



**U.S. Citizenship
and Immigration
Services**

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

MATTER OF C- INC.

DATE: OCT. 19, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an exporter of weather instruments, seeks to permanently employ the Beneficiary as its general manager under the multinational executive or manager immigrant classification. *See* section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

In denying the petition, the Director determined that the Petitioner did not establish: (1) that the Beneficiary was employed by the Petitioner's Colombian parent company in a qualifying managerial or executive capacity; and (2) that the Petitioner will employ the Beneficiary in a qualifying managerial or executive capacity in the United States.

I. LAW

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) *Certain multinational executives and managers.* An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision only to those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file Form I-140 to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The regulation at 8 C.F.R. § 204.5(j)(5) states:

No labor certification is required for this classification; however, the prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such letter must clearly describe the duties to be performed by the alien.

II. ISSUES ON APPEAL

The issues to be addressed are whether the Beneficiary has served in a qualifying executive or managerial capacity abroad, and whether the Petitioner intends to employ him in such a capacity in the United States.

Section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), states:

(A) The term “managerial capacity” means an assignment within an organization in which the employee primarily—

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. 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.

(B) The term “executive capacity” means an assignment within an organization in which the employee primarily—

(i) directs the management of the organization or a major component or function of the organization;

(b)(6)

Matter of C- Inc.

- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or 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. Section 101(a)(44)(C) of the Act.

A. Managerial or Executive Capacity Abroad

The first issue to be addressed relates to the Beneficiary's previous employment abroad. The Petitioner must establish that, in the three years preceding his entry to the United States as a nonimmigrant, the Beneficiary was employed by a qualifying foreign entity for at least one year in a managerial or executive capacity. *See* 8 C.F.R. § 204.5(j)(3)(i)(B).

1. Facts

The Petitioner filed Form I-140, Immigrant Petition for Alien Worker, on August 5, 2013. The Petitioner submitted a letter, dated July 21, 2013, signed by [REDACTED] general manager of the Petitioner's parent company in Colombia. [REDACTED] stated: "The company currently employs five full time employees, seventh [*sic*] sales persons and outsources [work to] two companies." An organizational chart showing the structure of the entity immediately prior to the Beneficiary's transfer to the United States in April 2010 showed the Beneficiary as president and general manager, with two people reporting directly to him: an executive assistant, and [REDACTED] as administrative manager. Below [REDACTED] were an accounts inspector and accountant, both outsourced, and a sales department manager who oversaw four contract workers and a maintenance employee.

The Petitioner submitted the following job description for the foreign entity's general manager position, broken down by the number of hours per week devoted to each task:

- 4 hrs. Working with creative and production teams to develop effective promotional materials.
- 4 hrs. Creating and overseeing implementation of a marketing plan designed to increase market share; compiling and analyzing market research.
- 2 hrs. Develops the marketing strategy for a company or product.
- 4 hrs. Implementation of continual improvement to the Marketing plan.
- 2 hrs. Liaising with the other office department sharing best-practice.
- 4 hrs. Designing, justifying and managing marketing campaigns.

(b)(6)

Matter of C- Inc.

- 4 hrs. Continuous interaction with Portfolio Management in the promotion of new products and services.
- 16 hrs. Test & Control Campaigns.
- 4 hrs. Work with sales in execution of direct marketing and events via website and direct sales.
- 4 hrs. Working with internal development resources to improve Marketing structure.

The Petitioner also submitted job descriptions for subordinate positions abroad, including vacant positions. The description for one position, sales executive (elsewhere listed as sales department manager), indicated that the job requires a bachelor's degree in marketing or in a related field as well as extensive experience.

The Petitioner's initial evidence also included a copy of the Beneficiary's resume, in which he provides the following information regarding his duties as general manager of the Colombian entity:

Responsible for designing and organizing the Sales Department, looking into the Enterprise for the improvement of internal and External processes.

Responsible for the direct sales, toward our Customers, looking for new solutions to be implemented

I have identified new business opportunities for our Company on the raw material supply and after sales support like calibration service and repair to instruments.

The Beneficiary lists his experience as including such duties as making business cases to customers, presenting bids, making commercial presentations, handling international relations with company vendors, providing commercial support to sales staff, improving his sales skills, developing relationships with purchasing managers in the region, and participating in key projects, such as helping a client to install a satellite control center for the reception of its 250 weather stations in Colombia.

The Director issued a request for evidence (RFE) on April 22, 2014. The Director requested "evidence to establish that the beneficiary has at least one full year of full-time employment in a managerial or executive capacity immediately preceding [his] entry as a nonimmigrant." The Petitioner's response included evidence regarding the Beneficiary's employment in the United States since 2010, but not his earlier employment abroad.

The Director issued a second RFE on September 30, 2014, requesting evidence that the Beneficiary's duties abroad met the definition of a managerial or executive capacity, as well as a detailed description of those duties from an official of the foreign company.

In response, the Petitioner submitted a translated statement from [REDACTED] dated November 4, 2014, stating that the Beneficiary had "the following responsibilities and duties," with accompanying percentages of the time allotted to each task:

(b)(6)

Matter of C- Inc.

- Ensure alignment of goals for all company departments (15%)
- Build the credibility of the project team (10%)
- Develop relations intra and extra Organization (Networking) (15%)
- Anticipate the problems (10%)
- Communicate the existence and the progress of the project (10%)
- Ask for feedback about the performance of projects (10%)
- Provide direction and leadership to the project team (10%)
- Promote, monitor and ensure the quality of the deliverables (10%)
- Creating a culture of collaboration and of sharing knowledge (10%)

██████████ asserted that the Beneficiary “supervised the work of Managers and Executives,” specifically ██████████ “who filled the position of Administrative Manager,” and another individual “who filled the position of Executive Assistant.”

The Petitioner submitted printouts of email messages to and from the Beneficiary, regarding various business subjects. In many of them, the Beneficiary issued instructions to one ██████████ presumably ██████████. The Petitioner also submitted copies of memoranda from the Beneficiary to his secretary, generally instructing her to contact various customers and individuals within the company.

The Director denied the petition on February 13, 2015, concluding that the Petitioner had not established that the Beneficiary was employed by the foreign company in a qualifying managerial or executive capacity. The Director acknowledged the Beneficiary’s senior status within the company, but concluded that the Petitioner had provided “a set of broad job responsibilities” which did not “convey an understanding of what the beneficiary actually did on a daily basis.”

Noting the foreign company’s “limited number of employees,” the Director found that the Petitioner had not shown that the company’s “support staff . . . [was] sufficient to have relieved the beneficiary from having to primarily perform non-qualifying tasks.” The Director also found: “the petitioner has not shown that any of the beneficiary’s subordinate employees were professionals.”

On appeal, the Petitioner asserts, in a brief, that contracted workers performed operational tasks, leaving the Beneficiary free to perform qualifying managerial or executive functions. In a letter dated March 30, 2015, ██████████ repeated the assertion that the Beneficiary supervised two professional employees at the foreign company.

For the reasons discussed below, we find that the Petitioner has not established that the Beneficiary’s position with the foreign parent company qualifies as a managerial or executive function.

2. Analysis

In general, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary’s proposed job duties with the petitioning entity. *See* 8 C.F.R. § 204.5(j)(5). Published case law has determined that the duties themselves will reveal the true nature of the beneficiary’s employment. *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). We then consider the beneficiary's job description in the context of the petitioner's organizational structure, the duties of the beneficiary's subordinates, and any other relevant factors that may contribute to a comprehensive understanding of the beneficiary's actual duties and role within the petitioning entity.

In addition, while performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. *See* Section 101(a)(44) of the Act.

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. 1108. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. *Id.*

In this instance, the Petitioner has not responded to the Director's finding that the Beneficiary's foreign job description lacked significant detail. The Petitioner, on appeal, states: "the evidence shows that for several years the beneficiary . . . was employed as General Manager" of the foreign parent company.

