

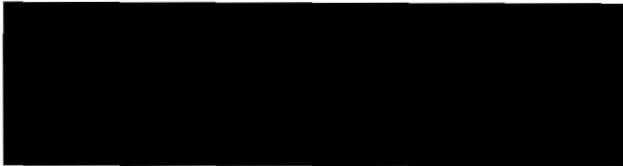
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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NOV 03 2009

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date:
LIN 07 083 53060

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

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Texas limited liability company that claims to be engaging in the manufacture and sale of farm equipment and laminated tires. It seeks to employ the beneficiary as its laminated tires construction specialist. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition, concluding that the petitioner had not established that the beneficiary was employed by the foreign entity, or will be employed by the United States entity, in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner contends that the director's decision is in error. Counsel submits a brief and additional evidence on appeal.

Section 203(b) of the Act states in pertinent part:

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

- (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in

a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

The first issue in the present matter is whether the beneficiary would be employed in a primarily managerial capacity in the United States. The petitioner does not claim that the beneficiary would be employed in an executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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.

In a letter dated January 11, 2007 submitted with the Form I-140, Immigrant Petition for Alien Worker, the petitioner stated that the beneficiary has been employed by the U.S. company as a laminated tires construction specialist since 2002. The petitioner stated that the beneficiary manages the Laminated Tires division of the company and described the beneficiary's job responsibilities as follows:

[The beneficiary] is primarily responsible for promoting use of and sale of laminated tires within the U.S. and managing the quality assurance aspect of our manufactured laminated tire products. As a promoter of laminated tires in the U.S., [the beneficiary] determines whether laminated tire products may be manufactured to meet the specific needs of our clients. In this regard, he examines the technical specifications of the current tire product used by the client and then evaluates whether

a laminated tire product could be designed and manufactured to meet the clients' technical specifications. If [the beneficiary] determines that such laminated tire product could be manufactured, he then coordinates with our Indian affiliate to ensure that products are developed within the required timeframe and budget. [The beneficiary] functions at a senior level with respect to promoting the sale of our laminated tires because he possesses contract authority. In other words, he determines whether laminated tire products may be manufactured to meet the clients' requirements and this in turn determines whether ANZ-USA can ultimately enter into a contract with these clients. In this regard, he exercises wide latitude in discretionary decision-making with respect to the selling of our laminated tire products.

The petitioner added:

The beneficiary works with the technical division in India to ensure changes made to the laminated tire products meet the requirements of the clients in the US. He works with the import coordinator to facilitate product development and the delivery of the laminated tire products. He coordinates between the manufacturing facility in India and our U.S. clients to obtain all the clarifications related to designs and standards as may be required during product development stage. [He] maintains a comprehensive record for each product from inception till the commercial supply stage. He establishes technical support function of final quality check of all products before shipping to our U.S. clients. He supports and educates sales team by providing necessary input on the high quality standards maintained by [the U.S. company]. He addresses client grievances related to the quality of the product supplied by [the U.S. company] and establishes standards of service for our clients. [He] functions at a senior level with respect to the quality of our laminated tires because he has the authority to send products back to our Indian affiliate to be re-manufactured when the laminated tire products fail to match our clients' specifications. In that regard, he also exercises wide latitude in discretionary decision-making with respect to the quality assurance of our laminated tire products.

On February 29, 2008, the director issued a request for further evidence (RFE), in which he instructed the petitioner to submit the following evidence relating to the beneficiary's position in the United States:

1. A description of the beneficiary's duties in greater detail, setting forth what actual, day-to-day tasks are involved and an estimate of the percentage of time spent on each specific duty.
2. A statement from an authorized officer of the U.S. company describing the beneficiary's intended employment in the United States, stating the date of employment, job title, specific job duties, types of employees supervised, and the title and level of authority of the beneficiary's immediate supervisor.

3. A detailed organizational chart for the petitioner illustrating the current structure of the organization with the addition of the permanent proposed position of the beneficiary. The chart should include the names of all departments and teams, the names and a detailed description of the job duties of the beneficiary's immediate supervisor and all subordinate employees, and the dates of employment for each U.S. employee.
4. Copies of the petitioner's Form 941, Employer's Quarterly Federal Tax Return, and corresponding state form for each quarter of 2005, 2006 and 2007; Forms W-2 for each U.S. employee for the years 2005, 2006 and 2007; the U.S. company's tax returns for 2006 and 2007; and the beneficiary's most recent pay voucher.

