U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-US INC.

DATE: JULY 24, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a wholesaler of spices and other food ingredients, seeks to extend the Beneficiary's temporary employment[1] as its vice president of sales/marketing under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity in the United States, or that the Beneficiary was employed abroad in a managerial or executive capacity. On appeal, the Petitioner asserts that it has established by a preponderance of the evidence that the Beneficiary will be employed in the United States in a managerial capacity, and that the Beneficiary was employed abroad in a managerial capacity.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three 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 or executive capacity. *Id.*

A petitioner seeking to extend an L-1A petition that involved a new office must submit a statement of the beneficiary's duties during the previous year and under the extended petition; a statement describing the staffing of the new operation and evidence of the numbers and types of positions held; evidence of its financial status; evidence that it has been doing business for the previous year; and

[1] The Beneficiary was previously granted L-1A nonimmigrant status, valid from September 8, 2017, to September 7, 2018, to open a new office for the Petitioner.

evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii). This evidence must demonstrate that the beneficiary will be employed in a managerial or executive capacity, as defined at sections 101(a)(44)(A) and (B) of the Act, under the extended petition.

II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

On appeal, the Petitioner claims that the Beneficiary would be employed in a managerial capacity. Therefore, our analysis will address whether the Beneficiary's proposed position would be in a managerial capacity.

"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.

When examining the managerial capacity of a given beneficiary, we will review the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in a managerial capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business, its staffing levels, and its organizational structure. If staffing levels are used as a factor in determining whether an individual is acting in a managerial capacity, we 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. However, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the Petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

A. Duties and Staffing

Based on the statutory definition of managerial capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). The Petitioner must also prove that the Beneficiary will be *primarily* engaged in managerial duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

In a letter supporting the initial petition, the Petitioner stated that the Beneficiary would allocate his time in the offered position of vice president of sales/marketing as follows:

- Review and Analyze sales and activity reports, potential sales, and performance data to measure productivity and goal achievement to determine areas of cost reduction and program improvement – 10% of time;
- Direct, design, and implement strategic sales and marketing plans in a cost-effective and time-efficient manner – 10% of time;
- Manage integrated project plans to ensure successful on-time and on-budget delivery of products by developing scope of work documents for all projects to define tasks, deliverables, cost estimates, and timing – 10% of time;
- Take part in negotiations with clients and logistics companies – 5% of time;
- Help clients to obtain the products according to their specification – 5% of time;
- Stay alert to new trends – 5% of time;
- Determine staff requirements, hire personnel, oversee training of new personnel, and monitor management personnel activities and reports of lower level personnel submitted by Managers – 5% of time;
- Direct and approve product strategies, price policies, and discounts in order to ensure required competitive level, cost recovery, and profitability expected by the company – 10% of time;
- Establish and communicate goals and objectives-10% of time;
- Work on the setting up of a strategy for being time efficient and reducing costs – 5% of time;
- Plan a weekly meeting to coordinate company operations – 5% of time;
- Develop financial forecasts and perform financial analysis – 10% of time;
- Direct the Company's promotion through social media – 5% of time; and
- Direct a competitive analysis- 5% of time.

In a request for evidence (RFE), the Director indicated that the duties listed were vague and did not sufficiently detail whether the Beneficiary would be primarily performing executive or managerial tasks. He requested additional evidence regarding the Beneficiary's proposed duties in the United States.

