U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-T-W- LLC

DATE: JUNE 1, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

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

The Director of the Vermont Service Center denied the new office extension petition, concluding that the record did not establish that the Petitioner is doing business, that the Beneficiary will be employed in a managerial or executive position, and that the Petitioner has sufficient physical premises to operate its business.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred in her decision.

Upon *de novo* review, we find that the record includes sufficient evidence that the Petitioner has sufficient office space to house and operate its business; therefore, the Director's decision on this issue is withdrawn. However, as the Petitioner has not met the eligibility requirements for the remaining bases for the denial of the petition, the appeal will be dismissed.

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 one continuous year within three years preceding the Beneficiary's application for admission into the United States. 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. Section 101(a)(15)(L) of the Act.

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 evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii).

II. DOING BUSINESS

The petition to open a "new office" in the United States was approved on September 25, 2015, for a validity period from September 25, 2015, to September 24, 2016. To seek an extension of a new office petition, the Petitioner must demonstrate that it has been doing business between September 25, 2015, and September 24, 2016. 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).

The record shows that the Petitioner purchased a 15-room hotel in July 2015, and has plans to renovate the property. The record also included a summary of the Florida city building department's decisions on the Petitioner's renovation application. The summary shows that the building department began processing the application in June 2015 and has been continuing the approval process at various intervals. The record also included evidence that the Petitioner had entered into a management agreement with a company that owns five residential properties in Florida.[1] The Petitioner submitted four one-year residential leases entered into for four of the five properties. The rental periods commence between March 2016, and June 2016, and continue for one year. The leases designate the landlord of the properties as the Beneficiary/ and state that rent payments and maintenance and repair requests should be sent to an address at in Florida, not to the Petitioner's address. The Petitioner submitted evidence showing that it earned $1,439.20 as its management fee for the first half of 2016, pursuant to the management agreement with The Petitioner does not submit other evidence of its ongoing involvement in the management of these rented properties.

Additionally, the Petitioner owns a six-bedroom residential property where it has established its business offices. The Petitioner submitted evidence that it began renting two of the rooms as short-term accommodations through Airbnb beginning sometime in 2015. The Petitioner provided evidence that it earned $6,200 in 2015, and $19,500 in 2016, through September, from the rental of these two rooms. Finally, the Petitioner noted that it started discussions with to create a training program for project assets managers, preconstruction suppliers, and operation managers from China. The record includes minutes of the initial meeting which took place in August 2016, and includes photographs of the meeting. The

[1] The record includes evidence that the Beneficiary is a member of and is an authorized representative of the company. The record does not include evidence of the other members of this entity, although the Petitioner's balance sheets for 2015 and July 2016 show it invested $391,218.69 in the entity.

record further includes a list of potential trainees and companies to be targeted for marketing the training program. However, other than the Petitioner's statement on appeal that a preliminary agreement had been reached regarding this project, the record does not provide further evidence that the discussions resulted in a training program or that the Petitioner has earned any income from this proposed endeavor.

Based upon the information regarding these various projects, the Petitioner has not established that it has regularly, systematically, and continuously provided goods or services the previous year, September 25, 2015, to September 24, 2016. The record does not include sufficient evidence of the Petitioner's involvement in the hotel renovation project. Other than the undated engineering plans for the renovation and the Florida building department summary showing that an application/permit was filed and is in progress, the record does not include the Petitioner's participation in this process. We note that the Petitioner initially included a "construction management department" on its organizational chart and designated an employee to oversee the contracting work for this renovation.[2] However, the record does not include evidence of the Petitioner's employees' involvement in signing off on documents, contracts, or otherwise contributing to the renovation project. The record does not include sufficient evidence that the Petitioner was actively involved in this project for the previous year and that such involvement, if any, was systematic, regular, and continuous.

Similarly, the Petitioner has not submitted probative evidence that its management agreement with is more than a paper transaction. Although the Petitioner claims that it helped purchase five residential rental properties, the record does not include evidence of the Petitioner's involvement in any of these transactions. is a separate entity from the Petitioner and apparently has its own offices, where rent payments and maintenance and repair requests are sent. Thus it does not appear that the Petitioner participates in the ongoing management of the properties by accepting and processing rents, or responding to repair and maintenance requests. We note the Petitioner's receipt of a small amount of money it claims was earned from managing the properties for the first six months of the pertinent year. However, there is insufficient evidence establishing that the Petitioner is providing systematic, regular, and continuous services pursuant to its management agreement with The limited nature of the Petitioner's involvement is insufficient to establish that the Petitioner is doing business as a result of the claimed management of residential properties.

