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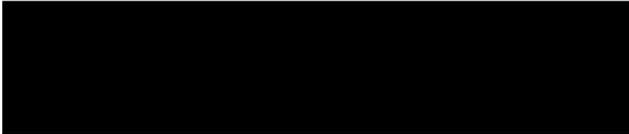
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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File: EAC 03 220 54781 Office: VERMONT SERVICE CENTER Date: **OCT 02 2007**

IN RE: Petitioner:  
Beneficiary:



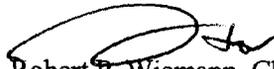
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN 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, Vermont 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 visa petition seeking to employ the beneficiary as its general manager 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 corporation organized under the laws of the State of Delaware and is allegedly engaged in the historic newspaper business.

The director denied the petition. After concluding that the beneficiary was coming to the United States to open or to be employed at a "new office," the director determined that petitioner did not establish (1) that the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position; or (2) that the beneficiary had been employed abroad in a primarily executive or managerial position.<sup>1</sup>

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 to the petitioner asserts that the director erred and that the beneficiary's duties have been, and will be, primarily those of an executive or manager. In support, counsel submits a brief and additional evidence.

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:

- (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.

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<sup>1</sup>It is noted that, while the director did not specifically indicate that she was applying the "new office" criteria, this is implied by her citation to the regulations applicable to "new offices" at 8 C.F.R. § 214.2(l)(3)(v) and her determination that the petition is a "new office" as defined at 8 C.F.R. § 214.2(l)(1)(ii)(F).

- (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 regulation at 8 C.F.R. § 214.2(l)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a "new office" in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
  - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
  - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
  - (3) The organizational structure of the foreign entity.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(F) defines a "new office" as:

[A]n organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

Moreover, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(H) defines "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

A threshold issue in this matter is whether the director correctly treated the petitioner as a "new office" in adjudicating the petition.

In the Form I-129 petition, the petitioner asserts on page 6 that the beneficiary is not coming to the United States to open a "new office." The petitioner's supporting documentation includes evidence that the foreign entity acquired the stock of the petitioner on January 1, 2002; that the petitioner has employed approximately nine people; that the petitioner has been engaged in business both before and after the foreign entity's acquisition of its stock; and that the petitioner began leasing space for the business in New Jersey on June 1, 2002. The instant petition was filed on July 29, 2003.

Despite this evidence, the director concluded that, because the record did not establish that the petitioner has been doing business for at least one year, it should be treated as a "new office" and the more lenient criteria set forth in 8 C.F.R. § 214.2(l)(3)(v) should be applied. The AAO disagrees. As outlined above, the record clearly establishes that the petitioner is an ongoing business concern which had been engaged in business for more than one year before the filing of the petition. Furthermore, the record indicates that the foreign entity has owned and operated the petitioner since January 2002, over 18 months before the instant petition was filed.

Therefore, the AAO concludes that the petitioner does not meet the definition of a "new office" in 8 C.F.R. § 214.2(l)(1)(ii)(F), because the record establishes that it has been "doing business" in a regular, systematic, and continuous fashion for over one year before the filing of the instant petition. Thus, the director's application of the "new office" criteria in 8 C.F.R. § 214.2(l)(3)(v)(C) was in error, and, to the extent the director denied the petition because the petitioner failed to establish that the intended United States operation will support an executive or managerial position within one year, the decision is hereby withdrawn. However, for those reasons set forth below, the petitioner has nevertheless failed to establish its eligibility for the benefit sought, and the appeal will be dismissed.

In view of the above, the primary issue in the present matter is whether the petitioner has established that the beneficiary has at least one continuous year of full-time employment abroad in a position that was managerial, executive, or involved specialized knowledge.<sup>2</sup>

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

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<sup>2</sup>While the decision does not clearly explain whether the director applied 8 C.F.R. § 214.2(l)(3)(iv) or 8 C.F.R. § 214.2(l)(3)(v)(B) in denying the petition, it is noted that 8 C.F.R. § 214.2(l)(3)(iv) should be applied in this matter because the petitioner is not a "new office" as defined by the regulations. Therefore, to the extent the director relied on 8 C.F.R. § 214.2(l)(3)(v)(B) in denying the petition, that reasoning is hereby withdrawn, and the AAO shall properly apply 8 C.F.R. § 214.2(l)(3)(iv).

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 petitioner does not clarify in the initial petition whether it is claiming that the beneficiary was primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner may not claim that a beneficiary was employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

The petitioner described the beneficiary's job duties abroad in the Form I-129 as follows:

Management of the day[-]to[-]day operations of the [foreign organization]. Supervision of personnel, contracts, marketing, and financial aspects of the company.

On August 8, 2003, the director requested additional evidence. The director requested, *inter alia*, an organizational chart for the foreign employer and more detailed job descriptions for the beneficiary and his subordinate workers.

