

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

87



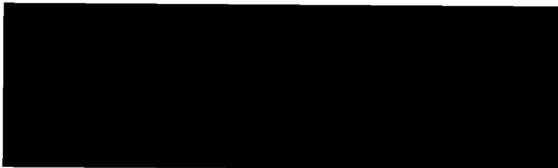
File: WAC 07 212 50839 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2008**

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, 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 visa petition seeking to employ the beneficiary as its kitchen operations 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 California and allegedly operates restaurants serving Filipino style food.

The director denied the petition concluding that the petitioner did not establish that the beneficiary was employed abroad 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, the petitioner asserts that the director erred and that the beneficiary's duties were primarily those of a manager.

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.
- (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 primary issue in the present matter is whether the beneficiary was employed abroad in a primarily

managerial or executive capacity.¹

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

¹It is noted that, in her decision, the director cited the regulation 8 C.F.R. § 214.2(l)(3)(v). This regulation pertains to beneficiaries who will be employed in "new offices," which are defined as "an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year." 8 C.F.R. § 214.2(l)(1)(ii)(F). However, the petitioner in this matter does not meet the definition of a "new office," and the director's decision will be partly withdrawn to the extent she applied the more lenient criteria at 8 C.F.R. § 214.2(l)(3)(v) to the instant petition. The petitioner asserts that it has been in operation since 2004 and does not claim in the L Classification Supplement to the Form I-129 that the beneficiary will be employed at a "new office." Accordingly, the petitioner should be treated as a fully formed entity and, thus, is obligated under the regulations to establish that the beneficiary will perform qualifying duties immediately upon his employment by the petitioner in the United States.

- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Although the petitioner does not clarify in the initial petition whether the beneficiary primarily performed managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act, the petitioner appears to restrict the beneficiary to the managerial classification on appeal. Given the lack of clarity, the AAO will assume that the petitioner is asserting that the beneficiary was employed in either a managerial *or* an executive position and will consider both classifications.

Counsel describes the beneficiary's foreign employment in a letter dated July 2, 2007 as follows:

Beneficiary holds the position of Kitchen Operations Manager in the foreign corporation's biggest outlet out of the 29 restaurants. The food service business of these 29 restaurants refer to only one trade name of "Gerry's Grill" all doing business as "Gerry's Grill[.]" Beneficiary has been with the business since February, 1997 up to the present. As of today, Beneficiary supervises chefs, assistant chefs and all the head cooks and about 4 line cooks and all other employees in the kitchen of the biggest outlet, including the overall supervision of all the 29 "Gerry's Grill" kitchen outlets in the Philippines.

The petitioner also submitted an organizational chart for the foreign employer. However, the chart does not specifically identify any of the employees and fails to include the beneficiary's "kitchen operations manager" position.

Finally, the petitioner describes the beneficiary's duties abroad in as follows:

1. In-charge and commands the performance of kitchen personnel including chefs, Sous chefs and other cooks;
2. Plans sequence and time of cooking operations relying on his extensive experience and judgment to ensure consistent high quality and to minimize food costs and exercises portion control over all dishes in the kitchen;
3. Evaluates food products to ensure that quality standards are consistently attained and solves problems encountered such as substituting items on menus, re-using cooked food and reducing excess waste and spoilage;
4. Schedules and coordinates the work of chefs, cooks and other kitchen employees to ensure that food preparation is economical and technically correct;
5. Consults with catering staff about food production aspects of special events being planned and serviced;
6. Prepares necessary data for the budget in area of responsibility, projects annual food and labor costs and monitors actual financial results; takes corrective action where necessary to help ensure that financial goals are met; all in cooperation and collaboration with the Executive Chef;
7. Safeguards all food preparation employees by implementing training to increase their knowledge about safety, sanitation and accident prevention;
8. Ensures that high standards of sanitation and cleanliness are maintained throughout

- the kitchen areas at all times[;]
9. Hires, trains and supervises the work of assistant chefs, cooks and other food production staff[; and]
 10. Manages the Kitchen operations at all times.

