

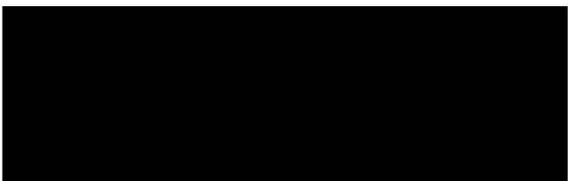
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U.S. Citizenship
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Services

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File: WAC 05 058 50814 Office: CALIFORNIA SERVICE CENTER Date: **DEC 11 2006**

IN RE: Petitioner:
Beneficiary:



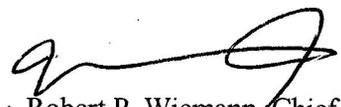
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner claims to be a subsidiary of Fine Line Circuits, Limited, located in India.¹ The U.S. office is engaged in the sale of printed circuit boards manufactured by the foreign entity. The petitioner seeks to employ the beneficiary as the manager of U.S. sales for a three-year period.²

The director denied the petition, concluding that the petitioner did not establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary will serve in a managerial capacity as the manager of an essential function and/or as the manager of professional employees. Counsel contends that the director failed to take into account the beneficiary's supervision of independent contractors, and contends that all of the beneficiary's subordinates are professionals. Counsel further asserts that the beneficiary would serve in an executive capacity. Counsel submits a brief and additional evidence in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

¹ The petitioner submitted the minutes of an organizational meeting and a copy of a stock certificate indicating that the U.S. entity is a California corporation. The petitioner also submitted a certificate of qualification issued by the California Secretary of State, indicating that the foreign entity is authorized to transact business in California. It is therefore unclear whether the petitioner is a branch office of the foreign entity, or a subsidiary. 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).

² The petitioner previously filed two Form I-129 petitions requesting L-1A classification on behalf of the beneficiary. The first petition was approved on June 6, 2003 and valid until June 6, 2004 (WAC 03 174 50072). The petitioner's subsequent petition requesting an extension of the beneficiary's L-1A status was denied on July 26, 2004 (WAC 04 143 50038).

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The issue in the present matter is whether the petitioner established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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), defines the term "executive capacity" as 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 nonimmigrant petition was filed on December 22, 2004. In a letter dated December 3, 2004, the petitioner stated that the beneficiary would be transferred to the U.S. sales office "to more effectively oversee the U.S. Sales force and to respond to client queries in a timely and more efficient fashion." The petitioner provided the following description of the beneficiary's proposed duties:

The focus of Beneficiary's responsibilities as Manager – U.S. Sales, is to control, organize, plan and direct the sales activities of the subsidiary, including directing the activities of other sales professionals and staff members.

In his capacity as Manager, U.S. sales, Beneficiary has taken all necessary steps to open and staff the U.S. subsidiary with an effective sales force. Beneficiary has increased sales and has entered into strategic alliances with U.S. based companies and has coordinated legal and agreement/contract related issues while managing the subsidiary as an independent profit center.

As the Manager, U.S. Sales, Beneficiary directs the activities of the sales support unit and is solely responsible for the following functions:

1. Sales & Marketing of the entire product range of company in U.S. market
2. Identification of new products and adapting product to overseas market.
3. Correspondence and negotiations with overseas buyers.
4. Selecting training, installing sales force.

Beneficiary, as manager/executive of petitioner company, directs the management of the company; establishes goals and polices [sic] of the organization in relation to sales development of Petitioner's products and services in the United States.

Beneficiary does this by exercising independent decision-making and by managing the work of other sales professionals who work under him either as employees, external representatives or as independent contractors.

The petitioner submitted an organizational chart depicting the beneficiary's proposed position over a sales person and a sales assistant. The petitioner stated that the sales person is a professional who possesses a bachelor's degree in education. The petitioner noted that the sales assistant provides sales support to the beneficiary and to "other sales team members," in addition to performing accounting and finance back office support functions. The petitioner indicated that both employees would perform the same duties and provided a lengthy job description which will not be repeated here. The petitioner noted that both employees would report directly to the beneficiary. The petitioner submitted copies of resumes and appointment letters for both employees, which indicate that the employees were hired for the position of "salesperson."

