U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V- CORP.

DATE: SEPT. 18, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a restaurant management company, seeks to extend the Beneficiary's temporary employment[1] 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 denied the petition, concluding that the record did not establish, as required, that the Beneficiary would be employed in a managerial or executive capacity in the United States. On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary would be employed in a managerial or executive capacity in the United States.

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

I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification, a qualifying organization must have employed the beneficiary "in a capacity that is managerial, executive, or involves specialized knowledge," for one continuous year within three years preceding the beneficiary's application for admission into the United States. Section 101(a)(15)(L) of the Act. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

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

[1] The Beneficiary was previously granted L-1A nonimmigrant status, valid from December 1, 2017, to November 30, 2018, to open a new office for the Petitioner. 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 of its financial status; evidence that it has been doing business for the previous year; and evidence that it maintains a qualifying relationship with the beneficiary's foreign employer. 8 C.F.R. § 214.2(l)(14)(ii). This evidence must demonstrate that the beneficiary will be employed in a managerial or executive capacity, as defined at sections 101(a)(44)(A) and (B) of the Act, under the extended petition.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Petitioner claims that it would continue to employ the Beneficiary as its general manager in the United States in either a managerial or executive capacity. We will therefore examine each claim.

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

Beyond the required description of the job duties, we also 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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive 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.

A. Managerial Capacity

The term "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.

On the petition, the Petitioner indicated that the Beneficiary would serve as general manager and that it currently had 22 employees in the United States. In a letter supporting the initial petition, the

Petitioner stated that the Beneficiary would allocate his time in the offered position of general manager as follows:

- Strategic plan - 10%
- Finance & accounting - 10%
- Rules & policies - 10%
- Organization - 10%
- Chain of supervision - 10%
- Functions - 10%
- Objectives & reports - 5%
- Cooperation - 5%
- Human resources - 10%
- Representation - 10%
- Problem solving - 5%
- Mission & objectives - 5%

The Petitioner submitted an organizational chart showing that the Beneficiary, in his capacity as general manager of the Petitioner, would oversee a Secretary [redacted] and a vice general manager whose position was vacant. The chart shows that the vice general manager oversees the Beneficiary as general manager of [redacted] Restaurant, and several other vacant positions. It further shows that the Beneficiary, in his capacity as general manager of [redacted] Restaurant, would oversee two vacant positions, and that each of those vacant positions would oversee a vacant position. Thus, the organizational chart showed only two employees currently working for the Petitioner.

The Petitioner also submitted its employment tax returns for the third and fourth quarters of 2017, which show that it employed only one employee, [redacted] during those periods. Its 2017 California tax return submitted with the petition shows no gross receipts or gross sales. Its employment tax return for the first quarter of 2018 shows that it employed two employees, [redacted] and the Beneficiary.[2] Despite being listed on the organizational chart as Secretary, [redacted] was not listed on the Petitioner's employment tax documents submitted with the initial petition.

In a request for evidence (RFE), the Director indicated that the duties listed did not demonstrate what the Beneficiary does on a day-to-day basis. She noted that the duties do not correspond with the organizational structure of the business. Because the Petitioner only employed two employees at the time of the RFE and many positions listed on the organizational chart were vacant, the Director was unable to determine if the Beneficiary is relieved on non-qualifying duties. She also noted that the petition did not contain corroborating evidence of the Beneficiary's duties and she requested additional evidence regarding the Beneficiary's proposed duties in the United States, including the percentage of time spent on each duty. She also stated that the organizational chart was insufficient because it did not show that the Beneficiary was elevated to a primarily managerial position. The Director also stated that the job descriptions were insufficient to show what the other employees would be doing on a day-to-day basis.

