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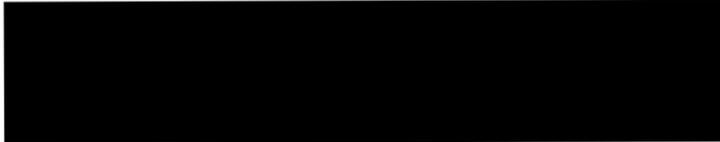
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



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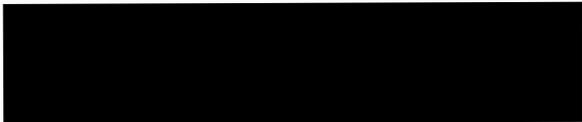
FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
LIN 07 204 51002

Date: **NOV 03 2009**

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)

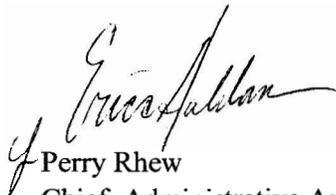
ON BEHALF OF PETITIONER:



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 United States corporation that engages in the real estate business. It seeks to employ the beneficiary as its president and chief executive officer. 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 or executive capacity in the United States.

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.

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.

In a letter dated May 29, 2007 submitted with the Form I-140, Immigrant Petition for Alien Worker, the petitioner stated that as the president and chief executive officer, the beneficiary "is ultimately responsible for overseeing the entire operation" and that his responsibility "is to plan, develop, and establish the policies and objectives of the company." The petitioner indicated that it has a staff of eight, including salaried employees as well as independent sales staff. In addition to the beneficiary, the staff includes an office manager, a property manager, a projects manager, an auction manager, and workers in information technology and development.

On February 28, 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 with the petitioner:

1. A complete, detailed description of the day-to-day duties to be performed by the beneficiary, including the percentage of time the beneficiary will spend performing each duty.
2. A complete, detailed description of the day-to-day duties to be performed by the beneficiary's subordinate employees, including the percentage of time each person will spend performing his/her duties, and the educational level of each employee.
3. An organizational chart showing the beneficiary's position in the U.S. in relations to others in the company.
4. Copies of 2007 IRS Forms W-2 or Forms 1999 for all of the petitioner's employees.
5. The 2007 and 2008 work schedules for all employees including the beneficiary.

In response to the RFE, the petitioner indicated that it is involved in real estate development as well as real estate brokerage. The petitioner specified that the main emphasis of the company is on real estate acquisitions and investments, and the beneficiary's day-to-day activities focus on these long term projects. The petitioner provided the following description of the beneficiary's intended duties in the United States:

- Oversees the acquisition of new properties. 30%
 - Evaluate and analyzes new commercial property and development opportunities (20%)
 - Analyzes target markets throughout the Tampa Bay region and State of Florida (5%)

- Anticipates and identifies expansion opportunities by researching market conditions, demographics, competition and other activities generators (5%)
- Oversees analysis and management deal summaries [sic] to identify most favorable deals. 5%
- Performs due diligence on potential acquisitions. 15%
- Studies and analyzes land use patterns and changes that affect acquisition opportunities. 5%
- Reviews work load and analyzes staffing requirements. 5%
- Represents the company before zoning boards and other regulatory agencies. 3%
- Oversees negotiations on acquisition of potential sites and properties to coordinate in-depth feasibility analyses of potential developments. 5%
- Reviews and approves all funding proposals and applications. 2%
- Monitors progress of developments against proforma budgets and schedules. 5%
- Approves contracts with attorneys, architects, engineers and other professionals. 5%
- Facilitates resolution of operational and personnel issues. 10%
- Builds and strengthens network within the real estate development industry, with financial institutions and lenders, as well as consultants. 10%

