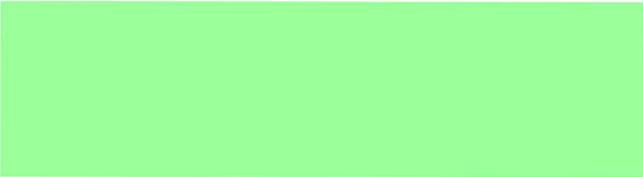


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

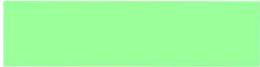


U.S. Citizenship
and Immigration
Services



DATE: **MAY 23 2013**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

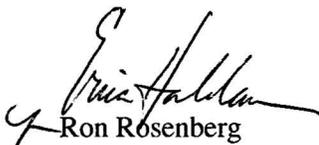


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, ("the director") initially approved the nonimmigrant visa petition. Upon subsequent review, the director issued a Notice of Intent to Revoke (NOIR) approval of the petition, and ultimately revoked approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

This nonimmigrant petition was filed seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner was organized under the laws of the State of Florida in May 2003. On the Form I-129 (Petition for a Nonimmigrant Worker), the petitioner noted that it employed 6 personnel and had earned a gross annual income of \$850,000 when the petition was filed. The Form I-129 lists the petitioner's type of business as "Commercial Printing Company." The Form I-129 Supplement L indicates that the petitioner is affiliated with [REDACTED] a Venezuelan company established in July 2001. According to the Form I-129, the petitioner seeks to employ the beneficiary in L-1A classification as its president and general manager for three years.

As observed above, the director initially approved the petition but upon subsequent review issued a Notice of Intent to Revoke (NOIR) and ultimately revoked approval, concluding that the petitioner failed to establish: (1) the beneficiary would be employed in a managerial or executive capacity for the petitioner; and (2) the beneficiary's employment abroad was in either a 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. On appeal, counsel asserts that the director's basis for revoking approval of the petition was erroneous and contends that the evidence of record is sufficient to satisfy the petitioner's burden of proof in that the evidence establishes that the beneficiary will be employed in a primarily managerial or executive capacity for the petitioner and had been employed in a primarily managerial or executive position for the foreign entity.

I. The Law

Under United States Citizenship and Immigration Services' (USCIS) regulations, the approval of an L-1 petition may be revoked on notice under six specific circumstances. The regulation at 8 C.F.R. § 214.2(l)(9)(iii) provides in pertinent part:

- (iii) Revocation on notice.
 - (A) The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he/she finds that:
 - (1) One or more entities are no longer qualifying organizations;
 - (2) The alien is no longer eligible under section 101(a)(15)(L) of the Act;
 - (3) A qualifying organization(s) violated requirements of section 101(a)(15)(L) and these regulations;
 - (4) The statement of facts contained in the petition was not true and correct;

- (5) Approval of the petition involved gross error; or
 - (6) None of the qualifying organizations in a blanket petition have used the blanket petition procedure for three consecutive years.
- (B) The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. Upon receipt of this notice, the petitioner may submit evidence in rebuttal within 30 days of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If a blanket petition is revoked in part, the remainder of the petition shall remain approved, and a revised Form I-797 shall be sent to the petitioner with the revocation notice.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a parent, subsidiary, or affiliate of the foreign employer.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

The regulation at 8 C.F.R. § 214.2(l)(3) provides that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

II. The Issues on Appeal

A. Managerial or Executive Capacity for the Petitioner

The first issue addressed by the director in the NOIR is whether the petitioner established that the beneficiary will be employed by the petitioner in a managerial or executive position in the United States.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

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

Facts and Procedural History

In its letter in support of the petition, the petitioner indicated that it provides high definition print, direct mail, and design services for multiple trade markets. The petitioner noted that its product line includes business cards, flyers, inserts, packaging, postcards, posters, catalogs, sell sheets, brochures, booklets, manuals, and promotional materials.

The petitioner stated that the beneficiary as the president and general manager would be "directly responsible for the supervision of all the personnel to be employed by [the petitioner]" and that he would "establish the goals and policies of the organization while exercising wide latitude in discretionary decision-making." The petitioner indicated:

The President and General Manager of the U.S. operations will direct and manage the Company and all components of the organization, [the beneficiary] will be required to direct and control the work of other professionals, and managerial employees. He will have complete authority to hire and fire personnel, authorize promotions and leave of absences, and exercise discretion over the day-to-day operations of the business activity. In addition, [the beneficiary] will manage successful negotiations leading to the company's growth.