In a letter dated March 20, 2008 responding to the RFE, the petitioner provided the following description of the beneficiary's duties:

- Correspond with the Vice President of Operations in order to understand Petitioner's current product development and delivery schedule (5%);
- Visit client locations to study each client's product in order to see how Petitioner's products will be and are being used (5%);
- Travel (10%);
- Learn the technical specifications of the current product being used by the client and relate that to laminated tires (5%);
- Coordinate between manufacturing facilities in India to relay clients' requirements as they pertain to tire wheel configurations (10%);
- Debrief the technical support staff on the execution and quality check of the tire related products before shipping them to clients (10%);
- Communicate the necessary configuration changes in products to support staff to better suit clients' requirements (20%);
- Exercise discretion over support staff in implementing changes to future products and parts at the plant level (10%);
- Provide input for designing and fabricating the necessary jigs and fixtures which are required to carry out the product changes needed to meet customer requirements (10%);
- Address client complaints regarding the quality of the marketed products supplied by Petitioner (5%); and
- Maintain comprehensive records for each product and provide Petitioner with documentation, emails, and internal communication (10%).

The petitioner provided an organizational chart dated March 27, 2008 for the U.S. company, which shows the beneficiary reporting directly to the "QA Manager/Acting VP Operations", who reports to the president of the company. The chart also shows the beneficiary as an indirect report of the U.S. company's "FMEA Engineer," who in turn is an indirect report of the U.S. company's QA Manager and the foreign company's CEO. According to the petitioner, the Vice President of Operations "has been given the authority to purchase needed resources ..., to sign and issue company checks, hire and

fire any employee, and exercise wide latitude in discretionary decision making with only minimal direction from the President." In addition, the petitioner indicated that he "establishes the goals and policies of the US organization" and "is responsible for achieving the stated corporate objective ...". No job description was provided for the FMEA engineer.

The chart lists three assistant positions under the beneficiary. No individual names were disclosed in connection with these positions, although the chart indicates that all three are temporary personnel provided by a staffing agency. The petitioner describes the job duties of the assistants as follows:

- Execute daily plans as per the agreed requirements on a daily basis;
- Must be able to read technical plans and drawings and understand all of the technical terminology referred to in the drawings;
- Report problems and process delays in a timely manner;
- Repair faults in equipment to ensure smooth operations;
- Indent [sic] material and order supplies once reorder levels are triggered;
- Maintain shop floor etiquettes including housekeeping; and
- Maintain other coworker's timesheet and compile these forms on a weekly basis.

In addition, the petitioner provided the U.S. company's tax return for 2006 and an application for a six-month extension to file its 2007 tax return. The petitioner submitted 2005 Forms W-2 for nine individuals, 2006 Forms W-2 for eight individuals, and 2007 Forms W-2 for 4 individuals. The petitioner also submitted the requested Forms 941, which show that the petitioner employed five to eight employees in 2005, four to six employees in 2006, and four employees in 2007.

On June 3, 2008, the director denied the petition, concluding that the petitioner had not established that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity. The director observed that the description of the beneficiary's U.S. position initially provided with the Form I-140 is "that of a sales representative, staff officer or a specialist, not that of an executive or manager." The director found that the job description provided in response to the RFE is inconsistent with the first, in that it makes no mention of marketing or sales functions. The director further found that the petitioner has not established that the beneficiary would manage a function within the U.S. organization. Therefore, the director concluded, the petitioner has failed to establish that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity.

On appeal, counsel contends that the beneficiary's duties in the U.S. company indicate that he will be employed in a managerial capacity. Counsel notes that, previously, three L-1 petitions filed by the petitioner on behalf of this beneficiary have been approved. Counsel emphasizes that the beneficiary does not and will not engage in sales, and that his only responsibility in connection with sales is to ascertain that the petitioner can produce a product that would satisfy a client. Counsel asserts that, because he has contract authority and the power to send products back to the manufacturing plant if they do not meet with clients' specifications, the beneficiary's position is closer to that of a quality control manager than a sales person. Counsel explains that the Indian affiliate handles all of the sales (*i.e.*, sales are generated by the president of both companies and the CEO of the foreign entity

through their periodic visits to the United States), and that the primary functions of the U.S. company are warehousing, quality control management and after-sale support. Counsel argues that although the beneficiary does not supervise or control the work of other supervisory, professional, or managerial employees, the beneficiary does manage an essential function of the petitioner's business, namely the company's laminated tires division. Counsel contends that the beneficiary's position in the United States meets all four requirements for "managerial capacity" set forth in Section 101(a)(44)(A) of the Act.

