U.S. Citizenship and Immigration Services

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

MATTER OF D-USA, INC.

DATE: NOV. 8, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an import and export, hospitality, and tourism company, seeks to temporarily employ the Beneficiary as its general manager 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 revoked the approval of the instant petition concluding that the Beneficiary would no longer be employed in a managerial or executive capacity.

On appeal, the Petitioner asserts that the Beneficiary is the founder of the company and exercises overall control indicating that "it is our belief that the materials provided could [*sic*] fully evidence such facts." The Petitioner further states that operational tasks necessary to upgrade its vans are performed by other companies.

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.* The petitioner must also establish that the beneficiary's prior education, training, and employment qualify him or her to perform the intended services in the United States. 8 C.F.R. § 214.2(l)(3).

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of

intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).[1]

## II. U.S. EMPLOYMENT IN A MANAGERIAL CAPACITY

The sole issue to be addressed is whether the Petitioner has established that the Beneficiary would be employed in a managerial capacity. The Petitioner does not claim that the Beneficiary would be employed in an executive capacity. Therefore, we will restrict our analysis to whether the Beneficiary would be employed 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 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.

### A. Duties

Based on the definition of managerial capacity, the Petitioner must first show that the Beneficiary would 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 would 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.

[1] The Director revoked the approved petition on April 11, 2018, following the issuance of a notice of intent to revoke (NOIR) on January 29, 2018. The Director concluded that the statement of facts in the petition was not true and correct and the Beneficiary was no longer eligible for the nonimmigrant classification. *See* 8 C.F.R § 214.2(l)(9)(iii)(A)(*2*), (*4*).

The Petitioner stated in support of the petition that it was engaged in "the trade business of wine, luxury vehicles, and furniture" and indicated that it hoped "to extend into the hospitality and tourism industry." The Petitioner explained that as general manager the Beneficiary was responsible for "business development, project development, and personnel management" and listed the following duties, amongst others:

- develop and maintain annual purchasing/procurement plan, including strategies and tactics to achieve short and long term revenue objectives,
- implement plans to take advantage of all relevant procurement opportunities for assigned customers or region,
- develop quarterly and annual revenue forecasts,
- supervise the development of sales proposals, estimates, specifications, and presentations,
- drive/coordinate new business across all product/service lines,
- negotiate at the most senior client level on both technical and business issues,
- review and approve annual roadmap for key accounts,
- develop and deploy account strategies,
- develop positioning for the tourism, [and] hospitality management services offered by the company,
- establish strategic partners, and develop relationships with the objective of promoting [the] company's products/services,
- review and approve original foundational product collateral and sales tools such as marketing documents, presentations, white papers, data sheets, brochures, Web content, etc.
- direct new service and solution launches,
- make important personnel decisions,
- interview, perform reference checks, and manage the employment process from recruitment to hiring,
- responsible for recruitment and contracting of temporary staff for projects,
- collaborate with peers in other regions to establish best practices, and
- organize training workshops and seminars.

In a later request for evidence (RFE), the Director stated that the Petitioner did not provide sufficient evidence to demonstrate the Beneficiary's duties, including a description of his typical decisions and tasks. In response, the Petitioner highlighted the Beneficiary's accomplishments during the first year, noting his focus on "corporate governance and rule making," his decision to move to a larger commercial space, and his approval of a business plan drafted by his subordinates. It also emphasized some of the following additional duties:

- made the strategic business decision to explore new business opportunities, establishing and implementing a wine exporting line of business as the company's new focus of operations,

- reviewed marketing strategy and goals and through Import and Export Manager, establishing storage and distribution channels for purchasing, and exporting of automobiles,
- provide adequate and timely information to the board and the foreign parent company to enable it to effectively execute its oversight role,
- create the company's cultural environment and developed an employee handbook,
- coordinate with Vice General Manager to direct and coordinate organization's financial and budget activities to fund operations, maximize profits, and increase efficiency,
- prepare work schedules and assign specific duties to Department Managers,
- Evaluate department managers' performance, and
- Determine staffing requirements.

Following a site visit by an immigration officer (IO), the Director issued a notice of intent to revoke (NOIR) which listed various discrepancies regarding the operations and employees observed during this visit. In response, the Petitioner offered few additional duties or decisions for the Beneficiary indicating that he had "determined that the company would be better suited to focus and develop its vehicle modification activities before revisiting wine and furniture sales opportunities at a later time" and that he "directed the company to focus on its retrofitted luxury vans business operations." The Petitioner emphasized that he had the ultimate authority to decide "business strategy and direction for the US company, personnel matters including hiring and firing, creating internal policies, budget setting for the company, and is authorized to make any financial commitment by the company." Further, it indicated that the Beneficiary determines the "company's goals, business strategy, policies, and development" and noted that his "core responsibilities are business development management, project management, and personnel management."

