

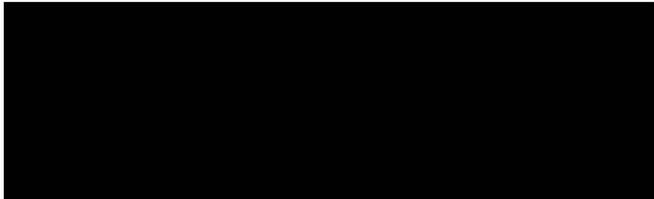
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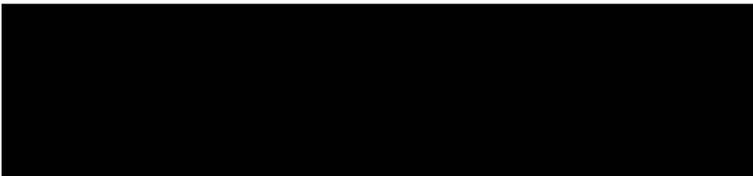
FILE: LIN 07 117 52964 Office: NEBRASKA SERVICE CENTER Date FEB 14 2008

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, Chief
Administrative Appeals Office

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

The petitioner filed the instant immigrant petition 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, an international passenger/freight airline, seeks to employ the beneficiary as a station maintenance manager based at the Orlando International Airport.

The director denied the petition on June 22, 2007 on the grounds that the petitioner failed to establish: (1) that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity prior to his transfer to the United States as a nonimmigrant intracompany transferee; and (2) that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity. The director observed that the petitioner had failed to submit an adequate response to a request for evidence issued on April 20, 2007.

On appeal, counsel for the petitioner asserts that the beneficiary manages the essential aircraft maintenance function within the company through subordinate licensed aircraft engineers and supervisors, and states that he managed the same function while employed by the foreign entity in the United Kingdom. Counsel provides further explanation regarding the beneficiary's duties and the organizational structure of the maintenance function within the foreign and United States entities. Counsel submits a brief and additional evidence in support of the appeal.

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 and 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 that 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. *See* 8 C.F.R. § 204.5(j)(5).

The first issue to be addressed in this matter is whether the petitioner established that the beneficiary would be employed by the United States entity in a primarily managerial capacity. The petitioner does not claim that the beneficiary would be employed in an executive capacity.

Section 101(a)(44)(A) of the Act defines "managerial capacity" as follows:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

The immigrant visa petition was filed on March 14, 2007. In a letter dated March 1, 2007, the petitioner stated that the beneficiary would continue to serve in his current position of "Station Maintenance Manager" based at Orlando International Airport. The petitioner stated that the beneficiary "is responsible for insuring that the quality of work performed by his subordinate aircraft maintenance engineers" meets company and government-mandated standards. The petitioner further described this position as follows:

[The beneficiary] has complete day to day discretionary authority to cancel flights, take aircraft out of service, establish contractual relationships with maintenance support contractors and other airlines to form aircraft part sharing pools as needed on an immediate and ad hoc basis. [The beneficiary] also has complete discretionary day to day authority to determine which individuals from a total of approximately 25 persons employed directly by contract aircraft maintenance companies may or may not perform work on our aircraft.

The petitioner indicated that the applicant holds a United Kingdom Civil Aviation Authority (CAA) license for Boeing 767 200/300; Boeing 747-100/200/400 and Airbus A330-200 and A340 aircraft. The petitioner noted that only persons with the proper CAA licenses are authorized to oversee and approve technical work on the petitioner's aircraft, which are all registered in the United Kingdom.

The director issued a request for evidence on April 20, 2007, in which he requested that the petitioner describe the duties of the proposed position "in much greater detail." The director instructed the petitioner to include the actual, specific, day-to-day tasks involved with the completion of each duty, and to supplement these descriptions with an estimate of the percentage of time the beneficiary dedicates to each specific duty.

The director also requested a detailed organizational chart for the petitioner illustrating its current structure and clearly depicting the beneficiary's proposed position. The director noted that the chart should include the names of all departments, teams, employees, their titles and descriptions of their job duties. The director stated that at a minimum, the chart should name the people above the beneficiary's position and the names of the employees he supervises, and identify other departments and teams and the number of employees in each department. The director emphasized that the chart must include sufficient detail to adequately illustrate the beneficiary's position in relation to others.