On July 19, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed organizational chart for the foreign employer describing its managerial hierarchy and staffing levels; job descriptions for all employees under the beneficiary's supervision; and a more detailed description of the beneficiary's duties abroad, including a breakdown of the number of hours the beneficiary devotes to each of his ascribed duties.

In response, the petitioner submitted an organizational chart for the foreign employer that bears virtually no resemblance to the organizational chart originally submitted in support of the petition. The new organizational chart shows the beneficiary at the top of the organization supervising 29 "kitchen managers" of 29 different branches of the foreign employer. Each "kitchen manager" is portrayed as supervising dispatchers and stockmen. The "kitchen managers" are described as being "[i]n charge of the implementation of Gerry's Grill Standard Kitchen Operating Procedures in the assigned branch." The dispatchers are described as dispatching and inspecting food, and the stockmen are described as administering inventory. The chart does not explain whom the beneficiary supervises in his claimed management of the foreign employer's "biggest outlet out of the 29 restaurants."

The petitioner also submitted a breakdown of the number of hours the beneficiary devotes to each of his duties as follows:

Work to be Performed or Specific Duties	Percentage of Time to be Spent (Hours per Week)
Check, monitor and reviews the outlets Kitchen Managers reports i.e. <ul style="list-style-type: none"> - 5 days par stock projections[.] - Quantity of food stock purchases. - Inventory and Receiving reports. - Production and Yield Reports[.] - Track Sheet Report (detailed quantities of deliveries vs. actual production and yield to ensure that standards and target food cost is achieved)[.] - Kitchen Manning budget and schedules[.] 	18 hrs. 30%
Conducts meetings and briefings to all kitchen personnel	3 [hrs.] 5%
Interviews, qualifies, and hires applicants in the following positions; <ul style="list-style-type: none"> - Kitchen Managers - Stockman - Food Checkers/Dispatchers - Kitchen Stewards/Helpers 	8 hrs[.] 13%
Conducts training, orientations and briefings on job responsibilities and task breakdowns for newly hired kitchen personnel's [sic].	5 hrs[.] 8%

Formulate corrective measures and takes action where necessary to help ensure that financial goals are met. <ul style="list-style-type: none"> - Kitchen Payroll cost[.] - Kitchen Supplies cost[.] - Kitchen Maintenance and equipments cost. - Other Kitchen Miscellaneous expenses. 	6 hrs[.] 10%
Check and monitor kitchen standards on <ul style="list-style-type: none"> - Food quality, presentation and portion size. - Kitchen safety and sanitation. - Storage procedures and stocking level. 	6 hrs[.] 10%
In charge and commands the performance of Kitchen personnel by formulating guidelines and procedures as approved by the Director of Operations and Management Committee. <ul style="list-style-type: none"> - Operations flowcharts[.] - Standard operating procedures on food handling, receiving, and storage[.] - Shelf life or production items. - Product yields and preparation[.] 	2 hrs[.] 3%
Regularly update cost tracking sheet and recipe maintenance[.]	2 hrs[.] 3%
Formulate & Cost new approved recipes and propose selling price.	4 hrs[.] 6%
Participate in the planning, design and layout of kitchen for new project restaurant branches.	6 hrs[.] 10%

On October 17, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary was employed abroad primarily in a managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary's duties were primarily those of a 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). 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.* A petitioner cannot claim that some of the duties of the position entailed executive responsibilities, while other duties were managerial.