In revoking the petition, the Director concluded that the Beneficiary's duty description was too general to demonstrate the duties he performed within the context and scope of the business. On appeal, the Petitioner provides little additional detail regarding the duties the Beneficiary performs, or would perform, stating only that he is responsible "for the board of the company and has overall control of the company with extensive discretion" and asserts "that the materials provided could fully evidence such fact."

Upon review, we concur with the Director's determination that the Beneficiary's duties are too vague. The Petitioner has not submitted sufficient examples or documentation to substantiate the Beneficiary's day-to-day managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily 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). The Beneficiary's duty description includes several generic duties that could apply to any manager acting in any business or industry and they do not provide insight into the actual nature of his role. The Petitioner provided insufficient examples and little supporting documentation to demonstrate the Beneficiary's performance of qualifying duties, such as purchasing and procurement plans he developed, revenue forecasts he

created, negotiations he conducted with clients, account strategies he deployed, dialogue he engaged in with strategic partners, "foundational product collateral and sales tools" he reviewed and approved, important personnel decisions he made, or marketing strategies he put in place.

We acknowledge that the Petitioner provided some examples of the Beneficiary performing qualifying tasks, but these did not sufficiently demonstrate that he would devote his time primarily to managerial duties. For instance, the Petitioner initially emphasized the Beneficiary's decision to explore exporting wines; and later, that he decided to shift the company's focus to upgrading vans for sale in China. However, these represent one-time decisions and authority to direct the business and are not indicative of his day-to-day managerial duties. Further, the Petitioner pointed to an employee handbook the Beneficiary approved; but this document is not specific to the business, and it is not reflective of how he spent, or would spend, a substantial portion of his time.

Similarly, the Petitioner references a business plan it states was drafted and reviewed by his managerial subordinates and approved by the Beneficiary. This five page document stated that the Petitioner would focus on a number of vague action items such as formulating "policies to encourage corporate managers to participate in marketing efforts," concentrating on "developing overseas customers and domestic distributors," "always meet[ing] the customer needs in product procurement and price," ensuring "that the same product has more than two suppliers," and "strengthen[ing] the education and training." However, the business plan included few details or specifics as to how any of these general goals would be accomplished, such as marketing it would implement, customers, distributors, or suppliers it would focus on, or education and training it would be provide. In sum, this document is not credible and it does not appear that the preparation of this document accounted for a significant portion of the Beneficiary's duties.

The Petitioner also provides claimed meeting minutes and communications between the Beneficiary and his subordinates, and foreign employer management that are not credible or demonstrative of his actual day-to-day managerial tasks. For instance, the Petitioner submitted what it asserted are meetings minutes from the company's first staff meeting in May 2017. The notes of this meeting indicate that the Beneficiary stated: "I hope all of you to help each other for the development of the company and offer advice and suggestions for our company" and "I'm going to assign everyone a new work assignment." The meeting notes then mechanically listed the duties of each member of the organizational chart and to whom each employee will report. For instance, the notes reflect that the Beneficiary stated: "[The Vice Manager] will be under the direct leadership of [the Beneficiary] to assist [the Beneficiary] to handle the affairs of the company." In total, the meeting minutes raise question as to whether they are truly reflective of the Beneficiary's daily performance of qualifying managerial level duties. Likewise, the Petitioner further provided purported meeting minutes from June 2017 including the same unnatural back and forth between the members of the meeting. Like the previously provided meeting minutes, the notes include a list of action items that are not reflective of verbal communication at a staff meeting and abruptly end with the Beneficiary stating "okay, the meeting is over." On the whole, these meeting minutes do not credibly demonstrate that the Beneficiary would devote a majority of his time to managerial duties.

Similarly, the Petitioner provides several translated communications between the Beneficiary and the president of the foreign employer. However, these documents questionably provide no indication of how they were communicated. For example, one communication from the foreign employer's president states "I received your email," but his response is typed on a blank page with no letterhead or indication of how his response was provided. All of these purported communications between the Beneficiary and the foreign employer's president are submitted in this same format, and they leave question as to whether they are reflective of actual communications made between the Beneficiary and foreign employer management. In sum, the documents submitted to substantiate the Beneficiary's managerial duties and decisions, such as the provided employee handbook, business plan, meeting minutes, and foreign company communications, are not credible and do not sufficiently substantiate his day-to-day managerial tasks.