[2] Since [redacted] was not listed on the initial organizational chart, the individual's job title and job description are not clear. The Petitioner must resolve any ambiguities with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In response to the RFE, the Petitioner submitted a statement indicating that the Beneficiary serves as "President and General Manager;" that it seeks to continue his employment in the executive capacity as President; and that the Beneficiary "has been and will be acting in a managerial capacity." It stated that his duties include general corporate planning; general administration; business development; and supervising marketing strategy of a Chinese style food service, but it did not provide a breakdown of the time spent on each of these duties. It also asserted that the Beneficiary serves as a functional manager. It asserted that the Beneficiary has full discretionary authority over all business decisions of the company, and that he manages and directs subordinate managers. It stated that he is in charge of development and operations and that he occupies the highest position in the U.S. entity.

The RFE response also included a revised organizational chart which shows that the Beneficiary, in his capacity as general manager of the Petitioner, would oversee a vice general manager whose position was vacant. The revised chart removed [redacted]'s position of secretary and shows an administration manager; a financial department manager [redacted]; and a franchise department manager [redacted]. It also shows that the vice general manager oversees the Beneficiary as general manager of [redacted] Restaurant Management Corporation;[3] however, it does not reference [redacted] Restaurant. The revised chart further shows that the Beneficiary, in his capacity as general manager of [redacted] Restaurant Management Corporation, would oversee the head chef and the front house manager; that the front house manager would oversee seven waitstaff; and that the head chef would oversee nine kitchen workers.

The RFE response also included the 2018 IRS Forms W-2, Wage and Tax Statements, for the Petitioner showing that it paid a total of four employees in 2018. Its employment tax returns for the second, third, and fourth quarters of 2018 showed that it employed no more than four total employees during any given period. In the fourth quarter of 2018, which the covers the period when the petition was filed, the Petitioner employed only two employees, the Beneficiary and [redacted]

We note that the initial job description does not match the revised job description. The revised description added the title of President, removed the percentages of time devoted to each duty, and altered the job duties. Further, as set forth above, the initial organizational chart does not match the revised organizational chart, and neither chart matches the actual payroll of the Petitioner as detailed in its employment tax returns and wage statements. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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

[3] It is not clear how the vice general manager effectively oversees the Beneficiary while the Beneficiary is simultaneously supervising the vice general manager in his capacity as general manager of the Petitioner.

If significant changes are made to the initial request for approval, a petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the Petitioner in its response to the Director's RFE did not clarify or provide more specificity to the original duties of the position, but rather changed the job title; gave a different description of the Beneficiary's duties; and removed the applicable time devoted to each duty. The response also provided a different organizational chart and listed employees that weren't actually employed by the Petitioner at the time the petition was filed. We will therefore review only the duties and organizational chart that were initially submitted with the petition.

In her denial decision, the Director noted the changes in the Petitioner's staffing and organizational structure. She stated that if many of the positions are vacant, then it is reasonable to conclude that the Beneficiary is performing the duties of those positions. She also noted that the Petitioner has not established that any of the Beneficiary's direct subordinates are professional, managerial, or supervisory employees. She stated that based on the organizational structure, it appears that the beneficiary is performing the day-to-day non-supervisory duties of the business. She further determined that the Petitioner had not established that the Beneficiary was a functional manager because the Beneficiary was engaged in the routine operational activities of the entity rather than a management function of the business; he did not function at a senior level within the organizational hierarchy; and he did not have sufficient staff to support his proposed position.

On appeal, the Petitioner submitted the same statement that it submitted in response to the RFE regarding the Beneficiary's purported managerial and executive duties. It also resubmitted its previously submitted tax and wage documentation, and tax and wage documentation for [redacted] Restaurant Management Corporation. It asserts that the Beneficiary meets all of the requirements of the L-1A visa classification.

