

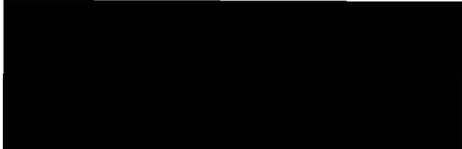
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services



B4

File: [REDACTED] Office: NEBRASKA SERVICE CENTER  
LIN 07 162 51756

Date: MAY 01 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)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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

John P. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The AAO will withdraw the decision of the director and approve the petition.

The petitioner was formed in the State of Delaware in 2005<sup>1</sup> and claims to be engaged in the manufacture and import of premium Russian vodka and spirits. It seeks to employ the beneficiary as its vice president of marketing 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 petitioner claims to be the affiliate of SV Company, Ltd., located in Kiev, Ukraine.

The director denied the petition, determining that (1) the petitioner had not been doing business for the previous year as required; (2) the beneficiary was not employed abroad in a primarily managerial or executive capacity; and (3) the beneficiary will not be employed in a primarily managerial or executive capacity in the United States.

On appeal, counsel for the petitioner submits a brief and additional evidence.

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 a firm, corporation or other legal entity, or an affiliate

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<sup>1</sup> The AAO notes that the petitioner was originally formed under the name "Medoff Company (USA), LLC, on July 13, 2005. On February 28, 2006, the petitioner filed a Certificate of Amendment to the Certificate of Formation, which changed the company's name to that currently used by the petitioner.

or subsidiary of that entity, and who 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 first issue in this matter is whether the petitioner has been doing business as required by the regulations for the previous year. The regulation at 8 C.F.R. § 204.5(j)(2) defines the term “doing business” as “the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.”

Moreover, the regulation at 8 C.F.R. § 204.5(j)(3)(i)(D) provides that a petition should include evidence that:

The prospective employer in the United States has been doing business for at least one year.

In this matter, the petitioner claims that it is engaged in the manufacture and import of premium Russian vodka and spirits. The director denied the petition, finding that the petitioner had failed to satisfy the regulatory requirements for doing business. Specifically, the director concluded that based on the evidence submitted, the petitioner was merely an agent.

The petitioner in this matter was filed on May 16, 2007. Therefore, according to the regulations, the petitioner was required to submit evidence that it had been doing business as contemplated by the regulations from May 16, 2006 to May 16, 2007.

In a letter of support dated May 10, 2007, the petitioner indicated that it was in the process of securing all necessary U.S. federal and individual state regulatory licenses to import vodka into the United States. The petitioner claimed that this was a “lengthy process,” and until such licenses were obtained, it had designated a company called MHW, Ltd. (“MHW”), based in Manhasset, New York, to perform the duties of an importer of SV Supreme vodka (“SV Supreme”). The petitioner claimed that this was a common practice for most foreign importers and exporters of spirits, and claimed that it had imported over 50,000 bottles of SV Supreme into the United States via MHW. The petitioner submitted two invoices from MHW, dated August 4, 2006, September 29, 2006, and February 5, 2007, billing the petitioner for services such as freight and storage charges, as well as additional importer shipping documents, listing MHW as the ultimate consignee, from August to November 2006. A letter from the petitioner dated February 6, 2007 to the Federal and State Beverage Alcohol Regulators of the United States of America, claiming that MHW is authorized to use the petitioner’s trade name and import SV

Supreme into the United States until the necessary licenses are obtained by the petitioner, was also submitted.

In a request for evidence dated July 3, 2007, the director requested evidence from the petitioner to show that it met the regulatory requirements for doing business, and was not merely acting as an agent. In addition, it specifically requested a copy of the petitioner's signed 2005 federal tax return, as well as a copy of the 2006 return, if available. In a response dated September 10, 2007, counsel for the petitioner claimed that the petitioner and its nine employees and twenty outside contractors are currently engaged in market research and analysis in order to ensure that its products are strategically placed in U.S. markets. In support of the contention that the petitioner is doing business, counsel submits copies of various invoices for sales and marketing activities, including press releases, and examples of the petitioner's marketing, advertising, and press release efforts. Moreover, it includes a copy of its importer permit issued by the Alcohol and Tobacco Tax and Trade Bureau on July 27, 2007, and claims that as a result of its procurement of this license, the petitioner is now able to legally import alcoholic beverages without the need for MHW as an intermediary. Finally, counsel contended that the petitioner's signed tax returns were not yet available.

