D. Qualifying Relationship

Although not addressed in the Director's decision, the evidence of record does not support the Petitioner's claim that it has a qualifying relationship with the Beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, 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").

On the Form I-129, the Petitioner stated that it is a wholly-owned subsidiary of the foreign entity. In its supporting letter, the Petitioner explained that the foreign entity purchased all 1000 shares of the company on March 25, 2015, and that, prior to that date, the company was owned in equal parts by four individual shareholders: and However, the Petitioner has not adequately documented this change in ownership.

The record contains, in pertinent part, the following evidence:

1. Stock purchase agreement between and (sellers) and (purchaser), indicating that the sellers owned and agreed to sell

all 1000 shares of the company's stock to the foreign entity in exchange for $70,000 on March 25, 2015;

2. The Petitioner's stock certificate number 1, which indicates that 500 shares were issued to [redacted] on March 25, 2015 and transferred to [redacted] on that date;
3. The Petitioner's stock certificate number 2, which indicates that 500 shares were issued to [redacted] on March 25, 2015 and transferred to [redacted] on that date;
4. Copies of two checks issued by [redacted] the claimed proprietor of [redacted] from his U.S. bank account on March 25, 2015, indicating that he paid $35,000 to both [redacted] and [redacted] on March 25, 2015;
5. Copies of the Petitioner's IRS Forms 1120-S, U.S. Income Tax Return for an S Corporation, for the years 2012 through 2014, which indicate that the Petitioner had four shareholders: [redacted] and [redacted] and
6. Affidavits from [redacted] and [redacted] indicating that they had relinquished their ownership interest in the petitioning company prior to March 25, 2015.

Upon review of the totality of the evidence, the Petitioner has not documented that [redacted] and [redacted] owned 100 percent of the company's shares at the time the stock purchase agreement was executed, which calls into question the Petitioner's claim that all 1000 shares were sold to the foreign entity. The evidence indicates that the Petitioning company was owned by four individual shareholders as of December 31, 2014. While [redacted] and [redacted] indicated that they extinguished their ownership interests prior to March 25, 2015, the Petitioner did not submit supporting evidence of these stock transactions or any documentation showing that that their ownership interests were in fact transferred to [redacted] and [redacted] Further, the Petitioner has not explained why the only stock certificates issued to date were issued on the date of the claimed stock purchase, nearly 5 years after the company was established.

In addition, while the Petitioner claims that [redacted] is the current owner and proprietor of [redacted] and there is some secondary evidence in support of this claim (specifically, the foreign entity's 2012 rental agreement), the record also contains evidence that the foreign entity was established as a sole proprietorship owned by [redacted] in 2003. The record does not contain an official Indian government registration document identifying [redacted] as the current proprietor. A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof. *See Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); *see also Matter of Chawathe*, 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.

Based on these deficiencies and inconsistencies, we cannot conclude that the Petitioner has a qualifying relationship with the Beneficiary's foreign employer. For this additional reason, the petition cannot be approved.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 N- Inc.*, ID# 106321 (AAO Jan. 18, 2017)