In a response dated June 15, 2007, the petitioner stated that the beneficiary is one of four "Duty Maintenance Managers" assigned to the Orlando International Airport, and indicated that these employees perform the following duties:

- Assigning independent contractor maintenance staff to perform particular functions on each flight for which they are responsible (20% of their time)
Insuring that U.S. FAA and U.K. CAA required procedures are performed by subordinate staff and records of aircraft maintenance are properly prepared by those contract maintenance staff (40% of their time)
Reporting work performed and costs expended to the Orlando Maintenance Manager, who reports directly to the Area Maintenance Manager – Americas (South), (25% of their time)
Physical supervision and inspection of actual work performed on each aircraft maintained to support legally required maintenance documentation (15% of their time)

The petitioner attached what was described as a "dedicated maintenance organizational chart for the United States, North and South." The attached chart for "South Americas" depicts four "Duty Maintenance Managers" reporting to the Orlando Station Manager, Phil Serik, who in turn reports to [REDACTED], Area Maintenance Manager, South Americas Stations. The chart does not depict any subordinate staff reporting to the duty maintenance managers, nor does it identify the beneficiary by name. Although the director had specifically requested that the petitioner submit position descriptions for the beneficiary's immediate supervisor and his subordinate staff, the petitioner did not acknowledge this request.

The director denied the petition on June 22, 2007, concluding that the petitioner had failed to establish that the applicant would be employed in a primarily managerial or executive capacity. The director noted that

although the petitioner initially indicated that the applicant would serve as a "Station Maintenance Manager" in Orlando, the organizational chart submitted in response to the request for evidence depicted another individual as "station manager," and the petitioner instead indicated that the applicant would be one of four "Duty Maintenance Managers." The director observed that it was unclear whether these were the same or different positions and noted that there are no subordinate employees listed under the duty maintenance manager position. The director emphasized that the petitioner had failed to provide detailed position descriptions for all relevant positions on the chart, as specifically requested in the request for evidence.

The director acknowledged the position description provided in response to the request for evidence, but found that the petitioner did not provide the requested detailed explanation of the actual day-to-day tasks performed by the beneficiary in his current position. The director noted, for example, that it was not evident what duties the beneficiary would perform to "insure that regulatory procedures are followed by contract maintenance staff." The director concluded that the petitioner had failed to establish that the beneficiary would spend the majority of his time supervising professional or supervisory personnel or that he would otherwise perform primarily managerial or executive duties.

On appeal, the petitioner references the definition of managerial capacity at 8 C.F.R. § 204.5(j)(2)(B), noting that it includes the management of an essential function within the organization or a department or subdivision of the organization. The petitioner states that the beneficiary, as a "Duty Station [Aircraft] Maintenance Manager," identifies the most essential and critical function within the company – "prevention of aircraft accidents and disasters." The petitioner explains that all of the petitioner's aircraft operating in Orlando must be maintained, inspected and repaired according to the requirements of the aircraft manufacturer and in accordance with CAA and FAA requirements, and goes on to explain in more detail the specific daily, scheduled, and ad hoc inspections required, and the detailed compliance reports that must be maintained by the maintenance department. The petitioner further explains the applicant's role as follows:

[The beneficiary] manages this essential function within [the petitioner] through subordinate licensed aircraft engineers employed directly by an independent contractor. This contractor supplies to [the beneficiary], on a daily basis, licensed aircraft engineers (the number of which is dictated by the amount of work required on a particular aircraft on a particular day or the number of scheduled aircraft), and a supervisor of those engineers who is also an employee of the independent contractor.

[The beneficiary] directly manages the independent contractor's supervisor of the items scheduled for inspection, replacement and/or repair on our Boeing 747; Boeing 767 and Boeing 777 aircraft. The independent contractor's supervisor then assigns specific day-to-day tasks and functions to be performed on the aircraft to the subordinate individual aircraft engineers. The engineers' supervisor implements the directions of [the beneficiary] in order to insure compliance with law, company policy and instructions of the aircraft manufacturer.

The independent contractor's supervisor also acts as a liaison with cabin crew (pilots and flight attendants), to insure required repairs are made inside the aircraft cockpit (aircraft

instrumentation, etc.), cabin, i.e. electronic equipment for passenger or crew use, lavatories, galleys, etc.