The Petitioner's limited income from the rental of a portion of its business offices is also insufficient to establish that the Petitioner is doing business such that it can support a managerial or executive

[2] On appeal, the Petitioner revises its organizational chart and deletes this department. The Petitioner states that the responsibility for the construction management project now falls within the purview of the operations manager/store manager. The record includes evidence that the individual identified as the operations manager/store manager on the revised organizational chart was on the Petitioner's payroll in 2015 and January and February of 2016. There is no evidence that the Petitioner subsequently re-employed this individual during the pertinent time period, September 25, 2016, to September 24, 2016.

employee, as required by the regulation. Likewise, the Petitioner's discussions and plans to start up a training program with had not come to fruition when this petition was filed. The record does not include contracts with various entities to provide the training facilities, contracts with attendees and trainers, or other evidence supporting the existence of this program. A nonimmigrant intracompany transferee visa is not an entrepreneurial visa classification allowing a beneficiary a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business. The regulations allow for a one-year period for the U.S. entity to commence doing business and develop to the point that it will support a beneficiary in a qualifying managerial or executive position. The Petitioner has not submitted evidence establishing that it has progressed sufficiently and is doing business in such a way that it has met this standard. The Petitioner has not demonstrated that it has been doing business in a regular, systematic, and continuous manner for the previous year. The appeal will be dismissed for this reason.

III. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director also found that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity under the extended petition. On appeal, the Petitioner asserts that the Beneficiary has been "tasked to establish, develop, and direct the day-to-day activities of the U.S. operations" and that it is his "responsibility to develop and manage the new business, using the services or employees and subcontractors to carry out these goals."

A. Definitions of Managerial and Executive Capacity

Section 101(a)(44)(A) of the Act 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 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.

B. Duties

When examining the managerial or executive capacity of the Beneficiary, we will look first to 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 or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Based on the definitions of managerial and executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner must clearly describe the duties to be performed by the Beneficiary, indicate whether such duties are either in an executive or managerial capacity, and demonstrate that the Beneficiary's responsibilities will meet the requirements of one or the other capacity. The Petitioner, in response to the Director's RFE, stated that the Beneficiary would work as an "executive" for the Petitioner. On appeal the Petitioner asserts that the Beneficiary "meets the definition of Manager" as defined by the regulation. Thus, it is not clear from the record whether the Petitioner is claiming that the Beneficiary will be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. For thoroughness, we will address both classifications.

In the letter submitted in support of the petition, the Petitioner stated that the Beneficiary, as general manager, "will oversee the overall operations of [the Petitioner], including but not limited to:

- [R]emaining accountable to shareholders and exercising executive power, reporting work to shareholders and executing resolutions passed by the shareholders (10%);
- [D]eciding on operation and investment plans, especially the newly developed training program with (20%);
- [O]verseeing the renovation of hotel properties and new site selection and development (20%);
- [O]verseeing the management of rental properties through cooperation with and deciding on whether new rental properties should be acquired in the future (10%);
- [F]ormulating the company's annual financial budget and account settlement plan (10%);
- [F]ormulating the profit distribution and losses recovery plans (10%);
- [O]verseeing marketing activities (10%);
- [A]ppointing or dismiss[ing] managers and deciding on their remuneration (5%); and
- [S]upervising the recruitment and training of employees (5%).

This general description is insufficient to identify specific duties that will engage the Beneficiary in a managerial or executive capacity. For example, remaining accountable to shareholders and exercising executive power does not detail what tasks this will entail. Other duties are very broad (such as "deciding on operation and investment plans," "overseeing the management of rental properties," and "deciding on whether new rental properties should be acquired") or short-term, one-time responsibilities that would not make continued demands on the Beneficiary's time (such as "appointing or dismiss[ing] managers" and "deciding on their remuneration").

Further, the Petitioner's use of the words "overseeing," "formulating," and "deciding" without the added context detailing the Beneficiary's duties in carrying out those tasks is insufficient. General assertions of this type do not tell us what the Beneficiary is actually doing. For example, the Petitioner referred to the Beneficiary as deciding on operations and investment plans related to "the newly developed training program with However, other than minutes from an August 30, 2016, meeting discussing the potential program, photographs of representatives attending the meeting, and lists of potential trainees and businesses, the record does not include sufficient evidence of the specific duties the Beneficiary will perform relating to this program. The record does not include probative evidence of the Beneficiary's ongoing negotiations or other decision-making related to this program. Similarly, the record does not include evidence of the Beneficiary's involvement, if any, in the stalled renovation plans of the 15-room hotel, the research for and negotiation of additional properties to manage, and the additional investigations to find new hotel properties. The record does not include sufficient evidence establishing the Beneficiary's actual duties relating to these projects so that we can determine if he will be performing managerial or executive duties as defined by the statute, rather than performing the duties involved in operating the company. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 369, 376 (AAO 2010).

The general description of the Beneficiary's intended duties is insufficient to establish that the duties are primarily managerial or executive in nature.