In response, the petitioner submitted an organizational chart for the foreign entity showing the beneficiary reporting to a vice president and supervising six employees. The beneficiary is portrayed as supervising three "office team" employees and three "fulfillment warehouse" employees. The petitioner also submitted brief job descriptions for the "office team" employees (described as "office team/customer representatives" in the

job description) and the "fulfillment warehouse" employees. The "office team/customer representatives" are described as processing customer orders. The "fulfillment warehouse" employees are described as working directly with the foreign entity's inventory of newspapers.

On November 3, 2003, the director denied the petition. The director concluded, *inter alia*, that the petitioner failed to establish that the beneficiary had been employed abroad in a primarily executive or managerial position.

On appeal, the petitioner asserts that the beneficiary's duties were primarily those of an executive or manager.

Upon review, the petitioner's assertions are not persuasive.

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(l)(3)(ii) and (iv). The petitioner's description of the job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were either in an executive or managerial capacity. *Id.* The petitioner must specifically state whether the beneficiary was primarily employed in a managerial or executive capacity. As explained above, a petitioner cannot claim that some of the duties of the position entailed executive responsibilities, while other duties were managerial. A petitioner may not claim that a beneficiary has been employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary acted in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary did on a day-to-day basis. The petitioner has described the beneficiary as managing the day-to-day operations of the foreign entity and as supervising "personnel, contracts, marketing, and [the] financial aspects of the company." However, the petitioner does not explain how, exactly, the beneficiary "supervised" contracts, marketing, and financial matters when the organizational chart indicates that he supervised only warehouse workers and customer services representatives. The fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes lofty duties does not establish that the beneficiary was actually performing managerial duties. 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). 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).

Likewise, despite being specifically requested by the director in the Request for Evidence, the petitioner did not provide a breakdown of how much time the beneficiary devoted to the duties ascribed to him. 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). This is particularly important in this matter because most of the duties listed by the petitioner appear to be non-qualifying administrative or operational tasks which do not rise to the level of being managerial or executive in nature. For example, the petitioner states that the beneficiary supervised contracts, marketing, and financial matters. However, such duties constitute administrative or operational

tasks when the tasks inherent in these duties are performed by the beneficiary. As the organizational chart and job descriptions for the subordinate employees fail to identify any employees who relieved the beneficiary of the need to perform the non-qualifying tasks inherent in marketing, contracting, and financial matters, it must be concluded that he performed these tasks. As the petitioner has not established how much time the beneficiary devoted to such non-qualifying tasks, it cannot be confirmed that he was "primarily" employed as a manager. 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).

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 explained in the organizational chart and job descriptions for the subordinate staff members, the beneficiary appears to have supervised a staff of six employees. However, the petitioner has not established that the six employees were primarily engaged in performing supervisory or managerial duties. To the contrary, it appears that these employees were performing the tasks necessary to produce a product or to provide a service, e.g., warehousing tasks, inventory repair, and processing customer orders. In view of the above, the beneficiary would appear to have been primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. 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. Moreover, as the petitioner did not establish the skill level or educational background required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary managed professional employees.<sup>3</sup> Therefore, the petitioner has not established that the beneficiary was employed primarily in a managerial capacity.<sup>4</sup>

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<sup>3</sup>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).

<sup>4</sup>While the petitioner has not argued that the beneficiary managed 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 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

Similarly, the petitioner has failed to establish that the beneficiary acted 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 acted primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary did on a day-to-day basis. Moreover, as explained above, the beneficiary appears to have been primarily employed as a first-line supervisor and/or was performing tasks necessary to produce a product or to provide a service. Finally, as the beneficiary appears to have reported directly to a vice president, the record is not persuasive in establishing that the beneficiary had the necessary authority to direct the organization. Therefore, the petitioner has not established that the beneficiary was employed primarily in an executive capacity.<sup>5</sup>

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).

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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. In this matter, the petitioner has not provided evidence that the beneficiary managed an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties were managerial functions, if any, and what proportion were non-managerial. Also, as explained above, the record indicates that the beneficiary was primarily a first-line supervisor of non-professional employees and/or was engaged in performing non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties were managerial, nor can it deduce whether the beneficiary was primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

<sup>5</sup>While not raised by the petitioner, it is noted that the record does not establish that the beneficiary had been employed abroad in a position involving specialized knowledge. *See* 8 C.F.R. § 214.2(l)(3)(iv). The petitioner has failed to identify any specialized or advanced body of knowledge, which would distinguish the beneficiary's role from that of other similarly experienced employees employed by the organization or in the industry at large.