The petitioner again explains that because its aircraft are registered in the United Kingdom, only an individual with a CAA aircraft maintenance license may approve its maintenance records and determine whether an aircraft is airworthy. The petitioner states that the beneficiary "does this through a review of the work performed and the records prepared."

The petitioner acknowledges that the applicant does not have the authority to hire and fire the contract employees, but states that he "has full discretionary authority to dictate which individual aircraft engineers and supervisors employed by the independent contractor may work on [the petitioner's] aircraft and refuse those whose performance or work product does not meet with his satisfaction and [the petitioner's] standards of excellence and company policy."

The petitioner further addresses the beneficiary's level of authority as follows:

[The beneficiary] also has authority to recommend to [the petitioner] which independent contractor's services meet with [the petitioner's] high standards of aircraft maintenance and safety and also suppliers at Orlando Airport of aircraft parts, lubricants and other essential aircraft supplies."

[The beneficiary] has full and sole day-to-day discretionary authority to take an aircraft out of service by determining whether or not an aircraft is airworthy, on a day-to-day basis and such action results in the day of hundreds of passengers. This decision is [the beneficiary's] and [the beneficiary's] alone.

The petitioner also acknowledges the director's observations regarding the organizational chart, noting that the chart does not depict subordinate staff beneath the beneficiary because these positions are filled by contract employees. The petitioner references other airport maintenance departments included on the submitted organizational charts, noting that they in fact show up to 20 individuals in "three descending layers of hierarchy." As an example, the petitioner notes that its maintenance staff at the JFK International Airport in New York includes "nine subordinate representatives (supervisors), eight subordinate aircraft maintenance engineers and three aircraft parts store-keepers – supplemented by independent contractor aircraft engineers." The petitioner noted that because the Orlando airport has a lower frequency of flights than the JFK airport, the use of contracted staff is more cost efficient.

Finally, the petitioner emphasizes that the beneficiary is presently in the United States and is currently working in the proposed position pursuant as an L-1 nonimmigrant visa.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed by the U.S. entity in a primarily managerial capacity.

As a preliminary matter, the AAO notes that the petitioner has not adequately resolved its use of different position titles for the beneficiary's proposed position. As noted by the director, the petitioner initially

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identified the position as that of "Station Maintenance Manager" on the Form I-140 and supporting letter, but subsequently indicated that the beneficiary serves as one of four "Duty Maintenance Managers" assigned to the Orlando International Airport. Given that the organizational chart submitted in response to the request for evidence identifies the beneficiary's director supervisor as "Station Manager," it is reasonable to assume that these are two distinct positions within the petitioner's organizational hierarchy. Absent an explanation from the petitioner, the record suggests that the petitioner did not provide an accurate job title for the beneficiary at the time of filing the Form I-140. On appeal, the petitioner does not specifically address the director's observations regarding this inconsistency, although it is noted that the petitioner now refers to the position as "Duty Station [Aircraft] Maintenance Manager," apparently a hybrid of the two previous job titles.

The use of inconsistent position titles makes it impossible for CIS to make an accurate assessment of the beneficiary's position within the organizational hierarchy. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner's initial description of the beneficiary's duties failed to identify any specific managerial tasks to be performed by him in the proposed role. The petitioner stated that he has "complete day to day discretionary authority to cancel flights, take aircraft out of service, establish contractual relationships with maintenance support contractors and other airlines," as well as "complete day-to-day authority to determine which individuals from a total of approximately 25 persons employed directly by contract maintenance companies may or may not perform work on our aircraft." These broad statements convey little understanding of what specific tasks the beneficiary performs on a day-to-day basis. Making general claims regarding the scope of the beneficiary's responsibility is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner's initial description of the proposed position failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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).

Furthermore, it is noted that while the petitioner initially indicated that the beneficiary has "complete discretionary authority" to establish contractual relationships with maintenance support contractors and other airlines, the petitioner states on appeal that his authority extends to recommending which independent contractors services meet the petitioner's standards. Again, as with the change in the beneficiary's position title, the petitioner offered no explanation for this change in the beneficiary's level of authority with respect to the company's contractual relationships. Without such explanation, these conflicting statements further support a conclusion that the petitioner did not accurately identify the beneficiary's job title and duties at the time of filing.