Upon review, the AAO concurs with the director's conclusion that the petitioner has failed to establish that the beneficiary would be employed in a primarily executive or managerial capacity in the United States.

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. § 204.5(j)(5). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In addition, it should be noted that the definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act.

Here, the AAO finds that the evidence indicates, and counsel acknowledges, that the beneficiary does not supervise supervisory, managerial or professional employees and therefore would not qualify as a "personnel manager." The petitioner provided an organizational chart and job descriptions indicating that the beneficiary supervises three "assistants" within the U.S. company, and the company's tax filings show that it has multiple employees during the years 2005 through 2007. However, there is no evidence in the record identifying which, if any, individuals occupied those assistant positions at any point in time. It is noted that the petitioner was requested to produce the names and dates of employment for its U.S. employees, and failed to disclose this information for the beneficiary's claimed subordinates. This information would have established whether the beneficiary actually supervises subordinates in the U.S. company, and therefore is material to the determination of the beneficiary's managerial capacity. 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).

Further, assuming these subordinate positions were filled, it does not appear based on the job description provided that any of them would qualify as a supervisory or managerial employee. Similarly, the record lacks any evidence showing that any of the beneficiary's subordinates in the United States would qualify as a "professional" employee. As such, the record does not demonstrate that the beneficiary would function as a "personnel manager" in his U.S. position.

In any event, counsel maintains that even though the beneficiary does not supervise employees, he still qualifies as a function manager. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, *i.e.*, identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 204.5(j)(5). Further, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Counsel asserts on appeal that the director erred in characterizing the beneficiary's functions as that of a salesperson and claims that the beneficiary's position is closer to that of a quality control manager. However, the AAO notes that while the petitioner did indicate in its January 11, 2007 letter that the beneficiary "manages the quality assurance aspect" of its laminated tire products, it also explicitly stated that the beneficiary "is primarily responsible for promoting use of and sale of laminated tires within the U.S." The petitioner further explained that the beneficiary "functions at a senior level with respect to promoting the sale of our laminated tires because he possesses contract authority," and thus "he exercises wide latitude in discretionary decision-making with respect to the selling of our laminated tire products." Regardless, in view of the totality of the evidence, the AAO accepts that the beneficiary does not function strictly as a salesperson, but rather is involved in the quality control function with respect to products sold by the petitioner to its customers. However, the question remains whether the beneficiary's involvement in the quality control function can be characterized as primarily managerial in nature.

In this instance, the description of the beneficiary's daily duties in the United States fails to demonstrate that the beneficiary manages the quality control function rather than performs the duties related to the function. First, the AAO notes that it is the beneficiary's immediate supervisor who bears the title of "QA [presumably, quality assurance] Manager." Thus, it is not possible to conclude that the beneficiary acts at a senior level with respect to the quality control or assurance function. Further, with respect to the beneficiary's duties, the petitioner indicated that the beneficiary "visit[s] client locations to study each client's product;" "learn[s] the technical specifications of the current

products" of clients;" "communicate[s] ... configuration changes in products to support staff to better suit clients' requirements;" "provide[s] input for designing and fabricating" components required for product changes; and "maintain[s] comprehensive records for each product." Altogether, these tasks occupy at least 60%, or the majority, of the beneficiary's time. The description of these tasks suggests that even if the actual production of the laminated tire products is carried out by an unspecified support staff, the beneficiary is still performing tasks that are part of the production of the company's product, albeit in a specialist capacity. 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 Int'l.*, 19 I&N Dec. at 604. As such, the AAO finds the evidence shows that although the beneficiary is primarily involved in the quality control function with respect to the petitioner's laminated tire products, his involvement appears to be in the capacity of a technical specialist rather than a managerial or executive capacity.

