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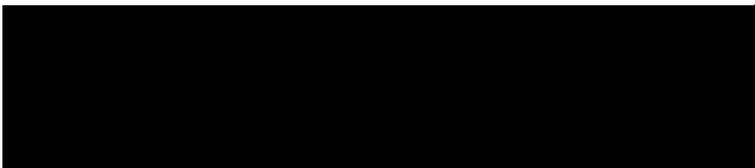
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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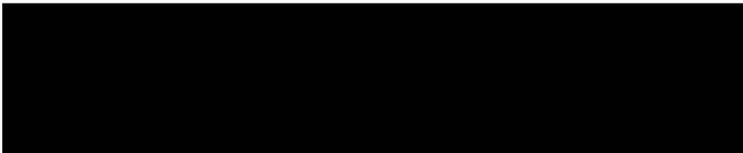


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: NOV 03 2009
LIN 08 129 50890

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 providing corporate best practices research. It seeks to employ the beneficiary as its senior manager, marketing, in its San Francisco office. 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 director noted that the petitioner had failed to provide material evidence that was requested following the filing of the Form I-140, Petition for Immigrant Worker.

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 March 6, 2008 submitted with the Form I-140, Immigrant Petition for Alien Worker, the petitioner stated that the beneficiary assumed the position of Senior Manager, Marketing, in its San Francisco office on September 1, 2007. The petitioner provided a brief list of the beneficiary's duties.

On June 20, 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. An expanded description of proposed permanent duties at the U.S. entity, which should describe the duties in greater detail and include the actual, specific day-to-day tasks involved in the completion of each duty and an estimate of the percentage of time dedicated to each duty.
2. A detailed and dated organizational chart for the petitioner illustrating the current structure of the organization with the addition of the permanent proposed position of the beneficiary. The chart should include the names of all departments and teams, and the names and a detailed description of the job duties of the beneficiary's immediate supervisor and all subordinate employees.
3. Copies of the college or university degrees for those named subordinate employees which are professional in nature.

In a letter dated July 29, 2008 responding to the RFE, counsel for the petitioner set forth the following time allocation for the beneficiary's duties as described by the petitioner in its earlier letter:

- Manage a team of 20+ Marketing Associates, Senior Marketing Associates, and Associate Managers with the goal of securing meetings with senior executives across the entire executive suite from companies with revenues greater than \$750 million in annual revenue - **% of time = ongoing.**
- Support the Sales and Business Development team in generating new revenue - **% of the time = ongoing.**
- Identifies performance gaps and presents training recommendations to individuals on the team – **ongoing but in 1:1's and formal settings roughly 50% - 25 hours per week**
- Collaborates with Managing Directors and Directors to set goals, develop marketing strategies, and forecast peak performance as well as obstacles – **10% - approximately 5 hours per week.**

- Serves as a hiring manager for Marketing Associate candidates by conducting interviews and assess external applicants – **15% -- approximately 7.5 hours per week.**
- Complies and analyzes market data, as well as internal performance metrics, to guide team decisions and strategies -- **% of the time = ongoing.**
- Provides territory analysis, individual coaching, and career counseling to Marketing Associates -- **1:1's are about 50% of time - approximately 25 hours per week.**
- Assists in creating and teaching training modules for new Marketing Associates - **5% - approximately 2.5 hours per week.**
- Plans and executes against monthly goals, while providing strategic insights and territory analysis to the team - **5% - approximately 2.5 hours per week.**
- Serves as an active member of the West Coast Office leadership team, spearheading strategic and operational office initiatives - **5% - approximately 2.5 hours per week.**

Counsel also provided an expanded description of tasks performed in connection with each of the beneficiary's duties. The response to the RFE included an organizational chart for the San Francisco office and a description of the job duties of the beneficiary's supervisor and subordinates. Based on the chart and counsel's letter, the beneficiary is under the direct supervision of [REDACTED] the "Head of the San Francisco Office and Franchise Lead for HR and Sales and Marketing." The job duties of the beneficiary's supervisor, as described by counsel, include "managing overall territory strategy, quota allocation and direction of Sales Team/Region" and "directing the activities . . . of Sales Managers, Sales Executive, and Sales Associates within an assigned region." According to counsel, the staff under the beneficiary's supervision includes a sales coordinator, an associate manager, and eighteen sales and marketing associates, thirteen of whom report directly to the beneficiary and the remaining five to the associate manager.