The petitioner also provided job descriptions for four other employees. Based on that information, the office manager's duties include auditing real estate contracts and listing agreements, handling bookkeeping activities, overseeing office staff, and supervising day-to-day office functions. The broker/salesperson's duties include locating and obtaining contracts with U.S. businesses and investment properties, and potential buyers in the U.K. market (the petitioner explained that this employee has taken over the primary function of representing buyers and sellers while the beneficiary focuses on the company's real estate investment sector). The secretary is responsible for typing contracts and letters, answering the phone, and other secretarial duties. The property manager's duties include management and oversight of maintenance and leasing functions; support and marketing of properties; resolution of disputes with customers, contractors, buyers/sellers and agents; inspection of property to ensure upkeep and cleanliness; overseeing application approval and lease renewal processes; and collection of rent, security deposits and documentation for investment properties.

The petitioner submitted a list of its employees, past and present, setting forth their names, positions, number of hours worked per week, dates of employment, and social security numbers. In addition, the petitioner submitted an organizational chart which lists the beneficiary, the four subordinate employees, and eleven independent contractors. As requested, the petitioner provided IRS Forms W-2 for 2007 for seven employees and thirteen IRS Forms 1099 filed by the petitioner in 2007.

On June 27, 2008, the director denied the petition, concluding that the petitioner had not established that the beneficiary was employed abroad, or would be employed by the U.S. entity, in a primarily managerial or executive capacity. Specifically, with respect to the beneficiary's U.S. position, the director found that "the job description is composed of vague, conclusory assertions regarding the

beneficiary's claimed managerial or executive capacity, and statements which indicate that the beneficiary is directly responsible for a number of non-qualifying duties, rather than supervising the performance of these duties through subordinate personnel." The director further found that "the record does not substantiate that the petitioner employs sufficient personnel to allow the beneficiary to primarily 'direct' and 'manage' all of the functions of the organization, rather than performing its non-qualifying operations."

On appeal, counsel contends that the director's determination that the beneficiary's job description is vague is based on an incomplete and inaccurate reading. Counsel asserts that the director gave no indication as to how the petitioner could have been less vague. Counsel restates the description of the beneficiary's job description in its entirety and claims that the director omitted some details in his analysis and re-characterized some of the beneficiary's managerial and executive duties to non-qualifying ones. Counsel contends that the U.S. Citizenship and Immigration Services (USCIS) is denying the petition based upon the size of the company. Counsel asserts that size should be only one factor to be considered, and that the petitioner has shown that the beneficiary has four employees to support him in addition to numerous independent contractors. Finally, counsel seeks to supplement the record with documentary evidence of the petitioner's involvement in various real estate development deals since the petition was first submitted. Counsel concludes that, given the diversity of the petitioner's business, the beneficiary "could not possibly be simply 'performing the tasks necessary to produce the product or services offered by these businesses'" and that, instead, the beneficiary is required to be completely engaged in the function of chief executive officer of the company.

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.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

Further, it is 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). Whether the beneficiary is a managerial or executive employee turns on whether the

petitioner has sustained its burden of proving that the beneficiary's duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

The AAO agrees with the director's observation that the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner stated that, among other duties, the beneficiary "oversees the acquisition of new properties," "oversees analysis and management deal summaries [sic] to identify most favorable deals," "performs due diligence on potential acquisitions," "represents the company before zoning boards and other regulatory agencies," "oversees negotiations," "facilitates resolution of operational and personnel issues," and "builds and strengthens network within the real estate development industry, with financial institutions and lenders, as well as consultants." While the petitioner did elaborate upon what it means for the beneficiary to "oversee the acquisition of new properties," scant details were provided relating to the remaining duties. For example, what is involved in "overseeing negotiations?" What tasks does the beneficiary perform with respect to due diligence? In what instances does the beneficiary "represent the company" before regulatory agencies? What tasks does the beneficiary actually perform with respect to conflict resolution and networking? Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will 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). 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. *Id.*

In addition, while the evidence indicates that the beneficiary is the highest ranking employee within the U.S. company and performs some of the high-level responsibilities that are specified in the definition, the record does not sufficiently establish that the beneficiary *primarily* performs these specified responsibilities, and does not spend a majority of his time on day-to-day functions.

