U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10876251

Date: MAR. 10, 2021

Appeal of California Service Center Decision

Form I-129, Petition for an L-1A Manager or Executive

The Petitioner seeks to continue the Beneficiary's temporary employment[1] as its President 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 California Service Center denied the petition, concluding that the Petitioner did not establish that the Beneficiary would be employed in a managerial capacity in the United States under an extended petition.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. 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 managerial or executive capacity, or in a position requiring specialized knowledge for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(1). The prospective U.S. employer must also be a qualifying organization that seeks to employ a beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(3)(i).

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 Petitioner previously filed a "new office" petition on the Beneficiary's behalf which was approved for the period from March 16, 2018, until March 15, 2019. A "new office" is an organization that has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year within the date of approval of the petition to support an executive or managerial position.

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

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

II. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The sole issue to be addressed is whether the Petitioner established that the Beneficiary will be employed in the United States in an executive capacity. The Petitioner does not assert that the Beneficiary would be employed in a managerial capacity.

To be eligible for L-1A nonimmigrant visa classification as an executive, the Petitioner must show that the Beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(B)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying executive position.

If the Petitioner establishes that the offered position meets all elements set forth in the statutory definition, the Petitioner must prove that the Beneficiary will be primarily engaged in 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). In determining whether a given beneficiary's duties will be primarily executive, we consider the petitioner's description of the job duties, the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve the 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 and its staffing levels.

A. Job Duties

On the petition filed on March 14, 2019, the Petitioner claimed to operate an e-commerce business employing six workers in the United States.[2] In its initial letter of support dated February 15, 2019, the Petitioner identified the Beneficiary's "current" job duties and tasks, and the percentages of time devoted to each task, as follows:[3]

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[2] In a letter supporting the petition, the Petitioner stated that it sells home improvement products, fast-moving consumer goods, and other youth oriented products. It asserted that it has a "cooperation with Amazon, Ebay and other e-commerce platforms, storage service companies and those global logistics carriers such as UPS, USPS, and FedEx."

[3] Because these duties were listed as "current," it appears that they represent her duties during her initial year in L-1A status.

- Strategic leadership and operational management (20%).
  - Formulate and implement the strategic plan and business goals of the company in the U.S. market and oversee the operation of the company in accordance with the direction established (8%).
  - Analyze and access the effectiveness of all existing operations and identify potential problems by hearing the reports of other directors, and render improvement suggestions and resolutions (6%).
  - Set guidelines and establish the company's various internal rules and policies including funds usage, investment, spending, and expenses (6%).
- Fiscal stability and financial performance (20%).
  - Hear the financial report of CFO[4] on director's meetings, and develop and adjust the periodical and annual budget for e-commerce function (8%).
  - Constantly monitor the financial environment of the company, and identify and discuss and current and potential financial threats and challenges of the company (6%).
  - Solicit advice and guidance from the Board of Directors of the parent company, and make decisions on budget breakdowns, investment endeavor, business expansion, and other financial-related issues (6%).
- Sales growth and revenue increase (20%).
  - Oversee the company's gross sales revenues; review and analyze the sales reports represented by the sales department,[5] and establish and adjust sales goals, if necessary (10%).
  - Partner with the sales department to evaluate current sales channel and sales personnel, and identify any possible improvements (5%).
  - Direct and advise the marketing department[6] on the exploration of new channels and market relevant customer acquisition strategies through business events and marketing strategies (5%).
- Platform optimization & channel development (15%).
  - Closely track and drive strategic decisions on platform optimization based on data analysis (5%).
  - Render guidance and advice to the IT department[7] on content design and marketing strategies to drive sales performance improvement and the optimization of outstanding customer experience (5%).
  - Partner with the marketing department on the exploration of new sales channel and the development of annual promotional calendar (5%).
- Organizational improvement and human resources decision-making (15%).
  - Monitor and evaluate the work of other executive leaders of the company and receive reports from the general manager[8] on the performance of individual personnel (5%).
  - Partner with the general manager on the valuation and improvement of compensation plan and training program based on needs of business growth (5%).

