

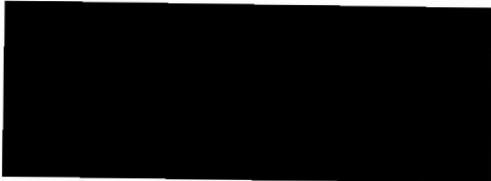
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D7

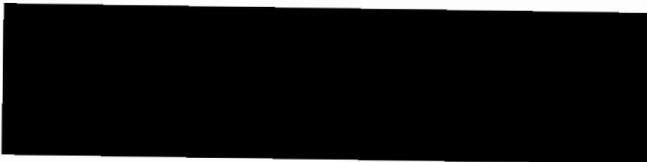


File: WAC 05 003 54216 Office: CALIFORNIA SERVICE CENTER Date: JUL 07 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

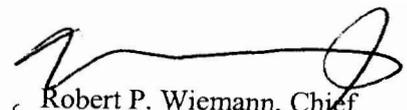
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 is a California corporation established in 2001 that operates as a wholesaler of cutting plotters, laser engravers and thermal transfer printers. The petitioner claims that it is the subsidiary of [REDACTED] located in Taipei, Taiwan. The petitioner seeks to employ the beneficiary as its Manager, Customer Service and Technical Support Department.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily 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 director failed to consider the U.S. company's current stage of development and did not account for the growth anticipated as a result of the beneficiary's proposed assignment in the United States. Counsel asserts that due to the company's stage of development and its intention to distribute new product lines "it should be treated as if it were the equivalent of a newly established company." Counsel submits a brief and additional evidence, including a new proposed organizational chart, 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. Finally, counsel contends that the beneficiary's organizational structure is sufficiently complex to support the beneficiary in a position that is primarily managerial.

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:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(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 will 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 October 4, 2004. The petitioner stated on Form I-129 that it currently has seven employees and noted that the beneficiary would perform the following duties in his proposed role as manager of the customer services and technical support department:

Directs, plans and coordinates customer service and technical support such as updates product information to account customers on regular basis, gathers & collects customer's complaints & suggestions back to parent company in Taiwan for product & service improvement, etc.

In a September 30, 2004 letter submitted in support of the petition, the petitioner indicated that the beneficiary's proposed position "requires a thorough knowledge and understanding of technology involved in the business and utilization of such knowledge in product service." The petitioner stated that the beneficiary's daily activities would include "directing, planning, coordinating customer service and technical support, improvising and developing a comprehensive scheme of customer service and support."

The petitioner submitted an organizational chart and accompanying employee list for the U.S. company. The chart depicts a vice president over five departments, including finance and accounting, purchasing, marketing and sales, customer service and technical support, and warehousing. The beneficiary's proposed position was not identified on the chart, which showed that the customer service and technical support department is currently staffed by two employees identified on the employee list as "assistant manager" and "technological specialist." The other employees' job titles included marketing specialist, purchasing specialist, accounting specialist, and operations specialist.

The director issued a request for additional evidence on October 7, 2004, instructing the petitioner to submit additional evidence to establish that the beneficiary would be employed in a managerial or executive capacity with the U.S. company. Specifically, the director requested: (1) a more detailed description of the beneficiary's proposed duties including the percentage of time he will spend in each of the listed job duties; (2) job titles and position descriptions for all employees who will work under the beneficiary's direction; (3) an organizational chart for the U.S. company identifying all executives, managers, supervisor and the number of employees within each department, and clearly identifying the beneficiary's proposed position and those of his subordinates; (4) copies of California Forms DE-6, Quarterly Wage Report, for the last six quarters; and (5) copies of IRS Forms 941, Employer's Quarterly Federal Tax Return, for the last three quarters. The director also requested that the petitioner explain the beneficiary's purpose for coming to the United States, how the U.S. business functioned to date without the beneficiary, why the U.S. business requires an additional manager or executive at this time, and how the beneficiary's duties will differ from current managers or executives.