The director denied the petition on February 6, 2008, finding that the petitioner had failed to satisfy the regulatory requirements for doing business. Specifically, the director concluded that based on the evidence submitted, the petitioner was merely an agent.

On appeal, counsel contends that the director failed to properly analyze the evidence, and contends that as a result, the director reached an erroneous conclusion. Specifically, counsel contends that the petitioner provided ample evidence that it was doing business during the required period, such as copies of wire transfers evidencing the transfer of funds from the parent company to the petitioner, and a lease agreement showing the acquisition of a business premises. Further, counsel contends that the evidence of the petitioner's sales and marketing activities, as well as evidence that it was in the process of producing necessary licenses, was sufficient to establish the petitioner was doing business as required.

On review of the evidence submitted and counsel's assertions on appeal, the AAO finds that the petitioner demonstrated that it had been doing business for the year prior to the filing of the petition. Accordingly, the director's decision with regard to this issue will be withdrawn.

In the course of examining whether a petitioning company has been doing business as an import and export firm, it is reasonable to request that the company produce copies of documents that are required in the daily operation of the enterprise due to routine regulatory oversight. Upon the importation of goods into the United States, the Customs Form 7501, Entry Summary, serves to classify the goods under the Harmonized Tariff Schedules of the United States and to ascertain customs duties and taxes. The Customs Form 301, Customs Bond, serves to secure the payment of import duties and taxes upon entry of the goods into the United States. According to 19 C.F.R. § 144.12, the Customs Form 7501 shall show the value, classification, and rate of duty for the imported goods as approved by the port director at the time the entry summary is filed. The

regulation at 19 C.F.R. § 144.13 states that the Customs Form 301 will be filed in the amount required by the port director to support the entry documentation. Although customs brokers or agents are frequently utilized in the import process, the ultimate consignee should have access to these forms since they are liable for all import duties and taxes. Any company that is doing business through the regular, systematic, and continuous provision of goods through importation may reasonably be expected to submit copies of these forms to show that they are doing business as an import firm.

In this matter, however, the petitioner explicitly claims in its initial letter of support that it was in the process of securing all necessary U.S. federal and individual state regulatory licenses to import vodka into the United States, and further stated that it had designated MHW to perform the duties of an importer of SV Supreme until its licenses were obtained. As discussed above, the petitioner has submitted no documentation to demonstrate that it has been conducting import services, although it does provide copies of some invoices from MHW.

On appeal, counsel contends that ample documentation was submitted to demonstrate the petitioner was doing business, such as invoices for its sales and marketing research. Upon review of this extensive documentation, the AAO concurs with counsel's contentions. These documents establish that in the previous year, the petitioner has expended millions of dollars in sales and marketing in order to launch its target brand in U.S. markets. While the AAO recognizes that these actions do not coincide with their claimed title of "importer," the promotion of a product through sales and marketing on such a large scale negates the director's finding that the petitioner is merely an agent or a shell company. Based on the nature of the expenditures of the petitioner during the previous year, along with evidence that the necessary licenses have since been obtained, the AAO is satisfied that the petitioner has been doing business as contemplated by the regulations. Accordingly, the director's decision with regard to this issue will be withdrawn.

The second and third issues in this matter; namely, whether the petitioner has established that the beneficiary was employed abroad and will be employed in a managerial or executive capacity for the United States entity, are closely related in terms of analysis.

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.

The AAO will first address the beneficiary’s employment abroad.

In a letter of support dated May 10, 2007, the petitioner claimed that the beneficiary was employed by Soyuz Vitan Company Limited from January 2004 to April 2007 in the position of Export Marketing Director.

The petitioner stated that the beneficiary’s duties included the following:

- Defined strategy for and developed, executed and managed comprehensive marketing plans for the export activities of the company encompassing integrated marketing initiatives designed to penetrate and grow more than 20 targeted export vodka markets.

- Directed all activities with agencies, importers, distributors, management, internal departments, and vendors to execute overall export marketing efforts in accordance with corporate goals.
- Created, planned and carried out international market research and analysis.
- Directed all product development activities[.]
- Organized, led and directed forward-thinking marketing team[.]
- Prepared, managed and directed \$14M marketing budget for markets: USA, Israel, Germany, UK and China.

