



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
SRC 07 015 53408

Office: TEXAS SERVICE CENTER

Date:

AUG 28 2007

IN RE:

Petitioner:

Beneficiary:

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:

[REDACTED]
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.

R Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner filed the immigrant visa petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of New Jersey that provides imaging products and services to photographic, graphic communications, and healthcare markets. The petitioner seeks to employ the beneficiary as its worldwide financial analyst.

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

On appeal, counsel for the petitioner contends that Citizenship and Immigration Services (CIS) erred in its analysis of the beneficiary's employment capacity, stating that CIS incorrectly required that the beneficiary possess "a level of supervision of other employees." Counsel also emphasizes CIS' earlier approval of an L-1A nonimmigrant visa petition filed the petitioner on behalf of the beneficiary, noting that CIS previously deemed the beneficiary's position to be primarily managerial or executive in nature. Counsel submits a brief in support of the 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 or 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, which 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.

The issue in this proceeding is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) Directs the management of the organization or a major component or function of the organization;
- (ii) Establishes the goals and policies of the organization, component, or function;
- (iii) Exercises wide latitude in discretionary decision-making; and
- (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the Form I-140 on October 23, 2006, noting that in association with her position as worldwide financial analyst, the beneficiary would "[p]rovide financial analysis and business strategy support for the Worldwide Consumer and Professional Imaging Film Flow Manager." In an attached letter, dated October 9, 2006, the petitioner provided the following additional description of the beneficiary's employment in the United States entity:

In her current position, [the beneficiary] is responsible for providing financial analysis and business strategy support for the Worldwide Consumer and Professional Imaging (C&PI) Film Flow Manager. Specifically, she leads and coordinates Worldwide C&PI annual Worldwide Operating Plan, Annual Strategic Review, monthly reporting and quarterly estimate processes. She also prepares explanations and consolidates monthly reports for Worldwide C&PI operations. In addition, [the beneficiary] performs various sourcing, new business and capital investment business cases. She also has responsibility for providing leadership for internal controls, reporting processes and general financing questions for the worldwide C&PI manufacturing sites.

In the course of her duties as Worldwide Financial Analyst, [the beneficiary] makes priority decisions independently and exercises discretionary authority over her daily management activities. **She has supervisory authority over the functions of her position.** [The beneficiary] exercises broad discretion with regard to day-to-day decisions, as she manages all elements of the company's financial functions. [The beneficiary] retains broad discretion with regard to financial decisions and functions at a senior level within the company.

On December 4, 2006, the director issued a request for evidence, noting that the present record did not establish the beneficiary's proposed employment as a manager or executive. The director requested that the petitioner submit a statement detailing the specific functions or duties to be performed by the beneficiary, including addressing "all goal-setting, policy-making, and discretionary decision-making duties." The director asked that the petitioner describe the supervision received by the beneficiary with respect to her position in the organizational hierarchy, and submit an organizational chart reflecting the beneficiary's position. The director further requested the names and job titles of the individuals supervised by the beneficiary, and clarification as to how the company's reasonable needs in light of its overall purpose and stage of development would allow the beneficiary to perform in a primarily managerial or executive capacity.

Counsel for the petitioner responded in a letter dated February 16, 2007. In an attached letter, dated February 15, 2007, the petitioner stated that in her proposed position, the beneficiary would manage "the essential function of forecasting, analyzing and disseminating worldwide financial advice and finance distribution for [the petitioner's] film manufacturing operations." The petitioner explained that with respect to this function, the beneficiary's "develops, modifies, leads and coordinates the worldwide [C&PI] Film Manufacturing Annual Financial Operating Plan and in doing so, provides financial analysis, guidance, strategy and direction to all affected major parties, such as the Chief Executive Office (CEO), Chief Financial Officer (CFO) and Directors of [the petitioning entity], with full responsibility for a \$200 million budget." The petitioner further provided the following outline of the beneficiary's related job responsibilities:

Goal Setting

[The beneficiary] sets goals for the [C&PI] such as the setting of unit manufacturing cost goals and their impact on [the petitioner's] annual finances, which involves communicating with different worldwide film manufacturing sites and processes and determining the future plans for the products. She also sets financial productivity goals, including production and sales volumes, inventory levels and future products for the [C&PI] film manufacturing and in so doing, exercises discretionary authority over her daily management activities.

[The beneficiary] also sets Executive Compensation goals for both executives and employees of [the petitioning entity], such as stocks programs and wage dividends, and presents them to the Board of Directors Compensation Committee, which are the senior decision making executives as [the petitioning entity]. She executes the scoring and reporting of Executive Compensation with the Human Resources Compensation Executive, the Worldwide Control Director of Corporate Financial Planning and Analysis, and the CFO and CEO of [the petitioning entity], thereby functioning at a senior level within the organizational hierarchy and with respect to the function managed.

