U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-B- CO., LTD.

DATE: SEPT. 14, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a real estate development company, seeks to temporarily employ the Beneficiary as a managing director of its new office[1] 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 petition, concluding that the record did not establish, as required, that: (1) the Beneficiary has been employed abroad in an executive capacity; (2) the Petitioner had a qualifying relationship with the Beneficiary's foreign employer at the time of filing; and (3) the Petitioner would be able to support a managerial or executive position within one year of the approval of the petition.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred by drawing unwarranted conclusions, and did not consider business conditions in Saudi Arabia that would explain apparent omissions from the record.

Upon *de novo* review, we will dismiss the appeal, based on the merits of the record before the Director and on derogatory information that has since come to light.

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 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

[1] The term "new office" refers to an organization which has been doing business in the United States 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 no more than one year within the date of approval of the petition to support an executive or managerial position.

temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. Section 101(a)(15)(L) of the Act.

If the Form I-129, Petition for a Nonimmigrant Worker, indicates that the Beneficiary is coming to the United States in L-1A status to open or to be employed in a new office, the Petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence includes information regarding the new office's physical premises, the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

II. FOREIGN EMPLOYMENT IN AN EXECUTIVE CAPACITY

The Director found that the Petitioner had not shown that the Beneficiary has been employed abroad in an executive capacity as required by 8 C.F.R. § 214.2(l)(3)(iv). The Petitioner has not claimed that the Beneficiary worked in a managerial capacity or a position involving specialized knowledge.[2]

An executive capacity is 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.

If staffing levels are used as a factor in determining whether an individual is acting in an executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

A. Duties

When examining the executive capacity of the Beneficiary, we will look first to the Petitioner's description of the job duties. The definition of executive capacity has two parts. First, the Petitioner must show that the Beneficiary performed 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 was *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the foreign company's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

[2] The Petitioner initially referred to the position as "executive/managerial" but later clarified: "this position is not a 'hybrid' of executive and manager. . . . Some normal, ordinary duties of an executive are . . . similar to some of the duties of a manager."

In its initial supporting letter, the Petitioner asserted that the Beneficiary has worked for the Petitioner's foreign affiliate in Egypt "since 2005" and for the foreign affiliate in Saudi Arabia "since 2009 to the present time." The Petitioner stated that the Beneficiary had the following duties at the foreign entity's office in Saudi Arabia:

- Plan, develop and establish policies and objectives of business organization in accordance with board directives and corporation charter;
- Confer with company officials to plan business objectives, to develop organizational policies to coordinate functions and operations between divisions and departments, and to establish responsibilities and procedures for attaining objectives;
- Review activity reports and financial statements to determine progress and status in attaining objectives and revise objectives and plans in accordance with current conditions.
- Direct and coordinate formulation of financial programs to provide funding for new or continuing operations to maximize returns on investments, and to increase productivity.
- Plan and develop industrial, labor, and public relations policies designed to improve company's image and relations with customers.
- Evaluate performance of executives for compliance with established policies and objectives of the different businesses in attaining objectives.
- Participate as member of the boards of directors and chair of engineering activities committee.

In a request for evidence (RFE), the Director asked for more information because the original description lacked detail. In response, the Petitioner submitted a letter from the Beneficiary's spouse, [redacted] identified as a partner and "one of the Owners and Managing Directors" of the foreign company. She attested to the accuracy of the original job description, and stated that the company had employed the Beneficiary "in Egypt from July 1995 to the present as Executive Managing Director and with our branch in Saudi Arabia since 2009 to present." She asserted that the Beneficiary's work "includes delegation and assignment of work to engineers, reviewing the Project Manager's work for final approval," and "[d]etermination as to what needs to be done." She added:

> Construction, development, and management of real estate properties, and all matters relating thereto, take[] up approximately 75% of his work time at our company. The remaining 25% of his time relates to administrative matters within the organization, such as peripheral investments, inventory control and budgeting, wherein he supervises management staff in those areas.

[redacted] did not identify or otherwise elaborate on the "management staff" mentioned above, and the Petitioner did not submit evidence of their employment.

The Director denied the petition, stating that the Petitioner had not provided enough details about the Beneficiary's claimed duties abroad. The Director found that some parts of the description were vague, and others simply paraphrased elements of the statutory definition of executive capacity.