In response, the Petitioner's President provided an undated letter stating that "all of the sales functions previously overseen by the affiliate in the Netherlands" are now being run out of the Petitioner's United States office under the direction of the Beneficiary. Referring the Beneficiary's initial duties set forth above, the President stated that those duties "list the day-to-day functions of the subordinate employees allowing the beneficiary to engage in strategic planning and marketing, including the

search for new clients and the negotiation of contracts with them."[2] The President further asserted that the Beneficiary oversees two employees, a logistics manager and a sales manager, and "is currently responsible for undertaking the following tasks which will be implemented within the five-year business plan:"

- Oversee the Company's product strategies, price policies, and discounts in order to ensure required competitive level– 20% of time;
- Oversee the hiring process, employee appraisal and review– 10% of time;[3]
- Oversee the sales activities considering new trends in the industry– 10% of time;
- Oversee the implementation of strategic sales plans– 10% of time;
- Oversee the establishment of new business relationships with partners– 10% of time;
- Oversee the achievement of goals and objectives.[4] Based on results, realign the Company's priorities and goals-15% of time;
- Oversee the Company's promotion through social media – 10% of time;
- Supervise development of new innovative marketing campaigns to increase the customer base – 10% of time; and
- Oversee the implementation of a competitive analysis- 5% of time.[5]

We note that the initial job description had the Beneficiary performing primarily non-qualifying operational duties, while the revised description has the Beneficiary tasked with several duties involving oversight that were not included in the initial description. Many of the initial tasks were also removed in the revised description, and the percentages of time devoted to each individual duty were changed. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, a petitioner cannot offer a new position to a beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. A petitioner must establish that the position offered to a beneficiary, when the petition was filed, merits classification as a managerial or executive position. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978).

If significant changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the Petitioner in its response to the Director's RFE did not clarify or provide more

[2] It appears based on this statement that those duties shifted to lower level employees, although based on staffing levels at the time of filing, there was only one employee on the payroll - a logistics manager- who could have assumed those duties. The logistics manager already had her own duties, including data entry of freight bills; freight bill auditing and marketing; coordination with logistics companies, origin factories and clients regarding pickup and delivery of products; maintaining files to comply with customs regulations; and packing products for shipment to buyers and unpacking received shipments form sellers. Thus, it is unclear how she could have assumed all of the Beneficiary's initial duties, as well.

[3] This duty overlaps with the President's duties.

[4] This duty overlaps with the President's duties.

[5] The Petitioner's May 2017 business plan shows that the Beneficiary will be responsible for overseeing these duties in "Year 5," although its response to the RFE indicated that the revised duties were current as of October 2018, which was a little more than two years following its July 2016 incorporation.

specificity to the original duties of the position, but rather changed many of the duties and the applicable time devoted to each duty. Therefore, the focus of our analysis will be based on the job description submitted with the initial petition.

On appeal, the Petitioner asserts that the Beneficiary directs the Petitioner's "marketing strategies, policies, and strategic planning." It states that the Beneficiary will be primarily employed in a managerial position and that the Petitioner has hired "lower level employees to assist the beneficiary in his managerial duties." It submits an undated letter from its President stating that the Beneficiary's "efforts have been absolutely critical to our business development" and that the company has met the goals of its business plan. The President states that the sales support manager and logistics manager perform duties that "relieve the beneficiary from performing the day-to-day duties of non high-qualifying tasks."[6] He also restates the Beneficiary's revised duties listed in the RFE response above.

Like the Director, we find that the Petitioner provided a deficient job description that is so general it could describe virtually any general position with any company. The initial description provides only vague information that focuses on the Beneficiary's oversight of the business, but says little about the actual tasks he would perform or how those tasks qualify as managerial. For example, the tasks of helping clients to obtain "the products" according to their specification and staying alert to new trends are general, non-managerial duties. The task of taking part in negotiations with clients and logistics companies does not describe the negotiations or the Beneficiary's role in them or how that is a managerial duty. The task of directing a competitive analysis does not define or describe "competitive analysis" or indicate how it is a managerial task. Specifics are clearly 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. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Moreover, although the Petitioner asserts that the Petitioner has hired "lower level employees to assist the beneficiary in his managerial duties," the record does not demonstrate the existence of sufficient lower level personnel at the time of filing to relieve the Beneficiary from performing non-qualifying day-to-day operational duties. At the time of filing, the Petitioner only employed two employees – the Beneficiary and a logistics manager. Thus, it is not clear how the logistics manager could support all of the sales and marketing duties that the Beneficiary claims to direct and oversee. Without lower level staff to perform operational duties, we cannot find that Beneficiary would be relieved from performing non-qualifying duties, specifically those of the sales manager.

