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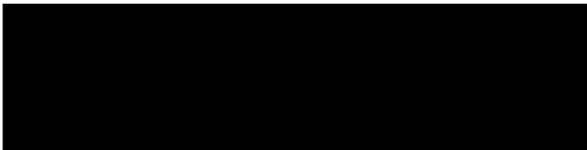


File: EAC 08 007 53281 Office: VERMONT SERVICE CENTER Date: DEC 01 2008

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)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting 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 petition seeking to employ the beneficiary in the position of "owner/executive" to open a new office in the United States 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, a limited liability company formed under the laws of the State of Tennessee, allegedly operates an organic farm.

The director denied the petition concluding that the petitioner failed to establish (1) that the United States operation will support a managerial or executive position within one year; or (2) 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, counsel asserts that the beneficiary primarily performed qualifying duties abroad and will primarily perform qualifying duties in the United States within one year. 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.
- (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.

In addition, 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, 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 first issue in this proceeding is whether the intended United States operation, within one year of the approval of the petition, will support an executive or managerial position.

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.

In support of its petition, the petitioner submitted a letter dated October 3, 2007 in which the proposed United States enterprise is described as a 1,460-acre organic farming operation located in Tennessee. The petitioner also outlined a "five-year plan" for the operation. Years one and two are described in the letter as follows:

Year 1:

- [The beneficiary] manages two workers (Corban, hired man) to plow grassland and convert into certified organic immediately to grow corn and soybeans
- Begin transition of current tilled land in to [sic] organic – [the beneficiary] manages the conversion process
- Buy some cattle to begin transition into natural or organic beef
- Increase storage capacity – special crops cannot be delivered immediately
- Get a Forest Plan written up by the State Forester for the land
- [The beneficiary] and Corban visit other organic farms to see Biological farming in action

Year 2:

- [S]econd year of transition – grow non-gmo crops (corn and soybeans) at a premium
- [The beneficiary] and Corban visit organic trade shows (Acres) to make contacts for diverse markets

- Begin clearing trees for pasture areas
- [The beneficiary] manages the Forest Plan – set up duck holes and blinds and bluffs for deer – grow crops that encourage wild life attraction
- Full Biological Farming practices initiated
- Increase employees for the farming division

The petitioner also vaguely summarizes the beneficiary's proposed duties in the United States. As this job description is in the record, it will not be repeated here verbatim. Generally, the petitioner paraphrases the statutory definition of "executive capacity." However, the petitioner did not specifically define the proposed staffing of the organization, the goals or policies to be established by the beneficiary, or how, exactly, the beneficiary will be relieved within one year from primarily performing the non-qualifying tasks inherent to the administration of a farm.

Finally, the petitioner submitted revenue, expense, and income projections. However, these projections were not corroborated by any evidence pertaining to the proposed United States operation.

On October 18, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the proposed staffing and personnel structure of the United States operation, descriptions of the job duties and job titles of the proposed subordinate workers, a more detailed description of the beneficiary's proposed duties, and an organizational chart for the United States operation.

In response, counsel submitted a letter dated October 23, 2007. In this letter, counsel claims that the United States operation will "establish a manufacturing facility for farm implements" in addition to operating the organic farming enterprise described in the initial petition. The petitioner submitted an uncorroborated "five-year plan" for this line of business as well. The plan notes that the beneficiary will manage "all operations" but does not indicate that any additional workers will be hired during the first year.

Counsel also further described the beneficiary's proposed duties in the United States in the October 23, 2007 letter as follows:

According to the five year plans and organizational charts attached, [the beneficiary] will manage the overall development of the farm operation. He will coordinate with government, direct and develop operations, and be involved in developing the organic products to be grown on the farm. In addition, he will direct and develop the manufacturing division. His duties will include coordinating the distribution of specialized farm implements through a manufacturer using the New Holland Brand. He will manage initially sales and marketing of the products in the first year. By the second year, he will hire additional workers and manage overall direction and vision of the manufacturing plant. By the third year, nine additional employees will be hired and [the beneficiary] will manage personnel.

Moreover, counsel claims that the beneficiary will oversee "a grain processing manager, wildlife tourism manager, forestry manager, grain farm manager, manager of research and development, parts manager[r], assembly manager and service manager." The petitioner also submitted a proposed organizational chart for

the United States operation listing a variety of proposed positions subordinate to the beneficiary. However, the petitioner failed to specifically describe the duties of any of these proposed subordinates or explain when, exactly, it plans to recruit and hire these workers and in what sequence.

On November 6, 2007, the director denied the petition concluding that the petitioner failed to establish that the United States operation will support an executive or managerial position within one year.

On appeal, counsel asserts that the petitioner has established that the beneficiary will perform qualifying duties within one year of petition approval.

Upon review, counsel's assertions are not persuasive.