Policy Making

In policy making, [the beneficiary] leads global efforts to improve financial and operational processes within the [C&PI] business. She continually reviews the processes for possible improvement, modification or cancellation, and makes these priority decisions independently.

Discretionary Decision Making

In discretionary decision making, [the beneficiary] after receiving financial reports and information from [the petitioner's] various departments and groups around the world, performs analysis and decisions and presents them in final detail, with her suggestions, to the most senior level management of [the petitioning entity] for their final approval. She also provides leadership for internal controls by answering general financial questions for other departments and making decisions for the worldwide [C&PI] manufacturing sites.

Position in Organizational Hierarchy

[The beneficiary] reports directly to [REDACTED] who is Director, Corporate Finance Planning and Analysis. [REDACTED] in turn, reports directly to [REDACTED] the Chairman and Chief Executive Officer of [the petitioning entity]. Therefore, she is functioning at a senior level with [the petitioning entity's] organizational hierarchy. [The beneficiary] consolidates global monthly results and then presents them with explanations directly to senior operating and financial management officials in the Global Manufacturing and [C&PI] business units, and then offers recommendations on opportunities, risks, future courses of action, thereby functioning at a senior level within the organizational hierarchy.

Although [the beneficiary] does not have any employees who directly report to her, she does act as the Financial Point of Contact for various Site Financial Analysts around the world (currently eight sites) to provide information for their required decision-making in the major financial corporate processes for [C&PI].

[The petitioner] requires [the beneficiary's] skills and experience to meet the reasonable needs of the company in light of its overall purpose and stage of development of the worldwide [C&PI] Film Manufacturing operations. This level of financial responsibility and functional management allows [the beneficiary] to function as a manager within the organization.

In a decision, dated February 23, 2007, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director outlined the descriptions offered for the beneficiary's position, stating that the record does not establish that as a financial analyst, the beneficiary would be employed in a primarily managerial or executive capacity. The director noted that the petitioner employed other workers in the position of financial analyst, and stated that it is not clear whether the beneficiary's position "is more superior over the others," or that they would "share the duties in this company." The director stated that because the beneficiary was not depicted as supervising subordinate workers, "[t]here is no evidence that [the beneficiary] has the authority to supervise and control 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." The director concluded that because the petitioner failed to establish these criteria, the beneficiary could not be considered a manager or executive. Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on March 23, 2007, claiming that the director's decision contains errors of law and fact with respect to the requirement that the beneficiary supervise subordinate employees. Counsel states that the petitioner did not claim that the beneficiary would manage other individuals, but instead, that she would be employed as a function manager. Counsel states that the statutory definition of "managerial capacity" does not require the supervision or control of others in order to qualify as a manager, but instead allows for the management of a function. Counsel contends: "Proof was submitted that [the beneficiary] works at a senior level with respect to the 'function'."

Counsel emphasizes CIS' previously approval of an L-1A nonimmigrant petition filed by the petitioner on behalf of the beneficiary's employment in the position of worldwide financial analyst. Counsel states:

[The beneficiary] was granted approval as a manager for L-1A purposes and should also be accorded that status for EB-1 purposes under identical regulatory language and under an identical fact pattern.

Counsel references several unpublished AAO decisions, stating that in the decisions the AAO refused to affirm CIS' denial of an I-140 visa petition when a prior L-1A petition had been approved for the same beneficiary unless the prior determination had involved gross error or the facts at issue had changed. Counsel claims that the AAO relied on a belief of "fairness," that "the petitioning company was entitled to rely on the favorable determination concerning managerial status made in the earlier L-1A adjudication." Counsel contends that as a matter of fairness, the "logic" of the earlier decisions should be applied to the analysis of the instant matter.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the petitioning entity in a primarily managerial or executive capacity.

