



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 11880149

Date: DEC. 22, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a retail sales company, seeks to permanently employ the Beneficiary as its “executive manager” 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).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary will be employed in a managerial or executive capacity in the United States and that the Beneficiary had been employed abroad in a managerial or executive capacity prior to her entry as a nonimmigrant. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.<sup>1</sup> We review the questions in this matter de novo.<sup>2</sup> Upon de novo review, we will dismiss the appeal.

## I. LEGAL FRAMEWORK

An immigrant visa is available to a beneficiary who, in the three years preceding the time of the petition for classification and admission into the United States, 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,<sup>3</sup> that the beneficiary is coming to work in the United States for the same

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<sup>1</sup> See Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).

<sup>2</sup> See Matter of Christo’s Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015).

<sup>3</sup> If a beneficiary entered the United States to work for a qualifying entity as a nonimmigrant (for example in an H-1B or other work-authorized status), U.S. Citizenship and Immigration Services will reach back three years from the date of his or her admission to determine whether he or she had the requisite one year of employment abroad. Matter of S-P- Inc., Adopted Decision 2018-01 (AAO Mar. 19, 2018); 8 C.F.R. § 204.5(j)(3)(i)(B).

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).

“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.

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

The regulation at 8 C.F.R. § 204.5(j)(5) requires the Petitioner to submit a statement which clearly describes the duties to be performed by the Beneficiary. Beyond the required description of the job duties, we review the totality of the evidence when examining a beneficiary’s claimed managerial or executive capacity, including the company’s organizational structure, the duties of a beneficiary’s subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary’s actual duties and role in a business. Accordingly, our analysis of this issue will focus on the Beneficiary’s duties as well as the company’s staffing levels and reporting structure.

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

The Petitioner, a limited liability company organized in [ ] 2016 in the State of Illinois,<sup>4</sup> offers products and services in the technology sector and textile industry and also has a 20 percent interest in a weight management and medical spa asset, purchased in November 2018. We note that the partnership agreement governing the operation of the medical spa asset allows the Petitioner to place staff at the location of the spa facility “to learn this business division as well as manage other business.” The partnership agreement also states that: (1) at the closing date of the partnership agreement, December 10, 2018, the 80 percent owner in the partnership shall execute an LLC operating agreement; (2) the votes cast within the partnership shall be determined by majority vote with votes cast in the same percentage as capital contributions; and (3) each partner has the right to manage the affairs of the partnership in the ordinary course of the partnership’s business, with limited exceptions, and that the day-to-day affairs of the partnership shall be managed by a management committee, elected by a majority vote of the partners.

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<sup>4</sup> The Office of the Illinois Secretary of State website shows that the Petitioner is NGS (not in good standing) as of [ ] [ ] 2020. See <https://www.ilsos.gov/corporateLlc/CorporateLlcController> (last visited Nov. 20, 2020). Accordingly, it does not appear the Petitioner currently has authority to conduct business in the State of Illinois. This deficiency must be addressed in any future proceedings.

The record does not include an LLC operating agreement for the partnership and does not include evidence of a management committee. The record does not include other evidence supporting the Petitioner's management of the spa facility.<sup>5</sup> The Petitioner's authority appears limited to placing staff at the facility to learn the business and to use the facility's office to manage its other (GPS tracking, home textiles) businesses.<sup>6</sup> Without additional evidence establishing that the Petitioner's 20 percent partnership interest provides it management authority over the medical spa through an operating agreement or other evidence, we cannot conclude that the Beneficiary has the authority to manage the partnership or the asset of the partnership, the medical spa.

The Petitioner, in response to the Director's request for evidence (RFE), provided a business plan for an [redacted] delivery service program and letters referring to interviews to occur in January 2020 regarding a proposed delivery partnership with [redacted]. The Petitioner, however, 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). Accordingly, the Petitioner's future plans to add a logistics division and expand its business is not evidence establishing eligibility when the petition was filed and thus, will not be considered.

We also observe that the Petitioner throughout the record identifies the Beneficiary's position as managerial. It does not claim that the Beneficiary will perform in an executive capacity. Accordingly, we will analyze the U.S. position under the statutory definition of managerial capacity. Section 101(a)(44)(A) of the Act.