When a new business is 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 activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

For several reasons, the petitioner in this matter has failed to establish that the United States operation will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. The petitioner has failed to establish that the beneficiary will primarily perform qualifying duties after the petitioner's first year in operation; has failed to establish that the beneficiary will be relieved of the need to perform the non-qualifying tasks inherent to the operation of the business by a subordinate staff within the petitioner's first year in operation; and has failed to sufficiently describe the nature, scope, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C).

First, the job description for the beneficiary fails to credibly establish that the beneficiary will perform primarily "managerial" or "executive" duties after the petitioner's first year in operation. When examining the proposed executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the proposed 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 that will be performed by the beneficiary and indicate whether such duties will be either in an executive or managerial capacity. *Id.*

In this matter, the petitioner has 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 after the petitioner's first year in operation. For example, the petitioner states that the beneficiary will "direct and develop operations," develop "organic products to be grown on the farm," and coordinate "the distribution of specialized farm implements through a manufacturer using the New Holland Brand." The petitioner also claims that it "will hire additional workers" in the second year. However, the petitioner fails to specifically describe what, exactly, the beneficiary will do to perform these duties or to establish that any of these vaguely described duties will constitute a bona fide managerial or executive duty. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated duties does not establish that the beneficiary will actually perform managerial or executive duties after the first year in operation. Specifics are clearly an important indication of whether a beneficiary's duties will be 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, the record is not persuasive in establishing that the beneficiary will be, after the first year, relieved of the need to "primarily" perform the non-qualifying tasks inherent to his duties and to the operation of a farming and farm equipment business. While the petitioner claims that it will hire additional employees, the petitioner failed to explain when it plans to hire these workers, or to describe their proposed duties, even though this evidence was specifically requested by the director. 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). Consequently, it cannot be discerned how, exactly, any of these proposed workers will relieve the beneficiary of the need to primarily perform non-qualifying tasks inherent to the farming and equipment operation. 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.

Furthermore, it has not been credibly established that the petitioner will truly be able to hire the workers described in the organizational chart and in the response to the Request for Evidence. Simply alleging that the petitioner will hire a variety of employees in the future who will perform non-qualifying tasks does not establish that the United States operation will truly grow and mature into an active business organization which will reasonably require the services of a beneficiary who will primarily perform managerial or executive duties. Rather, the petitioner must clearly define the scope and nature of a United States operation and establish that it has, and will continue to have, the financial ability and business strategy to support the establishment and growth of the business. However, the record in this matter is devoid of any such evidence. The business plan vaguely describes the scope of the proposed farming and equipment operation and fails to establish when any of the proposed workers will be hired, in what sequence they will be hired, or how they will be recruited. Importantly, the record also fails to establish that the United States operation is of a character which will require the services of a managerial or executive employee. As noted by counsel on appeal, "in organic farming, or any farming operation, the executive level manager is responsible for the daily operation of the farm and there usually is only one layer of employees below that manager." Accordingly, the petitioner has failed to establish that the beneficiary will more likely than not perform "primarily" qualifying duties after the petitioner's first year in operation. 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; see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. See 101(a)(44) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604.

Given the size and nature of the proposed operation, it is more likely than not that the beneficiary and his proposed subordinate employees will all primarily perform the tasks necessary to the operation of the business. See generally *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9<sup>th</sup> Cir. 2006). It is not credible that a business, such as the petitioner's proposed United States operation, will develop an organizational complexity within one year which will require the employment of a subordinate tier of managers or supervisors who will be supervised and controlled by a primarily executive or managerial employee. Therefore, it appears that the beneficiary will be, at most, a first-line supervisor of non-professional workers.

Accordingly, the petitioner has failed to establish that the beneficiary will be primarily employed in a managerial or executive capacity within one year, and the petition may not be approved for that reason.

Second, the petitioner failed to establish that the United States operation will support an executive or managerial position within one year, because the petitioner has failed to sufficiently describe the nature, scope, and financial goals of the new office. 8 C.F.R. § 214.2(l)(3)(v)(C)(I). As explained above, the petitioner describes the United States operation as a farming and farm equipment business. However, the petitioner's "five-year plan" and associated financial projections are entirely unsupported by evidence. The record does not specifically describe the operation's marketing strategy, and the petitioner fails to address its competitors or potential customers. It is unclear to whom the petitioner will market its products in the United States. The record does not contain any independent analysis, contracts, or list of business contacts. Absent a detailed, credible description of the petitioner's proposed United States business operation specifically

addressing the petitioner's proposed products, marketing plan, and customers, it is impossible to conclude that the proposed enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. 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.

Accordingly, the petitioner has failed to establish that the United States operation will support an executive or managerial position within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C), and the petition may not be approved for the above reasons.

The second issue is whether the petitioner has established that the beneficiary was employed abroad in a primarily managerial or executive capacity.