In contrast, the Petitioner submits evidence indicating the Beneficiary's substantial involvement in non-qualifying operational tasks. For instance, the Beneficiary's duties state that he would be tasked with "developing sales proposals, estimates, specifications, and presentations," performing reference checks on prospective employees, "manag[ing] the employment process from recruitment to hiring," and "recruit[ing] and contracting of temporary staff for projects." The Beneficiary's duties submitted in response to the RFE also mention him "preparing work schedules." In total, these duties are not reflective of a managerial employee overseeing supervisory and professional subordinates to whom he primarily delegates operational tasks. In addition, the record includes documentation indicating the Beneficiary's involvement with various non-qualifying operational tasks, such as signing off on all business trip expenses, signing all of the company's checks to pay invoices, purchasing the company's attendance at a tradeshow using a debit card, and signing off on the purchase of approximately $800 worth of tools and office supplies. Therefore, the record contains evidence suggesting that the Beneficiary is engaged in nearly all the operational matters of the business and there is little evidence to credibly demonstrate the delegation of these tasks to the Beneficiary's subordinates.

Even though the Beneficiary holds a senior position within the organization, the fact that he manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in an managerial capacity within the meaning of section 101(a)(44)(A) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" managerial in nature. *Id.* The Beneficiary may have exercised discretion over the Petitioner's day-to-day operations and possessed the requisite level of authority with respect to discretionary decision-making; however, the job description alone is insufficient to establish that his actual duties were primarily managerial in nature.

B. Staffing

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.

In support of the petition and in response to the Director's RFE, the Petitioner submitted an organizational chart reflecting that the Beneficiary supervised a vice manager who in turn oversaw a marketing development manager and an import and export manager. The chart also indicated that the marketing development manager supervised a marketing analyst and a fleet supervisor, while the import and export manager supervised two business specialists.

As discussed, an IO later conducted an administrative site visit to California and concluded that the Beneficiary was operating the Petitioner's business out of a warehouse location not listed on the record which the IO described as a "friend's office."[2] In a later NOIR, the Director stated that when the IO visited the aforementioned location he observed that, out of the asserted members of its organizational chart, only the Beneficiary and his claimed vice manager were present. The Director also indicated that the IO observed the following:

- there were other employees on location, but they were not employees of the Petitioner,
- the Beneficiary explained the business as being engaged in retrofitting Mercedes-Benz vans to be tourism vehicles in China,
- there were six vans at the location being modified at the time of the visit,
- the Beneficiary stated he had bought 30 vans, but provided no evidence to substantiate this claimed purchase,
- the Beneficiary stated all vans were purchased verbally over the phone, thus explaining the lack of supporting evidence,
- the Beneficiary indicated that he did business with his "partner," the Petitioner's vice manager, and the vice manager's company
- a provided lease for was signed by the Petitioner's claimed vice manager on behalf of

Upon reviewing the IO's observations, the Director concluded that the Petitioner was operating at a location which was the primary business location of another company. The Director determined that this left question as to its operations and whether the Beneficiary acted in his asserted managerial capacity. The Director also indicated that the site visit left question as to whether the Petitioner had the organizational structure it claimed.

In response to the NOIR, the Petitioner acknowledged that its address was now at the Ave location and stated that was, and is, its wholly owned subsidiary. The Petitioner indicated that has no employees and that it was only used to secure the office location. The Petitioner submitted corporate documentation meant to demonstrate that it had acquired all of the shares of in July 2017. The Petitioner further asserted that the

[2] The Form I-129 reflected that the Petitioner's offices were at California . The Petitioner also provided a three year lease for this 2,495 square foot space dated in May 2017, executed approximately only one month prior to the date the petition was filed.

IO was mistaken when he concluded that the Beneficiary and his claimed "partner," vice manager, were the only employees at the location during the site visit. It stated that there were four employees of the Petitioner present at the time, including the Beneficiary, its vice manager, the import and export manager, and one of its business specialists. The Petitioner asserted that the marketing and development manager was on a business trip, its market analyst was on vacation, and that its fleet supervisor works remotely from Oregon where he purchases vans from a dealership located there. The Petitioner noted that it had moved its office location to beginning in August 2017 and through October 2017.