In a response dated December 3, 2004, former counsel for the petitioner noted that petitioner's parent company recently developed two major product lines which have not previously been promoted in the U.S. market, which has prompted the need for the beneficiary's transfer to the United States. Counsel further explained:

[The beneficiary] has a full range of knowledge to promote these two brand new "laser marking" product lines in the US marketplace. Due to time zone difference and heavy travel

involved, [the beneficiary] is required to report to the US office in order to move the new product lines efficiently. The current technical support does not have any practical knowledge of the new product or the experience in new product development. [The beneficiary] is a necessary individual in the US to train the technical support.

Former counsel further described the beneficiary's proposed duties as follows:

[The beneficiary's] primary function is to promote new lines of products. [The beneficiary] has an Associates degree in EE and an MBA degree. [The beneficiary] has extensive experience in traveling to US, Canada, Mexico. . . to meet with our customers. [The beneficiary] speaks sufficient English to communicate with all our customers. [The beneficiary] will report to [redacted] VP of [redacted] [The beneficiary] will supervise [redacted] and [redacted]

* * *

[The] US business was able to function up to this date because we were not introducing any new line of products. [The beneficiary] will benefit the business by promoting and introducing the new lines with his strong technical background and customer relation experiences.

The new line of products requires knowledge in the latest laser technology used in the products.

The petitioner submitted a new organizational chart showing the beneficiary as the manager of the "Sales, Customer Service & Technical Support Department," supervising two "technical specialists," both of whom have completed a community college level education. The petitioner indicated that one position is responsible for networking and machine quality control and technical support of laser markings and ID printers, while the other employee is responsible for technical support of engravers and cutters, and all parts and machines repairs. The petitioner submitted the requested quarterly wage reports and quarterly tax returns, which confirmed the full-time employment of the employees named on its organizational chart.

The director denied the petition on December 9, 2004, concluding that the beneficiary would not be employed in a primarily managerial or executive capacity. The director observed that the record indicated that a preponderance of the beneficiary's duties will be directly providing the services of the organization and supervising two non-professional employees. The director found that the beneficiary would not function at a senior level within an organizational hierarchy, manage an essential function of the organization, or supervise a subordinate staff of professional, managerial or supervisory personnel who provide relief from the performance of non-qualifying duties.

In an appeal filed on January 7, 2005, counsel for the petitioner asserts that the director did not give proper consideration to the stage of development of the petitioner, and contends "the petitioner's business operations

should have been analyzed with respect to its current business plan and organizational chart based on a new product focus and the anticipated growth resulting therefrom [sic].”

Counsel emphasizes that although the U.S. company has been in existence for over three years, “it is still effectively in its infancy,” with its anticipated growth dependent upon the assignment of “qualified managerial personnel.” Counsel asserts that the U.S. company cannot develop properly until it implements the new laser product line, and states that the petitioner “proposes to transfer the beneficiary to manage the distribution and servicing of the cutting-edge laser marking devices.”

Counsel further contends that the beneficiary’s employment will “create further levels within the organization and reach a level of organizational complexity where not only discretionary decision making is required, but the supervision of two levels of employees is necessary.” The petitioner submits a new proposed organizational chart identifying proposed positions subordinate to the company’s current “technical specialists,” including a quality control team, an assembly team, customer relations staff, and Return Material Authorization staff, as well as a proposed sales specialist position that will report directly to the beneficiary. The petitioner also submits a 2005 budget and sales forecast which accounts for its implementation of the new product line.

Counsel further explains the beneficiary’s proposed role:

In addition to possessing discretionary decision making skills such as the authority to hire and fire subordinates, as part of his policy making authority, the beneficiary . . . will establish protocols for the efficient management of the business and training the current employees to progress to management positions as the U.S. [subsidiary] grows. Thus, the beneficiary will then devote his time to the management of the managers which will free him from the day to day type of management duties initially necessary to develop a business that has been stagnant in its growth.

Finally, counsel asserts that due to the U.S. company’s current stage of development and intention to distribute new product lines, “it should be treated as if it were the equivalent of a newly established company and its business plan/organizational chart be given great weight in the examination of the transfer of the beneficiary as a manager.” Counsel notes that the petitioner would consequently accept an initial L-1A petition approval valid for one year.

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 in the United States.