The petitioner listed the beneficiary's "specific managerial and executive duties" as including:

- Oversee the business activities and the management company. (25%)
- Review financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement. (15%)
- Establish and implement parent company's policies and initiatives. (10%)
- Manage successful negotiations leading to the company's growth. (5%)
- Plan, direct and coordinate all corporate activities at the highest level of management with the help of subordinate executives and staff managers. (15%)
- Determine staffing requirements, and interview, hire and train new employees, or oversee those personnel processes. (5%)
- Monitor businesses and agencies to ensure that they efficiently and effectively provide needed services while staying within budgetary limits. (5%)
- Oversee activities directly related to providing services and planning the actions of the Office. (5%)
- Direct and coordinate organization's financial and budget activities to fund operations, maximize investments, and increase efficiency. (10%)
- Supervise the overall operations and goal setting for each operating unit or department. (10%)
- Provide leadership and policies to develop customer portfolios. (5%)

The petitioner noted that a total of "six (6) subordinate professional employees will be under [the beneficiary's] direct supervision" and that the beneficiary reports directly to the Chairman of the company and "will report only to the highest level executives of [the petitioner] and its Board of Directors." The petitioner stated that it currently employs six full-time employees.

The petitioner included its organizational chart depicting the beneficiary in the position of president and general manager over the vice-president/press manager, office manager, and shipping department. The individual employed in the shipping department was also shown as performing the duties of a "pre-press" operator and reporting to the vice-president/press manager position. The organizational chart depicted a graphic designer and bindery employee reporting to the vice-president/press manager and an account receivable clerk reporting to the office manager. The organizational chart also included two proposed positions. The petitioner provided its Internal Revenue Service (IRS) Forms 941, Employer's Quarterly Federal Tax Returns, for the first and second quarters of the 2010 year. The first quarter Form 941 showed the petitioner employed three personnel and the second quarter Form 941 showed the petitioner employed six personnel.

The petitioner included the job descriptions for the six employees. The duties of the vice-president/general manager's position included:

- Oversee activities directly related to providing services and planning the actions of the Office.
- Direct and coordinate activities of businesses or departments concerned with the production, pricing, sales, or distribution of products.
- Review financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement.
- Manage staff, preparing work schedules and assigning specific duties.
- Manager [*sic*] all materials for printing press.
- Plan, direct, and coordinate the printing activities and resources, making sure that production meets output and quality goals while remaining within budget.
- Manage the scheduling of orders to ensure smooth flow of production process.
- Plan for products pricing and promotional strategies, while keeping within budget.
- Oversee the investigation of applications of new processes and technologies to take advantage of developments for the more economical and efficient use of production resources and budgets.

The petitioner listed the duties of the office manager as:

- Resolve customer complaints and answer customers' questions regarding policies and procedures.
- Supervise the work of office, administrative or customer service employees to ensure adherence to quality standards, deadlines, and proper procedures, correcting errors or problems
- Provide employees with guidance in handling difficult or complex problems and in resolving escalated complaints or disputes.
- Implement corporate and departmental policies, procedures, and service standards in conjunction with management.
- Discuss job performance problems with employees to identify causes and issues and to work on resolving problems.
- Train and instruct employees in job duties and company policies or arrange for training to be provided.

- Evaluate employees' job performance and conformance to regulations and recommend appropriate personnel action.
- Review records and reports pertaining to activities such as production, payroll, and shipping to verify details, monitor work activities, and evaluate performance.
- Recruit, interview, and select employees.

The petitioner also provided the duties of the shipping department/pre-press position, the graphic designer, the bindery position, and the accounts receivable clerk listing their general duties.

Based on the limited and general information in the record regarding the actual duties the beneficiary would perform, the director improperly approved the petition. Such approval constituted gross error.

Upon review of the record, the director issued a NOIR informing the petitioner that the record was insufficient to establish the proffered position as a managerial or executive position.

In response to the NOIR, the petitioner provided the same job descriptions as listed above. The petitioner also noted that the beneficiary supervised eight subordinate managers and employees as two additional employees had been hired. The petitioner outlined the duties of the pre-press/general manager, the shipping manager, the bindery and finishing employee, the cutting operator, the finishing and delivery employee, the assistant/account receivable clerk, market research analyst, and pressman. The petitioner stated that 85 to 95 percent of the beneficiary's time would be spent addressing managerial duties and the remaining time would be spent on operations tasks. The petitioner emphasized that the beneficiary has complete discretion over the day-to-day operations of the company and makes key decisions regarding the profitability of fundamental transactions over others.