Further, the Petitioner pointed to tax documentation, such as Forms W-2, Wage and Tax Statements reflecting that it had "7-8 fulltime employees" who perform the day-to-day business operations of the company and who relieve the Beneficiary from these tasks. An updated organizational chart submitted at this time reflected a similar organizational structure as that previously asserted with the Beneficiary overseeing the vice manager supervising a new marketing development manager and the import and export manager. The chart also indicated that the marketing development manager supervised a market analyst and a fleet supervisor, while the import and export manager oversaw one business specialist. The Petitioner stated that the Beneficiary directs the company from the location and that it performs "various upgrades and features to the Mercedes-Benz Metris and Sprinter vans such as running boards, power-steps, electronic systems, lights, seat upholstery" and that these vans are shipped to China for sale.

In the revocation decision, the Director stated that the date of the Petitioner's claimed acquisition of was in July 2017, after the filing of the petition in June 2017. The Director also indicated that the Petitioner did not sufficiently substantiate its purchase of The Director also noted that the claimed vice manager had signed a lease as the owner of and that the claimed vice manager of the Petitioner was listed in California corporate records as the secretary, chief financial officer, and sole director of Likewise, the Director pointed to a submitted contract to reserve an exhibition space and emphasized that this document was signed by The Director determined that it was not clear who performed the administrative functions of the Petitioner; namely, who actually performed the modifications to its vans prior to their shipment and sale. The Director concluded that based on the Petitioner's asserted operations, it did not establish that the Beneficiary would manage supervisory or professional subordinates and determined that he would be primarily involved in the routine operational activities of the business.

On appeal, the Petitioner states that they "registered only to facilitate future operation, and all costs of this company from registration to operation were borne by [the Petitioner]." The Petitioner indicates that the claimed vice manager was "appointed the executor, therefore, the equity transfer didn't involve the so-called cost issue." It also contends that "all modification work has been commissioned to other companies following our requirements and we also had the requests afterwards for temporary labor to complete some modification work, thus we don't have our own workers." Further, it states that "we're a newly established company fumbling our way forward, there might be a lot including contract management and [*sic*] needs improvement, so we're unable to provide more details regarding some of our materials."

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." Section 101(a)(44)(A) of the Act. As the Petitioner does not assert that the Beneficiary qualifies as a function manager, we will restrict our analysis to whether he would act as a personnel manager. 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." *Id.* 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*).

Upon review, the Petitioner has not established that the Beneficiary would more likely than not oversee subordinate managers and supervisors as necessary to qualify him as a personnel manager. A primary basis upon which the petition was revoked was the Director's determination that the Petitioner did not establish that it had operational level employees to perform its van renovations. The Petitioner does not submit additional evidence to overcome this insufficiency nor does it adequately articulate how the Beneficiary and his asserted subordinate managers are relieved from these tasks. In fact, the Petitioner only leaves further question as to its asserted organizational structure by stating that it is "fumbling [its] way forward" and "unable to provide more details regarding some of our materials."

The Petitioner also appears to assert on appeal that all of the actual modification work performed on its vans is done by contract labor; for instance stating that they use "temporary labor to complete some modification work, thus we don't have our own workers." Again, this statement leaves additional uncertainty as to whether the Petitioner has sufficient operational level employees to relieve the Beneficiary and his claimed managers from these tasks. For instance, although the Petitioner appears to suggest that it contracts for labor to perform van modifications and indicates in the Beneficiary's duties that he is tasked with engaging this contract labor, it submits no supporting documentation to substantiate this assertion. Indeed, the IO indicated that there were other workers who were not on the Petitioner's payroll present at the [redacted] location during the site visit; however, the Petitioner responded that the IO was mistaken and listed four company employees who were present at the time.[3] This assertion appears to be in conflict with the Petitioner's contention that it uses contract labor to perform the van modifications and would indicate that the Beneficiary and his subordinates perform these duties. Without corroborating evidence, it appears likely that the Beneficiary and his asserted managers are primarily engaged in these tasks.

In addition, the Petitioner submitted an organizational chart indicating that the Beneficiary oversaw a vice manager who supervised a subordinate marketing development manager and an import and

[3] The Petitioner provided a signed statement of those present reflecting that the Beneficiary, the vice manager, the import and export manager, and one of the business specialists were present at the time of the site visit.

export manager. The chart also indicated that the marketing development manager oversaw a marketing analyst and a fleet supervisor, while the import and export manager supervised a business specialist. However, there is insufficient supporting evidence in the record to substantiate the Petitioner's assertions regarding the vice manager and the employees that he oversees. For example, the Petitioner did not credibly establish that it would require a manager and a subordinate devoted to marketing activities. In fact, the Petitioner's most recent 2017 IRS Form 1120, U.S. Corporation Income Tax Return included a statement of the company's expenses and reflected that it spent nothing on advertising during that year and that it spent no other discernable funds on marketing its products.

