

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**

B4



FILE: [Redacted]  
LIN 06 214 52099

Office: NEBRASKA SERVICE CENTER

Date: OCT 31 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 is a Georgia limited liability company which claims to be a flooring business having a qualifying relationship with the beneficiary's previous employer in Colombia. 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, the petitioner disputes the director's findings, asserts that the beneficiary will perform, and has performed, primarily qualifying duties, and submits a brief and additional evidence in support.

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 "general manager" in the Form I-140 as follows:

Makes legal & financial decisions, management of daily operations, seeks new clients, draws needed contracts, control of hiring and firing of personnel, manages bank accounts.

The petitioner also claims in the Form I-140 to employ six workers and further describes the beneficiary's duties in a letter dated July 10, 2006 as follows:

[The beneficiary] will continue to hold a General Manager position to make all legal and financial decisions, will manage and direct daily operations, seek new clients, draw needed contracts, control the hiring and firing [of] personnel, and management of bank accounts.

The petitioner also described its other five employees in a document titled "Current Staffing Level in the United States." The petitioner claims to employ a "customer service and secretary" worker who deals with customers, answers the telephone, and files documents. The petitioner also claims to employ four "installers" of flooring.

On May 15, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties.

In response, the petitioner further described the beneficiary's duties on a daily basis over the course of a week. As this document is in the record, its contents will not be repeated here verbatim. Generally, the beneficiary is described as performing tasks such as: obtaining working orders, meeting the installation crews, providing instructions at job sites, reviewing bank accounts, preparing time sheets for workers, personally overseeing jobs, searching the internet for potential customers to target for direct mail advertising, visiting customers in order to market services, preparing invoices, and calling clients regarding job performance.

On September 18, 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, the petitioner asserts that the director erred and that the beneficiary will primarily perform qualifying duties. The petitioner submits a brief and additional evidence, including documents claiming that the petitioner has hired additional workers after the filing of the instant petition.

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 the petitioner's attempt on appeal to supplement the record with evidence that it has hired additional workers, including a supervisory employee, after the filing of the petition 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. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, additional employees hired after the filing of the instant petition, including a claimed subordinate supervisor, may not be used to establish that the beneficiary will primarily perform qualifying duties. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a 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).

Therefore, 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 managing and directing the petitioner's "daily operations" as a flooring business, the beneficiary is claimed to obtain work orders, meet

with the flooring installation crews, provide instructions at job sites, review bank accounts, prepare time sheets for workers' payroll, personally oversee jobs, search the internet for potential customers, make sales calls on customers, prepare invoices, and telephone clients regarding job performance. Accordingly, it appears that the beneficiary will devote virtually all of her time to supervising a single clerical worker and four flooring installers and performing essential administrative tasks pertaining to invoicing, payroll, customer relations, and marketing. 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 she 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. 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 a secretary and four flooring installers. However, as none of these subordinate employees have supervisory or managerial responsibilities over others, the beneficiary will not supervise and control the work of supervisory or managerial workers. To the contrary, the beneficiary will be the first-line supervisor of the single clerical worker and the four flooring installation employees. 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. Accordingly, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>1</sup>

---

<sup>1</sup>While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. 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. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her duties will be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. See *IKEA US, Inc. v.*

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 five non-professional workers. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9<sup>th</sup> Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991)); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

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 with 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 the "general manager" of the foreign employer in Colombia and describes her duties in an attachment to the Form I-140 as follows:

Makes final financial and commercial decisions on information provided by Administrator of [the foreign employer] via facsimile, e-mail, or telephone. Also, manages commercial relations with different clients based in Colombia via telephone, facsimile or e-mail.

The petitioner also submits an organizational chart for the foreign employer pertaining to the time period during which the instant petition was filed. The chart shows the beneficiary at the top of the organization directly supervising an "administrator," who, in turn, is shown supervising three workers. The petitioner claims the "administrator" has earned a bachelor's degree in commerce.

On May 15, 2007, the director requested additional evidence. The director requested, *inter alia*, an organizational chart pertaining to the time period during which the beneficiary was employed abroad, a more detailed description of the beneficiary's duties, and descriptions of the duties of the beneficiary's immediate subordinate employees.

In response, the petitioner submitted a revised organizational chart showing the beneficiary at the top of the organization directly supervising an "administrator" who, in turn, is shown supervising a sales worker and a secretary. The sales worker and the secretary are each portrayed as supervising a single subordinate worker. The beneficiary's duties are described as follows:

Made all financial and commercial decisions, managed all bank accounts, directed daily operations, made final decisions regarding firing/hiring of personnel, drew needed contracts/invoices, for purchases, deliveries, and trade activities.

The foreign employer submitted an undated letter which indicates that the beneficiary allegedly devoted 80% of her time abroad to performing these duties.

Likewise, the duties of the "administrator" are described as follows:

Manages personnel, sends and receives financial information, maintain book-keeping, authorizes sales and purchases accordingly, manages and resolves service to clients, works together with warehouse-man and record keeping of inventory.