To be eligible for this immigrant visa classification as a manager, the petitioner must show that the beneficiary will perform the high-level responsibilities set forth in the statutory definition at section 101(a)(44)(A)(i)-(iv) of the Act. If the record does not establish that the offered position meets all four of these elements, we cannot conclude that it is a qualifying managerial position. If the petitioner establishes that the offered position meets all the elements set forth in the statutory definition, the petitioner must prove that the beneficiary will be primarily engaged in managerial duties, as opposed to ordinary operational activities alongside the petitioner's other employees. See *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006).

#### A. Duties

The Petitioner's initial letter in support of the petition, sets out a vague and generic description of the Beneficiary's proposed duties. In response to the Director's RFE, the Petitioner, through counsel, added responsibilities associated with each initially listed job duty.<sup>7</sup> For example, the Petitioner initially states that the Beneficiary will provide strategic direction in the development of the U.S.

<sup>5</sup> The record does include evidence that the Petitioner began paying an esthetician in December 2018.

<sup>6</sup> We also note that the Office of the Illinois Secretary of State website identifies the manager of the medical spa asset as the 80 percent owner of the partnership. See [redacted] at <https://www.ilsos.gov/corporatellc/CorporateLlcController> (last visited Nov. 20, 2020).

<sup>7</sup> On appeal, counsel for the Petitioner asserts that it did not submit a separate statement of the Beneficiary's duties. We observe, however, that the Petitioner did not sign or acknowledge counsel's response to the Director's RFE. The response is signed only by counsel and it is this response that includes the additional responsibilities. Counsel does not indicate within the response how it gained knowledge of these additional responsibilities and thus whether it had personal knowledge of this additional description. Nevertheless, for thoroughness we will briefly discuss the additional responsibilities.

company, position the company as a leader in its GPS tracking, home textile and spa divisions, and set targets to learn the new business and its dynamics to achieve financial benefits for the company. The RFE response indicates that the responsibilities associated with these broadly stated duties include playing an integral role in running the day-to-day business operations, formulating, developing, and implementing policies and practices, maintaining relationships with partners, exploring new opportunities and innovative ways to grow the GPS tracking and home textile divisions, and taking the lead in developing the new spa joint venture. The added responsibilities, however, do not communicate the actual tasks associated with running the day-to-day business operations, nor does the Petitioner provide documentary evidence demonstrating the tasks involved in and the results of maintaining relationships with partners, exploring new opportunities,<sup>8</sup> and formulating, developing, or implementing particular policies and practices. 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 actual duties themselves will reveal the true nature of the 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). Here, the Petitioner has not provided the necessary detail or an adequate explanation of the Beneficiary's activities in the course of her daily routine.

Similarly, the remaining responsibilities in the record are insufficiently defined, lengthy, and repetitive, and shows the Beneficiary performing tasks to generate sales of services and products. For example, the RFE response indicates that the Beneficiary will be responsible for conducting analysis of the company's pricing structure with other competitors in the area, establishing specific sales objectives and targets, reviewing pricing to remain competitive, developing marketing material, after consultation with the CEO, developing the brand and brand recognition, and exploring better ways to utilize social media for marketing purposes. The Petitioner, however, does not develop these duties within the specific context of its organizational hierarchy and its business operations. The Beneficiary's level of responsibility and role in performing these duties is also not clearly delineated and raises concerns regarding her actual day-to-day obligations and whether such responsibilities would be primarily managerial or would be operational in nature.

Numerous other responsibilities listed in the descriptions also do not include the detail and context necessary to understand the Beneficiary's role within the Petitioner's business. Responsibilities such as analyzing sales, reviewing operational management objectives, reporting information and providing analysis to the CEO, identifying and implementing appropriate technical tools, and conducting various meetings, are generic and do not enhance an understanding of the Beneficiary's day-to-day tasks. Many of these duties appear to be necessary operational tasks to continue or increase the Petitioner's business. Not only does the record lack documentary evidence of these duties, the Petitioner has not clearly conveyed the nature of the Beneficiary's primary day-to-day duties. Moreover, the Petitioner has not shown its ability to relieve the Beneficiary from significant involvement in other non-qualifying tasks required to operate the three divisions within its business.<sup>9</sup>

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<sup>8</sup> For example, the Petitioner's exploration of the [ ] delivery business appears to be conducted by the Petitioner's chief executive officer, not the Beneficiary.

