

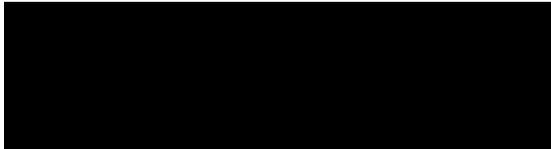
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE: [REDACTED]
LIN 06 255 51245

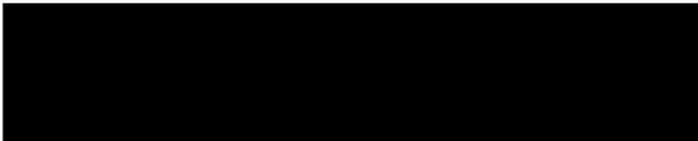
Office: NEBRASKA SERVICE CENTER

Date: NOV 03 2008

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a Delaware corporation, is a commercial airline business which claims to have a qualifying relationship with Continental Airlines, Inc., the beneficiary's foreign employer. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be or has been employed in a primarily managerial or executive capacity.

On appeal, counsel to the petitioner disputes the director's findings, asserts that the beneficiary will perform, and has performed, primarily qualifying duties, and submits a brief.

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 a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A "United States employer" may file 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.

Title 8 C.F.R. § 204.5(j)(3) explains that a petition filed for a multinational executive or manager under section 203(b)(1)(C) must be accompanied by a statement from an authorized official of the "petitioning United States employer" which demonstrates that:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

The first issue in this proceeding is whether the petitioner provided sufficient evidence to establish that it will employ the beneficiary 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) 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.

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 described the beneficiary's proposed job duties as "supervisor – airport services" in Louisville, Kentucky in a letter dated May 30, 2006 as follows:

- Supervise and coordinate activities of airport employees and agents to provide services for airline passengers.
 - Interpret company policies and procedures for employees and ensure compliance to all company policies and procedures including adherence to internal control measures and consistent compliance to customer first initiatives.
 - Observe activities of employees to evaluate work performance and maintain personnel records.
 - Train, explain and demonstrate methods and skills required for obtaining optimum performance.
 - Prepare daily duty assignments for airport sales agents.
 - Assist general manager in the operation and administration of the station including direct and documentary counseling and development of agent work force.
 - Ensure that all relevant and required company procedures and standards are observed and maintained.
- Substitute for general manager in her/his absence.

On June 15, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties, a breakdown of the amount of time the beneficiary will devote to each of her ascribed duties, an organizational chart, and descriptions of the duties of any subordinate workers.

In response, the petitioner further described the beneficiary's proposed duties as follows:

1. Substitute for general manager in her/his absence, using managerial discretion to reach satisfactory resolutions to any problem at any station. **15%**
2. Resolving ticketing, overselling, delayed flights and passengers[] complaints during irregular operations. This capacity requires managerial discretion to facilitate customer needs when policy does not dictate any obvious resolution. **5%**
3. Coordinate activities between:
 - 1) local (TSA) and federal (FAA) authorities;
 - 2) airport employees and;
 - 3) our company agents.Managerial discretion is used in this capacity to ensure company operation schedules are responsive to any changes in airport conditions or security requirements and vice versa. Supervisor of Airport Services must ensure the company work force is responsive to frequent changes in airport conditions or security threats by redirecting or reallocating manpower throughout the day. **40%**
4. Interpret company policies and procedures for employees and ensure compliance to all company policies and procedures including adherence to internal control measures and consistent compliance to customer first initiatives. Ensure local (TSA) and federal (FAA) regulations are correctly enforced at all stations. This often requires managerial discretion in determining what does and does not qualify as regulatory enforcement. **10%**
5. Observe activities of employees to evaluate work performance and maintain personnel records for the human resources department. At a company this size, the human resource department normally handles hiring and firing decisions (based upon supervisory recommendations noted in personnel records). **10%**
6. Organize and audit station controls, expenses, sales report, oversell reports to ensure there are no discrepancies between actual coordinated activities and documented schedules. **10%**
7. Prepare daily duty assignments for agents and provide any required training for optimum performance of those duties. **10%**

The petitioner also submitted an organizational chart showing the beneficiary reporting to the station manager and supervising "agents." The petitioner does not indicate how many "agents" are supervised by the beneficiary. The duties of the "agents" are described as follows:

Performs a variety of duties according to the functional work area assignment, however, in certain stations and under certain circumstances may be required to perform all functions.