The other employees are described as performing the tasks necessary to the provision of a service or the production of a product. None of the other four workers is described as having supervisory or managerial authority over other workers despite the configuration of the organizational chart.

On September 18, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity.

On appeal, the petitioner asserts that the director erred and that the beneficiary primarily performed qualifying duties abroad. The petitioner argues that the director incorrectly interpreted the organizational chart and thus wrongfully determined that the beneficiary worked as both the manager and the administrator abroad. In support, the petitioner submits a revised organizational chart for the foreign employer which shows the beneficiary supervising the "administrator" who, in turn, is shown supervising all other employees.

Upon review, the petitioner'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 noted that the AAO agrees with the petitioner that the director misinterpreted the submitted organizational chart. Upon review, it does not appear as if the petitioner is claiming that the beneficiary performed the duties ascribed to both the manager and the administrator. Instead, it appears as if the administrator position was actually filled by a person having a name very similar to the beneficiary's name, and the director simply misread the chart. Accordingly, this determination shall be withdrawn. Nevertheless, and for the reasons set forth below, the AAO agrees with the director's ultimate conclusion that the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity, and the appeal will be dismissed. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

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, the petitioner's description of the beneficiary's job duties abroad fails to establish that the beneficiary acted in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary did on a day-to-day basis and, consequently, fails to establish that the beneficiary "primarily" performed qualifying duties. For example, the petitioner states that for 80% of the time the beneficiary "made all financial and commercial decisions," managed bank accounts, directed daily operations, made personnel decisions, and prepared contracts and invoices pertaining to "purchases, deliveries, and trade activities." However, the petitioner does not specifically explain what financial and commercial decisions were made by the beneficiary or describe what, exactly, the beneficiary did on a day-to-day basis to "direct" daily operations. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary actually performed managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties were primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.* Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Consequently, the record is not persuasive in establishing that the beneficiary "primarily" performed qualifying duties in her administration of the enterprise abroad. Not only is the job description so vague that it cannot be concluded that any of her duties were bona fide managerial or executive duties, it appears that many of her duties were in fact non-qualifying administrative or operational tasks. For example, the petitioner claims that the beneficiary managed bank accounts and prepared contracts and invoices pertaining to "purchases, deliveries, and trade activities." However, these are non-qualifying operational or administrative tasks and not qualifying managerial or executive duties. As the record is devoid of evidence establishing what portion of the 80% of the beneficiary's time was devoted to these non-qualifying tasks, it would not be possible to conclude that the beneficiary was primarily performing qualifying duties abroad even assuming that the remaining duties had been established to be qualifying, which they have not (*see supra*). Once again, an employee who "primarily" performed the tasks necessary to produce a product or to

provide services is not considered to have been "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.

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, the petitioner claims that the beneficiary directly supervised an "administrator" who, in turn, supervised the other workers. However, upon review, it has not been credibly established that the administrator was a bona fide supervisory or managerial worker. Although the petitioner claims in the organizational chart that the administrator had supervisory authority over other workers, the job duties ascribed to this worker do not describe her as having bona fide supervisory authority. To the contrary, most of the tasks ascribed to this worker are clerical in nature, e.g., sending and receiving financial information, maintaining bookkeeping, authorizing sales and purchases, dealing with customers, record keeping, and administering inventory. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to other workers, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. In this matter, simply alleging that the administrator "manages personnel" and placing her on an organizational chart in between the beneficiary and the other workers does not establish that the administrator was, in fact, employed as a bona fide supervisor or manager having a significant degree of control over other workers. Once again, specifics are clearly an important indication of whether a worker's duties were primarily supervisory or managerial in nature. See generally *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. At 1108, *aff'd*, 905 F.2d 41. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Accordingly, it appears more likely than not that the beneficiary was, at most, a first-line supervisor of non-professional workers. Once again, 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. 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Furthermore, the petitioner has not established that the beneficiary supervised professional workers abroad. Although the petitioner claims that the "administrator" and other subordinate workers have earned bachelor's degrees, the petitioner has failed to establish that the vaguely described duties ascribed to these workers require the acquisition of such degrees. In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Accordingly, the AAO must focus on the level of education required by the position, rather than the degree held by the subordinate employee. The possession of a bachelor's degree by a subordinate employee does not

automatically lead to the conclusion that an employee was employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the tasks of any of the vaguely described subordinate workers.

Similarly, the petitioner has failed to establish that the beneficiary acted in an "executive" capacity. The beneficiary's job description is so vague that it cannot be discerned what, exactly, the beneficiary did on a day-to-day basis. Furthermore, as explained above, it appears more likely than not that the beneficiary was primarily employed as a first-line supervisor of non-professional workers or performed non-qualifying administrative or operational tasks. 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 primarily performed managerial or executive duties abroad, and the petition may not be approved for that reason.

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.