Like the Director, we find that the Petitioner has not established that it would employ the Beneficiary in a managerial capacity in the United States. The Petitioner provided a deficient job description that is so general it could describe virtually any general position with any company. The initial description provides only vague information that focuses on the Beneficiary's oversight of the business, but says little about the actual tasks he would perform related to restaurant management or how those tasks qualify as managerial. For example, under the heading of "Strategic Plan," the task of analyzing "the company's business advantages, including the companies' experience in the marketing, developing, selling and facilitating of different projects and services and company's past experience in dealing with customers and international business" does not appear to relate to the Petitioner's restaurant management business; it does not describe the products, services, and past experiences or the Beneficiary's role in them; and it does not indicate how it is a managerial duty. The tasks of analyzing, defining, and articulating the company's focus, missions, goals, and development directions likewise does not describe how this broad oversight would translate into daily duties for the Beneficiary or what this means in the context of the Petitioner's business. Under the heading of "Finance & Accounting," the tasks of establishing the company's accounting system, determining the budget, and approving the budget plans are not clearly managerial duties, and the Petitioner has not described who would perform operational tasks associated with the budget and accounting system. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations.

Fedin Bros. Co., Ltd. v. Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Moreover, although the Petitioner asserts on appeal that the Beneficiary holds the highest position in the U.S. entity and "it is the employees who carry out physical tasks" and the day-to-day operational matters, the record does not demonstrate the existence of sufficient lower level personnel at the time of filing in November 2018 to relieve the Beneficiary from performing non-qualifying day-to-day operational duties. At the time of filing, the Petitioner only employed two employees – the Beneficiary and [redacted] who served as a secretary according to the initial organizational chart. Thus, it is not clear how the secretary, who the Beneficiary claims to oversee, could carry out the day-to-day operational tasks of the entire business alone. Without lower level staff to perform operational duties, we cannot find that Beneficiary would be relieved from performing non-qualifying duties.

The Petitioner's staffing further undermines the Beneficiary's claimed duties. The duties attributed to the Beneficiary require the presence of other employees to carry out the work that the Beneficiary claims to oversee. For example, under the heading "Chain of Supervision," the Beneficiary's job description states that the Beneficiary will "receive weekly, monthly, and quarterly reports from managers and key personnel," and under the heading of "Objectives & Reports," it states that he will "receive periodic reports… from the subordinates regarding each major function of the company." However, it is not clear what types of reports are being created or who is creating them because there were no managers or key personnel employed at the time of filing. The major functions of the company have also not been identified. Under the heading "Rules & Policies," the description also states that the Beneficiary will "supervise the subordinate professionals in designing specific measures" related to goals and missions; "evaluate the results of the implementation of the measures;" and "give guidance and instructions in improving the measures," but it is not clear which professionals he is supervising or what specific measures he is designing, implementing, and improving. Moreover, under the heading of "Organization," the description states that he will sketch the company's organization, decide what departments or subsections are to be arranged, set up an efficient and competitive company structure with necessary departments or subsections, and draft and determine the functions and purposes of the departments. However, other than his secretary, there are no personnel to arrange into departments or subsections.

Additionally, under various headings, the job description states that the Beneficiary will evaluate the "performance of subordinate managers or employees for compliance with established policies and objectives of the company;" that he will "define their job duties, supervise and control their work, by assigning different jobs to them;" that he will "plan and define the personnel decisions and changes and make final decisions in human resources policies and rules for company, including hiring/firing subordinate supervisory, professional, or managerial employees;" that he will "set up the company's chain of supervision, establish monitoring methods and procedures in day-to-day operation for the managers and employees to follow, guide the subordinates in establishing a system within the company or departments to define responsibilities and steps to follow for accountability of job duties;" and that he will "set specific guidelines… to follow for the managers and employees to report to the higher executives." However, the record contains no evidence supporting these assertions,[4] and the

[4] A petitioner's unsupported statements are of limited weight and normally will be insufficient to carry its burden of

employees, managers, and higher executives existing at the time of filing are not identified. The Petitioner must establish that the Beneficiary will primarily perform in a managerial capacity and will be relieved from performing operational and administrative tasks when the petition is filed. The Petitioner cannot establish the Beneficiary's managerial capacity based on future developments, such as proposed personnel, future departments, or projected employees. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). It has not done so here.