The petitioner claimed that the beneficiary's marketing strategy drove up export sales of the petitioner's product by 150%, and that he increased the number of export markets from seven to twelve in one year.

The petitioner also provided an organizational chart for the foreign entity, which indicated that the beneficiary, as head of the Export Marketing Department, directly oversaw two marketing managers and one PR and exhibitions manager. The chart indicates that the beneficiary reported to the foreign entity's vice president.

In the request for evidence dated July 3, 2007, the director requested additional information pertaining to the beneficiary's duties abroad, as well as the percentage of time he devoted to these duties. Additionally, the director specifically requested a more detailed organizational chart clarifying the beneficiary's position in the organizational hierarchy and briefly explaining the duties of all employees.

In a response dated September 10, 2007, counsel for the petitioner provided a brief description of the beneficiary's three subordinate employees in the export marketing department, namely, [REDACTED], [REDACTED], and [REDACTED]. Counsel also provided a breakdown of the percentage of time the beneficiary devoted to each task area. Specifically, counsel broke down the beneficiary's duties as they pertained to the foreign employer's business cycle, and indicated that the periods from September to December and May to August typically required the most effort with regard to marketing. In relevant part, the petitioner claimed that the beneficiary's duties were as follows:

SEPTEMBER – DECEMBER:

Direct the planning, preparation, and implementation of marketing strategies for export markets of [the foreign employer].

Travel to the most important markets (Kazakhstan, Azerbaijan, Moldova, Israel, Germany, Latvia) to understand current situation about the SV brands positioning there; (20%)

Order the research information about the export markets from different organizations (Euromonitor International, ESWR, etc); (15%)

Analyze the market information and the field information from the market; (20%)

Review and supervise the marketing plans drafted [by] subordinates. . . . (10%)

Prepare the marketing plans involved in communicating with advertising agencies at all target markets, as well as retail chains, distributors, who as a rule, were at the same time the company's importers and partners. (10%)

Every new year market plan included adapting existing [the foreign entity's][ product portfolio to export needs, including translating labels, adapting brand names and sizes, and very often, developing new products for export basing on the existing internal product portfolio. . . . (15%)

At the same time the execution of the current year's plan never stops: new advertisements are being adapted to local languages [to] be shown in local media, in-store promotions are being monitored and controlled, POS-material allocated, etc. (10%)

#### JANUARY – FEBRUARY:

Direct, oversee and manage the planning and implementation for executing local events in target markets: for example, sponsoring football tournament in Israel, involving major Ukrainian and Russian teams, coverage on national TV, etc.

#### JANUARY – MARCH:

Coordinate, monitor and manage all preparations for the international trade shows (Dusseldorf, London, Moscow, Hong-Kong, etc[.]).

#### MARCH – MAY:

Execute the first seasonal wave of media and promo activity (spring wave) at most markets.

#### MAY – AUGUST:

Analyze the first year half results, correcting marketing plans for the second half, strategically repositioning marketing goals and objectives. Then, in September, the planning cycle begins again.

Direct the updating and revision of the portfolio of brands for each market; (10%)

Controlling the price structure for each market, updating and regulating FOB prices; (10%)

Adapting designs of advertisements for local markets; (10%)

Approving the design, including POS designs and PR-articles with the lawyers both inside the company and at the target export market; (10%)

Overseeing the follow-up regarding insertion orders, invoices and the payments for marketing activities in all export markets; (10%)

Harmonizing media-calendars for leveraging cross-market synergies (for example, sponsoring sport events in Israel was covered by media in CIS markets)[;] (10%)

Approving designs of exhibition booths for international trade shows. (10%)

Approving PR and other copy materials for foreign trade press; (10%)

Supplying internal (Ukrainian and Russian) PR-services with the information about company's export activities; (10%)

Miscellaneous managerial tasks related to export marketing. (10%)

On February 6, 2008, the director denied the petition. The director noted that it did not appear that the beneficiary had been engaged primarily in managerial or executive tasks, and instead appeared to have been engaged in performing the marketing functions of the company. The director also noted that the claimed organizational hierarchy of the petitioner, with only three subordinates, did not support a finding that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner refers to the statements set forth in the initial letter of support and in response to the request for evidence, and highlights the fact that the beneficiary had been "instrumental in developing the firm's marketing strategy" and "oversaw product development."

