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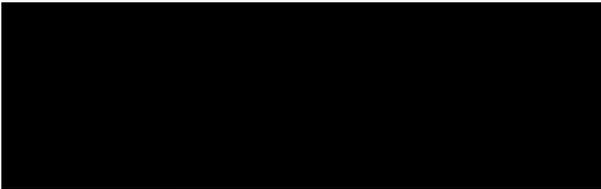
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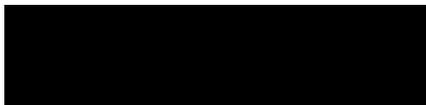
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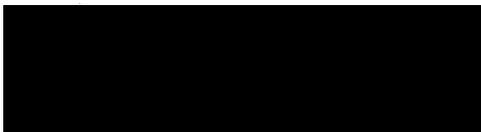
FILE: SRC 03 029 52460 Office: TEXAS SERVICE CENTER Date: **JUL 14 2005**

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant petition seeking to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of Delaware that provides well logging perforating services to the petroleum industry. The petitioner seeks to employ the beneficiary as its senior log analyst.

The director denied the petition concluding that the petitioner did not demonstrate that the beneficiary had been employed abroad or would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, counsel states that Citizenship and Immigration Services (CIS) incorrectly determined that the beneficiary's employment both abroad and in the United States did not meet the criteria of a multinational manager or executive. Counsel claims that CIS' decision contains misstatements of law and an improper application of the regulations, and "confuses" the distinction between an "executive" and a "manager." Counsel states that CIS considered whether the beneficiary was employed as an executive when "it should have been clear that [the beneficiary] is employed in a managerial capacity rather than in an executive one." Counsel submits a brief in support of the appeal, wherein he addresses the claimed "misapplication[s]" by the director.

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 who 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 to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. 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 a statement must clearly describe the duties to be performed by the alien. 8 C.F.R. § 204.5(j)(5).

The AAO will first consider the issue of whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

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

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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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.

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

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;
- (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.

The petitioner filed the instant petition on November 6, 2002. In an appended letter, dated November 5, 2002, counsel noted that the beneficiary qualifies as a multinational manager as a result of his foreign employment from May 1996 through October 2001 in the capacity of "Senior Engineer/Computer Center

Manager." As evidence of the beneficiary's qualifying foreign employment, counsel submitted an affidavit from the petitioner's president, dated September 26, 2002, wherein the petitioner provided the following description of the beneficiary's employment as senior engineer/computer center manager:

In this position, [the beneficiary] was responsible for managing the day-to-day operations of the Computing Center, including log quality control, data processing and archiving, and training and sales calls. He interpreted pulsed neutron decay-spectrum (Carbon/Oxygen) logs and old electric logs. He interpreted open-hole logs, including mechanical properties from [REDACTED] and [REDACTED] data analysis. He interpreted production logs and analyze[d] pressure transient tests. He exercised wide discretion in setting goals and implementing strategies for accomplishing those goals for the Computer Center. He was responsible for the work of up to 60 employees, up to 10 of which were degreed professionals. He was involved in personnel decisions, and was responsible for performance reviews and disciplinary actions for his employees.

Counsel submitted the beneficiary's resume, which reflected the beneficiary's receipt of a Bachelor of Engineering degree in Geological Engineering. On his resume, the beneficiary identified his position in the foreign entity as "Log Analyst/Computing Center Manager."

In a request for evidence, dated September 30, 2003, the director asked that the petitioner submit a "definitive statement" of the beneficiary's employment in the foreign entity, including the beneficiary's job title, job duties, the percentage of time spent by the beneficiary on each task, the number of subordinate managers, supervisors or employees who reported directly to the beneficiary, and a brief description of the subordinate employees' job titles, duties, and educational levels. The director noted that if the beneficiary does not supervise other employees, the petitioner should identify the essential function within the organization managed by the beneficiary. The director also requested that the petitioner submit an organizational chart of the foreign entity.