As a preliminary matter, counsel’s argument that the petitioner should be treated as a “newly established company” is not persuasive. The term “new office” is defined at 8 C.F.R. § 214.2(l)(1)(ii)(F) as an organization which has been doing business in the United States through a parent, branch, affiliate or subsidiary for less than one year. The instant petition was filed in October 2004. The petitioner was established in March 2001 and, based on its Form 1120, U.S. Corporation Income Tax Return, achieved gross sales of \$2,193,354 in 2003. The petitioner has clearly been doing business in the United States for more than

one year and cannot choose to classify itself as a “new office” based on its failure to achieve its desired level of growth and development or based on its desire to distribute a new product. The one-year “new office” provision is an accommodation for newly established enterprises, provided for by CIS regulation, that allows for a more lenient approach to petitions filed on behalf of managers or executives that are entering the United States to open a new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level. The new office regulations allow CIS to take into account the petitioner’s business plans, proposed organizational structure, financial objectives and anticipated staffing levels to determine whether a new company will reasonably be expected to grow to the point where it can support a managerial or executive position within one year. *See generally* 8 C.F.R. § 214.2(1)(3)(v).

As an established company that has been doing business in the United States for more than one year, the petitioner must establish that the beneficiary qualifies for classification as an executive or managerial employee as of the date of filing. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Furthermore, the proposed organizational chart submitted on appeal bears little resemblance to the chart submitted in response to the director’s request for evidence and suggests an attempt by the petitioner to elevate the beneficiary’s position to one that is higher than that of a first-line supervisor. 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. 169, 176 (Assoc. Comm. 1998).

Accordingly, the petitioner’s revised proposed organizational chart and 2005 sales projections will not be considered in this proceeding. The AAO will limit its review to the evidence that was before the director at the time he rendered his decision.

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.*

The petitioner initially provided a vague and nonspecific description of the beneficiary’s duties that failed to demonstrate what managerial or executive functions the beneficiary performs on a day-to-day basis. For example, the petitioner stated that the beneficiary would direct, plan and coordinate customer service and technical support and “develop a comprehensive scheme” for these functions. The petitioner did not describe the proposed “scheme” or indicate what specific tasks he would perform to “direct and coordinate” technical support and service activities. Conclusory assertions regarding the beneficiary’s employment capacity are not sufficient. Specifics are clearly an important indication of whether a beneficiary’s duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990). The AAO will not accept a vague job description and speculate as to the related managerial or executive duties.

The only specific duties identified in the petitioner's initial description suggest that the beneficiary's duties will include non-managerial tasks. The petitioner stated that the beneficiary will provide customers with updated product information, gather and collect customer complaints, and submit suggestions to the parent company for product and service improvement. Without further explanation, these appear to be the duties of a customer service representative, rather than those of an employee responsible for managing customer service activities.

After reviewing the inadequate job description submitted with the petition, the director specifically requested that the petitioner provide a detailed account of the beneficiary's duties, along with the percentage of time he would devote to each duty. The petitioner's response included only a brief and general description of the beneficiary's duties and did not indicate how the beneficiary allocates his time among his various duties. This evidence is critical as it would have established the actual duties performed by the beneficiary, whether they are managerial or executive in nature, and the proportion of time he devotes to qualifying duties as opposed to operational or administrative tasks. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Specifically, when requested to provide a more detailed account of the beneficiary's specific duties and the percentage of time he devotes to each duty, the petitioner submitted another abbreviated job description which appears to include non-qualifying duties. For example, the petitioner states that the beneficiary's primary function will be "to promote new lines of products" and notes that he will "train the technical support" employees, who have no practical knowledge of the new product. The petitioner did not explain what duties the beneficiary would perform to promote the company's new products. The AAO notes that the organizational chart submitted in response to the director's request included the sales function in the department to be managed by the beneficiary, and did not indicate that either of the beneficiary's subordinates would perform sales duties. Since the beneficiary would be the only employee with knowledge of the new products, it is reasonable to assume, and has not been shown to be otherwise, that he would be directly involved in the company's day-to-day marketing, promotion, customer service and sales activities, as well as training and supervising the company's two technical specialists in servicing the products. It is not possible to conclude that the beneficiary's duties associated with promoting products and training support staff would comprise primarily managerial or executive functions. 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Overall, the petitioner's descriptions of the beneficiary's duties appeared to include primarily non-qualifying duties and were too vague and general to allow any meaningful determination as to what actual duties the beneficiary will perform, or how much time he will devote to qualifying managerial or executive functions. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What will the beneficiary primarily do on a daily basis? The actual

duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

On appeal, the petitioner again declines to further delineate the beneficiary's actual tasks. Instead, counsel paraphrases the statutory definitions of managerial and executive capacity, asserting that he will possess discretionary decision making authority, authority to hire and fire subordinates, "policy making authority" and the authority to "establish protocols." Again, conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). As discussed above, the record contains no comprehensive description of the beneficiary's duties and no supporting evidence to support the petitioner's claim that the beneficiary will be employed in a managerial and executive capacity, other than in position title. 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)).

Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. The record shows that the beneficiary will supervise two technical specialists responsible for support and repair of the products distributed by the U.S. company. The petitioner has not established that these employees possess or require a bachelor's degree, such that they could be classified as professionals. Nor has the petitioner shown that either of these employees supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. The petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

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 detailed job description that identifies 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**. 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 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, the petitioner has not provided evidence that the beneficiary will manage an essential function, as it has not provided a detailed description of the proposed position, identified an essential function to be managed by the beneficiary, or established that the beneficiary will perform primarily managerial duties.

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 related to operational or policy management, not to the supervision of lower level employees, performance of the duties of another type of position, or other involvement in the operational activities of the company. Hence, the fact that the beneficiary will be designated as a department manager does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(44)(A) and (B) of the Act. The record must establish that the majority of the beneficiary's duties will be primarily directing the management of the organization or a component or function of the organization. While the AAO does not dispute that the beneficiary may be responsible for establishing plans and protocols for sales and service of a new product in the U.S. market, the record is not persuasive in demonstrating that the beneficiary's actual duties will be in a primarily managerial or executive capacity. In the instant matter, the petitioner has failed to show, as of the date this petition was filed, that non-qualifying operational and first-line supervisory duties will not constitute the majority of the beneficiary's time.

The AAO acknowledges counsel's assertion that the director failed to consider the petitioner's current stage of development when denying the petition. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. To establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not explained how the reasonable needs of the petitioning enterprise will allow for the beneficiary's performance of primarily managerial or executive duties.

The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. As discussed above, counsel's suggestion that the director is required to consider the petitioner's anticipated future staffing levels when considering its current stage of development is not persuasive. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved

at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that the foreign entity employed the beneficiary in a primarily managerial or executive capacity. *See* 8 C.F.R. § 214.2(1)(3)(iv). Based on an employment certificate provided by the foreign entity, the beneficiary is currently employed as deputy manager of the company's customer service department. The petitioner initially indicated that he "plans, directs and coordinates customer service to ensure a customer's overall satisfaction toward the products and company services" and submitted an organizational chart depicting the beneficiary as the only employee in the foreign company's customer service department.

In response to the director's request for a detailed description of the beneficiary's duties with the foreign entity, the petitioner stated that the beneficiary devotes 40 percent of his time to "promoting new products"; 30 percent of his time to "visiting buyers relating to after purchase product service and customer satisfaction"; and 30 percent of his time to "troubleshooting." The petitioner stated that the beneficiary supervises ten employees in the petitioner's "RMA Order" and "Technical Support" divisions and submitted a revised organizational chart placing these two divisions under the beneficiary's supervision. The AAO notes that the RMA division also appears under the supervision of the foreign entity's quality control department on both of the submitted organizational charts. The petitioner did not explain why these subdivisions were not depicted on the original organizational chart. 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).

In addition, the petitioner failed to provide the detailed foreign job description requested by the director. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Notwithstanding the petitioner's claims that the beneficiary supervises a staff of subordinate employees, the duties that were briefly outlined by the petitioner in response to the director's request suggest that the beneficiary is responsible for routine marketing and promotion, customer service and technical support tasks. 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). 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). Based on the limited evidence submitted, the AAO cannot conclude that the beneficiary has been employed in a qualifying capacity with the foreign entity. For this additional reason, the petition cannot be approved.

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

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