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

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive position as required by 8 C.F.R. § 214.2(I)(3)(iv).<sup>6</sup>

The petitioner described the beneficiary's proposed job duties in the United States in a letter dated October 16, 2003 submitted in response to the director's Request for Evidence. The beneficiary's duties as general manager are described as follows:

- Management of 10 staff in 3 separate departments.
- Promotion and sales development through media, catalogs advertising and our websites.
- Managing the order processing and instigating the streamlining of procedures through electronic data.
- Adding new products to our range such as the Classic Book and First Editions Millennium Collection which includes 19<sup>th</sup> century papers from across America.
- Negotiating and developing new partnerships with major newspaper titles and web companies.
- Purchasing substantial runs of newspapers from all over the United States and other countries.
- Staff training and the introduction of new procedures.
- Purchasing and installing new equipment in our manufacturing department.
- Negotiating purchasing and introducing new raw materials for our numerous presentations.
- Cash control, budgets, disbursements, receipts, banking, projections, and credit control.
- Liaising with our UK operations with all aspects of support.

The petitioner also submitted an organizational chart for the United States operation. The beneficiary is portrayed as directly supervising an accounts manager, a customer service supervisor, and a fulfillment warehouse supervisor. The customer services supervisor is, in turn, portrayed as supervising three customer service representatives and the fulfillment warehouse manager is, in turn, portrayed as supervising two warehouse workers.

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<sup>6</sup>It is noted that the director considered the beneficiary's proposed duties in the United States in denying the petition. However, as explained above, it appears that the director considered these duties in the context of applying the "new office" criteria in 8 C.F.R. § 214.2(I)(3)(v)(C), which requires the petitioner to establish that it will support an executive or managerial employee within one year. As the AAO has withdrawn the director's decision to the extent that she applied the "new office" criteria, the AAO will instead consider the beneficiary's proposed duties in the United States in the context of applying 8 C.F.R. § 214.2(I)(3)(iv). This regulation, which applies to fully formed organizations, requires the petitioner to establish that the beneficiary will perform primarily executive or managerial duties immediately upon his arrival in the United States.

Finally, the petitioner submitted job descriptions for the customer service representative and the fulfillment warehouse manager. These job descriptions indicate that these employees spend less than 25% of their time supervising subordinate workers. The rest of the time both the customer service supervisor and the fulfillment warehouse supervisor are described as performing the tasks necessary to produce a product or to provide a service.

Upon review, the petitioner has failed to establish that the beneficiary will be employed in a primarily executive or managerial capacity.

As explained above, 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(l)(3)(ii). In this matter, the petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has again provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. The petitioner has described the beneficiary as introducing "new procedures;" purchasing and installing "new equipment in our manufacturing department;" and engaging in "cash control, budgets, disbursements, receipts, banking, projections, and credit control." However, the petitioner does not describe what new procedures will be introduced; what new equipment will be purchased and whether the beneficiary will be installing it; or what, exactly, the beneficiary will do in performing the various financial tasks ascribed to him. Once again, the fact that the petitioner has given the beneficiary a managerial title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial duties. 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, *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.

Likewise, many of the duties listed by the petitioner appear to be non-qualifying administrative or operational tasks which do not rise to the level of being managerial or executive in nature. For example, the petitioner states that the beneficiary will engage in marketing and sales, purchasing, product development, staff training, and various financial tasks. However, such duties constitute administrative or operational tasks when the tasks inherent in these duties are performed by the beneficiary. As the organizational chart and job descriptions for the subordinate employees fail to identify any employees who will relieve the beneficiary of the need to perform the non-qualifying tasks inherent in marketing, purchasing, training, product development, and financial matters, it must be concluded that he will perform these tasks. While the petitioner asserts that it employs an "accounts manager," the petitioner did not specifically describe this employee and, thus, it cannot be confirmed that she will relieve the beneficiary of the need to perform non-qualifying tasks related to financial matters. Therefore, as the petitioner has not established how much time the beneficiary will devote to non-qualifying tasks, it cannot be confirmed that he will be "primarily" employed as a manager. 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. at 604.

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 explained in the organizational chart and job descriptions for the subordinate staff members, it appears that the beneficiary will directly supervise three supervisory employees and, indirectly, approximately five additional workers. However, the petitioner has not established that the three allegedly supervisory employees will be primarily engaged in performing supervisory or managerial duties. To the contrary, it appears that these employees spend less than 25% of their time supervising subordinate workers. The job descriptions indicate that these employees spend most of their time performing the tasks necessary to produce a product or to provide a service, e.g., warehousing tasks and processing customer orders. In view of the above, it appears that the beneficiary will primarily be a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. 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. Moreover, as the petitioner did not establish the skill level or educational background required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees. Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>7</sup>

Similarly, and for the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary will be primarily employed as a first-line supervisor and/or will perform the tasks necessary to produce a product or to provide a service. Finally, as it appears that the beneficiary will report directly to the president in the United Kingdom, the record is not persuasive in establishing that the beneficiary will have the necessary authority to direct the organization. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

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).

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<sup>7</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 petitioner's vague job description fails to document what proportion of the beneficiary's duties will be managerial, if any, and what proportion will be non-managerial. Also, as explained above, the record indicates that the beneficiary will primarily be a first-line supervisor of non-professional employees and/or will be engaged in performing non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time to be spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial, nor can it deduce whether the beneficiary will primarily be performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d at 24.