Upon review of the petition and the evidence of record, the petitioner has established that the beneficiary was employed in a managerial capacity abroad. Accordingly, the director's decision with regard to this issue will be withdrawn.

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 must clearly describe the duties to be performed by the beneficiary and indicate whether such duties

are either in an executive or managerial capacity pursuant to the definitions at section 101(a)(44) of the Act. At a minimum, the petitioner must establish that the beneficiary's responsibilities will meet the requirements of one of the statutory definitions.

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. The term "essential" is commonly defined as "inherent" or "indispensable." *Webster's II New College Dictionary* 384 2001. Accordingly, based on the plain meaning of the word "essential," the petitioner must establish that the function managed by the beneficiary is inherent and indispensable to the petitioner's operations rather than a non-essential or superfluous task.

Based on the statutory definition of managerial capacity, a petitioner must prove the following elements to establish that a beneficiary is primarily serving as a function manager within an organization:

First, the beneficiary must manage an "essential function" within the organization, or a department or subdivision of the organization;

Second, the beneficiary must function at a "senior level" within the organizational hierarchy or with respect to the function managed; and

Third, the beneficiary must control and "exercise discretion" over the day-to-day operations of the function.

See sections 101(a)(44)(A)(ii), (iii), and (iv) of the Act.

When examining the executive or managerial capacity of the beneficiary, USCIS will first look to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). If a petitioner claims that the beneficiary is primarily managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in that capacity, 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. *Id.* If a petitioner fails to document what portion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). 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 employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988); see also *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991); *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 at \*5 (9th Cir.

1995)(unpublished)(citing to *Matter of Church Scientology Int'l* and finding an employee who primarily performs operational tasks is not a managerial or executive employee.

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 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. In the case of a function manager, when no subordinates are directly supervised, these other factors may include the beneficiary's position within the organizational hierarchy, the depth of the petitioner's organizational structure, the scope of the beneficiary's authority and its impact on the petitioner's operation, the indirect supervision of employees within the scope of the function managed, and the value of the budgets, products, or services that the beneficiary manages.

In this matter, upon review of the totality of the record, the petitioner has established that the beneficiary was primarily serving as a function manager abroad. First, the AAO is satisfied that the beneficiary's role within the foreign organizations was that of a senior-level manager responsible for the management of an "essential function," specifically, the marketing, sales, and brand management of a product line that produces millions of dollars of revenue for the petitioner annually. The petitioner in this case derives its income from the production, marketing, sales and distribution of premium Russian vodka and spirits. Moreover, the petitioner is the second largest vodka company in the world. Within the scope of the petitioner's business, it is clear that the function of managing the sales, marketing, and brand image of one or more of its brands is an "inherent" or "indispensable" function, and therefore, an "essential" function as required by the plain language of the statute.

Second, the petitioner has established that the beneficiary functioned at a senior level within the organizational hierarchy abroad and with respect to the function managed. In performing his daily activities, the beneficiary has been working closely with other employees primarily at the executive and managerial level. In a company with a multi-layered managerial structure, his position can clearly be considered senior within the company's complex organizational management hierarchy. Further, the petitioner has established that the beneficiary occupies the senior position with respect to the updating and revision of the portfolio of brands for each market, with accountability for overseeing marketing programs, controlling costs, and monitoring production and sales performance for several of the petitioner's key product lines.

Third, the petitioner has established that the beneficiary "exercised discretion" over the day-to-day operations of the function in that he controls a broad range of activities associated with management of his assigned product lines. Beyond sales and marketing activities, the beneficiary's authority includes the allocation and control of a significant budget and authority to influence decisions made by the management of the various brands of vodka and spirit which he oversees.

Finally, although the director concluded that the beneficiary had been engaged primarily in performing the marketing functions of the company, the petitioner has submitted sufficient evidence to establish that it maintains a staff of subordinate marketing personnel who would perform the routine duties associated with marketing, advertising and selling the brands managed by the beneficiary, leaving the beneficiary free to primarily engage in developing policies and goals and overseeing execution of long-term strategies. Specifically, the organizational chart indicated that the beneficiary indirectly oversees three subordinate employees with managerial titles, and claimed that the beneficiary monitors and oversees the marketing plans drafted by his subordinates. The AAO is satisfied that the beneficiary primarily manages, rather than performs, the function.