On appeal, the Petitioner states that it had "clearly explained" the Beneficiary's foreign duties, and that the Director's finding "is an opinion far removed from reality and an unlawful abuse of administrative discretion." The Petitioner does not elaborate or provide additional information about the Beneficiary's claimed duties with the foreign company.

The listed duties are, for the most part, almost identical to the entry for "president (any industry)" in the *Dictionary of Occupational Titles*, a publication of the U.S. Department of Labor. (The final item in the Petitioner's list paraphrases rather than quotes a portion of that entry.) By design, the description in that entry is general enough to be broadly applicable to "any industry." The Petitioner must provide specific information about the particular position, rather than restate the requirements in the regulations. *See 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). For the same reason, the requirement to provide a detailed job description would be meaningless if a petitioner could meet that requirement simply by quoting a generic definition from a government publication.

The Petitioner adds that the Beneficiary's claimed foreign employment is "impossible to verify other than by statement of the employer" because no records exist "due . . . to the unique nature in which business is conducted in the Kingdom of Saudi Arabia." The Petitioner does not cite or submit any sources to corroborate this claim. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if a petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). In the same way, the Petitioner cannot simply cite cultural or business practices to explain the absence of evidence.

Furthermore, items on the list of claimed duties refer to policies, reports, and financial statements, which appear to contradict the Petitioner's assertion that the foreign company produced no records. If these policies, reports, and statements do not exist, then we cannot accept the Petitioner's claim that the Beneficiary devoted significant time to activities involving such non-existent documents.

We note that the Petitioner has submitted a translated power of attorney from the foreign company to the [redacted] That document authorized [redacted] the Beneficiary of another petition filed by the Petitioner, to "submit tax returns" on behalf of the company, which appears to be in direct conflict with the Petitioner's unsupported claim that "there is no taxation in Saudi Arabia."

B. Derogatory Information

Because the Petitioner states that the employer's statements are the only available evidence of the Beneficiary's employment in Saudi Arabia, we must weigh the reliability of those statements. The sources of the statements are the Beneficiary and his spouse, [redacted] In a

notice of intent to dismiss (NOID), we informed the Petitioner that inquiries had revealed discrepancies in their statements, as well as information of concern regarding

The Petitioner initially claimed that the Beneficiary transferred from Egypt to Saudi Arabia in 2009. repeated that claim in the RFE response.

In 2015, the Beneficiary filed a nonimmigrant visa application at the U.S. Consulate in Saudi Arabia. Asked to identify his employer and occupation, the Beneficiary stated that he was a civil engineer and project manager at Asked "Were you previously employed?," the Beneficiary stated that he had worked as general manager of the Petitioner's Egyptian affiliate from 1990 to 2013.

Asked, in respective RFEs, to explain these statements, the Petitioner submitted statements from both beneficiaries. The Beneficiary of the current petition stated:

> [P]lease note that I have worked two or more jobs during my professional career. During the relevant period in question . . . I . . . worked for two companies [in] Saudi Arabia: [the Petitioner's foreign affiliate] . . . and
>
> I worked an average of 32 hours per week for each company . . . . The job duties I performed at as a Project Manager, were more of a professional engineering position.

statement was almost identical, except that it named and instead of (In his statement to the Consulate, did not claim current or former employment with any of the Petitioner's foreign affiliates.)

stated: "As a partner, I have been active in the business affairs since I became a partner in the company." She also stated: "I intend to cover [the Beneficiary's] job duties here" while the Beneficiary is in the United States. In another letter, she stated that, as a partner at the highest level of authority in the foreign company, she is "fully familiar with the work that [the Beneficiary] does."

In May 2017, after the filing of the appeal, filed her own nonimmigrant visa application at the U.S. Consulate in Asked to specify her "primary occupation," she answered that she was "not employed" and, instead, caring for her children. Asked "Were you previously employed," she answered "no."

In response to our NOID, the Petitioner states:

> As to [the Beneficiary's] statement that he served . . . [in] Egypt from January 1, 1990 to January 1, 2013, this refers solely to the operations when he was in Egypt. The business was thereafter organized and operated in Saudi Arabia from 2013 to the present. . . .

. . . .

> [The Egyptian affiliate] was his former employer . . . until 2013, whereafter he went to Saudi Arabia to work for that company's branch office, as well as

This revision of the claim is inconsistent with prior chronologies, which had the Beneficiary moving from Egypt to Saudi Arabia in 2009. In the same brief, the Petitioner asserts that the company began operations in Saudi Arabia several years before 2013. The Petitioner's explanation does not successfully account for the Beneficiary's statement to a U.S. government official that he worked for the Egyptian affiliate only until 2013, and thereafter worked for in Saudi Arabia.