Counsel responded in a letter dated December 29, 2003, noting that as the senior engineer/computer center manager of the foreign entity the beneficiary spent the majority of his time analyzing data logs and supervising his subordinates' work. As additional evidence of the beneficiary's job overseas, counsel submitted an affidavit from the human resources manager of the petitioner's parent company, wherein the manager provided the following description of the beneficiary's position as senior engineer and computer center manager:

Regarding [the beneficiary's] duties and the percentage of time he spent on each, approximately 70% of his time was spent analyzing data received from the well operations and directly supervising and reviewing the work of his approximately sixty subordinates, up to ten of whom were degreed professionals. In doing so, he interpreted and reviewed different classes of operations logs, including open-hole logs, pulsed neutron decay-spectrum (carbon/oxygen) logs, production logs, pressure transient test logs, and old electric logs. By completing his own log assessment and by reviewing those analyses of his subordinates, he thus was key in ensuring the quality control of the data logs.

As already stated, [the beneficiary's] duties included directly supervising the work done by others. He also spent approximate[ly] 5% of his time training and consulting with those

employees he supervised. However, as a Senior Engineer/Computer Center Manager, not only did [the beneficiary] supervise degreed professionals, but he also managed an essential function of our operation, the Computer Center. He was responsible for the smooth running of the day-to-day operations of the department.

Apart from supervising and training his employees, [the beneficiary] spent about 25% of his time doing other tasks necessary to ensure that the Computer Center was performing successfully. His duties in this capacity included advising and interfacing with the clients, fielding and delegating sales calls, and responding to problems that arose concerning the software, computer systems, or data exchange, or any other [information technology (IT)]-related quandaries. Another part of [the beneficiary's] job responsibilities was to set policy, productivity, and other goals for the Computer Center and to implement strategies for achieving them. In adhering to his set goals, it was necessary for him to access the efficiency of his employees, issue performance reviews, and carry out any appropriate disciplinary actions. He therefore was heavily involved in personnel decisions, both in the hiring, firing, and advancement processes. In addition to these general day-to-day operation duties, [the beneficiary] also had several general administrative tasks to perform, such as data processing, archiving, and maintaining general records and reports.

The human resources manager for the petitioner's parent company further outlined the employees supervised by the beneficiary, noting that six of the employees were degreed professionals. The manager stated that these six employees occupied the positions of log analysts, trainee log analyst, data processor, and field supervisor. Although requested, counsel did not provide an organizational chart of the foreign entity. The parent company's manager noted the impracticality of providing a chart, as the company employs over 1,000 people.

The director issued a decision dated February 26, 2004, concluding that the petitioner had not demonstrated that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. The director stated that the affidavits from the petitioner's president and its parent company's human resources manager do not establish that the beneficiary's overseas employment met the definitions of "managerial capacity" and "executive capacity." The director stated that the beneficiary "did not primarily supervise professionals and he did not have the authority to hire and/or fire those under his supervision." The director also noted that the beneficiary's responsibilities included analyzing data and supervising employees, yet stated "[i]t is unclear how much time was actually spent analyzing and how much time was spent supervising." The director determined that the beneficiary did not spend the majority of his time performing primarily managerial tasks. The director further concluded that the beneficiary had not been employed in a primarily managerial or executive capacity, as "the petitioner has not demonstrated that the beneficiary's primary assignment has been . . . directing the management of the organization nor that the beneficiary has been . . . primarily directing or supervising a subordinate staff of professional, managerial, or supervisory personnel, who relieve him from performing nonqualifying duties." Consequently, the director denied the petition.

In an appeal filed on March 26, 2004, counsel claims that CIS incorrectly determined that the beneficiary does not qualify as a multinational manager. Counsel claims that the director misstated and misapplied the regulations, and "confuse[d]" the distinction between a "manager" and an "executive." In his brief, counsel notes that the director considered the beneficiary's employment in both a managerial and executive capacity,

and states that the beneficiary's employment should have been reviewed for classification in a managerial capacity only.

With regard to the definition of "managerial capacity," counsel claims that the director misapplied the four regulatory criteria. Counsel states that the director's requirement that the beneficiary supervise professionals to be considered a manager is "legally inconsistent," as the regulations allow the supervision of supervisory or managerial employees as well. Counsel contends that the previously submitted affidavits confirm that the beneficiary supervised up to ten degreed professionals while employed by the foreign entity, and claims, as a result, that the beneficiary is clearly not a first-line supervisor.