<sup>9</sup> For example, it is not clear who prepares and issues invoices, who manages the accounts payable and receivable. It is also not clear if it is the Beneficiary who will be learning the medical spa business, and if so, how this constitutes a managerial duty.

A key concern with the additional responsibilities provided in response to the Director's RFE, is that the tasks are not further described by the amount of time spent on each one. For example, the Petitioner initially states that the Beneficiary will spend 10 percent of her time "[c]oordinat[ing] managerial-level activities between [sic] the United States, Pakistan and Dubai office by guiding supervisory level direct reports and by finding business solution through discussion between offices . . . ." However, the responsibilities associated with this vague duty include "[u]nderstand the U.S. market trends with focus on GPS Tracking and Home Textile markets," "[c]oordinate between the [redacted] and [the Petitioner's] [redacted] IL office," "[w]ork with the marketing team and train them on how to approach a new client, generate leads and close sales deals," "[g]uide supervisory level direct report in the U.S. and Pakistan office by finding business solution through discussions," and "[p]lan and prepare strategic developmental plan for creating the company's marketing strategies, branding functionalities, and business development plans," among other responsibilities.<sup>10</sup> As the added responsibilities do not include a further division of the 10 percent of the Beneficiary's time amongst these various and distinct responsibilities, it is not clear how much time the Beneficiary will spend on the operational and administrative duties included in this overview and how much time will be devoted to tasks that may include a supervisory element.

On appeal, the Petitioner refers to the emails submitted in response to the Director's RFE to demonstrate the Beneficiary's managerial job duties. However, the majority of the emails are dated in 2015 and 2016 and concern the Beneficiary's activities during that time period, prior to her admission into the United States in January 2017. Although the record includes a number of emails dated in 2018, these appear to be emails forwarding the 2015, 2016 emails to counsel for submission to U.S. Citizenship and Immigration Services (USCIS). The record does not include emails from the time period the petition was filed in May 2019, even though the RFE response was not provided until January 2020.

The duties and responsibilities overall do not create a comprehensible view of the Beneficiary's role within the Petitioner's business operations when the petition was filed. The Petitioner does not clearly allocate the Beneficiary's time amongst the various responsibilities broadly described. Moreover, even if the Beneficiary will generally manage the business, the fact that a beneficiary will manage a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. As noted above, by statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and may possess some level of authority with respect to discretionary decision-making, we cannot conclude that the Beneficiary's duties and responsibilities are primarily managerial in nature.

## B. Staffing and Organizational Structure

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

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<sup>10</sup> The added responsibilities under this 10 percent allocation of time also include responsibilities for closely engaging with clients to offer best solutions and ensuring that client's instructions are followed by the U.S. and Pakistan company's staff, communicating with the general manager of the textile division in Pakistan, and communicating with the Pakistan textile division staff to maintain quality by making them understand the U.S. market.

the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act. Again, as discussed, the Petitioner must demonstrate that the Beneficiary was eligible for the benefit sought as of the date the petition was filed in May 2019. As such, we look to the Petitioner's staffing and organizational structure at the date the petition was filed and do not consider speculative plans for expansion.

The Petitioner's description of the proposed position refers to duties that may include a supervisory element but only vaguely suggests that the Beneficiary would act in a managerial capacity through her oversight of subordinates. We note that the statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." *Id.* If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 204.5(j)(2). The Petitioner has not established that the Beneficiary will primarily supervise and control the work of other supervisory, professional, or managerial employees.