The Petitioner asserts that never claimed that was his only employer, and that entered Saudi Arabia as an employee of while also scouting locations and opportunities to launch the Petitioner's affiliate in that country. The Petitioner submits a copy of a 2016 letter from to the Consul General of France, requesting a five-year multiple-entry visa for to visit that country. This letter indicates that still worked for in 2016, and is therefore consistent with the statements at the U.S. Consulate. The letter does not support the Petitioner's claim that simultaneously worked for the Petitioner's affiliate in Saudi Arabia.

The Petitioner acknowledges that was never employed in Saudi Arabia, but nevertheless played a significant, albeit unpaid, role as a partner. The Petitioner submits a copy of Saudi Arabian visa, which did not authorize employment in that country. The visa shows that was not allowed to work in Saudi Arabia, but it offers no information to support the key claim that she worked without pay, participating in business decisions. The Petitioner has not addressed or explained specific assertion that she "t[oo]k care of children" in lieu of employment. The visa documents for and for corroborate parts of the narrative, but crucially, they do not corroborate their claims of employment or active involvement in the Petitioner's Saudi Arabian affiliate.

At the Consulate in the two beneficiaries and were all asked about present and former employment, and none of them claimed employment with the Petitioner's affiliate in Saudi Arabia. Despite the Petitioner's observation that the application form does not ask about multiple current employers, it remains that none of the relevant documents corroborate the Petitioner's claims about the individuals' claimed work for the Petitioner's Saudi Arabian affiliate.

Furthermore, the assertion that a move from Egypt to Saudi Arabia caused the Egyptian company to be "former employer" is inconsistent with the Petitioner's assertion that the present Beneficiary "was under the employment of [the company] in Egypt, although he was physically present in Saudi Arabia." The Petitioner represents the move from Egypt to Saudi Arabia as a change of employment for the Beneficiary, but not for The Petitioner's business

plan includes the claim that both Beneficiaries continue to draw salaries from the Egyptian and Saudi Arabian companies.

Given the many unexplained inconsistencies and discrepancies in the statements of the various parties, the Petitioner has not established that those statements are credible or reliable evidence in the absence of verifiable corroborating documentation.

C. Staffing

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed 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 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 a beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply based on an executive title. 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.*

The foreign entity's purported organizational chart lists individual positions such as "site engineer" and "quantity surveyor," as well as divisions such as "finance" and "tendering" that do not specify the number of employees or their titles. The chart shows the Beneficiary to have ultimate authority (through [redacted] over "procurement," "technical office," "project manager," "accountant," and "supervisor for rental equipment." The Petitioner has not named any of the subordinate employees or submitted evidence to show that the foreign company actually employs individuals in the organizational structure claimed. We note that the Petitioner has submitted what purport to be copies of the Beneficiary's monthly pay receipts. By submitting these copies, the Petitioner has attested to the existence of payroll records, but the Petitioner has not submitted such records for its other claimed employees.

The record contains few documents directly relating to the company's activities in Saudi Arabia. A contract dated October 2015 and executed in [redacted] refers to a construction project by the petitioning company, but it refers to [redacted] as an "authorized Engineer" and "a manager of the project," which suggest an onsite role as a project manager. This is not consistent with the

organizational chart, which called [redacted] an "executive manager" superior to an unnamed "project manager."

The Director found that the Petitioner had not submitted enough information to show that the company in Saudi Arabia had a subordinate staff to relieve the Beneficiary from performing non-qualifying tasks. On appeal, the Petitioner does not address this issue directly. Counsel for the Petitioner states:

> While [the foreign entity] does employ permanent, full-time staff, those are limited to essential employees needed on a continuous basis. When a construction job is taken on, the company hires temporary workers, from laborers to skilled artisans, as well [as] subcontractors to do specific limited parts of the construction contract. It is the permanent staff who supervises these temporary workers, and it is the beneficiary who would supervise everybody.

Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Neither counsel nor the Petitioner identified the "essential employees" said to comprise "the permanent staff," and the Petitioner has not submitted copies of contracts with subcontractors or other evidence to support the new claim that the Petitioner has a core of permanent employees assisted, as needed, by outside labor.

We have already discussed the Petitioner's claims that few records exist owing to business practices in Saudi Arabia. Without documentation of the foreign company's staffing, there is only the organizational chart and general statements from company officials. Owing to the derogatory information discussed above, those statements have diminished evidentiary weight.