Based on the foregoing discussion, the petitioner has established that the beneficiary was employed abroad in a primarily managerial or executive capacity.

The last issue on appeal is whether the beneficiary will be employed in the United States in a primarily managerial or executive capacity. In the letter of support dated May 10, 2007, the petitioner claimed that the beneficiary would be employed in the United States as its vice president of marketing. The petitioner provided the following overview of the beneficiary's duties in this capacity:

- Define strategy for and develop, execute and manage comprehensive marketing plans for the launch of our premier vodka brand, SV Supreme and our other brands in the US.
- Direct all activities with advertising agencies, importers, distributors, management, internal sales and marketing departments, and vendors to execute overall export marketing efforts in accordance with corporate goals.
- Create, plan and carry out domestic US market research and analyses.
- Direct all product development activities for emerging US market.
- Organize, lead and directed forward-thinking marketing team[.]
- Prepare, manage and direct \$10M marketing budget for US markets.

The petitioner also provided an organizational chart for the U.S. entity, which indicated that the beneficiary, as vice president of marketing, oversees two subordinate employees: [REDACTED] and [REDACTED]

In the request for evidence dated July 3, 2007, the director requested additional information pertaining to the beneficiary's duties abroad, as well as the percentage of time he devoted to these duties. Additionally, the director specifically requested a more detailed organizational chart clarifying the beneficiary's position in the organizational hierarchy and briefly explaining the duties of all employees.

In a response dated September 10, 2007, counsel for the petitioner claimed that the beneficiary is responsible "for all facets of marketing strategy development and implementation." In addition,

counsel indicated that the beneficiary directly oversees one sales analyst, but claimed that the beneficiary additionally supervised other subordinates who are outside contractors and who worked directly on marketing, promotional, and press efforts.

The petitioner provided an updated and more detailed overview of the beneficiary's duties in the U.S. In relevant part, the petitioner claimed that the beneficiary's duties were as follows:

- Development and [] of the marketing strategy and policy (10%)
- Market research (10%)
- Present the marketing strategies and plans (10%)
- Control of the new sizes design and production schedules (10%)
- Create and develop the advertising campaign (10%)
- Designing and producing the pos and other advertising material (10%)
- Media planning and media buying (10%)
- Negotiating with magazines about added value events (10%)
- Managing the public relations side of marketing + event management (10%)
- Additional responsibilities (10%)

On February 6, 2008, the director denied the petition. The director noted that, similarly to the position abroad, the beneficiary would be not be engaged primarily in managerial or executive tasks, and instead would be engaged in performing the marketing functions of the company. The director also noted that the claimed organizational hierarchy of the petitioner, with only one identified subordinate and an organizational chart indicating numerous co-workers of the beneficiary with executive titles, did not support a finding that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner again emphasizes that the beneficiary is involved in all facets of the petitioner's marketing strategy development.

Upon review of the petition and the evidence of record, the petitioner has established that the beneficiary was employed in a managerial capacity abroad. Based on a review of the evidence, the AAO again concludes that the beneficiary will be employed as a function manager in the United States. Accordingly, the director's decision with regard to this issue will be withdrawn.

As previously discussed, the AAO will look first to the petitioner's description of the job duties when examining the executive or managerial capacity of the beneficiary. *See* 8 C.F.R. § 204.5(j)(5). The petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity pursuant to the definitions at section 101(a)(44) of the Act. At a minimum, the petitioner must establish that the beneficiary's responsibilities will meet the requirements of one of the statutory definitions.

The current organizational hierarchy of the petitioner, with a sales analyst and a claim that the beneficiary oversees external contractors, renders it reasonable to determine that the beneficiary can refrain from performing non-qualifying duties. A critical analysis of the nature of the petitioner's business supports the petitioner's assertions that subordinate employees and/or contractors relieve the beneficiary from performing non-qualifying duties. For example, the petitioner explained in detail in the organizational chart and the response to the request for evidence the manner in which the beneficiary accomplishes his external responsibilities through the use of external entities. Specifically, the petitioner claims that it uses Brand Action Team (BAT) Agency for design services, and the record contains evidence that BAT writes press releases and follows up on media stories and delivery of product samples for approximately \$24,000 per month.