Further, the Petitioner submitted several invoices bearing the name of the marketing development manager from September through December 2017 indicating his coordination of shipments of vehicles to China. However, the duties of the marketing development manager do not include such tasks. The provided duties are generic tasks not supported by the record such as preparing a "market development plan," organizing staff to carry out "market research work," and organizing "marketing campaigns." Again, these apparent discrepancies and insufficiencies are particularly noteworthy due to the apparent lack of operational level employees in the Petitioner's organizational chart to actually perform the van modifications. As such, it appears unlikely that the claimed marketing development manager and subordinate marketing analyst were acting in their claimed capacities.

Similarly, the Petitioner submitted a contract and invoices reflecting the vice manager's arrangement of participation in an automobile auction in November 2017. However, there is little evidence substantiating that he acts in a supervisory role subordinate to the Beneficiary, or that he oversees subordinate managers as claimed. In fact, the Beneficiary referred to the claimed vice manager in the site visit as his "partner" and the evidence indicates that he is the former shareholder and chief executive of This evidence leaves uncertainty as to whether the asserted vice manager acts in a subordinate manager role reporting to the Beneficiary as claimed.

Furthermore, additional discrepancies suggest that the Petitioner has been misleading about its claimed operations. For example, in support of the petition, the Petitioner submitted a three year lease agreement for for over 2,000 square feet of space dated in May 2017 and emphasized the acquisition of this space for its proposed operations under the extended petition. The Petitioner also cited the acquisition of this space as a key managerial accomplishment on the part of the Beneficiary. Further, it listed this space as its place of operation on the petition filed in June 2017 and made no mention of its renovation of vans at the location or its acquisition of , which was stated to have taken place only approximately one month later in July 2017. In addition, the IO noted the Beneficiary stated that the company purchased 30 vans for renovation as of the date of the site visit in October 2017 and contended that no records for this purchases existed since they were all conducted verbally over the phone. First, the Petitioner's assertion that the purchase of 30 vans could take place without any documentation is questionable and it still does not provide supporting documentation to substantiate this claim. Further, the submitted 2017 Form 1120 does not list these assets.

In sum, these discrepancies in the Petitioner's asserted operations and organizational structure leave substantial question as to whether the Beneficiary would oversee subordinate managers and supervisors as claimed. In fact, the weight of the evidence indicates that it is more likely than not that the Beneficiary and his claimed managers are actually performing the operational tasks of the business; namely, the outfitting of vans for tourism purposes, and it provides no supporting documentation to substantiate who is performing these duties. 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).

Moreover, the Petitioner did not establish that the Beneficiary would supervise professional subordinates. In evaluating 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"). Section 101(a)(32) of the Act, states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

In response to the NOIR, the Petitioner stated in a support letter that "the subordinate Vice Manager, Marketing Development Manager, and Import and Export Manager who report directly to the General Manager all have at least a bachelor's degree in education level demonstrating their professional capacity." First, the Petitioner submitted an organizational chart reflecting that the marketing development manager and import and export manager reported to the vice manager, not "directly" to the Beneficiary as reflected in this statement. This assertion only reinforces other evidence on the record indicating that the Beneficiary has been acting, and would act, only as a first line supervisor of employees performing the operational aspects of the business.

In addition, the Petitioner provides no documentation to substantiate its claim that the Beneficiary's subordinates hold bachelor's degrees and provides no explanation as to why these positions would require them. The Petitioner submits no supporting documentation to demonstrate that the Beneficiary's only claimed immediate subordinate in the organizational chart, the vice manager, holds a bachelor's degree and does not articulate why this position requires a bachelor's degree. Further, even if we were to consider the other employees of the company as direct subordinates of the Beneficiary, as the Petitioner appears to assert, we must focus on the level of education required by these positions, rather than the degree held by these subordinate employees. The possession of a bachelor's degree by a subordinate employee does not automatically lead to a conclusion that an employee is employed in a professional capacity. Even if they reported directly to the Beneficiary, the Petitioner does not describe why bachelor's degrees are required for the marketing development manager and import and export manager positions. Therefore, the Petitioner has not submitted sufficient evidence to demonstrate that the Beneficiary would supervise professional subordinates under the extended petition.

For the reasons discussed above, we conclude that the Director properly revoked the previously approved petition, as the Petitioner did not establish that the Beneficiary would act in a managerial capacity.

## III. CONCLUSION

The Petitioner has not established that the Beneficiary would be employed in a managerial capacity; therefore, the revocation of the approved petition will not be disturbed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of D-USA, Inc.*, ID# 1730726 (AAO Nov. 8, 2018)