For example, the job description states that the Beneficiary will "monitor reports of lower level personnel submitted by Managers." However, the Petitioner's organizational chart submitted with the petition does not list any personnel below the logistics manager and the sales manager who report to the Beneficiary. Thus, there appear to be no "reports of lower level personnel submitted by Managers" for the Beneficiary to monitor because there are no lower level personnel without managerial titles below the Beneficiary. Further, the job

[6] At the time of filing the petition, the position of sales manager was not filled. We also note that the Petitioner's May 2017 business plan lists the following current and prospective employees: logistics manager, sales representative, President and vice president of sales/marketing. It does not list a sales manager, although the duties of sales representative and sales support manager appear to be the same based on an undated letter from the Petitioner's President submitted after the initial petition was submitted.

description indicates that the Beneficiary will direct, design, and implement strategic sales and marketing plans, but it is not clear who is creating the sales and marketing plans for him to direct. The description also states that the Beneficiary will manage integrated project plans, but it is not clear who is developing the project plans for him to manage. Moreover, the description states that he will direct and approve product strategies, price policies, and discounts, but it not clear who is developing the strategies, price policies, and discounts for him to direct and approve. The description also states that he will direct the social media, but it is not clear who is creating the social media content. Further, the description states that he will direct a competitive analysis, but it is not clear who is generating the competitive analysis for him to direct. The submitted evidence is not persuasive in demonstrating that the Beneficiary will be employed in a managerial capacity. If the business does not have the necessary staffing after one year to sufficiently relieve the Beneficiary from performing operational and administrative tasks, the Petitioner is ineligible for an extension.

Further, the job description does not demonstrate that the Beneficiary has authority over personnel actions, that he functions at a senior level within the organizational hierarchy, or that the Beneficiary exercises discretion over day-to-day operations. Rather, based on the description of the President's duties, it appears that the President retains that authority and discretion. The President's duties include overseeing the financial aspects of growth and expansion; establishing and implementing the Company's policies, objectives, and procedures; maintaining financial reports; designing, monitoring, and directing the implementation of strategic business plans; and overseeing the performance of the Petitioner's employees. Many of the President's duties overlap with the Beneficiary's duties, including duties related to designing, monitoring, and directing the implementation of strategic business plans; overseeing the performance of the Petitioner's employees; establishing goals and objectives; and maintaining financial reports. Based on the overlapping duties, it is not clear that the Beneficiary duties would be "primarily" managerial in nature. Sections 101(A)(44)(A) and (B) of the Act.

Based on the foregoing, the record does not demonstrate that the Beneficiary would be primarily engaged in managerial duties.

B. Organizational Structure

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 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 term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a

beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that:

> (1) the function is a clearly defined activity; (2) the function is "essential," i.e., core to the organization; (3) the beneficiary will primarily *manage*, as opposed to *perform*, the function; (4) the beneficiary will act at a senior level within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations.

Matter of G- Inc., Adopted Decision 2017-05 (AAO Nov. 8, 2017).

On the petition, the Petitioner claimed three employees, including the Beneficiary. In the RFE, the Director stated that Petitioner did not provide sufficient evidence confirming the employment of subordinate employees, their educational record, or evidence that they will relieve the Beneficiary from performing non-qualifying tasks. Further, the Director indicated that if the Beneficiary would serve as a function manager, the Petitioner has not provided sufficient evidence that the specific function is critical or essential, or that the Beneficiary will serve in a high-level position or in a position directly related to an essential function of the business.