In addition, counsel contends that CIS is "embellishing" the regulatory requirement that the beneficiary possess "the authority to hire and fire" personnel, noting that the regulation also allows for the beneficiary to "recommend" personnel actions. Counsel states that CIS conceded in its denial of the petition that the beneficiary has the authority to participate in personnel decisions. Counsel contends that the director "limited the application of the regulation, only focusing on authority to directly take these actions and arbitrarily failing to consider authority to recommend these actions."

Counsel further claims that in addition to supervising the work of professional and supervisory employees, the beneficiary managed a subdivision of the foreign entity. Counsel notes that both affidavits indicate that the beneficiary managed the Computer Center, which the foreign entity's human resources manager claimed is an essential function of the company's operation.

Counsel also challenges the director's finding that the beneficiary "performed many duties that were not managerial in nature," stating that the regulations require only that the beneficiary be engaged primarily, not solely, in managerial duties. Counsel again states that 70% of the beneficiary's time would be spent "analyzing data and supervising and reviewing the work of his subordinates." Counsel notes:

Clearly, in reviewing his subordinates' analyses, [the beneficiary] would himself be analyzing the data upon which his subordinates had relied. Because he was 'key in ensuring the quality control of the data logs,' it was thus essential for him to review and analyze the data independently especially when engaged in consulting with clients regarding the work of his employees. [The beneficiary] was not primarily performing the tasks necessary to produce a product or provide services. Instead, he was primarily engaged in managerial activities to 'ensure that the Computer Center was performing successfully'."

Upon review, the petitioner has not demonstrated that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

The beneficiary's true position in the foreign entity is not clear from the record. While the petitioner and counsel identify the beneficiary's position abroad as the "Senior Engineer" and "Computer Center Manager," the beneficiary himself indicates on his resume that, prior to his transfer to the United States, he was employed as the foreign entity's "Log Analyst/Computing Center Manager." The beneficiary listed his associated job duties as: (1) interpreting Pulsed Neutron Decay-Spectrum logs; (2) interpreting production logs, "open hole" logs, and "old electric logs"; and (3) analyzing pressure transient tests. While the job duties of a "log analyst" appear to be similar to those of a "senior engineer," as outlined in the December 22, 2003 affidavit submitted by the foreign entity's human resources manager, neither the petitioner nor counsel has

clarified this inconsistency. When determining the true employment capacity of the beneficiary, the AAO cannot be expected to overlook a relevant discrepancy in the beneficiary's position title. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The job duties of a "log analyst" indicate that the beneficiary had been engaged in the day-to-day non-qualifying functions of the foreign entity rather than primarily supervising and reviewing the work of subordinates. In addition to the above-named job duties, the foreign entity's human resources manager outlines in her December 22, 2003 affidavit the job duties of a log analyst as: (1) interpreting and analyzing geophysical well log data; (2) answering sales calls; and (3) discussing log data with customers. As properly noted by the director, it appears that the beneficiary was responsible for performing non-managerial and non-executive operations of the company, specifically analyzing data and addressing the results with customers. The AAO recognizes counsel's explanation on appeal that in order to "ensure the quality control of the data logs," the beneficiary is required to personally review and analyze the data logs. However, based on the job descriptions in the beneficiary's resume and the December 2003 affidavit, it would seem the beneficiary is in fact involved in the "interpretation" and "analysis" of data logs, rather than the mere "review" of the logs in order to ensure compliance by his subordinates. The delineation between the beneficiary's "analysis" and "interpretation" to his "review" of data logs is relevant to the question of managerial capacity as the former description implies that the beneficiary is performing operations related to the services offered by the foreign entity. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