[4] The Petitioner's organizational charts do not indicate that it currently has, or plans to hire, a CFO.
[5] The Petitioner's initial organizational chart does not indicate that it has a sales department.
[6] The Petitioner's initial organizational chart does not indicate that it has a marketing department.
[7] The Petitioner's organizational charts do not indicate that it currently has, or plans to have, an IT department.
[8] The Petitioner's organizational charts do not indicate that it currently has, or plans to hire, a general manager.

- ∑ Make final decision on the appointment, recruitment, and dismissal of the general manager, directors of each department, individual employees, and make any personnel changes, if necessary (5%).

∑ Public relations and contract negotiation (10%).
- ∑ Represent the company for civic and professional association responsibility and activities and facilitate the positive interaction with local communities, government entities, and other social organizations (4%).
- ∑ Build and maintain strategic business relationship with business partners, and act as a liaison between the company and its vendors (3%).
- ∑ Negotiate and sign contracts on behalf of the company and participate in industry-related events or associations that will enhance the reputation and popularity of the company (3%).

On the petition, the Petitioner stated that the Beneficiary would perform the following duties under the extended petition:[9]

∑ Strategic leadership and operational management: to provide strong leadership for the company by monitoring its day-to-day operation, and to manage all aspects of the e-commerce business to ensure the implementation of the company's vision, mission, and overall direction.

∑ Fiscal stability and financial performance: to continually oversee and evaluate the company's fiscal stability and performance to ensure the fulfillment of business goals, and to exert decision-making authority on major issues affecting the company's financial end-state.

∑ Sales growth and revenue increase: to establish, implement, and adjust the e-commerce sales goals to ensure that the company remains competitive in the market, and to identify new areas to e-commerce opportunity.

∑ Platform optimization and channel development: To identify any possible changes and improvement of current sales platform and channels in terms of the content, product assortment, merchandising, etc. to ensure its attraction and effective reach to target customers.

∑ Organizational improvement and human resources decision-making: To provide strategic direction and exert decision-making authority on human resources related issues to create an environment and culture that efficiently enhances the loyalty of the employee.

∑ Public relations and contract negotiation: To serve as a spokesman and representative of the company on public occasions, and to facilitate and reinforce the long-term cooperation between the company and its industry partners.

In a request for evidence (RFE), the Director stated that the description of duties provided by the Petitioner did not demonstrate that the Beneficiary would primarily perform the high level responsibilities of an executive or manager. The Director stated that it appears that the Beneficiary

[9] The petition did not indicate percentages of time to be devoted to these duties; however, the categories are similar to the ones provided in the Petitioner's support letter detailed above relating to the Beneficiary's "current" duties.

primarily performs operational tasks, and therefore, she requested additional information about the Beneficiary's day-to-day functions. She specifically requested (a) a statement detailing the Beneficiary's duties during the previous year, and (b) a letter from the Petitioner detailing how the Beneficiary will be employed in an executive or managerial position under the extended petition.[10]

In response to the RFE, the Petitioner provided a list of the Beneficiary's duties during the initial year of her L-1A nonimmigrant status, including her overall job duties and specific tasks, and the percentages of time devoted to each task. The overall job duties and percentages were similar to those initially provided, but the tasks and percentages of time devoted to those tasks were different from those initially submitted. For example, as noted above, the list initially submitted stated that she spent 20% of her time on strategic leadership and operational management, including formulating and implementing the strategic plan and business goals of the company in the U.S. market and oversee the operation of the company in accordance with the direction established (8%); analyzing and accessing the effectiveness of all existing operations and identify potential problems by hearing the reports of other directors, and render improvement suggestions and resolutions (6%); and setting guidelines and establish the company's various internal rules and policies including funds usage, investment, spending, and expenses (6%). The new list also stated that she spent 20% of her time providing strategic leadership and monitoring the daily operation of e-commerce business, but described her tasks related to that category differently.[11] Also, in the new description of her financial duties, the references to a CFO and an IT department were removed. 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., I7 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 USCIS requirements. See Matter of Izummi, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

In response to the RFE, the Petitioner further asserted that the Beneficiary would continue to be employed primarily as an executive in the United States. However, it did not provide additional insight into what she would primarily do on a day-to-day basis under an extended petition. 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). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In her decision, the Director determined that the Beneficiary would not be employed primarily in an executive capacity in the United States. She stated that the Beneficiary would primarily perform the day-to-day functions of the Petitioner's e-commerce business, as her duties would primarily comprise a wide range of operational and administrative tasks.[12] On appeal, the Petitioner submits two briefs;

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[10] 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. 8 C.F.R. § 214.2(l)(14)(ii)(C).