As previously noted, the job description provided in response to the RFE divides the beneficiary's responsibilities into different categories and assigns percentages of time spent on each general category. The petitioner describes the beneficiary as focusing primarily on the company's real estate investment and development activities, and indeed, at least 55% of the beneficiary's described duties appear to fall into this category. However, based on the descriptions of the job responsibilities of the beneficiary and the petitioner's other employees, it appears that the beneficiary is directly performing, rather than directing or overseeing, many of the tasks relating to investment-related acquisitions. For example, the beneficiary is described as "overseeing" the acquisitions of new properties (30%), but as the petitioner indicated, the beneficiary himself is performing the analysis of target markets and new opportunities and "researching market conditions, demographics, competition and other activities generators." The beneficiary also directly "performs due diligence on potential acquisitions" (15%), and "studies and analyzes land use patterns" relating to acquisition opportunities (5%). Similarly, while the petitioner claims that the beneficiary "oversees negotiations

on acquisitions" (5%), it is not clear who else on staff, if not the beneficiary, is doing the actual negotiations in these real estate acquisitions.

In fact, a review of the descriptions of the duties of the beneficiary's subordinates show that none of these employees perform any of the research, analysis, due diligence, or negotiation relating to the company's real estate investment activities. Since the beneficiary actually performs these non-qualifying tasks himself rather than directs or manages them, he is performing tasks necessary to provide a service or product, and as such, time spent on such tasks will not be considered time spent functioning in a managerial or executive capacity. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Counsel contends on appeal that the evidence clearly indicates that the beneficiary is supported by a staff of four subordinate employees and a number of independent contractors who would relieve the beneficiary from performing non-qualifying tasks. First, it is noted that there are a number of inconsistencies in the record with respect to the staffing of the U.S. company. In the Form I-140, the petitioner indicated that it has four employees. In its May 29, 2007 letter, the petitioner indicated that it has a staff of eight. In response to the RFE, however, the petitioner only listed and provided job descriptions for four employees, in addition to the beneficiary, who are still employed by the U.S. company. The petitioner indicated on its staff list provided in response to the RFE that it has several employees who are on "temporary leave," including a broker/salesperson, a development manager, and an IT technician. However, the petitioner has not indicated who among the staff has taken on the duties of the employees on leave. In view of these inconsistencies in the record, the exact makeup of the petitioner's staff, and thus the support the beneficiary actually would have at his disposal, cannot be ascertained. 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).

Furthermore, as discussed, the job descriptions of the beneficiary's subordinates do not indicate that they perform the non-qualifying tasks relating to the company's real estate investment activities. The AAO acknowledges that the petitioner has submitted a number of IRS Forms 1999, evidencing the company's use of independent contractors. However, the petitioner failed to identify the services these individuals or companies provide, nor did the petitioner explain how the services of the contractors obviate the need for the beneficiary to primarily conduct the petitioner's business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998).

Counsel also asserts that the USCIS improperly based its denial of the petition on the size of the company. In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S.*

Citizenship and Immigration Services, 469 F. 3d 1313, 1316 (9 Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. However, to establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not explained how the reasonable needs of the petitioning enterprise justify the beneficiary's performance of non-managerial or non-executive duties. 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.

Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity. As discussed above, the petitioner has not established this essential element of eligibility.

Finally, the AAO acknowledges the petitioner's submission on appeal of documentation relating to its subsidiary, joint venture and other real estate transactions in which the petitioner has been involved. However, while these documents may be indicative of the company's ongoing business, counsel has not adequately demonstrated their relevance to the issue of whether the beneficiary is functioning primarily in an executive or managerial capacity in the U.S. company.

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 May 29, 2007 letter, the petitioner indicated that the beneficiary served as managing partner of the U.K. business. The petitioner indicated that as managing partner, the beneficiary made "all

major policy decisions regarding the operation of the business." The petitioner further stated that although another individual has been promoted to managing director of the U.K. businesses while the beneficiary is in the United States, the beneficiary remains active in the U.K. business.