An additional factor in determining the beneficiary's employment as a manager is the proportion of time the beneficiary spent "analyzing data received from well operations" as opposed to "supervising and reviewing the work of his approximately sixty subordinates." Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. The petitioner indicated that the beneficiary spent 70% of his time analyzing data and supervising subordinate employees. However, as discussed above, the portion of the beneficiary's time spent "analyzing data" constituted the performance of non-qualifying operations for the company. The AAO cannot determine from the record what portion of the beneficiary's time was devoted to supervising his subordinate employees. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Moreover, despite counsel's claim, the record does not establish that the beneficiary managed an essential function of foreign entity. Both the petitioner and counsel contend that the beneficiary managed the Computer Center. It is unclear, however, how the beneficiary "managed" the Computer Center when 25% of the beneficiary's time was spent actually performing operations of the Computer Center, including answering sales calls, advising clients, and responding to information technology-related questions. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must provide a job offer clearly describing the managerial or executive job duties to be performed by the beneficiary, identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 204.5(j)(5). In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties

demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. Again, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604. In this matter, the petitioner concedes that the beneficiary is performing the duties related to the Computer Center, and therefore has not provided evidence that the beneficiary manages an essential function.

The AAO notes that although requested by the director, the petitioner failed to provide the foreign company's organizational chart reflecting the workers subordinate to the beneficiary. Counsel's claim that the organization is very large does not excuse the petitioner from responding to the director's request for evidence, particularly if the beneficiary had only six direct subordinate employees, as noted by counsel in his December 29, 2003 letter. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

While the AAO acknowledges counsel's claim that the beneficiary supervised professional or supervisory employees, this factor alone is not sufficient to establish his employment in a primarily managerial capacity. Based on the above discussion, the petitioner has failed to establish that the beneficiary's foreign employment satisfied the qualifications for classification as a manager. Accordingly, the appeal will be dismissed.

The AAO will next address whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

The petitioner noted in its November 6, 2002 petition that the beneficiary would be employed by the United States entity as a "Senior Log Analyst." In an attached affidavit, dated September 26, 2002, the petitioner's president explained that in this capacity, the beneficiary "manages the work and analysis of others," "exercises wide latitude in discretionary decision making," sets goals and implements strategies to achieve the goals. The petitioner noted that the beneficiary supervises the work of seven employees, of which one is a degreed professional. The petitioner further stated:

As the computer center grows, it is anticipated that this number of indirect reports will increase, including additional degreed professional staff. [The beneficiary] is involved in personnel decisions and in advising on budget decisions. He is responsible and accountable for the on-going operations in the field that relate to log analysis. [The beneficiary] analyzes and interprets geophysical well log data using specialized software and computer systems. He interacts and consults with clients to analyze and solve problems with oil and gas wells. Similar to his position at our foreign affiliate in Venezuela, [the beneficiary] works to evaluate and organize data and software for our well logging systems.

The petitioner provided an additional outline of the following job responsibilities of the beneficiary:

1. Trains, coordinates and manages the activities of degreed professionals and engineers at the Houston Computer Center or other locations;
2. Recommends hiring and dismissal as well as other personnel actions over ComStar technical personnel;

3. Exercises ultimate responsibility for the projects he supervises, including deadlines, training and maintenance; and
4. Exercises wide latitude and discretion in decision-making, with minimal supervision by upper management employees.

The director subsequently issued a request for evidence, dated September 30, 2003, asking that the petitioner submit a "definitive statement" of the beneficiary's employment in the United States entity, including the beneficiary's job title, job duties, the percentage of time spent by the beneficiary on each task, the number of subordinate managers, supervisors or employees who reported directly to the beneficiary, and a brief description of the subordinate employees' job titles, duties, and educational levels. The director noted that if the beneficiary does not supervise other employees, the petitioner should identify the essential function within the organization managed by the beneficiary. The director also asked that the petitioner submit an organizational chart of its staffing levels.