[11] Her revised tasks related to strategic leadership and operational management included creating a company profile and annual business plan based on the periodical and annual marketing report and sales revenue to develop a clear path business path vision (5%); presiding at the bi-weekly meetings and hearing reports from department managers, and rendering suggestions on major issues (5%); receiving general direction from top executives at the parent company on strategic development and setting goals accordingly (5%); and adjusting the periodical sales goals based on the sales margin and other indexes (5%).

[12] An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See, e.g., sections 101(a)(44)(A) and (B) of the Act

emails relating to the Petitioner's 2018 tax filings; five bi-weekly management meeting agendas for portions of 2018 and 2019 detailing some of the Beneficiary's duties;[13] and a resume for the Petitioner's former deputy general manager. The Petitioner asserts that the Beneficiary's duty description is "explicit" and "goes beyond the day-to-day operational duties." It also provides a weekly schedule of the Beneficiary's duties from December 31, 2018, through January 6, 2019, and asserts that her duties show that she exercises business decision making and management direction authority on a daily basis.

Upon review, we agree with the Director's determination that the Beneficiary's proposed job description under the extended petition includes numerous duties that fall outside the statutory definition of executive capacity. Despite asserting that it had hired six subordinate employees to assist with its operations, many of the tasks listed by the Petitioner indicate that the Beneficiary will be directly engaged in the business operations of the company. For example, the Petitioner states that the Beneficiary would engage in contract negotiations on behalf of the company, which is typically a duty attributed to subordinate staff and not a corporate executive. The Petitioner also indicates that the Beneficiary will continue to exert decision-making authority on human resources related issues and that 15% of her time would be devoted to such tasks. The Petitioner does not explain why the Beneficiary, and not the deputy general manager or a department manager, would continue to oversee these issues. Finally, the Petitioner states that the Beneficiary will manage its operational activities and implement sales goals. While we do not doubt that the Beneficiary, as President of the company, will be engaged and knowledgeable regarding the company's operational activities, we cannot conclude that the listed tasks are primarily executive job functions. It appears that the majority of the Beneficiary's duties under the extended petition will continue to be non-qualifying, operational duties essential to the company's continued business operations.

Further, many of the prospective job duties listed for the Beneficiary overlap with the duties of other employees. The Petitioner states that the Beneficiary will "continually oversee and evaluate the company's fiscal stability and performance to ensure the fulfillment of business goals, and to exert decision-making authority on major issues affecting the company's financial end-state." While these stated duties indicate that the Beneficiary is likely responsible for both qualifying and non-qualifying financial tasks, the Petitioner claimed in response to the RFE that it employs a financial and administrative director who supervises and manages the daily operation of the department and who drives the financial planning of the company. Further, the financial and administrative director also oversees "employee recruiting, orienting, and training," which appears to overlap with the Beneficiary's human resource duties detailed above. Thus, the tasks of the Beneficiary and the financial and administrative director overlap. In addition, the duties listed on the former deputy general manager's resume submitted on appeal indicate that she managed financial plans and forecasts, which overlaps with the stated financial duties of the Beneficiary and the financial and administrative

(requiring that one "primarily" perform the enumerated managerial or executive duties); Matter of Church Scientology Int'l, 19 I&N Dec. 593, 604 (Comm'r 1988).

[13] We note that on the agenda dated December 17, 2018, the next "bi-weekly meeting" is scheduled for December 31, 2019. Further, one of the agendas is dated December 31, 2019, but it states that the next "bi-weekly meeting" is scheduled for January 14, 2019. Further, the agendas indicate that "all directors" attended the meetings presided by the Beneficiary, but they do not identify the actual attendees. The Petitioner must support its assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010). The agendas are not credible evidence of the Beneficiary's executive duties.

director. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).[14]

Additionally, as previously noted herein, some of the Beneficiary's duties detailed in the record describe interactions with employees and departments that are not listed on the Petitioner's organizational charts. The list of duties references a "CFO," but there is no indication that the Petitioner employs a CFO. It also references an IT department, but neither organizational chart listed an IT department. Further, it references a "general manager," but neither organizational chart lists a general manager.[15] Doubt cast on any aspect of a petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Id. at 591.