The Petitioner's assertions on appeal highlight the Beneficiary's authority to make discretionary decisions regarding the company's business. The issue here is whether the job duties the Beneficiary would carry out in the process of running the U.S. operation would be primarily of a managerial nature. Because the Beneficiary was one of only two employees of the Petitioner at the time of filing the petition, he is more likely than not performing the operational and administrative tasks necessary to operate the business. Thus, the Petitioner has not established, as required, that the Beneficiary was employed in the United States in a managerial capacity when the petition was filed. 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.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. The statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*4*). If a petitioner claims that a beneficiary directly supervises other employees, those subordinate employees must be supervisory, professional, or managerial, and the beneficiary must have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Sections 101(a)(44)(A)(ii)-(iii) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*)-(*3*).

We agree with the Director that the Petitioner did not establish that any of the Beneficiary's direct subordinates are professional, managerial, or supervisory employees. The evidence indicates that the Petitioner had only one employee other than the Beneficiary at the time of filing the petition. That employee was a secretary whose duties included "company filing, receptionist, document keeping and other clerk jobs." Although the chart indicates that she has a bachelor's degree, her duties do not require a bachelor's degree, and the record does not contain evidence of her degree. Additionally, she does not oversee any employees or have any managerial duties. Although the Petitioner's organizational chart shows that other projected personnel may oversee other employees in the future and may have bachelor's degrees, their subsequent employment is not relevant to this petition because they were not employed by the Petitioner at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Thus, the record does not establish that the Beneficiary would primarily supervise and control the work of other

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proof. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

supervisory, professional, or managerial employees. In light of the deficiencies described above, the Petitioner has not established that the Beneficiary will be employed as a personnel manager.

The Petitioner also asserted that the Beneficiary will serve as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that:

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

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

Here, the Petitioner has not sufficiently described the function to show that it is "a clearly defined activity." *Id.* Instead, it broadly states that the Beneficiary oversees supervision of the Petitioner's Chinese style food service in the United States without adequately describing a specific function or component of the U.S. organization that the Beneficiary would manage. It mentions two different restaurants, [redacted] Restaurant and [redacted] Restaurant Management Corporation, but it provides no specific details regarding its operation or management of these restaurants. Further, whether a beneficiary is a "function" manager turns in part on whether the Petitioner has sustained its burden of proving that the duties of that beneficiary are "primarily" managerial. *See Matter of Z-A-*, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016). As discussed above, the Petitioner has provided a deficient job description that neither defines an essential function, nor conveys an understanding of how the Beneficiary would go about managing the function. The deficient job description, coupled with insufficient evidence of adequate staffing, also precludes us from finding that the Beneficiary would serve as a function manager.

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

B. Executive Capacity

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

As discussed above, the Petitioner has not established that the Beneficiary will perform high-level executive responsibilities or that the Beneficiary will be *primarily* engaged in executive duties, as

opposed to ordinary operational activities alongside the Petitioner's other employees. 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 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 because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee.

As detailed above, the Petitioner provided a deficient job description that is so general it could describe virtually any general position with any company. The initial description provides only vague information that focuses on the Beneficiary's oversight of the business, but says little about the actual tasks he would perform related to restaurant management or how those tasks qualify as executive. Although the Petitioner submitted an initial position description which includes portions of the statutory definition of "executive capacity," it has not provided sufficient detail or supporting evidence to support a claim that the Beneficiary primarily focuses on the broad goals and policies of the organization, rather than on its day-to-day operations. As discussed above, the Petitioner had only one secretary on its staff at the time of filing, and it has not demonstrated that the Beneficiary is relieved from performing the operational tasks of running a restaurant management business. The Petitioner must establish that the Beneficiary will primarily perform in an executive capacity and will be relieved from performing operational and administrative tasks when the petition is filed. The Petitioner cannot establish the Beneficiary's executive capacity based on future developments, such as proposed departments or projected employees. *See* 8 C.F.R. § 103.2(b)(1).