As noted above, the director very clearly articulated in the request for evidence that the petitioner was required to describe the beneficiary's actual duties in much greater detail, including clarification regarding the "actual specific day-to-day tasks involved with the completion of each duty." The petitioner responded by listing four responsibilities and the amount of time devoted to each responsibility. The petitioner indicated that 25 percent of the beneficiary's time is devoted to "reporting work performed and costs expended" to his supervisor. The petitioner did not explain how this component of the beneficiary's position qualifies as managerial in nature. Without clarification regarding the specific tasks performed in regard to monitoring costs, for example, this responsibility could involve tasks that are more akin to administrative responsibilities that do not rise to the level of managerial capacity.

Upon review of the remaining three areas of responsibility attributed to the beneficiary, it is noted that the petitioner essentially stated that 75 percent of the beneficiary's time is spent assigning tasks to and supervising "independent contractor maintenance staff." Specifically, the petitioner indicated that the beneficiary spends 20 percent of his time assigning contract staff to perform particular functions for their assigned flights, 40 percent of his time ensuring that the staff complete required procedures and properly prepare the associated maintenance records, and 15 percent of his time physically supervising and inspecting the actual work performed on each aircraft. The petitioner did not indicate what specific tasks are involved in "ensuring" that staff complete procedures and properly prepare records, or how this responsibility differs from the beneficiary's separate responsibility for supervising and inspecting work performed by the claimed contract staff. 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 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

While the petitioner has provided a lengthy brief in support of the appeal, the petitioner does not directly address the director's finding that the petitioner failed to provide the requested detailed explanation of the actual day-to-day tasks performed by the beneficiary. The majority of the petitioner's brief is devoted to explaining the importance of the aircraft maintenance function, which was never in question, and to offering clarification regarding the staffing and reporting structure within the function. While this information will be taken into account, the petitioner still bears the burden of clearly describing the duties to be performed by the beneficiary. Here, the position descriptions submitted by the petitioner are insufficient to establish that the beneficiary would be employed in a primarily managerial capacity. 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).

Moreover, the petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Since the petitioner has indicated that the beneficiary primarily supervises subordinate personnel, and has also claimed that he manages an essential function of the company, the AAO will consider his eligibility under both criteria.

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." Section 101(a)(44)(A)(iv) of the Act. 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. Section 101(a)(44)(A)(iii) of the Act.

The petitioner has consistently indicated that the beneficiary would supervise subordinate personnel; however, the record is devoid of any evidence of these personnel, such as information regarding the number of personnel, their job titles, or their job duties. Clearly, this information is critical to any analysis of whether the beneficiary would primarily supervise a staff of professional, managerial or supervisory employees. The petitioner initially referred to the beneficiary's authority to determine which individuals from "approximately 25 persons employed directly by contract aircraft maintenance companies may or may not perform work on our aircraft." The director reasonably requested a detailed organizational chart for the petitioner and clearly advised that the chart should include the names, job titles and job duties of all employees, or, at a minimum, those of the beneficiary's subordinates and immediate supervisor.

As noted by the director, the organizational chart submitted in response to the director's request did not show any staff subordinate to the beneficiary and did not even identify the beneficiary himself by name. Nevertheless, the petitioner's description of the beneficiary's duties referenced "independent contractor maintenance staff" working under the beneficiary's supervision. While the petitioner has provided a reasonable explanation as to why the contract staff do not appear on the company's organizational chart, the fact that the beneficiary's claimed subordinates are independent contractors rather than direct employees should not have prohibited the petitioner from submitting the information requested by the director. The director made it clear that he required more information regarding the beneficiary's subordinates, including their job titles and job duties. Again, any 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). Based on the evidence in the record before the director, he properly concluded that the petitioner failed to establish that the beneficiary would be supervising a subordinate staff of managerial, supervisory or professional personnel, as required by section 101(a)(44)(A)(ii) of the Act.