In response to the RFE, the Petitioner provided payroll and employment tax documents showing that the Petitioner employed and paid only one employee, a logistics manager, in 2017; and that it employed and paid only two employees, the Beneficiary and the logistics manager, in 2018. The President and the sales manager are not listed on any of the payroll or employment tax documents. The Petitioner indicated in response to the RFE that the logistics manager has an associate's degree and provided a copy of the associate of applied science degree of [redacted].[7]

In the denial decision, the Director found that the Petitioner did not establish that the Beneficiary will oversee the work of professional subordinates for whom a baccalaureate degree or higher is required to perform their job duties.[8] On appeal, the Petitioner asserts that it has four employees; that the Beneficiary would supervise two professional level employees; and that the newly hired sales support manager has a bachelor of fine arts degree in graphic design and photography.[9]

We agree with the Director that the Petitioner did not establish that the Beneficiary will oversee the work of professional subordinates. The evidence indicates that the Petitioner had only one employee other than the Beneficiary at the time of filing the petition. That employee was a logistics manager with an associate's degree. Her duties, including data entry of freight bills; freight bill auditing and marketing; coordination with logistics companies, origin factories and clients regarding pickup and delivery of products; maintaining files; and packing products for shipment, are not duties requiring a

[7] The name on the payroll documents is [redacted]

[8] To determine whether a beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation").

[9] It is not clear how her fine arts degree relates to the position of sales support manager.

bachelor's degree. On appeal, the Petitioner asserts that it hired a sales support manager in October 2018, but it provides no payroll, tax, or other evidence to support that assertion. Further, her duties, including ensuring that the Petitioner's products are "made available to customers in the most efficient manner possible;" creating sales reports; contacting new clients; and managing and following up on leads, are not duties requiring a bachelor's degree. Regardless of her qualifications, because she was not employed by the Petitioner at the time of filing, her subsequent employment is not relevant to this petition. [10] Additionally, the Petitioner's organizational chart shows that neither the logistics manager nor the sales manager oversees any employees. Thus, the record does not establish that the Beneficiary would primarily supervise and control the work of other supervisory, professional, or managerial employees. In light of the deficiencies described above, the Petitioner has not established that the Beneficiary will be employed as a personnel manager.

Although the Petitioner does not specifically assert that the Beneficiary will serve as a function manager, we will briefly address the issue. Here, the Petitioner has not sufficiently described the function to show that it is "a clearly defined activity." *Matter of G- Inc.*, Adopted Decision 2017-05. Instead, it broadly states that the Beneficiary oversees supervision of the sales and marketing functions in the United States without adequately describing a specific function or component of the U.S. organization that the Beneficiary would manage. Further, whether a beneficiary is an "activity" or "function" manager turns in part on whether the Petitioner has sustained its burden of proving that the duties of that beneficiary are "primarily" managerial. *See Matter of Z-A-*, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016). As discussed above, the Petitioner has provided a deficient job description that neither defines an essential function, nor conveys an understanding of how the Beneficiary would go about managing the function. The deficient job description, coupled with insufficient evidence of adequate staffing, also precludes us from finding that the Beneficiary would serve as a function manager.

The Petitioner has not established that the Beneficiary will be employed in a managerial capacity in the United States.

III. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The Director further found that the Petitioner did not establish that the Beneficiary has been employed abroad in a managerial or executive capacity. The Petitioner claims that the Beneficiary has served as a senior sales account manager for its affiliate [redacted] in the Netherlands since 2013 and asserts the Beneficiary served as a function manager in this position. As such, we will restrict our analysis to whether the Beneficiary was employed abroad as a function manager.

In a letter supporting the petition, the Petitioner stated that the Beneficiary served as "Senior Sales Account Manager for [redacted] in the Netherlands from 2013-2017, where he was responsible for the development and implementation of sales and marketing strategies for customer groups with revenue targets of $10 million." The letter stated that he also was responsible for South African and North American customers and that he reported to the sales director. It also stated that he

[10] The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

"trained logistics personnel to support sales business objectives and developed an affordable range of spice ingredients within the R&D group."