C. Staffing

Beyond the required description of the job duties, we review 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. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in the pertinent regulations that allows for an extension of this one-year period. If a business does not have the necessary staffing after one year to sufficiently relieve a beneficiary from performing operational and administrative tasks, a petitioner is ineligible for an extension.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act. If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*).

The Petitioner initially identified six employees, including the Beneficiary, on its organizational chart. The organizational chart shows four employees reporting directly to the Beneficiary as general manager. The four employees are identified as a HR Director/Office Manager, Training Department Director, Construction Management Department Employee, Operations Management Department/Store Manager. The organizational chart also shows an additional employee, reporting to the HR Director/Office Manager. The Petitioner indicated that two additional employees would be hired and would report to the Training Department Director. However, as these positions were not filled when the petition was filed, they will not be considered. The Petitioner submitted the same organizational chart in response to the Director's RFE.

The Petitioner initially provided general descriptions for each of these positions. The Petitioner states that the HR Director/Office Manager is responsible for: "[s]upervising various tasks"; providing feedback to management; the Petitioner's external working relationships, communication, and coordination; corporate network operation, management, and network support at each branch; arranging meetings, recording meeting minutes, implementing conference decisions; and assisting the general manager in "overseeing the implementation and completion of tasks by various departments and regional managers."

Similarly, the training director is responsible for the following: coordinating with training agencies; implementing the training schedule; following up on the training process; assessing the effectiveness of the training; and marketing the program in China, among other generally described duties.

The store manager, the only employee referenced within the operations management department, is described as performing the following duties: making weekly and monthly sales plans for the branch store; brand management; materials management; maintenance management; complaints management; safety management; project quality control; and preparing the monthly job analysis report.

The construction management "employee" is responsible for: "project construction management and relevant construction process; branch store drawings; supervision of the implementation of product standards; site construction progress; quality control; negotiating and follow-up on matters related to decoration, fire, monitoring systems, advertising, water, electricity, and network; and project payment application.

In response to the Director's RFE, the Petitioner provided the same descriptions for the Beneficiary's subordinate employees, but noted that since the store manager position is "supposed to oversee a hotel/store but since there is no store to supervise now," is working on the rental of the five properties and the rental of its office premises, with the assistance of the office manager. The descriptions of these duties are insufficient to establish that any of the positions subordinate to the Beneficiary are managerial or professional positions; rather the individuals in the positions appear to be performing operational and administrative tasks.

The Petitioner's organizational chart before the Director depicted the Beneficiary's authority over a supervisor, the HR Director/Office Manager, who supervises an HR employee. Although the Petitioner's description of the HR Director/Office Manager duties includes "[s]upervising various tasks under the Management Office and providing feedback of completion of tasks to the management," according to the Petitioner this takes only 30 percent of the HR Director/Office Manager's time. Accordingly this is not her primary responsibility and thus, she also is not a supervisory employee. This organizational chart also included two employees subordinate to the training program manager's position. As previously discussed, the training program had not been established when the petition was filed and these potential employees are speculative and not relevant to establishing eligibility when the petition is filed.

The Petitioner's staffing when the petition was filed does not establish that the Beneficiary primarily supervised and controlled the work of other supervisory, professional, or managerial employees.

On appeal, the Petitioner asserts that the Beneficiary ensures that the employees and subcontractors carry out the purchasing, property management, and construction rehabilitation duties he assigns. The Petitioner also contends that the Beneficiary supervises professional employees, as the new operations manager, and the previously identified HR manager/office manager and training program manager, all have at least a bachelor's degree. The Petitioner also amends the description of the

Beneficiary's job duties to identify specific departments or job positions as assisting or executing the duties described.

The Petitioner further revises its organizational chart to depict three employees reporting directly to the Beneficiary, the Office Manager/HR Manager, a Training Program Manager, and an Operations Manager/Store Manager. The former construction manager department employee has been demoted and moved to report to the Office Manager/HR Manager. A new employee has been designated to work as the Operations Manager/Store Manager and the previous individual holding the position has been demoted to working as an Operations Department Employee. Additionally, the revised organizational chart identifies an accountant and references three real estate agents, reporting directly to the Beneficiary, the record, however, does not include evidence of the accountant or real estate agents contractual employment. The Petitioner also revises the description of the Beneficiary's subordinates' duties. The Petitioner claims that the operations manager not only manages rental properties, as indicated in the response to the RFE, but also assists with marketing and duties related to the renovation of hotel properties and new site selection and development. Additionally, the office manager/HR manager is now tasked with assisting with the establishment of the program, marketing duties, and working on the company budget and account settlement plan.