On appeal, the petitioner has provided further explanation regarding the organization of its aircraft maintenance function in general, but still has not established who the beneficiary actually supervises or what their job titles and job duties are. The petitioner indicates that the previously referenced independent contractors include both licensed aircraft engineers and "a supervisor of those engineers" who are supplied to the beneficiary by an independent contractor on a daily basis. The petitioner states that the beneficiary

manages the independent contractor's supervisor and that this employee assigns tasks and functions to the engineers and "implements the directions of [the beneficiary]." As discussed above, the petitioner stated in its letter dated June 15, 2007 that the beneficiary "assigns independent contractor maintenance staff to perform particular functions on each flight for which they are responsible." It appears that the petitioner is now attributing this task to previously unidentified supervisors employed by the independent contractors. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Furthermore, the petitioner does not provide any specific information on appeal regarding the job titles and duties of the "25 persons employed directly by contract aircraft maintenance companies" who are claimed to work under the supervision of the beneficiary and the three other duty maintenance managers assigned to the Orlando International Airport. Instead, the petitioner indicates that the duty maintenance managers at a different airport, John F. Kennedy International Airport (JFK), supervise nine "subordinate representatives (supervisors)," eight aircraft maintenance engineers and three aircraft parts store-keepers, in addition to independent contractor aircraft engineers. The petitioner implies that this same three-tier hierarchy exists within the independent contractors staff utilized at the Orlando International Airport. However, there are two problems with the petitioner's argument. First, it is unclear why the petitioner did not simply provide evidence related to the actual contractors it utilizes at the Orlando International Airport and actually supervised by the beneficiary, rather than asking that the AAO draw parallels between staffing structures utilized at different airports. It would be sufficient for the petitioner to identify the name of the contractor, the names of the contract staff available to work under the beneficiary's supervision, their job titles and a brief description of their job duties. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Second, the AAO notes that the petitioner's description of the staffing structure at one of its more fully staffed airports does not comport with the organizational chart it provided. The petitioner refers to nine "subordinate representatives (supervisors)," but the petitioner identifies these employees as "Maintenance Repts." on the organizational chart and the eight "aircraft maintenance engineers" are identified as "mechs", presumably "mechanics." The petitioner did not provide job descriptions or job requirements for any of these positions. Even if the AAO were to accept that the claim that the independent contractor staff is similarly organized, it could not be determined whether these positions are supervisory or professional in nature. *See* 8 C.F.R. § 204.5(j)(4)(i).

Based on the foregoing discussion, the petitioner has not established that the beneficiary primarily manages a subordinate staff of managerial, supervisory or professional employees. The petitioner has also acknowledged that the beneficiary does not have the authority to hire or fire employees or to recommend these personnel decisions because his subordinates are not direct employees. It appears that, at most, the beneficiary and the petitioner's other duty maintenance managers have the authority to refuse to accept the services of individual employees of the independent contractor if their work is found to not meet the petitioner's standards. The petitioner has not established that the beneficiary will be employed in a managerial capacity on the basis of his supervisory responsibilities.

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, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. The term "essential" is commonly defined as "inherent" or "indispensable." *Webster's II New College Dictionary* 384 (2001). Accordingly, based on the plain meaning of the word "essential," the petitioner must establish that the function managed by the beneficiary is inherent and indispensable to the petitioner's operations rather than a non-essential or superfluous task.

Based on the statutory definition of managerial capacity, a petitioner must prove the following elements to establish that a beneficiary is primarily serving as a function manager within an organization:

First, the beneficiary must manage an "essential function" within the organization, or a department or subdivision of the organization;

Second, the beneficiary must function at a "senior level" within the organizational hierarchy or with respect to the function managed; and

Third, the beneficiary must control and "exercise discretion" over the day-to-day operations of the function.

See sections 101(a)(44)(A)(ii), (iii), and (iv) of the Act.

If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. 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). If a petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The AAO does not dispute that the aircraft maintenance function is absolutely essential for any commercial airline, or that the beneficiary's position is important to the petitioner. However, the evidence submitted falls significantly short of establishing that the beneficiary performs primarily managerial duties. As discussed, his primary duties involve the supervision of independent contractor aircraft maintenance staff that has not been documented by the petitioner. The petitioner has not shown how the beneficiary functions at a senior level with respect to the function managed. The record shows that within the Orlando International Airport station, there are three other employees with precisely the same level of authority over aircraft maintenance activities relative to the beneficiary, and one employee who is senior to the beneficiary. While the beneficiary's is noted, the record does not establish that the scope or level of his authority rises to that of a function manager. Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

The remaining issue to be addressed is whether the petitioner established that the beneficiary was employed by the foreign entity in a primarily managerial capacity. Again, the petitioner has not claimed that the beneficiary was employed in an executive capacity.