In the RFE, the director requested the following evidence relating to the beneficiary's position as managing partner of the U.K. business:

1. A complete, detailed description of the day-to-day duties performed by the beneficiary, including the percentage of time the beneficiary spent performing each duty.
2. A complete, detailed description of the day-to-day duties performed by the beneficiary's subordinate employees, including the percentage of time each person spent performing his/her duties, and the educational level of each employee.
3. An organizational chart showing the beneficiary's position in relations to others in the company abroad.
4. The work schedules for all employees including the beneficiary for the period worked prior to transfer to the United States.

In response, the petitioner listed the beneficiary's duties overseas, along with the time allocated to each duty, as follows:

- Directed corporate policy of successful real estate firm and was ultimately responsible for training, hiring and firing of management staff and continuing the established proven formula which had been in place for decades. 30%
- Oversaw analysis and management deal summaries [sic] to identify most favorable deals. 5%
- Performed due diligence on potential acquisitions. 10%
- Studied and analyzed land use patterns and changes that affect acquisition opportunities. 5%
- Reviewed work load and analyzed staffing requirements. 10%
- Oversaw negotiations on acquisition of potential sites and properties to coordinate in-depth feasibility analyses of potential developments. 5%
- Facilitated resolution of operational and personnel issues. 20%
- Built and strengthened network within the real estate industry, with financial institutions and lenders, as well as consultants. 10%

The petitioner submitted a list entitled "Staff employed at [foreign entity] Prior to Transfer," which lists twelve employees other than the beneficiary, eight of whom would have been employed during the requisite period preceding the beneficiary's transfer to the United States. The list sets forth the name, position, hours worked per week, and employment dates of each employee. The petitioner

provided a detailed job description for only one other employee, the office manager/director, whose duties appear to be identical to those of the same position in the U.S. company.

In concluding that the petitioner has failed to demonstrate that the beneficiary was employed abroad in a primarily executive or managerial capacity, the director found that the description of the beneficiary's duties abroad contain "broad statements [that] convey little understanding of what specific tasks the beneficiary performed on a day-to-day basis." The director also found that "the record indicates that the beneficiary was directly responsible for a number of non-qualifying duties, rather than supervising or managing the performance of these duties through a subordinate staff of professional, managerial or supervisory personnel."

Upon review, the AAO concurs with the director's finding that the petitioner has failed to establish that the beneficiary was employed abroad in an executive or managerial capacity.

As previously noted, 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.* Here, insofar as the description of the beneficiary's overseas job duties is nearly identical to his U.S. job description, it suffers from the same vagueness of language previously discussed in connection with the U.S. job description. First, in lieu of spending 30% of his time on "oversee[ing] the acquisition of new properties," the beneficiary "directed corporate policy of successful real estate firm and was ultimately responsible for training, hiring and firing of management staff and continuing the established proven formula which had been in place for decades" for 30% of his time in the U.K. company. The petitioner has failed to elaborate upon what "corporate policy" or "established proven formula" entailed. Further, according to the petitioner, the description of the remainder of the beneficiary's duties abroad is identical to that of his duties in the United States, and thus similarly deficient in its vagueness. Again, the petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine in his position abroad. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Furthermore, it is noted that the director requested a complete, detailed description of the day-to-day duties performed by the beneficiary's subordinate employees, including the percentage of time each person spent performing his/her duties. Although the record suggests that there were a number of employees under the beneficiary's supervision in the foreign company, the petitioner provided a job description for only one employee of the foreign company other than the beneficiary. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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, without any explanation of their job duties, the AAO is unable to determine to what extent the beneficiary's subordinate staff was able to relieve him from having to perform non-qualifying duties. As

previously noted, 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. at 604.

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 an L-1A petition 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 petition, 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 approval 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.