Upon review of the documentation submitted in response to the NOIR, the director found that the petitioner had provide vague descriptions of the actual duties of its employees and determined that the record did not include sufficient evidence demonstrating that the beneficiary's primary duties would be executive or managerial duties in the United States.

On appeal, counsel for the petitioner asserts that the director improperly considered the petitioner's staffing size when determining that the beneficiary would not primarily perform duties in a managerial or executive capacity. Counsel noted that the petitioner pointed out that the beneficiary directly supervised the work of the general manager and indirectly the market research analyst, the pressman, and the shipping manager, which is contrary to the director's determination that the beneficiary did not supervise professional employees or act primarily in a managerial or executive capacity. Counsel also contends that there are other employees in the company that are supervising personnel. Counsel further avers that many of the non-managerial/executive functions are outsourced and not performed by the beneficiary.

Counsel submits a revised organizational chart depicting the beneficiary over the general manager position, who in turn is over the assistant, the accountant (a sub-contracted service), the marketing manager, the shipping manager, and the pressman. The revised organizational chart also identifies two positions reporting to the pressman and one position reporting to the shipping manager. Counsel submits the petitioner's list of employees, their education, and their date of hiring. The list identifies

only the accountant, a sub-contracted position, as working for the petitioner prior to the filing date of the petition. Counsel also provided the same description of duties for the petitioner's claimed employees as provided in response to the NOIR.

Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary's employment for the petitioner is in a managerial or executive capacity as defined at 101(a)(44)(A) or (B) of the Act. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Preliminarily, the petitioner must establish that when the petition was filed, the beneficiary qualified for the proffered position. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Accordingly, the AAO will review the petitioner's organizational chart and claimed employees when the petition was filed in July 2010.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In this matter, the petitioner does not clarify whether its claim is that the beneficiary's duties fall under both definitions of managerial and executive capacity as set out in section 101(a)(44)(A) of the Act and section 101(a)(44)(B) of the Act or just one of the definitions. Rather, the petitioner recites partial sections of the definition of manager and the definition of executive in support of its claim that the beneficiary is eligible for this visa classification. If, however, the petitioner is claiming that the beneficiary qualifies as both an executive and a manager, the petitioner must demonstrate that the beneficiary's responsibilities meet the requirements of each capacity. The petitioner may not claim to employ a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. On review, the petitioner's description of the beneficiary's duties fails to establish that the beneficiary will be engaged in primarily managerial or executive duties for the petitioner.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary will perform the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary will *primarily* perform these specified responsibilities and will 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 the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition,

the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee.

In this matter, the petitioner has not provided evidence of a subordinate level of managerial employees for the beneficiary to direct. Although the petitioner provided its organizational chart depicting two individuals who reported to the beneficiary and who supervised other employees, the description of their duties does not establish that these individuals are managerial employees. It is not apparent from the general description how much time, if any, the two claimed supervisory employees actually supervised or managed other employees or functions. We observe, for example, that the vice-president/press manager performs the same or similar duties as the beneficiary performs for 40 percent of his time.¹ The petitioner noted the vice-president/press manager would also manage the materials for the printing press, plan product pricing and promotional strategies, coordinate the printing activities, oversee the investigation of new processes and technologies, and manage the scheduling of orders. The petitioner does not include probative evidence of who carries out these duties, other than the vice-president/press manager. The petitioner, although noting that the vice-president/press manager manages staff, prepares work schedules, and assigns duties and coordinates specific departments, does not specify the amount of time he spends on these duties. Moreover, upon review of the totality of the petitioner's description of this individual's duties, it is not possible to ascertain what work he actually performs on a daily basis. Accordingly, the description is insufficient to establish that this individual performs primarily managerial duties.

Similarly, the petitioner provides inconclusive information regarding the duties of the office manager. For example, the petitioner's organizational chart identifies this position as only supervising an accounts receivable clerk.² The petitioner's description indicates the office manager performs the duties of a human resources employee as well as resolving customers' complaints and answering customers' questions. 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). In this matter, the petitioner's indication on the organizational chart that the office manager will supervise an accounts receivable clerk is inconsistent with the general description of the office manager's duties. Accordingly, the record does not include probative evidence that this individual actually performs the duties of a managerial employee. Furthermore, although the petitioner claims that it employs these two individuals, the record does not include probative documentary evidence establishing their employment when the petition was filed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*,

¹ The petitioner indicated the beneficiary would spend 25 percent of his time overseeing the business activities and the management company and 15 percent of his time reviewing financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement.