The petitioner indicated in its letter dated March 1, 2007 that the beneficiary was employed as a Station Maintenance Manager at London Heathrow Airport from 1991 until 2003, at which time he was transferred to the United States as a nonimmigrant intracompany transferee. The petitioner stated that his duties in that position were identical to those he currently performs in the United States. The petitioner further stated:

In that position, [the beneficiary] managed approximately 100 licensed [company] maintenance staff and was responsible for [the petitioner's] aircraft and other airlines under contract to [the petitioner]. [The beneficiary] was directly responsible to upper level technical management for the quality of aircraft maintenance performed by those staff to insure it met the company standards and adhered to United Kingdom Government regulations.

In the request for evidence issued on April 20, 2007, the director requested additional evidence including a detailed, specific description of the beneficiary's day-to-day duties while employed by the foreign entity, and an estimate of the amount of time he devoted to each specific duty. The director also requested a detailed organizational chart for the foreign entity that corresponds with the beneficiary's period of qualifying employment abroad, noting that it should, at a minimum, clearly identify the beneficiary, his supervisor, his subordinates and their names, job titles and job duties.

As noted above, the petitioner responded to the director's request for evidence in a letter dated June 15, 2007, in which it stated:

With respect to the beneficiary's responsibilities abroad, [the petitioner] is extremely large in the United Kingdom. In London, [the petitioner's] maintenance is responsible for maintenance of over 350 [company] aircraft, aircraft of Virgin Atlantic, South African Airways, KLM Royal Dutch Airlines and vie other airlines. Accordingly, [the petitioner] in London has over 800 maintenance staff, Duty Managers and maintenance Station Managers.

The petitioner did not address the director's request for a more detailed description of the beneficiary's duties or provide the requested organizational chart.

The director denied the petition on June 22, 2007, concluding that the petitioner had failed to establish that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity. In denying the petition, the director observed that the petitioner "failed to comply with the Service's very specific request for additional evidence regarding the nature of the duties performed abroad and the beneficiary's position relative to others." The director concluded that based on the minimal evidence provided, it could not be concluded that the beneficiary's duties with the foreign entity were primarily in a qualifying capacity.

On appeal, the petitioner asserts that the beneficiary's responsibilities in his prior position with the foreign entity were identical to those he performs in the United States. The petitioner notes that while employed

abroad, the beneficiary also had the authority to hire or dismiss subordinate aircraft engineers and to recommend promotions. The petitioner explained that in London, the subordinate employees were all direct employees of the petitioning company and not contractors. The petitioner further clarifies that the beneficiary's duties in the United Kingdom also included providing training and recurrent training in aircraft maintenance procedures to subordinate maintenance supervisors and aircraft engineers, a responsibility that required approximately 15 percent of his time.

The petitioner further explained the applicant's supervisory duties as follows:

In London, [the beneficiary] managed maintenance for up to 20 flights each day. The number of aircraft engineers assigned to any given flight was dictated solely by the maintenance work required on a particular aircraft on any given day. As [the petitioner] operates a 24/7/365 maintenance operation at London Heathrow (three eight-hour shifts), responsible for over 300 flights daily, the actual employees subordinate to [the beneficiary] depended upon the individual supervisors and subordinate aircraft maintenance engineers on duty on any given day or shift and were from an overall pool of nearly 200 subordinate aircraft maintenance engineers.

The petitioner noted that it employs over 2,000 employees in Heathrow airport alone, and that of these employees, the beneficiary managed "a large revolving group on individual aircraft maintenance engineers and aircraft parts store-keepers . . . through subordinate supervisory aircraft maintenance staff." With respect to the beneficiary's supervision of subordinate supervisors, the petitioner states:

[The beneficiary] managed subordinate aircraft maintenance supervisors – based on the date and shift, from a pool of 73 supervises who directly supervised aircraft engineers performing actual day-to-day tasks of aircraft maintenance, from a pool of 142 individuals. . . . [The petitioner] respectfully submits that, in light of the foregoing, identification of the employees [the beneficiary] managed, together with turnover, is a very daunting task.