The Petitioner's Form I-140 indicates that the Petitioner has five employees in the U.S. The Petitioner's initial U.S. organizational chart depicts the Beneficiary over an office manager and three divisions, GPS Tracking, Textiles, and a medical spa. The initial organizational chart identifies four full-time employed individuals, in addition to the Beneficiary, and several others to be hired. The Petitioner's revised organizational chart, provided in response to the Director's RFE, adds a division,<sup>11</sup> re-arranges the reporting structure, and revises some job titles.<sup>12</sup> The record includes a payroll list for individuals employed in March 2019, two months prior to filing the petition, and the state quarterly employment records for the 2018 year.<sup>13</sup> The record also includes copies of employment contracts, some in effect when the petition was filed and others that anticipate future employment. The positions of office manager, sales and marketing officer, esthetician, and IT software developer/business developer appear to be the individuals employed when the petition was filed. The Petitioner identifies three of these positions as direct reports to the Beneficiary.<sup>14</sup>

The Petitioner also refers to three employees of the foreign entity – the chief operating officer, a general manager, textile division, and a general manager, tracking division – as individuals who also are the Beneficiary's direct reports. The organizational charts submitted to demonstrate the U.S. organizational hierarchy, however, present inconsistent information regarding the reporting status for these three foreign positions. The initial organizational chart appears to show these three foreign

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<sup>11</sup> As noted above, although the Petitioner is exploring the possibility of a relationship with [redacted] and a potential logistics division, this relationship had not been established when the petition was filed in May 2019. Additionally, in the last communication with [redacted] dated December 2019, it appears that further discussion of the Petitioner's application for the Delivery Service Partner program had been postponed for six months.

<sup>12</sup> For example, the Petitioner clarified that although it had offered a position to an accountant, the offer had been declined.

<sup>13</sup> The record does not include payroll records or state employment reports for the quarter in which the petition was filed.

<sup>14</sup> The Petitioner's organizational chart submitted in response to the Director's RFE, identifies a fourth individual, in the position of technical/sales (formerly sales and marketing officer) as reporting directly to the Beneficiary. However, the Petitioner's offer of employment to this individual indicates his start date is subsequent to the date the instant petition was filed.

employees reporting to the Petitioner's office manager, not the Beneficiary. The organizational chart submitted in response to the Director's RFE, shows the chief operating officer reporting to the Beneficiary and the two general managers reporting to the chief operating officer.<sup>15</sup> The Petitioner does not explain the revision to the organizational chart as it relates to the foreign employees and does not explain how the general managers' positions are the Beneficiary's direct reports. We reviewed the descriptions of duties for the Beneficiary's U.S. position and the descriptions provided for these three foreign positions in an attempt to ascertain the Beneficiary's supervisory authority over these individuals, if any, and to understand the foreign positions' role in relieving the Beneficiary from performing non-qualifying managerial tasks. Upon review, although the Beneficiary and the three foreign employees appear to intermittently work together the record does not show the amount of time, if any, the Beneficiary will spend supervising the foreign employees. Moreover, the descriptions of duties for the three foreign employees are not sufficiently thorough to conclude that the individuals relieve the Beneficiary from performing non-qualifying duties.<sup>16</sup>

We again point out that the Petitioner does not provide definitive information regarding the time the Beneficiary will spend supervising subordinates. Thus, the record does not sufficiently demonstrate that the Beneficiary would act primarily as a personnel manager supervising subordinate supervisors or managers. We also reviewed the duty descriptions of the subordinate U.S. employees and the duties generally describe individuals performing non-supervisory and non-professional tasks. For example, the office manager will manage employees' hour sheets and help prepare payroll, will organize board meetings and disburse minutes, prioritize participation in partner events including forward planning scheduling, liaise with marketing to create sales assets, prospect for new clients by networking, cold calling, advertising, plan pitches to convince potential clients to do business with the company, and organize staff meetings and workshops. The duties consist primarily of administrative functions and operational activities to generate business.<sup>17</sup> The tasks described are not supervisory in nature.

Similarly, the sales/marketing officer is involved in marketing and sales activities for the Petitioner's textile division and the IT software developer/business development position performs market research, meets clients, prepares sales contacts, and offers sales support. The esthetician greets customers and performs facials. The Petitioner does not indicate the amount of time these individuals

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<sup>15</sup> 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 8 C.F.R. § 103.2(b)(1). 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.