Subject to rotating shifts and off days. Ticket/Gates/Check-In: Handles all facts of work associated with ticketing and making reservations from passengers and those activities necessary to board and deplane passengers, including tagging and lifting passenger's baggage to bag belt for delivery to ramp. Baggage Service: Assists passenger in locating lost baggage or handling damages that may occur. Includes some clerical duties related to the reporting of baggage disposition and repair. Operations/Ramp: Responsible for directing[,] loading and unloading of aircraft, coordinating of load plans, directing ground movements, and communicating with aircraft, crew briefing and planning. Cargo: Responsible for the acceptance/delivery and handling of cargo shipments including preparation of paperwork, collection of funds and receipts and lifting and transporting shipments to/from loading equipment.

On December 13, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

On appeal, counsel to the petitioner asserts that the director erred and that the beneficiary will primarily perform qualifying duties. Counsel also provided a materially different job description and breakdown of the amount of time to be devoted to each of these duties for the proffered position.

Upon review, counsel's assertions are not persuasive in establishing that the beneficiary will be employed in a primarily managerial or executive capacity.

As a threshold issue, it is noted that counsel's attempt on appeal to submit a materially different job description for the beneficiary was inappropriate and will not be considered by the AAO in determining whether the beneficiary will be employed in a primarily managerial or executive capacity. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change the position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Furthermore, counsel's job description submitted on appeal was not corroborated with any evidence. The unsupported statements of counsel on appeal are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Accordingly, the petition will be adjudicated based on the record before the director.

In examining the executive or managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The actual duties themselves 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).

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. To the contrary, it appears that the beneficiary will primarily perform non-qualifying administrative, operational, and first-line supervisory tasks which will not rise to the level of being managerial or executive in nature. For example, in supervising airport services for the petitioner in Louisville, Kentucky, the beneficiary is described as primarily ensuring that her subordinates are "responsive to frequent changes in airport conditions or security threats by redirecting or reallocating manpower throughout the day," resolving customer complaints, interpreting policies and procedures for employees, ensuring employee compliance with policies and procedures, evaluating employees, maintaining personnel records, and preparing duty assignments and schedules. Accordingly, it appears that the beneficiary will devote virtually all of her time to supervising an undetermined number of "agents" and performing essential operational and administrative tasks pertaining to human resources, customer relations, and policy compliance. However, none of these ascribed tasks constitutes a qualifying duty. The fact that the petitioner has given the beneficiary a managerial or executive title does not establish that the beneficiary will actually perform managerial or executive duties. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). It appears that the beneficiary will be, at most, a first-line supervisor of non-professional workers. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. Section 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Likewise, the petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As noted above, the petitioner claims that the beneficiary will supervise "agents" who are described as performing the tasks necessary to the provision of airline services. However, as none of these subordinate employees have been described as having supervisory or managerial responsibilities over other workers, it has not been established that the beneficiary will supervise and control the work of supervisory or managerial employees. To the contrary, it is more likely than not that the beneficiary will be the first-line supervisor of the agents. Moreover, as the petitioner failed to establish the skills or educational backgrounds required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.