Counsel responded in a letter dated December 29, 2003, noting that the beneficiary has been employed in the United States entity as its senior log analyst. Counsel explained that in this capacity, the beneficiary spends the majority of his time analyzing and interpreting well data logs and supervising a staff of seven subordinate employees. Counsel submits an affidavit from the petitioner's human resources manager as additional evidence of the beneficiary's qualifying employment in the United States entity. In the undated affidavit, the human resources manager provided the following description of the beneficiary's position:

In his capacity as Senior Log Analyst, [the beneficiary] spends about two-thirds of his time performing and supervising others' performance of log analysis. In so doing, he interprets, evaluates, organizes, and analyzes wireline well log data using specialized software and computer systems. [The beneficiary] also provides all open hole log interpretation, including multi-mineral, complex, shaly sand models, and Nuclear Magnetic Resonance data processing and interpretation. He also analyzes and interprets cased hole log interpretation, including Pulsed Neutron Decay Spectrum and Multi-Array Neutron production logs. As will be further discussed below, there are seven employees in the Computer Center who are under [the beneficiary's] managerial supervision. He is directly responsible for the management, coordination, delegation, and supervision of the work of each of these individuals. Being accountable for the on-going log analysis operations, [the beneficiary] must ensure that the work product the staff is creating meets goals and expectations.

Therefore, [the beneficiary's] position lends itself to many administrative-type tasks, which make up around 20% of his activities. Because he is ultimately accountable for his staff's work, [the beneficiary] is closely involved in the personnel decisions, including the recommendation whether to hire, fire, or promote those under his supervision. He thus evaluates his subordinates and comments on their performance. Other administrative duties include: reviewing and advising on budget decisions; giving presentations and providing technical support to sales and marketing staff; fielding sales calls; and consulting with customers to solve their problems and to discuss the results of his own and his subordinates' log data analyses.

Another of [the beneficiary's] duties is to coordinate and lead the initial training course that all employees under his supervision must undergo at the outset of their employment. Furthermore, [the beneficiary] is expected to develop and execute new techniques in analyzing and presenting log data, as well as to keep current with new technology and interpretation methods. He is often called upon to train those not in his department, including sales and marketing staff as well as other engineers. Therefore, around 5% of his time is passed conducting initial, follow-up, and maintenance training of staff on both old and new procedures and methods.

[The beneficiary] is also ultimately responsible for the projects that he supervises, including meeting all deadlines, performing any necessary training, and ensuring proper maintenance of the necessary equipment. To this end, he spends approximately 10% of his time designing and supervising field data acquisition programs and projects. In coordinating a project, he must provide Propellant job design using the Pulsfrac modeling software and supply a post-project analysis reflecting appropriate recorder data.

The petitioner further outlined the seven employees subordinate to the beneficiary, including one professional employee and two supervisory employees, and noted the impracticality of submitting an organizational chart because of the company's large personnel structure.

In her February 26, 2004 decision, the director determined that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director stated that the affidavits from the petitioner's president and human resources manager do not establish that the beneficiary's employment meets the definitions of "managerial capacity" or "executive capacity." The director concluded that the beneficiary would not be employed in a primarily managerial or executive capacity, as "the petitioner has not demonstrated that the beneficiary's primary assignment . . . will be directing the management of the organization nor that the beneficiary . . . will be primarily directing or supervising a subordinate staff of professional, managerial, or supervisory personnel, who relieve him from performing nonqualifying duties." Consequently, the director denied the petition.

In the March 26, 2004 appeal, counsel contends that the record contains "ample evidence" to support the claim that the beneficiary would be employed in a primarily managerial capacity. Counsel claims that the director misstated and misapplied the regulations, and "confuse[d]" the distinction between a "manager" and an "executive." In his brief, counsel notes that the director considered the beneficiary's employment in both a managerial and executive capacity, and states that the beneficiary's employment should have been reviewed for classification in a managerial capacity only.

Counsel claims that the beneficiary's proposed employment under the employment-based petition satisfies the four regulatory criteria for "managerial capacity." Counsel states that the previously submitted affidavits establish that the beneficiary would be supervising seven employees, including one degreed professional and two supervisors. Counsel further states that the beneficiary would not be a first-line supervisor as he is supervising two employees who themselves supervise lower-level workers.

In addition, counsel contends that CIS is "embellishing" the regulatory requirement that the beneficiary possess "the authority to hire and fire" personnel, noting that the regulation also allows for the beneficiary to "recommend" personnel actions. Counsel states that CIS conceded in its denial of the petition that the

beneficiary's authority to participate in personnel decisions. Counsel contends that the director "limited the application of the regulation, only focusing on authority to directly take these actions and arbitrarily failing to consider authority to recommend these actions."