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in determining if the Beneficiary is or would be employed in a managerial or executive capacity. 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-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See e.g., Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Here, the Petitioner has not established that its reasonable needs may be satisfied with only one purportedly executive employee, the Beneficiary, and one staff member to carry out the day-to-day operational, non-qualifying duties. The Petitioner was not adequately staffed at the time of filing such that it was ready and able to relieve the Beneficiary from having to allocate a significant portion of his time to non-executive duties. Thus, the Petitioner has not established that it will employ the Beneficiary in an executive capacity.

In sum, the Petitioner has not submitted a job description or supporting evidence sufficient to demonstrate that the Beneficiary would primarily engage in managerial or executive duties as of the date it filed the petition, given the vague description of his job duties and the lack of staff to provide the company's services. Accordingly, the Petitioner has not met its burden to establish that it would employ the Beneficiary in a managerial or executive capacity.

III. DOING BUSINESS

Although not addressed by the Director in his decision, the record does not demonstrate that the Petitioner has been doing business for one year as required by the regulations governing new office extensions. The Beneficiary was previously granted L-1A nonimmigrant status, valid from December 1, 2017, to November 30, 2018, to open a new office for the Petitioner. If a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See* 8 C.F.R. § 214.2(l)(3)(v). After one year, USCIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner[5] "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B). The Petitioner's 2017 tax return indicates that it had no gross receipts or sales that year, and that it paid no rent that year. Its employment tax returns indicate that it paid only one employee in 2017, and that employee was not the Beneficiary. Further, on appeal, the Petitioner submitted an unaudited balance sheet dated September 30, 2018, showing its assets, liabilities and shareholders' equity. It lists "construction in progress," "start-up costs," and a "rent deposit," indicating that it did not start the process of opening its business or have a physical premises until sometime in 2018. It did not provide any evidence of income or expenses in 2018, other than paying wages to four employees.

On appeal, the Petitioner also submits financial information for [redacted] Restaurant Management Corporation. In its revised organizational chart, it indicates that the Beneficiary serves as general manager [redacted] Restaurant Management Corporation. However, it gives no explanation as to how the two companies operations are intertwined, or why we should accept the financial documentation of [redacted] Restaurant Management Corporation as evidence of the Petitioner's regular, systematic, and continuous provision of goods and/or services. As such, the record does not establish that the Petitioner was doing business for one year. The petition cannot be approved for this additional reason.

IV. EMPLOYMENT ABROAD IN A MANAGERIAL OR EXECUTIVE CAPACITY

Finally, we note the existence of derogatory information regarding the Beneficiary's employment abroad in a managerial or executive capacity. The Petitioner stated on the petition that the Beneficiary had been employed since November 2009 as vice general manager of its parent company in China. In a supporting letter with the petition, the parent company stated that the Beneficiary's duties included responsibility for management of the purchasing department, sales department, and chef department. However, in in a nonimmigrant visa petition submitted by the Beneficiary in May 2017, he stated that he had worked for the parent company since 2009 in "culinary/food services" and stated that his duties included responsibility for production, preparation, and presentation of all food items; responsibility for food cost control, purchasing quality and kitchen financial management; ensuring kitchen sanitation and safety; and presenting new dishes and updating the menu as needed. Thus, the Beneficiary's duties listed on the nonimmigrant visa petition submitted in 2017 are inconsistent with those listed by the Petitioner on the current L-1A petition. Instead of serving as vice general manager

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

of a hotel, the Beneficiary's duties appear to have been related to food preparation at the hotel-based restaurant. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although not a basis for denial, the Petitioner must address this issue in any future filings.

V. CONCLUSION

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

ORDER: The appeal is dismissed.

Cite as *Matter of V- Corp.*, ID# 5810291 (AAO Sept. 18, 2019)