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary acted "primarily" in a managerial or executive capacity. In support of the petition, the petitioner has submitted vague job descriptions which fail to sufficiently describe what the beneficiary did on a day-to-day basis. For example, the petitioner states that the beneficiary "supervises chefs, assistant chefs and all the head cooks and about 4 line cooks and all other employees in the kitchen of the biggest outlet, including the overall supervision of all the 29 'Gerry's Grill' kitchen outlets in the Philippines." However, the organizational chart submitted in response to the Request for Evidence fails to identify or describe any of these claimed

subordinate workers and instead portrays the beneficiary as supervising "kitchen managers" at all 29 restaurants in the Philippines. Likewise, while the petitioner submitted a breakdown of the number of hours devoted by the beneficiary to each of his duties, this breakdown fails to explain which duties pertain to his claimed "management" of kitchen operations at all 29 restaurants and which duties pertain to his claimed "management" of the kitchen of the foreign employer's "biggest outlet." For example, the petitioner claims that the beneficiary devoted 20% of his time to formulating corrective measures relating to kitchen costs and monitoring kitchen safety, sanitation, storage, stocking, and food quality. However, the petitioner fails to explain whether these duties pertain to the beneficiary's management of all 29 kitchens, pertain only to his management of the kitchen in the "biggest outlet," or are split to some degree between his management of all the kitchens and his management of the kitchen in the petitioner's "biggest outlet." Finally, the petitioner fails to clearly explain how, exactly, the beneficiary "supervised" all 29 kitchens while, at the same time, supervised the foreign employer's "biggest outlet." The beneficiary's job description fails to allocate any time for travel between branches and, instead, vaguely describes the beneficiary as formulating guidelines, recipes, and procedures, reviewing reports, and participating in designing new restaurants. However, the petitioner has failed not only to explain whether any of these duties actually pertain to the "management" of all 29 branches, the petitioner has failed to establish that these vague duties are indeed qualifying managerial or executive duties. To the contrary, these duties appear to be design and analytical tasks necessary to the provision of a service or the production of a product.

Accordingly, absent a specific description of his duties, along with a clear explanation of how his time was allocated, it cannot be concluded that the beneficiary was employed "primarily" in a managerial or executive capacity. 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 fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary actually performed managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties were primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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).

Furthermore, the petitioner has also failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As noted above, the petitioner claims the beneficiary supervised "chefs, assistant chefs and all the head cooks and about 4 line cooks and all other employees in the kitchen of the biggest outlet" as well as supervised the "kitchen managers" at all the foreign employer's other restaurants in the Philippines. The "kitchen managers," in turn, allegedly supervised other subordinate workers. However, the record is not persuasive in establishing that the beneficiary supervised and controlled supervisory, managerial, or professional workers. First, the record is not persuasive in establishing that the beneficiary truly "supervised" the "kitchen managers," and their claimed subordinate workers, at the foreign employer's other restaurant locations. The beneficiary's job description fails to describe the beneficiary as having supervisory control

over these employees. The beneficiary's breakdown of duties fails to include any time for travel between the restaurants, and the record is devoid of evidence explaining what, exactly, the beneficiary did to "supervise" these workers or how he fit into the overall management of each restaurant's operation. Instead, the beneficiary is described vaguely as formulating recipes, reviewing reports, and preparing guidelines and procedures. An employee will not be considered to be a supervisory worker simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employees, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. See generally *Browne v. Signal Mountain Nursery, L.P.*, 286 F. Supp. 2d 904, 907 (E.D. Tenn. 2003) (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)). In this matter, the beneficiary's job duties do not establish that he could truly be characterized as a "supervisor" of the "kitchen managers" at the foreign employer's 29 locations.

Second, even if it was established that the beneficiary truly "supervised and controlled" the "kitchen managers" and the subordinate employees working at the other locations, it has not been established that any of these employees, as well as any of the chefs, assistant chefs, head cooks, and line cooks working in the kitchen of the foreign employer's "biggest outlet," is a supervisory, managerial, or professional employee. The petitioner failed to describe the subordinates' duties or the organizational structure of the "biggest outlet," and the vague description of the "kitchen managers" fails to establish that these workers were truly supervisory, managerial, or professional in nature. Once again, 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.