Counsel further claims that in addition to supervising the work of professional and supervisory employees, the beneficiary would manage a subdivision of the petitioning organization. Counsel restates the claims from the September 26, 2002 affidavit that the beneficiary "exercise[s] wide latitude in discretionary decision making [and] in setting goals and implementing strategies for accomplishing these goals" in the petitioner's Computer Center. Counsel also states:

Upon his transfer to work at [the petitioning organization], [the beneficiary] continued his managerial duties at the Computer Center in Houston, Texas. [The petitioner's president] explains that those duties required that he 'manage the work and analysis of others' since he is 'responsible and accountable for the on-going operations in the field that relate to log analysis.' [The beneficiary] is thus the contact person and manager for all log analysis issues. In his affidavit, [the petitioner's human resources manager] also elaborates on [the beneficiary's] duties, describing the percentage of time [the beneficiary] spends on each activity at the Computer Center. The bulk of [the beneficiary's] time is passed 'performing and supervising others' performance of log analyses.' In so doing, he 'manages, coordinates, delegates, and supervises the work of each of the individuals' who work in the Computer Center. Because '[the beneficiary] must ensure that the work product the staff is creating meets goals and expectations,' naturally he has to review and analyze the logs and data presented to him by his subordinates since he is responsible for all 'on-going log analysis operations.' An additional 20% of his time is spent performing the administrative tasks inherent in his managerial position, including evaluating employee performance, proposing budget allocations, and consulting with clients. While 5% of his time is spent training employees, a further 10% is passed planning projects and designing jobs that his subordinates will carry out. Like his foreign position, [the beneficiary] spends his time primarily managing the Computer Center, supervising the work of his supervisory and professional subordinates, and managing the essential function of log analysis for the Computer Center.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The petitioner's description of the beneficiary's job duties indicates that the beneficiary would not be primarily managing a department or subdivision of the petitioning organization as claimed by the petitioner, but instead would be performing non-qualifying operations of the company. In response to the director's request for evidence, both counsel and the petitioner's human resources manager stated that the beneficiary would spend the majority of his time analyzing and interpreting data logs, and "performing and supervising others' performance of log analysis." As discussed in the previous issue, a relevant factor in determining the beneficiary's employment as a manager is the proportion of time the beneficiary would spend "performing" log analyses as opposed to "supervising others' performance of log analysis."

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are “primarily” managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. While the AAO acknowledges counsel's claim that the beneficiary would supervise the work of other employees, the petitioner's job description indicates that the "majority" of his time is not devoted to this managerial responsibility. The petitioner concedes that the beneficiary personally "evaluates, organizes, and analyzes wireline well log data using specialized software and computer systems." The petitioner notes that an additional 20% of his time is spent performing administrative tasks of the Computer Center, including reviewing budget decisions, providing sales and marketing support to staff, and answering sales calls. In addition, the beneficiary would also consult with customers "to discuss the results of *his own* and his subordinates' log data analyses." (Emphasis added). Despite counsel's claim on appeal that the beneficiary would review and analyze log data to ensure the accuracy of his staff's work product, the previously cited representations made by the petitioner indicate that the beneficiary would also be performing his own analyses separate from his work as a supervisor. In other words, the beneficiary would devote a portion of his time to performing non-qualifying operations of the organization. The AAO cannot determine from the record what portion of the beneficiary's time would be devoted to supervising his subordinate employees. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

In addition, despite counsel's claim, the record does not establish that the beneficiary would manage an essential function of the petitioning organization. Both the petitioner and counsel contend that the beneficiary would manage the petitioner's Computer Center. It is unclear, however, how the beneficiary would "manage" the Computer Center when 20% of the beneficiary's time would be spent actually performing "many administrative-type tasks" of the Computer Center, including answering sales calls, reviewing the budget, giving presentations, and providing sales and marketing support to the staff. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must provide a job offer clearly describing the managerial or executive job duties to be performed by the beneficiary, identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 204.5(j)(5). In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. Again, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604. Furthermore, in his affidavit, the petitioner's human resources manager stated that the beneficiary is supervised by the Computer Center Manager. The reference to another individual as the "Computer Center Manager" further undermines counsel's claim that the beneficiary manages the function or operates at a senior level with respect to the function managed. In this matter, the petitioner concedes that the beneficiary is performing the duties related to the Computer Center, and therefore has not provided evidence that the beneficiary manages an essential function.