The petitioner described the beneficiary's duties abroad in the October 3, 2007 letter as follows:

[The beneficiary] has performed the duties as a general manager of the company. He was in charge of the operations of the farm, production and ordering materials, production scheduling, staffing, equipment, quality control, as well as research and development. He plans, directs, and coordinates the operations of the company. His duties include formulating policies, managing daily operations, and planning the use of materials and human resources.

He analyzes the farm's personnel and capital resources and selects the best way to meet the stated production goals. He also monitors the production to make sure that it stays on schedule and correct any problems that may arise. He monitors product standards. When quality drops below the established standard, he troubleshoots why standards aren't being maintained and how to improve the process.

Since, 1982, he has concurrently served as the Vice-President of Honey Bee Manufacturing, directing the business and conducting research and development.

On October 18, 2007, the director requested additional evidence. The director requested, *inter alia*, that the petitioner indicate how the beneficiary's duties have been managerial or executive in nature and an organizational chart for the foreign employer.

In response, counsel submitted a letter dated October 23, 2007 in which she clarifies that Glenray Farms Ltd., and not Honey Bee Manufacturing, is the "qualifying company for L-1 visas."

The petitioner also submitted an organizational chart for the foreign employer, [REDACTED] located in Canada. The chart shows the beneficiary at the top of the organization supervising, directly or indirectly, approximately nine subordinate workers. The petitioner did not describe the duties of the claimed subordinate workers abroad.

On November 6, 2007, the director denied the petition concluding that the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity.

On appeal, counsel asserts that the beneficiary primarily performed qualifying duties abroad. Counsel notes in her brief that "in organic farming, or any farming operation, the executive level manager is responsible for the daily operation of the farm and there usually is only one layer of employees below that manager."

Upon review, counsel's assertions are not persuasive.

Once again, 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.* 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 will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

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 a vague and non-specific job description which fails to sufficiently describe what the beneficiary did on a day-to-day basis. For example, the petitioner states that the beneficiary was "in charge" of farm operations, "plans, directs, and coordinates the operations," manages "daily operations," and monitors production. However, the petitioner does not specifically describe what, exactly, the beneficiary did to direct or manage farming operations other than to act as a first-line supervisor of non-professional farm staff. The petitioner has not established that any of the beneficiary's vaguely described duties pertaining to administering farm operations, including the supervision of farm staff, were qualifying duties. The fact that a petitioner has given a beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that a beneficiary actually performed managerial or executive duties. Once again, 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, *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.

Consequently, the record is not persuasive in establishing that the beneficiary primarily performed qualifying duties in his operation of the farming business. As noted above, the petitioner claims that the beneficiary "direct" the foreign employer's business operations through several subordinate farm workers. However, the record does not establish that the beneficiary was relieved of the need to perform many of the non-qualifying tasks inherent to his ascribed duties by these workers. The petitioner failed to describe the duties of any of the beneficiary's claimed subordinate workers. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* Accordingly, it cannot be concluded that the beneficiary was relieved from the need to perform the non-qualifying tasks inherent to operating a farm, and it appears more likely than not that the beneficiary primarily performed non-

qualifying first-line supervisory, administrative, and operational tasks in his administration of the business. Once again, 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; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. As noted above, 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.

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 asserted in the organizational chart, the beneficiary directly or indirectly supervised several subordinate workers abroad. However, it has not been established that any of these workers was a supervisory, managerial, or professional worker. Merely placing one worker in a position superior to another in an organizational chart does not establish that a worker is a bona fide managerial or supervisory employee. When examining the supervisory or managerial characteristics of a worker, the AAO will look first to the petitioner’s description of the job duties. *See c.f.* 8 C.F.R. § 214.2(l)(3)(ii). In this matter, as the petitioner failed to specifically describe the duties of these subordinate workers, it has not been established that any of the workers is a supervisory, managerial, or professional worker. Finally, as indicated by counsel on appeal, it appears that the beneficiary was, at most, a first-line supervisor of farm workers. Counsel stated in her brief that “in organic farming, or any farming operation, the executive level manager is responsible for the daily operation of the farm and there usually is only one layer of employees below that manager.” Accordingly, as it appears that the beneficiary was, at most, a first-line supervisor of non-professional farm workers, the petitioner has not established that the beneficiary was employed primarily in a managerial capacity.<sup>1</sup>

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<sup>1</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 managed an essential function, the petitioner must furnish a written job offer that clearly describes the duties 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 managed the function rather than performed the tasks 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, it appears more likely than not that the beneficiary was primarily a first-line supervisor of non-professional farm workers and performed non-qualifying administrative or operational 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, if any, 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).

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. As explained above, it appears instead that the beneficiary was primarily employed as a first-line supervisor of non-professional farm workers and performed the tasks necessary to produce a product or to provide a service. 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 primarily performed managerial or executive duties abroad, and the petition may not be approved for that reason.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.