² Although the organizational chart also depicts the market research analyst reporting to the office manager, the market research analyst was not employed by the petitioner when the petition was filed.

22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Upon review of the description of the beneficiary's duties, we find that the description is overly broad and fails to provide details of the beneficiary's actual duties. Moreover, as footnoted above, the petitioner indicates that the vice-president/press manager also performs duties the petitioner identifies as occupying 40 percent of the beneficiary's time. The petitioner's failure to describe the beneficiary's actual duties as they relate to the petitioner's printing business precludes a conclusion that the beneficiary is actually performing in an 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. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava, Id.* Accordingly, the petitioner has not established the beneficiary will perform in primarily an executive capacity.

Turning to the definition of "managerial capacity," the statutory definition 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; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

To determine whether the beneficiary in this matter will primarily perform the duties of a personnel manager, we turn first to the petitioner's description of duties. The petitioner stated generally that the beneficiary is "directly responsible for the supervision of all the personnel to be employed by [the petitioner]," that he "will have complete authority to hire and fire personnel, authorize promotions and leave of absences," and that he will spend five percent of his time to "[d]etermine] staffing requirements, and interview, hire and train new employees, or oversee those personnel processes." Upon review of the totality of the description of the beneficiary's duties, the petitioner has not provided probative information establishing that the beneficiary will primarily supervise other employees. Accordingly, whether the beneficiary supervises professional employees or supervisory employees is irrelevant as the petitioner has not indicated that the beneficiary's time is primarily devoted to this duty. We note briefly, however, that the general descriptions of the duties of the beneficiary's subordinates do not describe the duties of either professionals or of individuals who primarily supervise other employees. The petitioner has not provided sufficient probative evidence that the beneficiary is primarily a personnel manager.

We now turn to an analysis of the record as it relates to 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. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. 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 (requiring that one "primarily" perform the enumerated managerial or executive duties. In this matter, the petitioner has not articulated the essential function the beneficiary allegedly manages. Moreover, the petitioner does not include documentary evidence establishing that it employs individuals who would relieve the beneficiary from primarily performing the requisite day-to-day tasks necessary for the petitioner to operate. Again, without documentary evidence, the petitioner has not met its burden of proof in these proceedings. *Matter of Soffici, supra*.

The record does not include a substantive description identifying the beneficiary's daily job duties. 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.

Beyond the required description of the job duties, however, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the 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 business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. Upon review of the totality of the record, the petitioner failed to establish that the beneficiary's employment will be in a bona fide manager or executive position. For this reason, the appeal will be dismissed.

B. Managerial or Executive Capacity for the Foreign Entity

Facts and Procedural History

The second issue in this matter is whether the petitioner established that the beneficiary had been employed by the foreign entity in a primarily managerial or executive position for one year within the three years preceding the beneficiary's application for admission into the United States.

The petitioner described the foreign entity as "one of the leading retailers of cell phones and wireless service plans in Venezuela" with three different locations in Venezuela. The petitioner asserted that the beneficiary had been employed as general manager for the foreign entity since 2001. The petitioner stated that the beneficiary directed and managed the operation of the company and its logistics and identified his responsibilities as follows:

- Directs and coordinates activities of the organization to obtain optimum efficiency and economy to maximize profits. (20%)

- Manages the relationships with the wireless cellular phone providers Samsung, LG, and Nokia. (10%)
- Plans, develops, and implements through administrative personnel, organizational policies and goals. (10%)
- Manages and coordinates the finance, human resources, sales, and marketing departments. (10%)
- Oversees the business development of the wireless communication department. (15%)
- Evaluates performance of the management team for compliance with established policies of the company. (5%)
- Oversees through subordinate management the general activities of operation, planning and development. (5%)
- Directs the preparation of potential contacts [*sic*] in Venezuela, as well as the planning of all projected developments. (10%)
- Directs and manages the technical wireless support for all [the foreign entity's] stores within Venezuela. (5%)
- Oversee[s] the representation of the company in all aspects of its relationships with customers, vendors, financiers and personnel. (10%)

The petitioner indicated that the beneficiary reported directly to the Chairman of the company and supervised and managed a total of seven subordinate managers and supervisors. The petitioner asserted that the beneficiary spent approximately 85 percent of his time on managerial duties. The petitioner added that the beneficiary "is vested with total discretionary authority concerning the hiring and firing of the employees he manages and supervises as well as promotions and salary increase." The petitioner indicated that the beneficiary "is responsible for the staffing, training, and performance evaluations of all subordinate employees," and that he "functions at a senior level and exercises discretion over the day-to-day operations of the business."