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 job descriptions provided for the position of worldwide financial analyst do not corroborate counsel's claim on appeal that the immigrant visa petition was based on the beneficiary's employment 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, 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. 8 C.F.R. § 204.5(j)(5). 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 its initial letter, the petitioner identified the beneficiary's specific tasks as: coordinating the Worldwide C&PI annual worldwide operating plan, the annual strategic review, the monthly reports, and the quarterly estimate processes; preparing "explanations" with respect to monthly reports for worldwide C&PI operations; performing "sourcing," new business and capital investment cases; and providing leadership for worldwide C&PI manufacturing sites. These brief claims fail to identify with specificity the function to be managed by the beneficiary, and only reference the existence of what appears to be a "Worldwide Consumer and Professional Imaging" department within the petitioning entity. The petitioner did not identify the "Worldwide Consumer and Professional Imaging" function. Nor did the petitioner address how the beneficiary's coordination of the worldwide C&PI operating plan and the monthly and quarterly "processes," or her "explanations" of monthly reports demonstrate that she would be managing a particular financial function in the petitioning entity. While the record suggests that the beneficiary may be receiving financial documentation from other departments, or "sites," from which the beneficiary would also field general finance questions, there is little evidence in the record addressing how the beneficiary would be primarily *managing* the finances of the petitioning entity. Additionally, the limited record does not resolve the suggestion that the beneficiary may instead be performing the non-managerial and non-executive tasks related to the finance function, such as gathering, computing, and analyzing financial material. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As mentioned by the director, the AAO addresses the petitioner's employment of six other financial analysts. Although not directly associated with the analysis of whether the beneficiary performs primarily managerial or executive job duties, the employment of a large number of financial analysts, as well as a director and vice president of corporate financial planning and analysis, a finance director, and a financial specialist severely undermines the petitioner's initial claim that the beneficiary "manages all elements of the company's financial functions," "retains broad discretion with regard to financial decisions," and "functions at a senior level within the company." Also, the beneficiary's employment is not distinguished from that of the other six financial analysts, thereby raising the question of why the beneficiary would be considered the manager of the company's finance function. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Moreover, the petitioner did not explain the beneficiary's additional job duties of "sourcing," "reporting processes," "or providing leadership for internal controls." The limited record does not explain these tasks or identify the specific managerial or executive job duties associated with these responsibilities. Absent clarification, the AAO cannot determine how these job responsibilities would warrant the beneficiary's eligibility as a manager of the company's finance function. The actual duties themselves reveal the true nature

of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Similarly, the petitioner's response to the director's request for evidence does not demonstrate the beneficiary's purported role as a function manager.

The AAO first notes a relevant and unresolved inconsistency in the subsequent job description related to the beneficiary's purported senior-level employment. The beneficiary was originally identified by the petitioner on the Form I-140 and in its October 9, 2006 letter as reporting to the worldwide C&PI film flow manager. Additionally, in its February 15, 2007 response to the director's request for evidence, the beneficiary is noted as holding this managerial position in "the Corporate Financial Planning & Analysis group for [the petitioner's] Worldwide Consumer and Professional (CPI) Film Manufacturing." However, in this same letter and on the company's organizational chart, the beneficiary is identified as reporting to the company's director of corporate finance planning and analysis, who in turn reports directly to the company's chief executive officer. The petitioner did not address its earlier claim of reporting to the worldwide C&PI film flow manager. Nor did the petitioner identify the C&PI film flow manager on its organizational chart. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). This relevant and unexplained change in the beneficiary's purported managerial authority raises uncertainty as to the beneficiary's true position in the company's organizational hierarchy at the time of filing the immigrant visa petition. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

As emphasized above, in order for the beneficiary to be deemed a function manager, the petitioner must describe with specificity the beneficiary's purported managerial authority over the company's financial function, demonstrating that the beneficiary is not personally performing tasks related to the function. While the petitioner provided in its response to the director's request for evidence a more lengthy description of the beneficiary's role as worldwide financial analyst, the record remains vague as to the specific function to be managed by the beneficiary, and how the beneficiary would primarily manage "all elements of the company's financial functions."

The petitioner continuously references the "worldwide [C&PI] Film Manufacturing Annual Financial Operating Plan," which the beneficiary purportedly "develops, modifies, leads and coordinates." Yet, the petitioner did not submit any explanation of the "Plan," or its purported essential nature to the petitioning entity, or how the beneficiary's development and coordination of the Plan constitutes her role as a function manager. Moreover, there is only limited evidence as to how the beneficiary derives the financial information relied upon to develop the operating plan. In other words, the record does not clarify whether the beneficiary's role as a worldwide financial analyst encompasses the performance of daily routine financial tasks or whether the beneficiary analyzes the financial data processed by outside personnel. Other than mentioning the existence of film manufacturing sites and "various departments and groups around the world," it is unclear from where the beneficiary is receiving financial information, or which personnel and departments the beneficiary would interact with on a regular basis. This information is relevant to the instant analysis, as the beneficiary is represented as relying on reports received from separate "departments" and "groups" to manage the C&PI film manufacturing annual financial operating plan and the financial function

as a whole. If the beneficiary is in fact managing a financial function, the petitioner is obligated to demonstrate that she is not personally performing non-managerial and non-executive financial tasks. The AAO notes that 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).