In addition, counsel on appeal argues that the beneficiary will manage an essential function of the organization, the record does not support this position. 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. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary will manage 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)(2) and (5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than

perform the tasks related to the function. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. As explained above, the record indicates that the beneficiary will more likely than not primarily perform non-qualifying tasks and serve as a first-line supervisor. Even if "quality control" and regulatory compliance were established to be "essential functions" of the organization, which they have not, the beneficiary's administration of these functions would not establish that she will be employed as a "function manager" for purposes of this visa classification if she will instead primarily perform the functions she will allegedly manage. As the beneficiary will more likely than not primarily perform non-qualifying, first-line supervisory tasks in her administration of these "functions," it cannot be concluded that she will manage an essential function. *See generally IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Accordingly, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. As explained above, it appears more likely than not that the beneficiary will primarily perform the tasks necessary to produce a product or to provide a service and will act as a first-line supervisor of non-professional workers. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.

The second issue in the present matter is whether the petitioner has established that the beneficiary was employed abroad in a primarily managerial or executive position.

The petitioner claims that the beneficiary was employed abroad as "reservation and [center ticketing office] supervisor" in Tel Aviv, Israel. The petitioner describes the duties of the beneficiary in a letter dated May 30, 2006 as follows:

- Manage and oversee all activities of reservation and ticket sales.
- Supervise and train employees, and monitor and evaluate reservation agents.
- Supervise and assist [center ticketing office] agents solving pricing and ticketing problems.

- Conduct fare analysis and promote sales for special fares.
- Manage team meetings and prepare evaluation reports on the performance of employees.
- Making daily sales report and prepare monthly summary report.
- Ensure compliance to all company policy and procedures.

On June 15, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's duties, a breakdown of the amount of time the beneficiary devoted to each of her ascribed duties, an organizational chart, and descriptions of the duties of any subordinate workers.

In response, the petitioner further described the beneficiary's duties abroad as follows:

1. Managed entire reservation department [in] the absence of reservation management: coordinated with airport officials on daily basis, assisted all stations with all problems as required. **10%**
2. Managed CTO (center ticketing office), managing all activities of ticketing sales, including quality assurance. Coordinated with Headquarters Tel Aviv and adjusted rules to the local market conditions. Managerial discretion utilized in this capacity to reach practical resolutions and to determine proper adjustments. **40%**
3. Human resource management: classify potential candidates' resume for interviews, conduct interviews and recommend new candidates for hire. Supervised and trained employees, monitored and evaluated their performance. Created guidance and instructions for new hires to explain expectations. Manage team meetings and prepare evaluation reports on performance of employees for promotion or termination recommendations. **20%**
4. Ensured compliance to all company and policy and procedure. This required managerial discretion to determine whether certain actions were consistent with policies. **20%**
5. Made daily sales report and prepared monthly summary report. In addition, conducted fare analysis and promoted sales for special fares on group fares and corporate contracts. **10%**

The petitioner also submitted an organizational chart showing the beneficiary subordinate to a "senior director" and a "reservation supervisor" and directly supervising "agents." Once again, the petitioner does not indicate how many "agents" were supervised by the beneficiary. The duties of the "agents" are described as follows:

This is a cross-utilized agent position. Responsibilities include issuing tickets, tags, luggage and proper fare and routing to assure passengers[] travel plans are efficient and correct. Maintain custody of cash and credit receipts. The operation [of] telephone system/business machines, computers, word processors to complete work required on a daily basis. Station controls and CRO training a plus. Perform routine housekeeping task to maintain work area and mechanical equipment. Attendance and performance must be in good standing in

accordance with applicable work rules. This position may be assigned to guide arriving and departing aircraft, jet ways, trucks or baggage inside the aircraft body to assure loads are balanced and secure. Direct freight materials servicing 6 to 8 airplanes per shift. Handle materials that cannot be handled by material handling devices. The position works from the ground and aerial devices at heights up to 10 feet. Will require shift work. A high school diploma or equivalent as well as a valid driver's license are required. Prior airline experience preferred. Physical requirements include, but are not limited to, standing 100% of the time, using hands and fingers to perform tasks with extended reach at shoulder height and extended reach in front of body. Requires lifting customer baggage weighing up to 75 pounds or more from counter space and places on the conveyor belt.