The petitioner also included the foreign entity's organizational chart which depicted the beneficiary in the position of general manager, a position on the same organizational tier as the support and operation manager. The chart identified both the support and operation manager and the general manager positions as over the next tier of employees, which included three supervisors, one for each of the foreign entity's locations, as well as an administrative supervisor with no specific location. The three location supervisors each supervised a technical supervisor who in turn supervised several technicians. The three supervisors also supervised positions identified as "RAC." The administrative supervisor supervised five administrative employees. The foreign entity's list of employees as of May 2010 included the beneficiary as chairman, a general manager, an operational and tech support position, three supervisors, one technical supervisor, 15 customer service employees, four administrative employees, seven technicians, and one office boy for a total of 34 employees.

Based on the limited information in the record, the director erroneously approved the petition.

In response to the NOIR, the petitioner provided a letter signed by the foreign entity's human resources administrator/general manager. The human resources administrator/general manager provided the same description of duties as previously submitted with the same allocation of time

devoted to each duty. The letter-writer noted that the beneficiary as the majority shareholder had always served as the company's general manager and reiterated that the beneficiary: was vested with total discretionary authority concerning the hiring and firing of the employees he managed and supervised; had full authorization to represent and bind the company in deals and negotiations; had strategic decision-making responsibility within the company; functioned at the senior most level position within the hierarchy of [the foreign entity]; exercised discretion over the day-to-day operations of the business; and only received general supervision from the Board of Directors of the organization.

The petitioner included the same organizational chart for the foreign entity as previously submitted but revised the titles of the positions on the foreign entity's list of employees to reflect the positions as of July 2010. The revised list identified one support and operation manager and one human resources administrator/general manager as well as three regional supervisors, three technical supervisors, and one administrative supervisor. The remaining foreign entity employees included nine technical staff, nine administrative assistants, nine reception/customer service employees, and two office boys for a total of 38 employees.

Upon review of the documentation submitted in response to the NOIR, the director determined that the petitioner had not submitted sufficient evidence establishing that the beneficiary managed professional or supervisory employees during his tenure with the foreign entity.

On appeal, counsel for the petitioner asserts that the foreign entity's number of employees, its three locations, and the petitioner's claim that the foreign entity was one of the leading retailers of cell phones and wireless plans in Venezuela clearly establishes that the beneficiary supervises professional and technical personnel. Counsel re-submits the information provided in response to the NOIR and contends that the beneficiary's position for the foreign entity was in a managerial capacity. Counsel avers that the beneficiary's subordinate staff carries out the day-to-day operations of the business.

Analysis

Upon review, the petitioner has provided a broad overview of the beneficiary's duties for the foreign entity which at most paraphrases parts of the definition of both managerial and executive capacity. In addition, the petitioner also claims that the beneficiary managed and coordinated the foreign entity's finance, human resources, sales and marketing departments, but other than a reference to a human resources administrator/general manager, does not otherwise identify a finance, human resources, sales, or marketing department. Further, the petitioner states that the beneficiary managed relationships with wireless cellular phone providers and directed the preparation of potential contacts in Venezuela. These vaguely described duties appear to encompass operational tasks for the foreign entity, especially as the foreign entity does not identify what employees the beneficiary directed or managed in these endeavors. Again, it is the specifics of a description that indicates whether the duties performed are primarily executive or managerial in nature. *Fedin Bros. Co., Ltd. v. Sava, supra*. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava, Id.*

A review of the totality of the record includes the petitioner and foreign entity's different titles for various positions within the foreign entity. It is not clear from the titles of the identified positions in either submission or the brief statement of the subordinates' duties, what duties the beneficiary's subordinates perform and what role the beneficiary played in their supervision. Moreover, the record does not include probative evidence documenting the employment of any of the individuals listed. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. The record does not include sufficient probative evidence establishing that the beneficiary primarily performed executive or managerial duties while employed at the foreign entity. The lack of such evidence renders the approval of the petition gross error. The petitioner failed to provide evidence in response to the director's NOIR or on appeal to overcome the revocation decision. For this additional reason, the petition may not be approved.

IV. Conclusion

Approval of the petition will be revoked and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.