The petitioner stated that the beneficiary would also manage five independent manufacturers' sales representatives "who develop and execute sales for Petitioner across the continental United States." The petitioner further indicated that the beneficiary manages the activities of outside professionals who provide accounting, banking and logistics services. Finally, the petitioner indicated that the beneficiary manages four sales support personnel in India. The petitioner submitted copies of representation agreements made between the foreign entity and the five U.S. manufacturers' representatives, and letters from its contracted accountant and logistics services providers, as well as letters from U.S. customers.

The director issued a request for evidence on December 28, 2004, and, in part, instructed the petitioner to submit the following: (1) a more detailed description of the beneficiary's duties in the United States, to include the beneficiary's specific duties and the percentage of time he spends on each of the listed duties; (2) an organizational chart for the U.S. company which clearly identifies the beneficiary's position and all employees under the beneficiary's supervision by name and job title, with a brief job description, annual salaries and source of remuneration for all employees; (3) the total number of employees at the U.S. location where the beneficiary will be employed; (4) copies of the U.S. company's California Forms DE-6, Quarterly Wage and Withholding Report, for the last four quarters; and (5) copies of the U.S. company's payroll summary, IRS Forms W-2 and Form W-3 evidencing wages paid to employees.

In a response dated March 4, 2005, counsel for the petitioner provided the following description of the beneficiary's proposed duties in the United States:

1. Responsible for interviewing and hiring all employees within the Sales/Marketing department. 4% of time.
2. Supervising and managing the work of all internal sales employees. 30% of time.
3. Developing Sales Strategies and Forecasts. 20% of time.
4. Responsible for developing, implementing and achieving the goals and policies of the sales department. 20% of time.
5. Responsible for Annual Sales Forecast and budget. 5% of time.
6. Product Mix Management Order Booking. 3% of time.
7. Interacting with business development team and customers in U.S. 10% of time.
8. Annual Sales Contract Negotiation and Agreement. 5% of time.
9. Institute systems to ensure timely payments receipt. 1% of time.
10. Delivery planning 2% of time.

The petitioner listed the same internal sales employees, outside agencies and independent manufacturers' representatives as the beneficiary's subordinates. However, the employees previously identified as "sales person" and "sales assistant," were identified as the petitioners' "Assistant Business Development Officer" and "Business Development Assistant." The petitioner stated that the employees are receiving salaries of \$30,000 and \$24,000, respectively. The petitioner's latest Form DE-6, Quarterly Wage and Withholding Report, indicated that both employees were being paid a monthly salary of \$1,000 as of the date the petition was filed.

Counsel for the petitioner also addressed the purpose for the beneficiary's transfer to the United States, noting the need to provide U.S. customers with "immediate and real time responses" when issues pertaining to product integrity, shipment dates, pricing and production arise. Counsel noted that the beneficiary previously resolved all technical, logistical and sales issues from India, but that customers "now require price quotations, technical, marketing, and logistical support within hours rather than days." Counsel stated that the beneficiary was chosen for the position "because of his seniority and his ability to resolve technical, logistical and sales issues without consulting with the head office in India."

The director denied the petition on March 24, 2005, concluding that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director found that the job description provided by the petitioner was too vague and failed to establish that the beneficiary's duties would be primarily managerial or executive in nature. The director further determined that the beneficiary's subordinates, the sales person and sales assistant, "are clearly employed in non-professional positions," and that the petitioner provided no evidence that any of the beneficiary's subordinates are supervisors or managers. The director concluded that the beneficiary's duties would include directly providing the services of the organization and supervising two non-professional employees, rather than primarily managing the organization or an essential function of the organization.