On December 13, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary was employed in a primarily managerial or executive capacity.

On appeal, counsel to the petitioner asserts that the director erred and that the beneficiary was primarily performing qualifying duties. Counsel also provided a materially different job description and breakdown of the amount of time devoted to each of these duties for the position abroad.

Upon review, counsel's assertions are not persuasive in establishing that the beneficiary was employed in a primarily managerial or executive capacity.

As a threshold issue, it is again noted that counsel's attempt on appeal to submit a materially different job description for the beneficiary was inappropriate and will not be considered by the AAO in determining whether the beneficiary was employed in a primarily managerial or executive capacity. On appeal, a petitioner cannot materially change the position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 176. Furthermore, counsel's job description submitted on appeal was not corroborated with any evidence. The unsupported statements of counsel on appeal are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. at 188-89 n.6; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503. Accordingly, the petition will be adjudicated based on the record before the director.

As explained above, in examining the executive or managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. At 1108, *aff'd*, 905 F.2d 41.

In this matter, and similar to the proffered position in the United States, the petitioner's description of the beneficiary's job duties abroad fails to establish that the beneficiary acted in a "managerial" or "executive" capacity. To the contrary, it appears that the beneficiary primarily performed non-qualifying administrative, operational, and first-line supervisory tasks which do not rise to the level of being managerial or executive in nature. For example, the beneficiary is described as primarily administering reservations and ticketing as a first-line supervisor of a subordinate staff of an indeterminate size. Accordingly, it appears that the

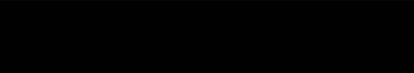
beneficiary devoted virtually all of her time to supervising "agents" and performing essential operational and administrative tasks pertaining to ticketing and airline reservations. However, none of these ascribed tasks constitutes a qualifying duty. The fact that the petitioner has given the beneficiary a managerial or executive title does not establish that the beneficiary actually performed managerial or executive duties. Once again, an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. It appears that the beneficiary was, at most, a first-line supervisor of non-professional workers. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. Section 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Likewise, the petitioner has also failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As noted above, and similar to the proffered position in the United States, the petitioner claims that the beneficiary supervised "agents" who are described as performing the tasks necessary to the provision of airline services. However, as none of these subordinate employees have been described as having supervisory or managerial responsibilities over other workers, it has not been established that the beneficiary supervised and controlled the work of supervisory or managerial workers. To the contrary, it is more likely than not that the beneficiary was no more than the first-line supervisor of the agents. Moreover, as the petitioner failed to establish the skills or educational backgrounds required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary managed professional employees.

In addition, counsel on appeal also argues that the beneficiary managed an essential function of the organization, the record does not support this position. As explained above, the record indicates that the beneficiary was more likely than not primarily performing non-qualifying tasks and serving as a first-line supervisor. Even if reservations and ticketing were established to be "essential functions" of the organization, which they have not, the beneficiary's administration of these functions would not establish that she was employed as a "function manager" for purposes of this visa classification if she was primarily performing the function she is claimed to have managed. As the beneficiary more likely than not primarily performed non-qualifying, first-line supervisory tasks in her administration of these "functions" abroad, it cannot be concluded that she was managing an essential function. See generally *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d at 24. Accordingly, the petitioner has not established that the beneficiary was employed primarily in a managerial capacity.

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. As explained above, it appears more likely than not that the beneficiary was primarily performing the tasks necessary to produce a product or to provide a service and acted as a first-line supervisor of non-professional workers. Therefore, the petitioner has not established that the beneficiary was employed primarily in an executive capacity.

Accordingly, the petitioner has failed to establish that the beneficiary primarily performed managerial or executive duties abroad, and the petition may not be approved for that reason.



LIN 06 255 51245

Page 12

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.