We note that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa petition for classification as a multinational manager or executive. *See* section 101(a)(44)(C) of the Act. However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company. *See, e.g., Family Inc.*, 469 F.3d 1313; *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record which cast doubt on some of the Petitioner's claims of fact. *See Systronics*, 153 F. Supp. 2d at 15.

The Petitioner has not submitted sufficient corroborated information about the foreign company's staffing to show that the Beneficiary supervised a managerial staff as claimed. The Petitioner has not established that the Beneficiary served abroad in an executive capacity for at least one continuous year during the three years prior to the filing of the petition.

III. QUALIFYING RELATIONSHIP

To establish a "qualifying relationship" under the Act and the regulations, a petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e., one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). The Petitioner claims affiliation with the companies in Egypt and Saudi Arabia because the Beneficiary is a 50% partner in the foreign companies and owns half of the U.S. Petitioner's shares.

The Director found that the Petitioner had not established that the foreign entity was actively doing business at the time of filing. If the foreign entity was not doing business, then there was no active entity with which the Petitioner could have had a qualifying relationship at the time of filing. On appeal, the Petitioner states that an onsite investigation would establish the company's continued business activity.

The Petitioner initially submitted Egyptian tax documents relating to 2014 and 2015. For the Saudi Arabian entity, the Petitioner submitted a translated contract dated October 2015, nearly a year before the filing date in September 2016.

In the RFE, the Director stated that the initial documentation did not show ongoing business activity by the foreign entity as of the time of filing. In response, the Petitioner submitted copies of invoices from May to November of 2016, showing the Saudi Arabian company's purchase of various building supplies. The Petitioner also submitted Egyptian financial statements for 2013 through 2015.

The Director concluded that the Petitioner had not shown that the foreign entity was doing business in September 2016. The Director noted that the company's purchase of supplies does not constitute doing business, defined as the regular, systematic, and continuous provision of goods, services, or both. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H).

On appeal, the Petitioner states that "business is conducted very differently in the Middle East," and asserts: "If the . . . petition is approved and forwarded to [redacted] an investigation is welcome to verify that [the foreign entity] is indeed in active operation in Saudi Arabia."

The burden of proof is on the Petitioner to establish eligibility; there is no presumption of eligibility. While all claims are subject to verification by USCIS or consular officials, the government is under no obligation to gather qualifying information on the Petitioner's behalf. For this reason, we cannot accept the Petitioner's request that we approve the petition first and then seek information to justify that approval.

As the Director observed in the denial notice, purchasing supplies is not, in itself, an income-generating activity that provides goods or services. The same is true of maintaining or renewing registration with local government offices. Licensure and inventory permit a company to do

business, but they do not, in themselves, amount to doing business. Also, a single contract from 2015 does not demonstrate that the Petitioner has done business regularly, systematically, and continuously. The Petitioner cannot waive its burden of proof by asserting, without evidence, that Saudi Arabian business practices include minimal record-keeping. The Petitioner has not established that the foreign company was actively engaged in the regular, systematic, and continuous provision of goods, services, or both, as of September 2016 when the Petitioner filed the petition.

IV. NEW OFFICE

The Director found that the Petitioner has not established that its new office will support an executive or managerial position within one year of the approval of the petition. On appeal, the Petitioner states that the Director has drawn unwarranted conclusions before the company has had a chance to commence operations in the United States. We disagree, and find that the Director did not step outside the regulatory requirements as the Petitioner contends.

To establish that it will be able to support an executive or managerial position, the Petitioner must submit information regarding the proposed nature of the office, describing its scope, organizational structure, and financial goals; the size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and the organizational structure of the foreign entity. *See* 8 C.F.R. § 214.2(l)(3)(v)(C).

When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of a beneficiary in a primarily managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally* 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

To establish the proposed nature of the office, the Petitioner submitted a copy of its business plan. The Petitioner described its "primary focus" as "real estate investment and development, and trade, both domestic and import/export." The Petitioner also expressed an interest in "[p]urchase and management of existing businesses, such as retail shopping centers/malls" and "[j]oint ventures with

major U.S. companies for the implementation of projects in Saudi Arabia relating to major construction projects."