The Petitioner provides no explanation for these material changes to the description of the Beneficiary's duties, his subordinates' duties, or the revised organizational chart. On appeal, 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 the 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to the requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

However, even if considering the Petitioner's revised organizational chart and the new descriptions of duties, we do not find that the employees subordinate to the Beneficiary are supervisory, professional, or managerial positions. Specifically, the new description of the operations manager/store manager's position does not include an allocation of the new employee's time to the duties described and does not appear to include any supervisory duties of the claimed subordinate position. Additionally, the Petitioner does not submit evidence probative evidence that the individual identified as now occupying this position was employed when the petition was filed.

Further, when evaluating the Petitioner's claim on appeal that the Beneficiary manages professional employees, we note that the Petitioner relies on the baccalaureate degree held by the employees subordinate to the Beneficiary's position. However, whether a beneficiary manages professional employees, depends on 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"). Therefore, we must focus on the level of education required by the position, rather than the degree held by the subordinate employee. For comparison purposes, we note that the Petitioner in its initial description of the duties of the positions subordinate to the Beneficiary indicated that the construction management employee needed only a junior high school education or general mechanic qualifications. Similarly, the position described as the store manager in the operations management department needed only a high school diploma. The new descriptions of duties do not include the Petitioner's educational requirements, but just lists the degrees held by the employees now in the positions. The Petitioner does not offer any evidence or explanation establishing that the positions as now described require bachelor's degrees in order to perform the duties for any of the positions subordinate to the Beneficiary's position.

The evidence on appeal is also insufficient to demonstrate that the positions subordinate to the Beneficiary are positions that are supervisory, professional, or managerial. Instead, the Beneficiary's subordinates perform the day-to-day tasks of the company. The Petitioner has not provided evidence of an organizational structure sufficient to elevate the Beneficiary to a supervisory position higher than a first-line supervisor of non-professional employees. Therefore, the Beneficiary's position does not qualify as primarily managerial or executive under the statutory definitions. *See* section 101(a)(44)(A)(iv) of the Act.

On appeal, the Petitioner also takes issue with the Director's determination that the Beneficiary will be "performing the functions of these departments himself, rather than overseeing" them. The Petitioner asserts that the evidence submitted shows that the Beneficiary has "sole authority over high-dollar value contracts and investment strategy for the U.S. company, and that the financial, marketing, and other non-qualifying duties are being carried out by his managerial staff (Operations Manager, Office Manager/HR Manager, and Training Program Manager) and outside contractors (Accountant and Real Estate Agents)." The Petitioner further refers to two unpublished decisions: (1) a decision in which we determined that a beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee, and (2) a decision where we approved a petition when the beneficiary had ultimate authority over the policies and objectives of the petitioner. However, the Petitioner has not established that the facts of this petition are analogous to either of those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on U.S. Citizenship and Immigration Services, unpublished decisions are not similarly binding.

Although it is not clear that the Petitioner is claiming on appeal that the Beneficiary will perform primarily as a function manager, nevertheless we have reviewed the Beneficiary's duties and the duties of those individuals subordinate to the Beneficiary in order to ascertain whether the Beneficiary will be employed 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 furnish a

written job offer that clearly describes the duties to be performed in managing the essential function, or more specifically, identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary's daily duties attributed 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 duties related to the function. See *Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016). In this matter, the Petitioner has not provided evidence that the Beneficiary manages an essential function.

The Petitioner asserts that the Beneficiary has subordinate employees who will carry out the financial, marketing, and other non-qualifying duties and that the Beneficiary "is ultimately responsible for formulating and carrying out the company's entire investment and operation strategy." The Petitioner, however, has not clearly identified a particular essential function with any specificity. Rather, the Petitioner seems to claim that operating its business is the essential function. Moreover, the Petitioner has not provided consistent descriptions of the Beneficiary's subordinates who would carry out the marketing, researching, and financial duties that would relieve him from primarily performing these duties. We also note that the fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. Based on the lack of consistent information in the record, the Petitioner has not established that the Beneficiary will manage an essential function.

Similarly, it is not clear that the Petitioner is continuing to claim that the proffered position also satisfies the definition of executive capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for a beneficiary to direct and the "executive" position must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. One does not qualify as an executive under the statute simply because one "directs" the enterprise as the sole managerial employee. While the Beneficiary may have the appropriate level of authority over the company as its senior employee, the submitted job descriptions do not show that the Beneficiary is primarily focused on the policies and goals of the company rather than on its day-to-day operational activities. The record does not include sufficient evidence to demonstrate that the Beneficiary will primarily perform duties in an executive capacity.

The Petitioner has not established that the Beneficiary will be employed primarily in a managerial or executive capacity as it has not been demonstrated that the Petitioner has ongoing business capable of supporting a managerial or executive position. The appeal will be dismissed for this reason.

IV. CONCLUSION

The Petitioner has not established that it is doing business or that the Beneficiary will be employed in an executive or managerial capacity under the extended petition.

ORDER: The appeal is dismissed.

Cite as *Matter of W-T-W- LLC*, ID# 354382 (AAO June 1, 2017)