In view of the above, the beneficiary would appear to have been primarily a first-line supervisor of non-professional workers, 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 failed to establish the skills and education required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary managed professional employees.² Therefore, the petitioner has not established that the

²In evaluating whether the beneficiary will manage professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee was employed in a professional capacity as that term is defined above. In this matter, the petitioner has not

beneficiary was employed primarily in a managerial capacity.³

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, it appears that the beneficiary was primarily employed as a first-line supervisor and performed the tasks necessary to produce a product or to provide a service. Finally, as it appears that the beneficiary as "kitchen operations manager" reported to a variety of superiors in the Philippines, it is more likely than not that any authority to direct the organization was vested in these

established that a bachelor's degree is necessary for any of the positions allegedly subordinate to the beneficiary.

³While 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 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 that the beneficiary's duties were primarily managerial. Also, as explained above, the record establishes that the beneficiary was primarily be a first-line supervisor of non-professional employees and/or performed 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 primarily performed 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).

workers and not in the beneficiary. Therefore, the petitioner has not established that the beneficiary was employed primarily in an executive capacity.

Accordingly, the petitioner has failed to establish that the beneficiary 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 failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. 8 C.F.R. §§ 214.2(l)(3)(ii).

The petitioner described the beneficiary's proposed duties in the United States in a document titled "Job Description of Kitchen Operations Manager" as follows:

1. Hires, trains and supervises the work of chefs, assistant chefs, sous chefs [sic] and line cooks and other food production staff;
2. Oversees the daily food production of all menu recipes;
3. Directly supervises the cooking of items served that require skillful preparation and presentation;
4. Makes certain that par stocking level in the kitchen, food and equipments, are always maintained to prevent out of stock items;
5. Makes certain that proper staff scheduling is observed daily;
6. Monitors and ensures that the kitchen standards on food quality, quantity portioning, safety and cleanliness, hygiene and grooming are observed at all times;
7. Ensures that the kitchen is maintained clean, orderly and organized and that proper storage procedure is observed at all times;
8. Ensures that department expenses are within the approved budget;
9. Examines and approves all kitchen reports from the other Executive Chefs, chefs and sous chefs.

Counsel further explained in a letter dated September 10, 2007 that the beneficiary will be responsible for the administrative and quantitative aspects of the kitchen while the executive chef, who is "second in command in the kitchen," will be responsible for the production of food.

The petitioner also submitted organizational charts showing the beneficiary reporting to a director of operations and directly supervising an executive chef who, in turn, is portrayed as supervising all subordinate kitchen employees including sous chefs, cooks, and dispatchers.

Finally, the petitioner submitted a breakdown of the number of hours the beneficiary will devote to each of his ascribed duties on a weekly basis. As the breakdown of duties is virtually identical to the breakdown submitted for the beneficiary's position abroad, with the exception of the percentages of time allocated to each duty (*see supra*), the breakdown will not be repeated here.

Upon review, the petitioner has failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity in the United States. The record is not persuasive in establishing 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. While the petitioner claims that the beneficiary will directly supervise the executive chef who, in turn, will supervise all subordinate kitchen personnel, this assertion is not persuasive. The beneficiary is described as being in charge of the administrative and quantitative aspects of the kitchen. He allegedly formulates and implements systems, policies, and procedures pertaining to kitchen costs, inventory, safety, and health. In performing this function, it has not been established that the beneficiary will truly "supervise and control" the executive chef and, indirectly, a subordinate tier of food production employees. To the contrary, it appears that the beneficiary will primarily perform tasks necessary to the operation of the restaurant or will act as a first-line supervisor of subordinate pantry and storekeeper employees, and the chef and food preparation employees will more likely than not report directly to the overall manager of the operation. As noted above, an employee will not be considered to be a supervisory worker simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employees, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F. Supp. 2d at 907 (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16). Once again, a managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner failed to establish the skills and education required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.

Accordingly, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, and the petition may not be approved for this reason.

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.