The AAO notes that counsel did not attempt to reconcile these deficiencies on appeal. Counsel claims only that "[p]roof was submitted that [the beneficiary] works at a senior level with respect to the 'function'," and fails to even identify what function the beneficiary is managing. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel main contention on appeal is that the prior approval of an L-1A nonimmigrant petition filed on behalf of the beneficiary, and which comprised facts similar to the instant matter, should be sufficient to establish the beneficiary's eligibility for the requested immigrant visa petition. Counsel claims that as a matter of "fairness," the previous approval should dictate a favorable determination in the instant matter. Counsel cites several unpublished AAO decisions involving the approval of an L-1A nonimmigrant petition and subsequent denial of requests under the employment-based sixth preference, Schedule A, Group IV category, stating that the AAO concluded that "the petitioning company was entitled to rely on the favorable determination concerning managerial status made in the earlier L-1 adjudication." Counsel states:

The underlying nonimmigrant visa status as L-1A was previously granted to [the beneficiary] by the USCIS. The logic of the foregoing [AAO] decisions and the policy that existed under Legacy [Immigration and Naturalization Services] should continue to be applied. To do otherwise would create a matter of significant unfairness.

Counsel's argument that the AAO's review of the instant matter is bound by the notion of "fairness" is not persuasive. Contrary to counsel's claim, in the instant I-140 proceeding, CIS is not bound by a prior approval of an L-1A visa petition. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. *See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant 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.

Also, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding.

See 8 C.F.R. § 103.2(b)(16)(ii). The AAO notes that the present record does not contain a copy of the prior approval of the nonimmigrant petition. Nonetheless, the prior nonimmigrant approvals do not preclude CIS from denying an extension petition. See e.g. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Moreover, if the previous nonimmigrant petition were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approval by denying the present immigrant petition.

Finally, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

Counsel acknowledges on appeal the petitioner's burden of proof to establish the beneficiary's eligibility for the requested immigrant visa classification. The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Here, the submitted evidence is not relevant, probative, and credible. As addressed previously, deficiencies in the record, such as clarification of the specific function to be managed by the beneficiary, as well as inconsistencies undermining the petitioner's claim of employing the beneficiary in a senior-level position,

raise doubt that the beneficiary would be primarily employed as a manager of the petitioner's finance function. These relevant inconsistencies create a "material doubt" as to the beneficiary's purported employment as a function manager.

Based on the foregoing discussion, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, an additional issue is whether the petitioner demonstrated that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

In its October 9, 2006 letter, the petitioner represented the beneficiary as having occupied the position of manufacturing financial analyst in the foreign entity, during which she was "in charge of Color Flow and Site Support Financial Operations." The petitioner provided:

In this functional manager role, [the beneficiary] worked closely with the Finance Manager in providing financial and business analysis as it related to site issues and partners with plant operations to evaluate financial merits of Color Film Flow business case proposals. Specifically, she held the position of primary financial support of manufacturing operation for the Consumer Imaging Film Flow. As a member of this management team, she ensured that the flow met financial and operational objectives by providing effective financial reporting and budgeting processes. She also developed ad hoc financial projects and provided leadership and financial counseling.

In the course of her duties as Manufacturing Financial Analyst, [the beneficiary] made priority decisions independently and exercised discretionary authority over her daily management activities. She had supervisory authority over the functions of the Financial Department. [The beneficiary] exercised broad discretion with regard to day-to-day decisions, as she managed all elements of the company's Finance functions. She retained broad discretion with regard to financial decisions and functioned at a senior level within the company.

Based on the petitioner's representations, the beneficiary was not employed by the foreign entity in a primarily managerial or executive capacity.

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).

Despite the petitioner's reference to the beneficiary's employment as a function manager, the record is devoid of evidence demonstrating that the beneficiary managed the foreign company's finance function. 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, 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. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. An employee who "primarily" performs the tasks necessary to produce a

product or to provide services is not considered to be "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).

The offered job description indicates that as the foreign entity's manufacturing financial analyst, the beneficiary provided "financial and business analysis," "effective financial reporting and budgeting processes," and financial counseling, and "developed ad hoc financial projects." These representations suggest that the beneficiary performed non-managerial or non-executive tasks related to the foreign company's finance function, rather than managing the function as claimed by the petitioner. See §§ 101(a)(44)(A) and (B) of the Act. Additionally, other than claiming the role of function manager, the petitioner failed to indicate with specificity how the beneficiary was managing the finance department. In light of these findings, the AAO cannot conclude that the beneficiary managed the foreign company's finance function. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Moreover, the fact that the beneficiary "worked closely with" and presumably reported to the manager of the foreign company's finance department undermines the petitioner's claims that the beneficiary possessed supervisory authority over the organization's finance department and "managed all elements of the company's Finance functions." Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Furthermore, a significant portion of the beneficiary's job description was based on a restatement of the statutory definitions of "managerial capacity" and "executive capacity." The petitioner's claims as to the beneficiary's "discretionary authority over [] daily management activities," "supervisory authority over the functions of the Finance department," "broad discretion with regard to day-to-day decisions," and senior-level position in the foreign company are not sufficient to establish the beneficiary's former overseas employment in a primarily managerial or executive capacity. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Based on the foregoing discussion, the petitioner has not demonstrated that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. For this additional reason, the petition will be denied.

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

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

ORDER: The appeal is dismissed.