In the RFE, the Director stated that "USCIS cannot determine with specificity how the beneficiary allotted his time to complete his day-to-day job duties in the foreign position." In response, the Petitioner submitted a letter dated October 12, 2018, from the Group Managing Director of the [redacted] stating that the Beneficiary served as senior sales account manager for [redacted] (now [redacted]) in the Netherlands from 2013 to 2017. The letter provided largely the same job description that was previously provided and did not provide specific time estimates for individual tasks. The Director denied the petition, concluding that the description of the Beneficiary's duties does not establish that the duties were executive or managerial duties.

On appeal, the Petitioner states that the Beneficiary managed a "major component" of the business abroad – the development and implementation for sales and market strategies for customer end groups located in South Africa and North America. Although the Petitioner argues that the Beneficiary was employed abroad as a function manager, the record does not support this assertion. First, as noted by the Director, the description of the Beneficiary's position abroad does not provide a meaningful understanding of how the Beneficiary allocated his time. The Beneficiary's position abroad is described generally with no indication on how the Beneficiary primarily spent his time. Although the description of the Beneficiary's position highlights the Beneficiary's success and achievements, it does not explain the Beneficiary's daily responsibilities or duties such that we could find he was primarily employed in a managerial positon. Reciting a 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. at 1108. Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's activities in the course of his daily routine.

Further, although a function manager is not required to oversee personnel, the discrepancies between the organizational chart and the Petitioner's claims must be explained. The Petitioner states that the Beneficiary oversaw a sales manager, although the organizational chart for the foreign entity does not show that the Beneficiary had responsibility for overseeing any employees. Instead, it shows that the entity's three sales managers and the Beneficiary were supervised by the group sales director.[11] The Petitioner must resolve this discrepancy with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582. Based on a lack of meaningful information concerning the duties performed abroad and the inconsistencies regarding the Beneficiary's placement in the foreign entity, we cannot find that the Beneficiary was employed as a function manager.

Finally, evidence in the record also raises questions about the duration of the Beneficiary's claimed employment abroad. The record contains the Beneficiary's job offer letter from [redacted] dated December 15, 2014. It states that the Beneficiary is being offered the position of senior sales account manager for the sales department effective January 1, 2015. His resume also shows that he was in sales from January 2013 to December 2014, and became a sales manager in January 2015.

[11] A letter from the sales manager, [redacted] states that the Beneficiary trained him for two weeks in South Africa, but it does not indicate that the Beneficiary was his supervisor.

Thus, it appears that he did not serve as a senior sales account manager from 2013 to 2017 as indicated by the Petitioner. The Petitioner must resolve this discrepancy with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 582.

For the foregoing reasons, the Petitioner has not established that the Beneficiary has been employed abroad in a managerial capacity.

IV. DOING BUSINESS

We note that the record does not demonstrate that the Petitioner has been doing business for one year as required by the regulations governing new office extensions. The Beneficiary was previously granted L-1A nonimmigrant status, valid from September 8, 2017, to September 7, 2018, to open a new office for the Petitioner. If a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See* 8 C.F.R. § 214.2(l)(3)(v). After one year, USCIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner[12] "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B). The Petitioner's President stated in a letter dated August 13, 2018, that the Petitioner "did not have the requisite personnel to begin full scale operations in the U.S. Business operations until late 2017," and the documents in the record regarding the Petitioner's operations only reflect business conducted in 2018. As such, the record does not establish that the Petitioner was doing business for one year. In any future filings, the Petitioner must address this issue.

V. CONCLUSION

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

ORDER: The appeal is dismissed.

Cite as *Matter of N-US Inc.*, ID# 4702253 (AAO July 24, 2019)

[12] The term "doing business" is defined in the regulations as "the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad." 8 C.F.R. § 214.2(l)(1)(ii)(H).