Additionally, the petitioner claims that "marketing and brand development efforts are core business activities of this company and the U.S. office was launched with the expectation that it would oversee, direct, and develop all marketing efforts on behalf of the **Silk Vodka.**" (Emphasis in original). The record contains evidence that the petitioner has utilized the services of Luxe Marketing LLC (Luxe), who provided the services of eighteen marketing managers. One invoice contained in the record indicates that Luxe billed the petitioner \$300,000 for marketing services for the month of October 2007 alone, thereby creating a presumption that contrary to the director's conclusions, the marketing tasks are outsourced as claimed by the petitioner to an independent agency.

Finally, the record indicates that the petitioner also retains McCaffery, Gottlieb Lane LLC (MGL), an advertising agency which places high profile advertisements for the petitioner's products, costing \$60,000 - \$80,000 on average, in magazines such as *Vanity Fair*. The record indicates that the beneficiary has the authority to approve these large-scale advertisements, thereby further supporting a finding that the beneficiary is employed in a qualifying capacity.

As previously stated, a petitioner must prove the following elements to establish that a beneficiary is primarily serving as a function manager within an organization: (1) the beneficiary must manage an "essential function" within the organization, or a department or subdivision of the organization; (2) the beneficiary must function at a "senior level" within the organizational hierarchy or with respect to the function managed; and (3) the beneficiary must control and "exercise discretion" over the day-to-day operations of the function. *See* sections 101(a)(44)(A)(ii), (iii), and (iv) of the Act.

Based on the totality of the record, the petitioner has established that the beneficiary will primarily serve as a function manager in the United States. First, the AAO is satisfied that the beneficiary's role within the petitioning organization will be that of a senior-level manager responsible for the management of an "essential function," specifically, the marketing, sales, and brand management of a product line that produces millions of dollars of revenue for the petitioner annually. The petitioner in this case derives its income from the production, marketing, sales, and distribution of premium Russian vodka and spirits, and the beneficiary will be responsible for the marketing and brand launch of Silk Vodka, among other products. Within the scope of the petitioner's business, it is clear that the function of managing the sales, marketing, and brand image of one or more of its brands is an "inherent" or "indispensable" function, and therefore, an "essential" function as required by the plain language of the statute.

Second, the petitioner has established that the beneficiary will function at a senior level within the organizational hierarchy and with respect to the function managed. In performing his daily activities, the beneficiary has been working closely with outside contractors, such as advertising and marketing agencies, who perform services primarily at the executive and managerial level. The beneficiary's position can clearly be considered senior within the company's complex organizational management hierarchy. Further, the petitioner has established that the beneficiary occupies the senior position with respect to the updating and revision of the portfolio of brands for each market, with accountability for overseeing marketing programs, controlling costs, and monitoring production and sales performance for several of the petitioner's key product lines.

Third, the petitioner has established that the beneficiary "exercised discretion" over the day-to-day operations of the function in that he controls a broad range of activities associated with management of his assigned product lines. Beyond sales and marketing activities, the beneficiary's authority includes the allocation and control of a significant budget and authority to influence decisions made by the management of the various brands of vodka and spirit which he oversees. As stated above, the beneficiary has the authority to approve expensive advertising campaigns and oversees the marketing efforts of Luxe as it pertains to Silk Vodka.

Finally, although the director concluded that the beneficiary will be engaged primarily in performing the marketing functions of the company, the petitioner has submitted sufficient evidence to establish that it maintains a sufficient staff of external entities who perform the routine duties associated with marketing, advertising and selling the brands managed by the beneficiary, leaving the beneficiary free to primarily engage in developing policies and goals and overseeing execution of long-term strategies. Specifically, the record contains evidence of substantial services rendered to the petitioner by marketing, advertising and design agencies. The AAO, therefore, is satisfied that the beneficiary will primarily manage, rather than perform, the function.

Based on the foregoing discussion, the petitioner has established that the beneficiary will be employed in a primarily managerial capacity in the United States.

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, the petitioner has sustained that burden. For the foregoing reasons, the decision of the director will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained.