U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-O-D- LLC

DATE: AUG. 9, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, which invests in real estate for development, seeks to permanently employ the Beneficiary as its president under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that: (1) the Petitioner has been doing business for at least one year prior to the petition's filing date; (2) the Beneficiary will be employed in the United States in a managerial or executive capacity; and (3) the Beneficiary has been employed abroad in a managerial or executive capacity.

On appeal, the Petitioner submits additional evidence and asserts that its business activities and the Beneficiary's responsibilities "conform to . . . industry standards."

Upon *de novo* review, we will withdraw the Director's decision concerning the Beneficiary's employment abroad; however, as the Petitioner has not overcome the remaining grounds for denial, we will dismiss the appeal.

I. LEGAL FRAMEWORK

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

II. BACKGROUND

The Petitioner filed the petition in May 2016. The Petitioner stated that it "is developing a major real estate project" which "will be sited on about 13 acres of waterfront property" and "[w]hen fully developed, the Project is expected to include 334 units composed of town homes and flats." The Petitioner identified itself as the "100% owner of the Project" and stated that "Project Development is led by" a third party "development company," with a "development team" comprised of an architectural firm, engineering companies, and a law firm. The outside development company "will oversee the entire development process . . . including site acquisition, design, entitlements, market research, financial analysis, ground-up construction, property management, marketing, leasing and sales."

The Petitioner claims that since 2013 it "has been in the design, planning and entitlement phase of developing a 13-acre parcel of land . . ." and has "spent more than $9 million in the planning and entitlement stages of the project." IRS Forms 1065, U.S. Returns of Partnership Income, showed that the Petitioner reported no income in 2014, 2015, or 2016. The Petitioner stated: "Since the Petitioner has not completed the Project, it does not have any housing units to sell, so it has booked no revenues (income)."

At the time of filing the petition in May 2016, the Petitioner had not yet purchased the land that it intends to develop, and was still estimating the amount of funds that it hoped eventually to raise.

III. DOING BUSINESS

The Director found that the Petitioner did not establish that it has been doing business for at least one year prior to the date of filing the petition. *See* 8 C.F.R. § 204.5(j)(3)(i)(D). The Director stated that "it does not appear that the Petitioner has progressed in the development of its real estate project beyond the planning stage. The Petitioner cannot be doing business when it has not produced or made available any housing units for sale." On appeal, the Petitioner argues that it is a "Development Stage Company . . . since it is devoting substantially all of its efforts in establishing a new business for which the operations have commenced, but no significant revenues are being generated."

Doing business means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office. 8 C.F.R. § 204.5(j)(2).

The Petitioner listed several expectations for the development project. For example, it stated that it "expects to roll out the Project in multiple phases over 6 years," "expects to obtain $113 million in conventional financing, about $54 million in Founders Equity and $75 million in EB-5 funding,"[1]

[1] "EB-5 funding" refers to funds provided by foreign nationals intending to immigrate under section 203(b)(5) of the Act, which makes immigration benefits available to foreign investors who meet certain specified conditions.

and "expects all entitlements for the Project to be received prior to the end of the third quarter of 2016. Then, it will close on the land and then commence engineering and pre-development construction." However, at the time of filing, the Petitioner did not own the land.

Further, the submitted business plan outlined no active role for the Petitioner apart from soliciting funds and selecting contractors. The business plan indicated that the Petitioner "anticipates beginning construction of Phase I beginning in February of 2017"; however, the Petitioner's submissions show that the Petitioner was unable to adhere to the above timeline, and the Petitioner later stated that it "expect[s] all entitlements for the Project to be received by mid 2018." In addition, as noted above, the Petitioner has outsourced apparently all of the development activities, so it is not clear what the Petitioner's role in the project is outside of soliciting funds and then selling the developed properties.

Upon review of the evidence in the record, we find that the Petitioner has not demonstrated that it provided any goods or services for one year prior to the filing of the instant petition. At the time of filing, the Petitioner did not own the land that it intended to develop and in the Petitioner's words, it was not "making houses available"; there were no developed properties to sell. The Petitioner was raising money and preparing to arrange for third-party contractors to build houses on land that the Petitioner had not yet purchased. The Petitioner has not explained how soliciting investors' funds or spending money equates to the "regular, systematic, and continuous provision of goods and/or services." 8 C.F.R. § 204.5(j)(2).

The Petitioner cites to *Matter of Leacheng*, 26 I&N Dec. 532 (AAO 2015) for the proposition that 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." The Petitioner contends that "[e]xcluding development stage companies from being petitioners under Section 203(b)(1)(C) of the Act undermines the purpose of that section of law: to facilitate international trade and investment, which by its nature must include a 'development stage' appropriate to the industry." The Petitioner, however, cites no source for the assertion that "the purpose of that section of law [is] to facilitate international trade and investment," or that it "must include a 'development stage.'"

Further, *Leacheng* did not involve a development stage company. The petitioner in *Leacheng* was a company that provided marketing, sales, and shipping services to its affiliate in Hong Kong, and in turn, the Hong Kong affiliate paid a service fee to the petitioner. We found that the U.S. employer's business transactions need not involve an unaffiliated third party to satisfy the doing business requirement. *Matter of Leacheng International*, 26 I&N Dec. at 534. There was no finding that an entity at a developmental stage is "doing business" even when it is not engaged in any revenue-generating activity or providing services.

The assertion that we "must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization" also does not derive from *Leacheng* and is wholly unrelated to the "doing business" requirement. The phrase derives from section

101(a)(44)(C) of the Act which discusses the use of staffing levels when "determining whether an individual is acting in a managerial or executive capacity."

Leacheng, however, did note parallels between the regulations for multinational manager/executive petitions and those relating to "L-1 nonimmigrant intracompany transferees." In this light, it is important to mention that the nonimmigrant regulations make allowances for companies at an early stage of development. *See, e.g.*, 8 C.F.R. § 214.2(l)(1)(ii)(F) and 214.2(l)(3)(v)(C) (permitting "new office" operations one year within the date of approval of the petition to support an executive or managerial position). The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*) refers to an employer that "[i]s *or will be* doing business" in the United States. The parallel immigrant regulations make no such allowance. A "new office" that is not yet engaged in business transactions can employ a foreign executive or manager *temporarily*, but cannot seek permanent immigration benefits under the first preference immigrant classification for multinational executives or managers. This distinction is warranted because if a new company turns out not to be viable, for whatever reason, then there is little merit to granting permanent immigration benefits based on employment with a company that never actually engages in commercial activity.

The Petitioner asserts that the regulatory definition of "doing business" does not explicitly exclude development stage companies, and therefore a new company can be "doing business" even if it does not have any revenue. The definition does, however, require the regular, systematic, and continuous provision of goods, services, or both. As such, the definition excludes even revenue-generating entities that only sporadically provide goods or services.

The Petitioner quotes a dictionary definition of "provision" as "the act of giving [something] or making it available." The Petitioner then proceeds from the unsupported assumption that this definition of "provision" is controlling. The Petitioner asserts "the phrase 'provision of goods and/or services by a firm' includes not simply the trading of goods for value, but also the actual producing of that good, since a business cannot make a good available for sale unless it has either purchased . . . or made that good." Even as worded by the Petitioner, purchasing and production are preliminary steps that come before the transactional stage by which a company provides the goods produced to customers.

In this instance, the Petitioner states that it is "producing housing," but its documented activities do not meet the doing business definition in the regulations. 8 C.F.R. § 204.5(j)(2). Furthermore, the Petitioner is not responsible for designing or building the houses. Those functions reside with contractors. The Petitioner's viability rests on selling the houses that its contractors will build, and those houses do not exist yet. The assertion that the lengthy development stage is consistent with industry standards is beside the point. There is only one regulatory definition of "doing business," which does not vary from industry to industry. Provision of goods or services does not include an unrealized intention to sell goods or perform services at a future time.

The Petitioner submits a letter from a college professor who asserts that, in the Petitioner's industry, "doing business is evidenced by . . . regularly, systematically, and continuously engaging in the

planning, design, and coordination that is necessary to gain approval to develop the land, ensure the units will be sellable, and then build and market these new units of real estate." We may, in our discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988). In this instance, the author of the letter asserts that "[i]t takes many years to develop housing," especially in the area where the Petitioner operates, but these factors do not permit the Petitioner to modify the definition of "doing business" in order to accommodate the nature of the company's activities and the external conditions under which it operates.

As noted above, the Petitioner acknowledges that various delays have set back the development process by several years. The Petitioner also acknowledges that a more established developer previously attempted to develop the same property several years earlier, but (again after several delays) the earlier developer ultimately withdrew and abandoned its project. Therefore, it remains an open question whether the purchase, development, construction, and sales will happen at all.[2]

The Petitioner has not been regularly, systematically, and continuously providing goods or services since May 2015. Therefore, the Petitioner was not doing business for at least a year prior to filing the petition.

IV. U.S. EMPLOYMENT IN AN EXECUTIVE CAPACITY

The Director found that the Petitioner did not establish that it will employ the Beneficiary in a managerial or executive capacity. The Petitioner does not claim that it seeks to employ the Beneficiary in a managerial capacity. Therefore, we restrict our analysis to whether the Petitioner intends to employ the Beneficiary in an executive capacity.

"Executive capacity" means an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from

[2] A separate, but significant, question is how long the Petitioner will remain in business after it sells the developed properties. On the petition form, the Petitioner indicated that it intends to employ the Beneficiary permanently. The petitioning entity, however, was founded specifically for the real estate development project described in the record; the company took its name from the site of the planned development (formerly a shipping terminal). The company's objectives, as expressed in its business plan, center on the one identified project. The planned development cycle of that project, though multi-year, is finite, and the Petitioner has not expressed any plans for the company following the completion of the project. Although there is no requirement that the Petitioner actually employ the Beneficiary permanently, the project's inherently temporary nature is highly relevant, considering that the Petitioner seeks permanent immigration benefits for the Beneficiary. Also, whether or not there is a *requirement* that the employment be permanent, the Petitioner stated that the position is permanent, and we cannot approve the petition unless we determine the Petitioner's claims to be true. *See* section 204(b) of the Act, 8 U.S.C. § 1154(b).

higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B).

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). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

When determining whether a given position is primarily in an executive capacity, we will look to 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. *See* 8 C.F.R. § 204.5(j)(5). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Accordingly, we will discuss evidence regarding the Beneficiary's job duties along with evidence of the nature of the Petitioner's business and its staffing levels.

A. Duties

The Petitioner stated:

> As company President, the beneficiary holds overall responsibility for the profit or loss of the company. On a daily basis, the beneficiary[] analyzes and resolves all major strategic, operating and financial issues of the company. His day to day duties center on directing the management of the company through its employees and consultants. . . . The beneficiary selects, hires, [and handles] development of all personnel. . . . His specific duties, and percentages of time devoted to each duty, follows:
>
> - 40%: Review and make decisions on finances and timelines associated with [various] budgets . . . developed by [the] Development Manager for the Project. . . .
> - 20%: Review and make decisions on non-Project operations . . . [that] include the operation and management of rental properties in Georgia. . . .
> - 15%: Consult and communicate with Company investors and finance partners on Project progress, Sources and Uses of Capital, financial planning and capital raising. Prepare, develop, and lead various initiatives to ensure that the company has the appropriate financial and operating controls, policies, procedures, and systems in place to support its effective use of resources.

- 15%: Consult and communicate with Company employees, Board of Directors, and Project stakeholders to discuss and resolve issues relating to project planning, assessing performance metrics, Identifying opportunities for improving operating margins, capital structure, financing techniques, and cash management. Serve as an effective spokesperson for the company[.]
- 10%: Review and make decisions on the design related aspect of the Project. . . .

The Director requested additional details that would identify "specific daily tasks" rather than broad areas of responsibility and authority. In response, the Petitioner stated that the Beneficiary spends 50% of his time "supervising the Development Manager of the company"; 15% of his time "supervising the Account manager"; 15% of his time "supervising the Vice President of Investor Relations"; 10% of his time gathering and evaluating information relating to sources of capital investment; and 10% of his time evaluating competition and "productivity of factors of production."

The Petitioner stated that the Beneficiary spends the majority of his time supervising three of his subordinates, but this only tells us of the Beneficiary's responsibility, rather than the duties he performs to exercise that responsibility. It is significant that, at the time of filing, only one of these three identified subordinates was on the Petitioner's payroll.

The assertion that the Beneficiary gathers information and determines the best uses for that information is vague and general, telling us little about the Beneficiary's actual tasks and duties. In the denial notice, the Director found that the Petitioner had not provided "a comprehensive description" with "meaningful information" about the Beneficiary's duties.

On appeal, the Petitioner cites "the main activities of a Chief Executive" listed in "the Department of Labor's O*NET program" and "the US Department of Labor's Occupational Outlook Handbook (OOH) entry for Top Executives," stating that those resources "are even less detailed than the Petitioner's job description" for the Beneficiary. Those resources, however, are general guides to the responsibilities of a generic executive position. If conformity with those resources were sufficient to establish eligibility, a petitioner would have to do no more than quote from O*NET and the OOH.

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). The actual duties themselves reveal the true nature of the employment. *Id.* Therefore, reciting a 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.

The Petitioner's obligation is not simply to provide a general idea of what *an executive* does. The Petitioner must show how *a particular position* qualifies as executive. The acknowledged resemblance between the Beneficiary's job description and generic templates only serves to suggest

that the Petitioner relied on those templates rather than an evaluation of the Beneficiary's position. The Petitioner asserts that the Beneficiary's job description "should not be rejected due to its similarity to the OOH and O*NET, as if it were simply copied. Rather, the similarity is evidence that the Beneficiary's work is indeed of executive nature." A job description that was not "simply copied," however, would include specific details that a generic template inherently lacks.

The Petitioner asserts that the Petitioner need not catalog the Beneficiary's "day-to-day routine tasks," and that "[e]xecutives are fundamentally different from operational employees – their daily routines involve habits, behaviors, attitudes, which allow them to receive, evaluate and execute opportunities." The Petitioner repeats a prior job description which primarily rests on the assertion that the Beneficiary supervises subordinates. Delegation of duties attests to the level of the Beneficiary's authority, but does not show that he *primarily* performs executive-level duties.

Apart from duties that involve supervising others, the Petitioner states that it provided "very detailed tasks" relating to the Beneficiary's formulation and implementation of policies and goals. Those tasks read as follows:

> Formulating company policies and developing long range goals and objectives and overseeing the administration of such policies, goals and objectives.
>
> - Gather information on current and future sources of capital investment (equity and debt and convertible securities)
> - Evaluate information on current and future sources of capital investment
> - Determine best uses of current sources of capital investment (optimize expenditures)
> - Rank future sources of capital investment
>
> Directing, planning, and implementing policies, objectives, and activities of the business to ensure continuing operations, to maximize returns on investments, and to increase productivity.
>
> - Gather information on current and future competition (similar real estate developments in the [local] Area)
> - Investigate and identify measures to improve the productivity of capital, labor, equipment, land
> - Evaluate findings on current and future competition
> - Evaluate findings on productivity of factors of production
> - Determine and rank best uses of factors of production (optimize mix of capital, labor, equipment, land)

Although the Petitioner calls these descriptions "very detailed," they provide no specific information except to identify the Beneficiary's field of endeavor as real estate development. Otherwise, the listed items are very general. For instance, the Petitioner refers to "equipment," without identifying

that equipment. Generic references to "factors of production" do not identify what is produced. The section that purports to relate to formulating policies and developing goals lists four aspects of raising capital; the Petitioner does not explain what policies or goals resulted from these fundraising activities.

The Petitioner submits a letter from a professor of Business Management, expressing the opinion that the Beneficiary "would direct the management of" the petitioning entity and "would play a vital role in the successful development, execution, and management of the [Petitioner's] Project." As noted above, we will consider expert opinion letters at our discretion, but they are not dispositive when the Petitioner has not otherwise met its burden of proof.

The Petitioner has not provided sufficient information about the duties that the Beneficiary has performed, and seeks to continue to perform, at a company that remains in a developmental stage of increasing length. The Petitioner has not shown that the Beneficiary will primarily perform duties consistent with an executive capacity.

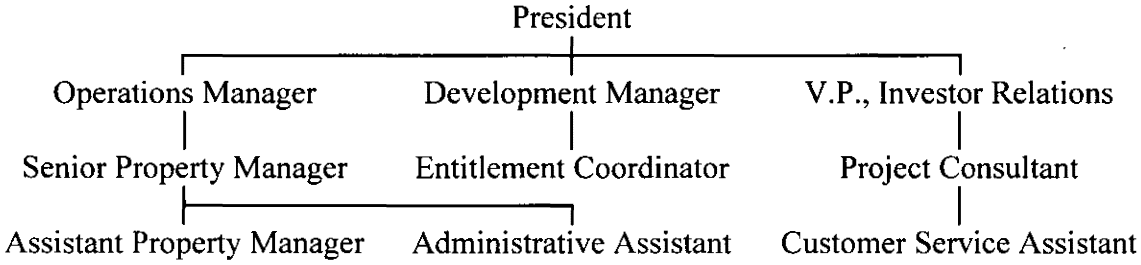
B. Staffing

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

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. 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 managers 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 because they have an executive title or because they "direct" the enterprise as an owner or sole managerial employee. A beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." Section 101(a)(44)(B) of the Act.

In the denial notice, the Director found that the Petitioner did not establish that the Beneficiary supervises managerial, supervisory, or professional employees. Supervision of supervisory or professional employees is an element of a managerial capacity, not an executive capacity, and therefore we need only consider whether the Beneficiary's immediate subordinates qualify as managers.

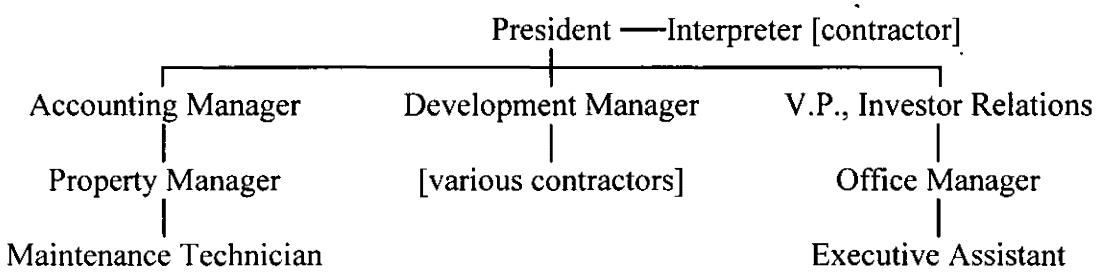
At the time of filing, the Petitioner stated that it "currently has 7 employees. . . . The beneficiary has three direct reports, five indirect reports and literally dozens of indirect reports who are employees of various professional service providers, including architectural, engineering and planning firms." The Petitioner's organizational chart included the following information at the time of filing:



The chart indicated that the development manager also oversaw the work of various contractors.

The organizational chart, showing 10 employees, is not consistent with Form I-140 or payroll records, both of which show 7 employees (omitting the employees named on the right-hand column of the chart).

The Petitioner later submitted a revised organizational chart dated September 2017:



Only four employees appeared on both versions of the chart: the Beneficiary; the development manager; the vice president of investor relations; and the executive assistant (formerly the administrative assistant). The individual originally identified as a customer service assistant appeared on the second organizational chart as a contracted translator rather than as an employee.

The Director found that the Petitioner did not establish that the Beneficiary supervises managers. The Director also found that the Petitioner had not resolved the discrepancy between the initial organizational chart, which named 10 employees, and contemporaneous tax and payroll records, which named only 7 employees. On appeal, the Petitioner acknowledges that the Beneficiary had "5-7 workers under him since 2016," but the Petitioner does not explain why its initial organizational chart named 10 employees.

On appeal, the Petitioner asserts that the job descriptions for the development manager, accounting manager, and investor relations manager "cover all essential aspects of running the Petitioner's

business." As noted above, the Petitioner did not employ an accounting manager at the time of filing, and the vice president of investor relations did not appear in the Petitioner's tax and payroll records until the fourth quarter of 2016. (That individual appears to be a shareholder of the foreign company.) The Petitioner does not say who performed the duties of those positions at the time of filing.

The development manager's responsibilities include elements such as developing proposals and budgets, "monitoring and directing the implementation of strategic business plans," and "understanding and mitigating key elements of the company's risk profile." The Petitioner also asserts that the development manager is responsible for "managing Engineering Department, Environmental Department, Maintenance Department and Customer Service Department." Those four departments do not appear on either version of the Petitioner's organizational chart. Although departments with those names do exist at the foreign parent company, the Petitioner's development manager is not an official of the foreign company. The Petitioner does not explain the seemingly random reference to a development manager and the four non-existent departments he/she is responsible for.

The Petitioner submits copies of "actual work product that . . . subordinate employees have produced." The Petitioner asserts that, because the subordinates created this work product, the Beneficiary did not need to do so himself, and therefore was relieved from performing non-executive tasks. Subordinate work product tells us what the subordinate employee did, but not what the Beneficiary has been doing. It cannot suffice to point to subordinate work product and assert that the Beneficiary supervised, but did not directly participate in, its creation.

Furthermore, the record does not show that the subordinates created all of the work product credited to them. For example, the Petitioner asserts that the accounting manager prepared the Petitioner's 2014 and 2015 tax returns, but the accounting manager position did not exist until late 2016. In addition, the preparer's name on the tax returns does not match the name of the accounting manager. The preparer also claimed affiliation with a private firm in Georgia. Quarterly tax returns, also attributed to the accounting manager, were prepared by a payroll service. The documentation does not show what role, if any, the person now employed as the Petitioner's accounting manager played in preparing the documents.

Among the documents cited as the development manager's work product are architectural renderings prepared by a firm in China and ordinances passed by the local city council. The Petitioner does not explain how these materials are the development manager's work product.

The Petitioner asserts that the Beneficiary is the highest-ranking figure at the petitioning company; however, the issue is not the extent of the Beneficiary's authority, but whether all available factors, taken together, show the Beneficiary will be employed in a *primarily* executive capacity. For the reasons cited above, we find that the Petitioner has not met this threshold.

The Petitioner has not established that it will employ the Beneficiary in a primarily executive capacity in the United States.[3]

V. CONCLUSION

The Petitioner did not establish that it has been doing business for at least one year prior to the petition's filing date, or that it will employ the Beneficiary in the United States in an executive capacity.

ORDER: The appeal is dismissed.

Cite as *Matter of T-O-D- LLC*, ID# 1415274 (AAO Aug. 9, 2018)

[3] We note that, in the denial notice, the Director's discussion of the Beneficiary's employment abroad was in some ways similar to the treatment of the Beneficiary's intended U.S. employment. We find a key distinction between the two positions to be the size and status of the two companies. Unlike the petitioning U.S. employer, the foreign parent entity has dozens of employees hierarchically arranged into departments with managers and supervisors, and is actively involved in property management rather than simply preparing to invest in a property to be handled by outside contractors. Also, the Petitioner further distinguished the foreign and U.S. positions by submitting additional details on appeal. The foreign entity appears to have sufficient organizational complexity and business activity to warrant an executive position at its head.