In light of the foregoing, the AAO concurs with the director's conclusion that the petitioner has failed to establish that the beneficiary would be employed in the United States in a primarily executive or managerial capacity. For that reason, the petition will be denied.

The second issue in this matter is whether the beneficiary was employed abroad in a primarily executive or managerial capacity.

In the January 11, 2007 letter, the petitioner indicated that, prior to his transfer to the United States, the beneficiary was employed as a technical support engineer with ANZ Tires International, a company located in Bangalore, India, which wholly owns the U.S. company. The petitioner described the beneficiary's responsibilities in that position as follows:

[The beneficiary] oversaw the development and manufacturing of laminated tire products to supply to our clients in the U.S. In such capacity, the beneficiary was involved in the sale, design, manufacture, and testing of these laminated tire products. He would frequently interact directly with our U.S. customers to ascertain whether laminated tires could be manufactured to meet the customers' specific specifications. Once he determined that such a product could be developed to conform to the clients' specific needs, he coordinated with the product development team to build these laminated tire products. After these products were manufactured, he would test the products to ensure the final products matched the specifications of the client. His other managerial duties include overseeing engineering modification records and defining preventative maintenance schedules. Essentially, as a Technical Support Engineer, [the beneficiary] prepared proposals transforming client requirements in technology solutions and ensured that requirements matched the proposed solution. He also served as Liaison with the clients and the product development team to ensure the proper manufacturing of products that matched the clients' request.

In the RFE, the director requested the following evidence relating to the beneficiary's positions abroad:

1. A description of the beneficiary's duties in greater detail, setting forth what actual, day-to-day tasks are involved and an estimate of the percentage of time spent on each specific duty.
2. A detailed organizational chart for the beneficiary's employer abroad that corresponds with the beneficiary's qualifying employment abroad and includes the names of all departments and teams, the names and detailed job descriptions for the beneficiary's immediate supervisor and all subordinate employees.
3. A statement from an authorized officer of the foreign employer describing the beneficiary's qualifying employment overseas, stating the date of employment, job title, specific job duties, types of employees supervised, and the title and level of authority of the beneficiary's immediate supervisor.

In the March 20, 2008 letter responding to the RFE, the petitioner listed the beneficiary's duties overseas, along with the time allocated to each duty, as follows:

- New product development (20%);
- Test current products and perform research on how to make them stronger and more durable (10%);
- Direct and perform preventative maintenance on Petitioner's plant and machinery (15%);
- Learn and improve the actual laminated tire construction process (20%);
- Use and design machines and tools to improve the quality and output of the laminated tires (15%);
- Coordinate with the Technical Manager to understand the product development program and allocate resources most efficiently (10%); and
- Maintain engineering modifications records (10%).

The petitioner indicated that the beneficiary "was responsible for overseeing several subordinates while employed abroad," including a shift supervisor or tire production manager, a maintenance manager, a follow up crew, and a general fabrication manager (who was not a direct subordinate). The petitioner noted that it is the responsibility of the shift supervisor, a job handled by multiple staff members, to ensure that automated production of the products is carried out efficiently. The petitioner did not provide any information as to the personnel, if any, supervised by the shift supervisor(s). The maintenance manager's job, according to the petitioner, is to perform preventative and corrective maintenance on the production equipment. The petitioner claimed that the maintenance manager plans a roster of people assigned to perform maintenance; again, no information was given with respect to a maintenance staff.

The petitioner submitted an undated organizational chart for the foreign entity which lists position titles without any individual names attached. The position that appears to correspond to the beneficiary's described position bears the title "Sr. Manager Tire Plant/Technical Support Engineer –

Tires (old job title)." That position reports to the "General Manager Production" and has an unspecified number of subordinates under the titles of "Shift Supervisor", "Maintenance" and "Follow-up."

As was the case with the beneficiary's U.S. position, the director found that the initial description of the beneficiary's foreign position "is that of a sales representative, staff officer, or a specialist, not that of an executive or manager as defined for the requested status. The director also found that the description of the beneficiary's overseas position provided in response to the RFE is not consistent with that provided with the initial petition. The director concluded that it has not been shown that the beneficiary managed a function within the foreign entity.