<sup>16</sup> The Petitioner cites to Matter of Z-A-, Inc., Adopted Decision 2016-02 (AAO Apr. 14, 2016) on appeal as relevant to the matter at hand. However, this matter is distinguishable from the facts in Matter of Z-A-. Matter of Z-A- concerned an essential function manager position wherein an essential function had been specifically identified. Here, as will be discussed, the Petitioner has not established that the Beneficiary is a function manager. Moreover, when evaluating the duties of the Beneficiary's position and the foreign employees' positions, the descriptions do not sufficiently demonstrate how the three employees in Pakistan support the day-to-day operational needs of the Petitioner by performing administrative and other duties related to an essential function of the U.S. company. The record is not sufficiently developed to ascertain and understand the interactions between the two affiliated companies.

<sup>17</sup> The Petitioner's organizational charts also show a corporate attorney, a marketing specialist, and suppliers as interacting with the office manager. However, the record does not include sufficient information regarding the exchanges between the office manager and these third parties to identify the nature and extent of the interactions.

spend performing their various tasks but does not suggest that any of these individuals have primary responsibility for supervising subordinates. The record does not support a conclusion that the Beneficiary primarily supervises a subordinate staff of managers or supervisors.

Moreover, the record does not include evidence that the Beneficiary would qualify as a personnel manager based on supervision of subordinate professionals. To determine whether a beneficiary manages professional employees, we evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor.<sup>18</sup> Therefore, we focus on the level of education required by the position, rather than the degree held by subordinate employees.<sup>19</sup> Here, the Beneficiary's subordinates' duties and the descriptions do not demonstrate that such positions would require a bachelor's degree in order to perform them. From the limited information in the record, it is not possible to conclude that the subordinate positions are professional positions. The Beneficiary's position although listing some personnel duties such as training staff and performance evaluations, is at most, a first-line supervisor over four non-professional positions. The record does not include evidence sufficient to establish the Beneficiary's position as primarily a personnel manager position.

The Petitioner also has not articulated a specific function that the Beneficiary will manage. 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). In this matter, the Petitioner has not described or identified an essential function with specificity. Moreover, the Petitioner has not included sufficient evidence demonstrating how and to what extent the employees actually relieve the Beneficiary from involvement in the day-to-day performance of operational and administrative tasks.

Again, although the Beneficiary may exercise some discretionary authority over the business, the record does not establish that she is more than a first-line supervisor over non-professional employees, who also performs operational tasks necessary for the Petitioner to conduct business. The Petitioner has not established that the staff in place at the time of filing would be sufficient to relieve the Beneficiary from significant involvement in the non-managerial, day-to-day operations of its business.

Although the Petitioner does not assert that the Beneficiary will be employed in an executive capacity, it does not appear that the Petitioner's organization was sufficiently developed to support the Beneficiary as an executive when the petition was filed. Additionally, the Petitioner does not provide

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<sup>18</sup> Cf. 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, states that "[t]he term profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

<sup>19</sup> The Petitioner here also does not identify the educational level required by any of the subordinate positions.



supporting evidence reflecting the Beneficiary's performance of executive-level tasks related to directing the company's management or setting its broad goals and policies. That is, the record does not establish that the Beneficiary primarily directs the management of the organization or a major component or function of the organization or establishes its goals and policies. Therefore, the record also does not establish the Beneficiary will perform duties in an executive capacity.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary would be employed in a managerial or executive capacity under an approved petition.

### III. CONCLUSION

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve its arguments regarding whether the Beneficiary was employed abroad in a managerial or executive capacity prior to her entry as a nonimmigrant. Although we are not making an adverse finding on this issue, we also note that the current record does not establish that the Petitioner is doing business. As noted above, the Petitioner is currently not in good standing in the State of Illinois and the record here does not include sufficient evidence of the Petitioner's claimed operations. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). The Petitioner has not established that more likely than not the Beneficiary will be employed in a managerial or executive capacity for the U.S. entity.

ORDER: The appeal is dismissed.