The Director did not dispute the Beneficiary's title, and acknowledged "the beneficiary's degree of heightened authority." Nevertheless, the definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The Petitioner asserts that contractors hired by the parent company performed the operational functions, which relieved the Beneficiary from having to perform those functions himself. The identified contract workers include an accountant, an accounts inspector, three persons in sales, and one person in "calibrations." This assertion does not address the question of what the Beneficiary did on a day to day basis at the foreign company. The breakdown of the Beneficiary's duties sheds little light on what it is that the Beneficiary did at the foreign company. Statements such as "Ensure alignment of goals," "Anticipate the problems," and "Build the credibility of the project team" do not describe identifiable activities.

Furthermore, the Petitioner has submitted two completely different positions for the foreign entity's general manager position. The job description submitted at the time of filing listed ten tasks adding up to a 40 hour workweek, eight of which specifically referenced sales and marketing activities. For example, the foreign entity stated that the general manager works on the development of promotional materials, creates and oversees implementation of marketing plans and strategies, analyzes market research, tests and control marketing campaigns, works with sales in executing

(b)(6)

Matter of C- Inc.

direct marketing, and interacts with “Portfolio Management” in the promotion of new products and services. In response to the Director’s RFE, [REDACTED] provided a completely different list of nine duties, also adding up to a full workweek, which did not reference sales or marketing at all. This duty description was even more vague, and contained multiple references to “projects” and “the project team,” without identifying what these projects were or who was on the project teams. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on these unresolved discrepancies, we are unable to determine which of the two duty descriptions more accurately conveys the Beneficiary’s duties as the foreign entity’s general manager. Regardless, neither description was sufficiently detailed to establish that he primarily performed managerial or executive duties. Based on the information provided in the Beneficiary’s resume, it appears that he was directly involved in presentations, bids, sales, supplier relations and implementation of projects while employed by the foreign entity. The record does not support a finding that he performed primarily managerial duties.

The statutory definition of “managerial capacity,” specifies that supervisory duties are not managerial unless the employees supervised are, themselves, supervisors, managers, or professionals. The Petitioner has stated, throughout this proceeding, that the foreign company’s administrative manager and executive assistant are managers, executives, and/or professional employees whom the Beneficiary had supervised.

The executive assistant holds a diploma with the legend “*Licenciada en Contaduria Pública*,” which the Petitioner has translated as “Academic Bachelor’s Degree” in “Public Accounting.” [REDACTED] the administrative manager, holds a “*Contador Público*” degree translated as “Public Accountant.”

In evaluating whether the 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. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), 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.” The term “profession” contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817, 818 (Comm’r 1988); *Matter of Ling*, 13 I&N Dec. 35, 36 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686, 687-8 (D.D. 1966).

Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor’s degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In this case, the petitioner has not, in fact, established that a bachelor’s degree is actually necessary for either position. A submitted job description indicates that

(b)(6)

Matter of C- Inc.

the executive assistant position requires an “associate degree in administration or related field.” By definition, such a position does not require a bachelor’s degree, whether or not the person in the position actually has such a degree. The Petitioner indicated that the administrative manager position requires a public accountant degree, which [REDACTED] holds. The record does not show that a public accountant degree from a college or university in Colombia is equivalent to a bachelor’s degree. Therefore, the Petitioner did not establish that either of these two positions is professional.

Previously submitted position descriptions indicated that the executive assistant primarily carries out operational and administrative tasks such as writing correspondence, keeping personnel records, and handling payroll functions. This is consistent with the nature of the tasks assigned in the memoranda from the Beneficiary to the administrative assistant. Therefore, the record does not show that the administrative assistant is either a manager or an executive.

The job description of the administrative manager, like the Beneficiary’s job description, is lacking in detail, and where specific information is provided, it is not always persuasive. For example, the description indicates that the administrative manager would “authorize payroll” for four hours per week, or 10% of his overall time. At the time, the foreign company had no more than five employees and six contractors. The Petitioner has not explained how payroll duties could consume so much time in a company of that size. Furthermore, several of the functions concern financial activities, while the company also contracted an accountant and an accounts inspector, whose duties would appear to have overlapped with those functions. There is insufficient information to establish that the administrative manager was employed in a supervisory or managerial position.

For the above reasons, the Petitioner has not established that the Beneficiary served in a primarily managerial or executive capacity with the foreign parent company. For this reason, the appeal will be dismissed.