The Petitioner states that it "does not predict net profits from purchases and sales . . . . The cost of operations will be covered through the savings to our foreign affiliates, for which reimbursement will be made to [the Petitioner] by each entity." The Petitioner has not provided financial information for the entity in Saudi Arabia. The Egyptian entity's financial statement for calendar year 2015 showed a net profit of 1,916,414 Egyptian pounds, which was about US$244,909 under the exchange rate in effect on December 31, 2015. The Petitioner's bank balance as of June 11, 2016, was $244,912. It is not clear whether it is a coincidence that the two figures are so close to one another.

The Petitioner estimated its first three months of startup expenses at $111,550. The June 2016 bank balance is more than double that amount, but does not appear sufficient to cover more than about six months of expenses at the stated rate. (The planned expenses for the first three months include some one-time costs, but not the salaries of the company's intended staffing, discussed below.) Given that a year's profit from the Egyptian company covers substantially less than a year's expenses for the petitioning U.S. company, the Petitioner has not shown that the Egyptian company will be able to support the U.S. company for a significant period of time.

The Petitioner stated that, by the end of the first year, it intended to fill the following positions:

- Director of Operations
- Director of Capital Investments
- International Logistics Manager
- Investment Analyst
- Clerk/Mailroom
- Research Associate
- Materials Buyer
- Secretary/Clerk
- Equipment Buyer
- Compliance Officer
- Receptionist/Operator

The Petitioner also referred to "Inventory/Materials Management," but did not specify how many people it intended to employ in that area.

The Petitioner did not specify the salaries for the above positions, stating that they will be "competitive" and contingent on the qualifications of the prospective employees. Even without specific figures, it is evident that the Petitioner's plan to spend $40,000 on salaries in the first three months of operation cannot cover all the above-named positions. The Petitioner did not specify which positions it intended to fill during those first earliest months.

An L-1A petition for a new office must include evidence that the petitioner has secured sufficient physical premises to house the new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(A). The Petitioner has leased a 195 square foot office, which could not accommodate all of the anticipated employees. The Petitioner stated that the leased space "for the time being is sufficient for our purposes. When a larger office is necessary, we will contract for a larger facility." The regulation requires the Petitioner to have secured sufficient physical premises, not simply to intend to do so at an undetermined point in the future.

The Director denied the petition, stating that the Petitioner had not shown that the company will support an executive or managerial position within a year after approval of the petition. In particular, the Director found that the Petitioner had not provided enough information about intended staffing and salaries.

On appeal, the Petitioner stated that its "business plan . . . is no more than a projection. These are the goals which the petitioner will strive to attain. They are for the future, subject to factors beyond the control of the petitioner." The Petitioner states that it cannot begin to make progress toward its goals until after the petition is approved, at which time the Beneficiary will travel to the United States and choose the best qualified candidates for the subordinate positions. The Petitioner adds that the company has sufficient funds to pay the Beneficiary's salary.

The Petitioner is correct to state that the company need not already be operating in the United States; it need only be *ready* to begin doing business upon approval of the petition. But the Petitioner has not met this lower standard.

The Petitioner's ability to pay the Beneficiary's salary is a separate issue from its ability to pay the subordinates who would allow the Beneficiary to devote his time primarily to managerial or executive duties. The Petitioner has stipulated that it will not generate profit, at least in its foreseeable early stages, and its ability to compensate the subordinate staff is a significant issue that the Petitioner has not fully addressed. Exact figures may be contingent on the credentials of the applicants, but there should at least be a range of figures with a definable minimum. The Petitioner has not shown how it will compensate these workers or where they will work. The Petitioner called itself a construction company but has not expressed plans to employ any construction workers. Other plans, such as purchasing existing commercial properties, amount to little more than speculation about side ventures that the company may choose to pursue at an unspecified time. The Petitioner cannot fulfill the regulatory requirements by stating that it has not yet decided on specifics regarding who will work for the company, where they will work, and what they will do.

In response to the NOID, the Petitioner states: "The company has been opened, offices secured and business commenced, but only one stateside resident has been performing services with the company in the United States." The Petitioner does not provide this individual's name or job title or any corroborating documentary evidence.

The Petitioner has not established that it will support an executive or managerial position within one year of approval of the petition.

V. CONCLUSION

The Petitioner has not established that the Beneficiary worked abroad in an executive position; that its foreign affiliate continues to actively do business; and that the new office will support an executive or managerial position within one year.

ORDER: The appeal is dismissed.

Cite as *Matter of M-B- Co., Ltd.*, ID# 451730 (AAO Sept. 14, 2017)