On appeal, counsel contends that the beneficiary's position abroad meet all four requirements for managerial capacity. Again, counsel emphasizes that the beneficiary did not engage directly in sales, and that "his position abroad would also be much more akin to a Quality Control Manager/Production Manager than a sales person as he was responsible for making sure the Petitioner's products were manufacture properly and matched client expectations." Counsel claims that the beneficiary "managed the development and manufacturing departments of the Laminated Tire division of Petitioner's company abroad," "supervised and controlled the work of other supervisory or managerial employees, and also managed an essential function within Petitioner's company," "had the power to hire and fire supervised employees," and "exercised complete and total discretion over the day-to-day operations of the development and manufacturing departments" of the foreign affiliate. Therefore, counsel claims, the beneficiary's position has satisfied all components of the definition of "managerial capacity."

Upon review, the AAO finds the petitioner has failed to establish that the beneficiary was employed abroad in an executive or managerial capacity.

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. § 204.5(j)(5). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* Further, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary primarily performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d at 1533.

Although the petitioner claimed that the beneficiary "oversaw the development and manufacturing of laminated tires" and counsel claims that he "managed the development and manufacturing departments of the Laminated Tire division" of the foreign entity, the job descriptions provided by the petitioner do not demonstrate that the beneficiary's duties abroad are primarily managerial in nature. For example, the petitioner stated that the beneficiary "[tested] current products and perform[ed] research on how to make them stronger and more durable"; "[learned] and improve[d] the actual laminated tire construction process"; "[used] and design[ed] machines and tools to improve the quality and output of the laminated tires"; and "[maintained] engineering modifications

records." According to the petitioner, these tasks occupied at least 55% of the beneficiary's time. In addition, the petitioner indicated that 15% of the beneficiary's time is spent "[directing] and perform[ing] preventative maintenance on Petitioner's plant and machinery," without any indication what amount of time is spent "directing" as opposed to actually "performing" maintenance. Again, the description of these duties indicated that the beneficiary was directly performing tasks that are part of the production of the company's product, rather than managing or directing the performance of these tasks. 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 Int'l.*, 19 I&N Dec. at 604.

Further, the petitioner has not shown that the beneficiary was employed abroad qualified as either a "personnel manager" or a "function manager." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii).

In the RFE, the petitioner was asked to provide "the names and detailed job descriptions for the beneficiary's immediate supervisor and all subordinate employees." In response, the petitioner provided job descriptions for the beneficiary's supervisor and for his subordinates, including one or more shift manager, a maintenance manager, and a follow up crew. However, the petitioner failed to indicate the actual number and names of employees who filled these positions. This information would have established whether the beneficiary actually supervised other employees in his position abroad, as claimed. Again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Further, assuming these subordinate positions were filled as claimed, the record is insufficient to show that any of them would qualify as a supervisory or managerial employee. Although the petitioner implied in the description of the duties of the shift manager and the maintenance manager that the employees in these positions at least coordinate the work of other personnel, the record contains no evidence of the existence of such personnel. In addition, the record lacks any evidence showing that any of the beneficiary's subordinates abroad qualified as a "professional" employee. Further, contrary to counsel's claim, there is no evidence that the beneficiary had authority to hire/fire or make these recommendations, if appropriate. As such, the record does not show that the beneficiary supervised and controlled the work of other supervisory, professional, or managerial employees in his position abroad, such that he could have been considered a "personnel manager."

Nor does the evidence demonstrate that the beneficiary qualified as a "function manager" abroad, as counsel claimed. As previously noted, the term "function manager" applies generally when a beneficiary is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). To establish 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. § 204.5(j)(5). Specifically, 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. As discussed above, the description of the beneficiary's duties abroad indicated that the beneficiary spent the majority of his time directly performing tasks related to the development and manufacturing of the company's product, rather than managing or directing the performance of these tasks. As such, the record does not support the conclusion that the beneficiary qualified as a "function manager" in his employment abroad.

In light of these deficiencies in the evidence, the AAO finds that the petitioner has failed to establish that the beneficiary was employed abroad in an executive or managerial capacity as required by section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). For this additional reason, the petition will be denied.

Finally, the AAO acknowledges that USCIS has previously approved multiple L-1A petitions filed by the petitioner on behalf of the instant beneficiary. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103. Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Despite the previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous nonimmigrant petition approvals by denying the instant petition.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.