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a primarily managerial or executive capacity. Counsel submits a supplemental letter from the petitioner, dated April 22, 2005, which includes a "comprehensive description," intended to further explain the list of duties submitted in response to the director's request for evidence. Counsel asserts that the beneficiary would be managing the petitioner's U.S. sales department, noting that the company expects to generate 50 percent of its revenues from the United States market. Counsel claims that the beneficiary will therefore manage a "major component" of the petitioner's organization pursuant to section 101(a)(44)(B)(i) of the Act. Counsel further emphasizes that the foreign entity's executives "have given the beneficiary the mandate to formulate and implement business policies," and the responsibility for setting goals for his sales team. Counsel asserts that the supplemental letter establishes that the beneficiary would be managing a major component of the organization, formulating goals and policies, exercising wide latitude in discretionary decision-making, and receiving only general supervision from the foreign entity and therefore would be employed in an executive capacity.

Counsel further asserts that the director erred in finding that the beneficiary would only supervise two employees, and in concluding that the beneficiary's subordinates would not be employed in a professional capacity. Counsel contends that the petitioner's internal "business development" employees, the petitioner's accountant, and the five independent sales representatives are all professionals. Counsel suggests that the

director “failed to consider the complexity of the products being sold and marketed,” and notes that technical sales representatives are typically required to possess a baccalaureate degree.

Counsel concludes that the record establishes that the beneficiary would manage an essential function of the organization, have the authority to hire and fire staff within his department, exercise discretion over the day-to-day operations of the U.S. sales department, and supervise professionals, and that he would therefore be employed in a managerial capacity, as well as in an executive capacity.

Upon review of the petition and the evidence, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner’s description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). 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.*

In addition, the definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower-level employees or the performance of the duties of another type of non-managerial or non-executive position.

Here, the job description provided for the beneficiary’s position suggests that he will be performing a mix of managerial, first-line supervisory and operational tasks, rather than performing primarily managerial or executive tasks as claimed by the petitioner. For example, the petitioner indicates that the beneficiary will devote a total of seventy percent of his time to supervising sales employees, developing and communicating sales strategies based on market research, implementing business practices for sales, and setting sales goals for his subordinates. All of these tasks, based on the petitioner’s representations, require frequent monitoring of and communication with the petitioner’s sales staff. The majority of these responsibilities are typical of a personnel supervisor, and as discussed further below, the petitioner has not established that the beneficiary’s subordinates are employed in professional positions. A managerial or executive 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. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

In addition, the record suggests that the beneficiary’s claimed managerial responsibilities involve non-qualifying duties associated with the day-to-day operations of the petitioner’s business. For example, while the beneficiary’s responsibility for developing overall sales strategies may be considered managerial, the petitioner has not identified any employees who would be responsible for performing the market research or collection of sales data that would be inherent to such responsibility. Initially, the petitioner indicated that the beneficiary would be responsible for “identification of new products and adapting product to overseas

market,” and “correspondence and negotiations with overseas buyers,” duties which suggest that the beneficiary is involved in product development, market research and day-to-day business transactions which have not been shown to be managerial. The petitioner opted not to elaborate on these duties when replying to the director’s request for a more detailed description of the beneficiary’s position. 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)).

Finally, the AAO notes evidence in the record which suggests that the beneficiary is personally involved in responding to inquiries from customers and sales representatives, communicating with the overseas manufacturers, and performing other non-qualifying duties inherent to the sales, shipping and customer service functions. For example, the petitioner submitted letters from customers who state that the beneficiary is their main point of contact for responding to product inquiries and supply and delivery issues. The petitioner also submitted a letter from one of its manufacturers’ representatives, who notes that the beneficiary is assisting him to make initial sales calls and sending literature to new potential customers. Significantly, the petitioner has repeatedly emphasized that the purpose of the beneficiary’s transfer to the United States was to ensure “immediate and real time” resolution of issues pertaining to issues involving product integrity, shipment dates, pricing and production, and the need to provide customers with technical, marketing and logistical support. Therefore, although the petitioner did not include these responsibilities in the beneficiary’s position description, it is reasonable to assume, and has not been shown otherwise, that he would be devoting a significant portion of his time to communicating with customers and sales representatives to respond to technical product questions and resolve quality issues, and communicating with the foreign entity to determine delivery times and coordinate logistical aspects of the sales function. These tasks, while essential to the operation of the U.S. sales office, have not been shown to be managerial in nature, and the petitioner has not established that any of the beneficiary’s subordinates would relieve the beneficiary of these duties.