B. Managerial or Executive Capacity in the United States

The second and final issue on appeal is whether the Petitioner has established that it intends to employ the Beneficiary in a qualifying managerial or executive capacity. Acknowledging that neither of the two RFEs addressed this issue, the Director stated: “For that reason, this deficiency will not be considered a ground for denial in this instant petition. However, the record does not support that the Beneficiary will be employed in a primarily executive or managerial capacity.” The Petitioner addresses the issue on appeal, and we will discuss it below.

1. Facts

[REDACTED] July 21, 2013 letter divided the Beneficiary’s duties and responsibilities into three broad categories, each subdivided into more specific tasks:

50% Analysis Responsibilities

- Prepare and present the annual[] sales projection and sales strategies of the company.

- Review and analyzes financial statements and data, operating reports, variance reports and other appropriate financial information to monitor attainment of financial goals.
- Assesses financial risk and opportunities of the account and communicates results to the clients and shareholders; initiates action plans as necessary.
- Evaluate the performance of the sales department and decides incentives and promotions.
- Monitor operations to plan projects, implement new processes and technology, and to ensure sufficient resources.
- Analyze, develop and execute new potential clients to increase the international business opportunities and profitability for the company.
- Evaluate monthly sales reports in order [to] determine requirements for increasing profits
- Periodic review of financial statements and data related to the incomes and expenses in order to take financial decisions.
- Implement innovating techniques to ensure and improve the company goals.
- Evaluate financial risk and business opportunities.

30% Monitoring/Coaching Responsibilities

- Monitor general operations executed in order to align procedures to the plan projects.
- Execute strategic plan by implementing short and long-term goals
- Initiates action plans as necessary, as to employ new personnel, put into operation new regulations, arrange new investments, between others.
- Direct, formulate and continuously update the company policies and procedures in favor of the financial improvement.
- Establishing new commercial relationships with vendors to get more representations and commercial export agreements.

20% Human Resource Responsibilities

- Direct and coordinate the ma[j]or company activities including [to] hire, supervise and evaluate the professional performance of the managers.
- Design and apply the incentives and promotions plan of the employees and planning the training required.
- Provide positive and constructive feedback to the personnel by coaching, mentoring, counseling or corrective guidance and action, as appropriate.
- Ensure a safe work environment for employees by enforcing the execution of all safety programs

The Petitioner stated that each of the above tasks takes five percent of the Beneficiary's time, with the exception of "[m]onitor general operations . . . ," said to occupy 10 percent of his time.

The Petitioner also submitted a separate "description of duties and responsibilities" for the Beneficiary's position which provided an hourly breakdown for 14 duties. Twelve of the duties were

(b)(6)

Matter of C- Inc.

included in the position description as stated above, but the second description also indicated that the beneficiary will “schedule meetings and presentations to meet and evaluate potential suppliers,” and “research and analyze the market in the Florida area.”

The Petitioner stated on the Form I-140 that it had four employees when the petition was filed on August 5, 2013. An organizational chart submitted with the petition lists two positions immediately subordinate to the Beneficiary: an executive secretary and a sales executive. The chart showed two positions subordinate to the executive secretary – a warehouse manager and a customer service representative – but the chart lists both of those positions as vacant. The sales executive has one subordinate, a sales assistant. The Petitioner submitted duty descriptions for all positions, including the two vacant positions, but did not provide the requirements for the jobs.

In the RFE issued on April 22, 2014, the Director requested evidence of “a valid employment relationship . . . between the petitioner and the beneficiary,” but did not specifically question the nature of the Beneficiary’s duties. Nevertheless, the Petitioner submitted a new, undated statement from [REDACTED] including a new breakdown of the Beneficiary’s duties:

[The Beneficiary] will continue to be responsible for formulating and administering company policies as well as developing long range goals of the company. . . . He will do this for 20% of his time. He will review analysis of activities, costs and operations and will forecast data to determine the progress achieved by the company toward stated goals and objectives. In his sole discretion, he will control all of the financial aspects of the corporation. . . . He will do this for 20% of his time.