Upon review, the petitioner has not fully overcome the grounds stated for denial. As discussed, the petitioner failed to respond to the director's request for evidence regarding the beneficiary's duties while employed abroad and the organizational structure of the foreign entity. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). 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). The suggestion that it would be difficult for the petitioner to provide the requested information because of its large size, even when given 12 weeks to respond to a request for evidence, is not persuasive. Therefore, the director's denial of the petition on this basis was proper.

Further, it is noted that the petitioner has repeatedly stated that the position the beneficiary held in the United Kingdom is identical to the position he currently holds in the United States. For that reason, several of the deficiencies discussed above would also apply to an analysis of the beneficiary's duties with the foreign

entity. The petitioner initially indicated that the beneficiary held the job title of "Station Maintenance Manager" with both the U.S. and foreign entities. However, the petitioner subsequently indicated that the beneficiary currently holds the position of "Duty Maintenance Manager," which, based on the petitioner's evidence submitted, appears to be a distinctly different position from that of "Station Maintenance Manager," and less senior within the company's organizational hierarchy. As the petitioner indicates that the beneficiary held the same position in the United Kingdom, it is unclear whether his position while employed abroad was Station Maintenance Manager or Duty Maintenance Manager. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Again, the petitioner has not addressed this issue on appeal.

The AAO acknowledges that the petitioner has consistently stated that the applicant supervised a large staff of subordinates who were direct employees of the foreign entity. The petitioner initially stated that the beneficiary managed "approximately 100 licensed maintenance staff" and was responsible to upper level technical management for the quality of the aircraft maintenance performed by these staff. However, the petitioner offered no information regarding the job titles or duties of these staff and did not specifically state that the beneficiary managed supervisors or professionals.

In response to the request for additional evidence regarding the beneficiary's duties, the foreign entity's organizational structure, and the job titles and job duties of the beneficiary's subordinates the petitioner stated: "[the petitioner] in London has over 800 maintenance staff, Duty Managers and maintenance Station Managers." Again, as noted above, it is not clear which position title the beneficiary held or where that position was located within the organizational hierarchy. Although it was perhaps not feasible to identify 800 employees by name on an organizational chart, it was not unreasonable to expect some meaningful response from the petitioner, such as the approximate number of employees holding each position title within the maintenance department, job descriptions for the positions subordinate to the beneficiary's, and/or a general chart clearly showing the reporting structure within the beneficiary's department.

On appeal, the petitioner clarifies that the beneficiary's subordinates were drawn from "an overall pool of nearly 200 subordinate aircraft maintenance engineers," and noted that there were 73 supervisors and 142 aircraft engineers available to work under his supervision. The petitioner still has not submitted a description of the duties performed by the beneficiary's subordinates, nor has it explained why it previously indicated that he supervised 100 people.

Overall, there is insufficient evidence in the record regarding the beneficiary's actual duties while employed by the foreign entity. Further, the lack of evidence pertaining to the organizational structure of the foreign entity and the beneficiary's place within the hierarchy prohibits a finding that the beneficiary primarily supervised subordinate professional, supervisory or managerial staff, and also precludes the AAO from determining that he functioned at a senior level with respect to the foreign entity's aircraft maintenance function. Accordingly, the appeal will be dismissed.

The AAO acknowledges that the beneficiary is currently employed by the petitioner in L-1 status. In this case, it appears that the beneficiary's previous L-1 petition(s) were submitted under the petitioner's blanket L petition and were thus adjudicated by U.S. consular officers. This matter, therefore, presents the first opportunity that CIS has had to determine this beneficiary's eligibility pursuant to the statutory definitions of managerial and executive capacity.

The prior nonimmigrant approvals do not preclude CIS from denying an extension or a separate immigrant petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity and on similar definitions of qualifying relationship/organization. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44) and 8 C.F.R. § 204.5(j)(2) and 8 C.F.R. § 214.2(l)(1)(ii). Although the statutory definitions for managerial and executive capacity are the same and the definitions of qualifying relationship/organization are similar, the question of overall eligibility requires a comprehensive review of all of the provisions, not just these definitions. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

In general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. Accordingly, many Form I-140 immigrant petitions are denied after CIS approves prior nonimmigrant Form I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

Moreover each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. *See* 8 C.F.R. § 103.8(d). The approval of a nonimmigrant petition does not guarantee that CIS will approve an immigrant petition filed on behalf of the same beneficiary. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

ORDER: The appeal is dismissed.