Rather, it appears from the record that the beneficiary’s subordinates will perform routine sales duties while the beneficiary would be responsible for answering all queries related to product specifications, quality issues, delivery timeframes, communicating with the foreign entity regarding shipments, and performing other operational and administrative tasks in support of the sales function. 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 Intn’l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Based on the above, while the petitioner has provided a detailed description of the beneficiary’s duties which provides the percentage of time he will devote to each duty, the description appears to present, at best, an incomplete portrayal of his actual duties. Accordingly, the record fails to establish any clear distinctions between the proposed qualifying and non-qualifying duties of the beneficiary, and the percentages provided by the petitioner are not credible. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Furthermore, the petitioner bears the burden of documenting what portion of the beneficiary’s duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177

(D.C. Cir. 1991). Given the lack of a complete position description, the record does not demonstrate that the beneficiary will function primarily as a manager or executive.

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). 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; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Here, the petitioner claims that the beneficiary will manage two internal sales or "business development" employees and five contracted manufacturers' sales representatives. The petitioner indicates that all of the beneficiary's subordinates are professionals.

In evaluating whether the beneficiary manages 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).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has established that one of its sales persons has a bachelor's degree in education, and has claimed that manufacturers' representatives are "customarily" required to possess bachelor's degrees in the petitioner's field. Notwithstanding the petitioner's emphasis on the professional nature of the "technical sales" duties performed by its employees and contractors, the AAO notes that neither of the company's sales employees has a degree or any prior work experience in a technical field. The petitioner has not provided evidence of the duties or educational qualifications of its independent sales representatives, and the AAO cannot accept the petitioner's assertion that such employees would "customarily" possess a bachelor's degree in a specific field. 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. at 165. The petitioner has not submitted sufficient evidence to establish that the beneficiary's subordinates are professionals. Although the petitioner also utilizes the services of an accountant who could be considered a professional, the scope of his services to the company is limited, and

the petitioner has not established that the beneficiary actually supervises and controls the work of this employee on a day-to-day basis.

Nor has the petitioner established that any of the beneficiary's subordinates are supervisors or managers. When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, 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; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. Here, although the petitioner has attempted to differentiate between its two direct employees by assigning them different job titles and indicating that one employee receives a higher salary than the other, the petitioner offered both employees the same position of "sales person" and is compensating both employees at an annual rate of \$12,000, as opposed to the \$30,000 and \$24,000 salaries claimed by the petitioner. 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).

On appeal, counsel argues that the beneficiary will manage the "U.S. sales" function of the petitioner. 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. 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. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. 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. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, while the beneficiary would supervise the petitioner's sales activities, the petitioner has not established that the beneficiary's actual job duties are primarily managerial in nature. As noted above, the beneficiary would also be engaged in first-line supervisory duties, as well as non-managerial operational duties inherent to the sales function. Since the petitioner has not established that the beneficiary's duties are primarily managerial, he cannot be considered a "function manager."

Counsel states on appeal that the beneficiary will also serve 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, 8 U.S.C. § 1101(a)(44)(B). 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 managerial 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.* In this matter, the record does not establish that the beneficiary would primarily "direct the management" of the U.S. office or that his job duties would be primarily focused on the broad goals and policies of the organization.

While the beneficiary in this matter evidently exercises discretion over the day-to-day operations of the U.S. company, the fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). The evidence of record supports a conclusion that the beneficiary in this matter would primarily perform customer and sales support functions and the tasks of a first-line supervisor.

For the foregoing reasons, the petitioner has not established that the beneficiary will be employed by the United States entity in a managerial or executive capacity. Accordingly, the petition cannot be approved.

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.