The beneficiary will make decisions as to the areas in which to concentrate marketing efforts and as to which methods to utilize to expand client base on the research and analysis of market trends and economic conditions. More specifically, the beneficiary will supervise the operations related [to] the purchasing, import, export, marketing and staff activities of [the Petitioner]. The beneficiary will oversee the service operations of [the Petitioner] and will assume responsibility for quality, cost and deliveries. The beneficiary will review and approve orders made by local and international customers. He will do this for 20% of his time.

The beneficiary [w]ill meet with top executives of providers in the U.S. territory . . . [and] will be in charge of obtaining new distribution or representation[] agreements with U.S. manufacturers. . . . He will do this for 5% of his time.

[The Beneficiary] will establish work plans and oversee staffing for each project phase. He will arrange for assignment of personnel. . . . He will direct and coordinate activities of personnel to ensure project progress on schedule and within prescribed budget. He will do this for 15% of his time.

(b)(6)

Matter of C- Inc.

[The Beneficiary] will have the authority to enter into any contracts or commitments for or on behalf of the Employer with [*sic*] first obtaining the express written consent of the Employer. He will do this for 10% of his time.

The Petitioner's response to the RFE also included copies of its Florida Employer's Quarterly Reports showing wages paid to employees for all four quarters of 2013. During the quarter in which the Form I-140 was filed, the Petitioner paid wages to the Beneficiary, the Secretary Executive, the Sales Assistant, and a fourth individual who was not listed on the organizational chart. The person identified as "Executive Sales" on the organizational chart did not appear on the Petitioner's quarterly reports during the last two quarters of 2013, but was paid by the company in 2014.

The second RFE, issued September 30, 2014, did not address the Beneficiary's employment in the United States, and therefore the Petitioner's response did not discuss the issue.

In the February 13, 2015 denial notice, the Director stated that the Petitioner had provided "a set of broad job responsibilities" which did not "convey an understanding of what the Beneficiary would actually be doing on a daily basis." Observing that the Petitioner had claimed only four employees in the United States, the Director concluded that the Petitioner had not shown that it "has sufficient staffing to relieve the beneficiary from having to perform primarily non-qualifying tasks," or that "the beneficiary will primarily perform qualifying duties."

On appeal, the Petitioner contends that "USCIS overlooked the fact that the beneficiary . . . direct[s] and control[s] the company's major functions." The Petitioner also asserts that "the USCIS conclusion was based solely on the size of the petitioning entity."

The Petitioner submits a new chart of the Beneficiary's duties, mostly identical to the list in [REDACTED] July 21, 2013 letter except with some of the percentages changed and one item ("Establish[] new commercial relationships with vendors . . .") removed.

The Petitioner also submits a new organizational chart on which the individual previously identified as "Secretary Executive" is shown as the "Operations Manager" and the person previously identified as "Executive Sales" is identified as the "Sales Manager" and oversees one sales assistant. The chart identifies vacancies for a secretary, a customer service position, and a second sales assistant. The warehouse position identified on the previous chart has been eliminated, although the Petitioner provided evidence that it has leased warehouse space.

The Petitioner also submits percentage breakdowns for the duties performed by its operation manager and sales manager. These descriptions bear little resemblance to those provided for the same employees at the time of filing. The duty description for the operation manager is almost identical to one of the duty descriptions provided for the Beneficiary's foreign position as general manager.

For the reasons discussed below, we find that the Petitioner has not established that the Beneficiary's proposed duties are primarily managerial or executive in nature.

2. Analysis

Many of the points raised in our analysis of the first issue, discussed above, also apply here. The Petitioner contends, on appeal, that the Beneficiary's control over the petitioning company is sufficient to establish that he will be employed in a qualifying managerial or executive capacity. This assertion, however, addresses only the first part of the two-part requirement implied by the statutory definitions of managerial capacity and executive capacity, and clarified in *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table).

The Petitioner claims that "no discussion of the size or staffing level of [the] organization is included in the definition of the term 'executive or managerial capacity' under Section 101(a)(44)(A), 101(a)(44)(B) of INA, and 8 CFR 204.5(j)." Section 101(a)(44)(C) of the Act, however, specifically allows USCIS to use "staffing levels . . . as a factor in determining whether an individual is acting in a managerial or executive capacity," provided that it "take[s] into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function."