In sum, the Petitioner's description of the Beneficiary's prospective duties under the extended petition includes numerous non-qualifying tasks; many of her prospective job duties overlap with the duties of other employees; and some of her duties describe interactions with employees and departments that do not exist. Thus, the record at the time of filing does not credibly establish that the Petitioner was able to support a primarily executive position for the Beneficiary a year after the approval of the earlier new office petition, and the materials submitted on appeal do not resolve the inconsistencies in the record.

The fact that the Beneficiary will manage or direct the business as its President does not necessarily establish eligibility for classification as an intracompany transferee in an executive capacity within the meaning of section 101(a)(44)(B) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. Here, the position description does not establish that her day-to-day duties would be primarily executive in nature.

B. Staffing and Organizational Structure

Next, we will address the U.S. company's staffing at the time of filing. If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, the reasonable needs of the organization must be considered in light of the overall purpose and stage of development of the organization. See section 101(a)(44)(C) of the Act. As noted, the U.S. company was established as a new office and its prior petition was approved for one year, with a validity period that ended on March 15, 2019. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation one year from the date of approval of the petition to support an executive or managerial position.

The Petitioner provided evidence that it employed six individuals at the time of filing, including the Beneficiary. According to its organizational chart dated February 2019 submitted with the petition, the Beneficiary oversees the deputy general manager; the deputy general manager oversees an "Admin & Financial Dept" employee, a "Logistics Dept." employee, and a "Warehouse Dept" employee; and the "Warehouse Dept" employee oversees a warehouse staff employee. The chart identifies four

[14] The emails submitted on appeal relating to the Petitioner's 2018 tax filings do not resolve the issue of overlapping financial duties.

[15] As further detailed below, the Petitioner submitted two different organizational charts, one with the extension petition and one in response to the RFE. Both charts list a "deputy general manager" directly underneath the Beneficiary in the organizational hierarchy, but not a general manager.

additional unfilled positions, including a financial specialist, customer service representative, logistics operator, and another warehouse staff member. The record is not clear who was performing the duties of these positions at the time of filing.

In her RFE, the Director stated that the record lacks sufficient documentation about the employees that the Beneficiary oversees. She noted that the record does not contain specific descriptions of the subordinates job duties, and that based on the fact that the Petitioner only has six employees (including the Beneficiary), it does not appear that the Petitioner has sufficient staffing to relieve the Beneficiary from performing the day-to-day tasks necessary to produce a product or service. She acknowledged that the Petitioner intends to hire additional employees, but stated that the Petitioner must establish eligibility at the time of filing the extension petition.[16]

In response to the RFE, the Petitioner provided, in part, another organizational chart; a list of the duties of each of the individuals listed on the chart; copies of identification documents and employment agreements for the Petitioner's employees; payroll summaries and employee paystubs for portion of 2019; and quarterly tax returns for part of 2019. The organizational chart submitted in response to the RFE shows that the Beneficiary will oversee a yet-to-be-hired deputy general manager;[17] that the deputy general manager will oversee an "Admin & Financial Dept" employee, a "Sales & Mktg Dept" employee, and a "Warehouse Dept" employee; that the "Admin & Financial Dept" employee will oversee a customer service representative and yet-to-be-hired bookkeeper; that the Sales & Mktg Dept" employee will oversee a sales associate, an inventory control specialist, and a yet-to-be-hired marketing specialist; and that the "Warehouse Dept" employee would oversee three warehouse associates.

In her denial decision, the Director noted the two different organizational charts submitted to the record. She found that the initial organizational chart, showed six employees, was corroborated by the first quarter federal tax return. The organizational chart submitted in response to the RFE showed 10 employees as of August 2019, and indicated that it would hire three others. The Director noted that the prospective hiring of additional employees has no bearing on the Petitioner's eligibility as of the date of filing. The Director determined that the record did not establish the duties of the Beneficiary's immediate subordinate, the deputy general manager. Thus, she determined that the record was not clear whether the Beneficiary's staff was sufficient to relieve her of the day-to-day functions of the business. The Director concluded that the record does not establish that the Beneficiary would serve in a primarily executive capacity in the United States.