Based on the above discussion, the petitioner has failed to establish that the beneficiary's foreign employment satisfied the qualifications for classification as a manager. The petitioner has not demonstrated that the beneficiary would "primarily" manage a department, subdivision, or function of the petitioning organization. Accordingly, the appeal will be dismissed for this additional reason.

The AAO further notes that with regard to both issues, the record is not clear as to the capacity in which the beneficiary was employed by the foreign entity or would be employed by the petitioning organization. Counsel emphasizes on appeal that it is "evident" from the submitted affidavits that the beneficiary was employed abroad as a manager and would be employed by the United States entity in a managerial capacity. Counsel contends that the director failed to make a distinction between "manager" and "executive," and erred in her analysis of executive capacity. Counsel clearly overlooked the petitioner's claim in its September 26, 2002 affidavit that the beneficiary "was employed for nearly twelve years as an *executive* employee outside the United States." (Emphasis added). In fact, counsel himself states on appeal that the petitioner provided three statements that "corroborate the fact that [the beneficiary] is eligible for classification as a Multinational *Executive*." (Emphasis added). The petitioner is inconsistent in its claims of whether the beneficiary had been primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *See* 8 C.F.R. § 204.5(j)(5).

Finally, the AAO acknowledges counsel's contention on appeal that the director improperly relied on *Matter of Treasure Craft of California*, 19 I & N Dec. 190 (Reg. Comm. 1972), to support his decision to deny the petition. Counsel asserts that the regulation at 8 C.F.R. § 204.5(j)(3) requires only a statement from the petitioner which demonstrates eligibility under all criteria for this visa classification, and further notes that the petitioner submitted three sworn statements from officials of the foreign and United States companies. Counsel concludes that these sworn statements, in conjunction with supporting documents previously submitted, were sufficient to establish the beneficiary's eligibility.

Upon review, the director gave proper weight to the submitted affidavits and discussed their contents in detail in her decision. As noted by the director, and as discussed above, the submitted affidavits do not establish that the duties of the beneficiary have been or will be primarily managerial or executive in nature. Further, it is noted that the petitioner opted not to submit the organizational charts for the foreign and United States entities, which were specifically requested by the director. The regulation at 8 C.F.R. § 204.5(j)(3)(ii) allows the director to request additional evidence in appropriate cases. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The director's citation to *Matter of Treasure Craft of California* is supportive of the overriding proposition that the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *see also*, *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner's case. As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the regulation.

Beyond the decision of the director, an additional issue is whether the petitioner demonstrated the existence of a qualifying relationship between the United States entity and the beneficiary's foreign employer. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also* *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or

indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

The petitioner has submitted extensive documentation to establish a qualifying relationship between the United States company and its Canadian parent company, Precision Drilling Corporation (formerly known as Computalog Ltd.). However, it has not been established that the beneficiary worked for the Canadian entity for one year during the three years preceding his admission to the United States as a nonimmigrant intracompany transferee. Rather, the beneficiary was employed in Venezuela from 1996 to 2001. The beneficiary's Venezuelan employer is referred to in the record as a branch office of the Canadian company, Computalog, Ltd., and as an affiliate of the United States company. The beneficiary's resume identifies his foreign employer as "Computalog Venezuela C.A." Regardless of whether the beneficiary's last employer is a branch office or subsidiary of the Canadian parent company, the petitioner is required to document its continuing existence and current ownership and control in order to establish the beneficiary's eligibility for this visa classification. The petitioner had not submitted evidence to establish that the petitioner is the same employer or a subsidiary or affiliate of the entity by which the beneficiary was employer overseas. *See* 8 C.F.R. § 204.5(j)(3)(i)(C). Again, going on the 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. at 165. For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.