The Petitioner notes that, in 2014, the company grossed \$635,938 and "paid total salaries of \$124,399.00 to five (5) employees."¹ The Petitioner contends: "it's clear that in order to generate its volume of business, the petitioner . . . by necessity is a complex business with numerous highly specialized organizational departments." The Petitioner does not elaborate on this assertion in the appellate brief, by identifying the "numerous highly specialized organizational departments" or by citing any evidence that the figures provided indicate "a complex business." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The subordinates' job descriptions refer to "Portfolio Management" and "the Accounting, Sales and Purchases department," but the Petitioner's organizational chart does not show such departments. One newly submitted job description indicates that the sales manager devotes 10% of her time to "[s]upervise and control Executives," but does not identify these executives. The only identified subordinate employee is a sales associate. Further, as noted above, the job titles and job duties for the Beneficiary's subordinates have been significantly revised on appeal. For example, at the time of filing, the petitioner stated that the "Executive Sales" (now identified as the sales manager) performs duties such as handling correspondence, maintaining customer records, processing invoices, preparing estimates, calling prospective customers, sending information to prospective customers, and networking on the phone. The record at the time of filing did not establish that any of the subordinate employees, was performing duties that are managerial or supervisory in nature, or that their duties are of the type that require the services of a professional employee.

¹ According to the Petitioner's IRS Form 1120, U.S. Corporation Income Tax Return, the Petitioner paid \$108,100 in salaries and wages and compensation to officers in 2014. The Petitioner IRS Form W-3 for 2014 shows payment of \$103,600 to four employees.

The Petitioner has not increased its staffing levels since the filing of the petition in 2013 to support the changes to the subordinate employees' job duties, and the Petitioner has provided no explanation for the changes. It also remains unclear who performs the duties attributed to the vacant warehouse manager and customer service positions identified at the time of filing, or who is responsible for the purchasing functions attributed to the "purchasing department" which has not been shown to exist within the organization. Overall, given the inconsistencies and omissions, it is difficult to determine how work is actually distributed among the Petitioner's four employees and we cannot conclude that the Beneficiary's three subordinates relieve him from significant involvement in the non-managerial activities of the company on a day-to-day basis.

As with the Petitioner's foreign parent company, the Petitioner asserts that "the corporation uses independent contractors to perform all its necessary functions," such as "customs brokering, freight forwarding, etc." The Petitioner maintains: "These duties are not auxiliary or clerical in nature; however, [they] constitute the essential functions necessary for the successful operation of the business." The only concrete example documented on appeal is that the Petitioner has used an accounting service to prepare its financial and tax documents.

The Petitioner's first percentage breakdown of the Beneficiary's U.S. duties, largely repeated on appeal, includes several very general terms, such as "[e]xecute strategic plan by implementing short and long-term goals," that provide little information about the Beneficiary's actual day-to-day activities. Also, the list contains a number of redundant terms described as separate duties. For example, the breakdown indicates that the Beneficiary devotes five percent of his time to "[e]valuat[ing] financial risk and business opportunities," and another five percent of his time to "[a]ssess[ing] financial risk and opportunities." Another example is the assertion that the Beneficiary spends five percent of his time "[r]eview[ing] and analyz[ing] financial statements and data," and another five percent of his time on "[p]eriodic review of financial statements and data."

The percentages listed in the second breakdown, submitted in response to the RFE, add up to only 90% of the Beneficiary's time. Furthermore, the differences between the two breakdowns appear to outweigh the similarities. For instance, the RFE version of the breakdown indicated that the Beneficiary spends 20% of his time making marketing decisions, overseeing service operations, and reviewing and approving orders. The other versions of the breakdown do not mention these functions. Therefore, as with the Beneficiary's duties with the foreign employer, his described duties with the Petitioner lack detail and do not establish that his intended work with the company meets the statutory and regulatory definitions of managerial or executive capacity.

The Petitioner's assertions and evidence on appeal do not overcome the Director's adverse finding. For this reason, we will dismiss the appeal.

III. CONCLUSION

We will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish

Matter of C- Inc.

eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of C- Inc.*, ID# 14054 (AAO Oct. 19, 2015)