The statutory definition of the term "executive capacity" focuses on a person's elevated position. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of an organization or major component or function thereof. Section 101(a)(44)(B) of the Act. To show that a beneficiary will "direct the management" of an organization or a major component or function of that organization, a petitioner must show how the organization, major

[16] As previously stated, the regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) only allows the intended U.S. operation one year within the date of approval of the petition to support an executive or managerial position. 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.

[17] It appears that the individual formerly holding this position in February 2019 was no longer employed in the role as of August 2019.

component, or function is managed and demonstrate that the beneficiary primarily focuses on its broad goals and policies, rather than the day-to-day operations of such. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the organization, major component, or function 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.

Upon review, we agree with the Director's determination that the record does not demonstrate that the Petitioner has sufficient staffing to relieve the Beneficiary from performing the day-to-day tasks necessary to produce a product or service. While the Petitioner has demonstrated that it employs several individuals to carry out some of the operational functions of the company, it has not established how they relieve the Beneficiary from performing the day-to-day activities of the U.S. company or otherwise support a position in which her actual duties would be primarily executive in nature. Further, the Petitioner's initial organizational chart identifies four unfilled positions, including a financial specialist, customer service representative, logistics operator, and another warehouse staff member. The record is not clear whether other employees were performing the duties of these positions at the time of filing, including the Beneficiary. Additionally, the Petitioner's subsequent organizational chart submitted in response to the RFE adds a sales and marketing department, but it is unclear who was performing the sales and marketing duties at the time of filing the extension petition. Given that sales and revenue growth are essential aspects of the Beneficiary's job, she would necessarily require support in these areas. The logistics department also disappeared in the second chart, but it is unclear why it was no longer needed in the Petitioner's business. We additionally note that the Petitioner is an e-commerce business, yet neither of its organizational charts identify any IT personnel to handle the technology related to its e-commerce platform. Thus, the record does not credibly demonstrate that the Petitioner has the necessary staffing after one year to sufficiently relieve the Beneficiary from performing operational and administrative tasks. See 8 C.F.R. § 214.2(l)(3)(v)(C).

On appeal, the Petitioner states that the Director incorporated duties of a manager into that of an executive. While the Director did discuss managerial attributes of the position in her decision, she ultimately determined that the record was not clear whether the Beneficiary's position would be primarily executive in nature. Specifically, she found that the record was not clear whether the Beneficiary's staff was sufficient to relieve her of the day-to-day functions of the business. This basis for denial has not been overcome on appeal.

On appeal, the Petitioner also asserts that it is "unconvincing" to deny the executive capacity of the Beneficiary because "USCIS should have known that the staffing of the e-commerce business is distinguished from other retailing and wholesaling" businesses. It states that the Petitioner "relies heavily on its e-commerce platform" which releases its employees "from a majority of the sales and marketing activities."[18] It additionally states that its number of employees is based on the actual needs

[18] If this is true, it is unclear why the Petitioner added a sales and marketing department to its organizational chart in response to the RFE.

of the company in its current stage of development.[19] However, a petitioner has the burden to establish that it would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. The Petitioner's unsupported statements are insufficient to carry its burden of proof, particularly when supporting documentary evidence would reasonably be available. The Petitioner must support its assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376.

In sum, 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. If a 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. Here, although the organizational chart suggests that a subordinate staff is available to perform some of the non-qualifying operational duties, the Petitioner has not explained how the yet-to-be-hired staff's duties have been delegated to existing employees, or why a significant percentage of the Beneficiary's time continues to be devoted to non-qualifying tasks.

Accordingly, the Petitioner has not established that the Beneficiary would be employed in the United States in an executive capacity under the extended petition as defined at section 101(a)(44)(B) of the Act.[20] The appeal will be dismissed for this reason.

ORDER: The appeal is dismissed.

[19] The reasonable needs of a petitioner will not supersede the requirement that a beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. Brazil Quality Stones v. Chertoff, 531 F.3d 1063, 1070 n.10 (9th Cir. 2008).

[20] We acknowledge that USCIS previously approved a nonimmigrant petition filed on behalf of the Beneficiary. However, the mere fact that USCIS approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. See, e.g., Royal Siam Corp. v. Chertoff, 484 F.3d 139, 148 (1st Cir 2007); Matter of Church Scientology Int'l, 19 I&N Dec. 593, 597 (Comm'r 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).