In his letter, counsel contended that the request from the U.S. Citizenship and Immigration Services (USCIS) for the college or university degrees of the beneficiary's subordinates both abroad and in the United States is an unjustified, burdensome, and irrelevant requirement as there is no statutory minimum education requirement for the beneficiary or his subordinates. Nonetheless, counsel stated, the petitioner had attempted to procure the diplomas from its employees and only received three responses, as many of the beneficiary's former subordinates are no longer with the company. Counsel also submitted records from HireRight, an employment background screening company used by the petitioner, confirming the educational background of certain employees.

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. The director found that the record does not support a conclusion that the beneficiary's subordinates are supervisors, managers or professionals. The director observed that the beneficiary performs some operational tasks as well as supervisory duties. The director found the petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a position higher than a first-line supervisor of non-professional employees. The

director further noted that the petitioner failed to provide certain information and documentation requested in the RFE regarding the beneficiary's positions in both the foreign and U.S. entities. Specifically, the director found the summaries of the subordinate employees' background records from HireRight insufficient without copies of the actual degrees of the employees. The director also noted that the generic organizational chart for the foreign company that was provided was not sufficiently responsive to the RFE and contained information that did not match the description of the beneficiary's position or organization abroad.

On appeal, counsel contends that the director erred in classifying the beneficiary as a "first-line supervisor of non-professional employees." Counsel claims that "all of [the beneficiary's] subordinates have bachelor's degrees as such education is the MINIMUM requirement for the subordinate positions company-wide." Therefore, counsel reasons, "every single individual supervised by [the beneficiary] is professional." Counsel states that, previously, the petitioner was unable to gather all degree data from the beneficiary's subordinates both overseas and in the United States because of the short amount of RFE response time. Counsel explains that the petitioner has not been able to obtain proof of education from employees that have left its overseas office. However, counsel submits copies of university diplomas for the beneficiary's current reports in San Francisco and asserts that, as the positions of the beneficiary's subordinates abroad are the same as those of his current reports, the evidence submitted should be sufficient to show that those occupying the same positions qualify as "professional employees." Counsel claims that the director selectively quoted only certain elements of the beneficiary's job duties and ignored those that are truly demonstrative of his managerial role. Counsel restated the descriptions of the beneficiary's positions overseas and in the United States provided in response to the RFE and claims that "there is absolutely no question as to [the beneficiary's] managerial role" in the San Francisco office of the petitioner.

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* In addition, it should be noted that the definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the

word "manager," the statute plainly states that a "first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act.

The description of the beneficiary's job duties in the United States indicates that he is primarily responsible for training, coaching and supervising the performance of his team of marketing associates (e.g., "identifies performance gaps and presents training recommendations to individuals on the team, 50% - 25 hours per week;" "provides territory analysis, individual coaching, and career counseling to Marketing Associates, 50% of time - approximately 25 hours per week;" "assists in creating and teaching training modules for new Marketing Associates, 5% - approximately 2.5 hours per week").¹ Insofar as he is primarily supervising and controlling the work of other employees, the beneficiary would qualify as a "personnel manager" if it is established that his subordinates are supervisory, professional, or managerial employees. Here, the AAO acknowledges that the beneficiary has one managerial employee under his supervision – the associate manager. However, as noted, the majority of his time is occupied by the direct supervision of the entire team of marketing associates, who evidently have no managerial or supervisory role. Thus, in order for the beneficiary to be considered a "personnel manager," it must be established that the marketing associates under his supervision qualify as professionals.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term profession shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. Counsel protested in response to the RFE, and again on appeal, that the director's request for the college or university degrees of the beneficiary's subordinates is burdensome and unjustified. However, the AAO notes that the director requested

¹ The AAO notes that the total percentage assigned to all duties, even excluding duties noted as "ongoing" without any time specified, is greater than 100%. Counsel does not account for this irregularity, even as he repeats the list of duties in full on appeal. 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).

"copies of the college or university degrees for those named subordinate employees, abroad and in the U.S., *which were/are professional in nature* [emphasis added]," rather than degrees for *all* subordinate employees.

Thus, the petitioner must first establish which, if any, of the subordinate positions in question are professional in nature -- *i.e.*, that they require a bachelor's degree -- and the petitioner has failed to do so. Although counsel claims that a bachelor's degree is the "minimum requirement" company-wide for positions at the level of the beneficiary's subordinates, there is no indication in the description for "marketing associates" and "senior marketing associates" that these positions require at least a bachelor's degree in a specific, related field, nor has the petitioner submitted any other documentation evidencing such requirement. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, regardless of the educational degrees that the beneficiary's subordinates actually hold, the petitioner has failed to demonstrate that the positions under the beneficiary's supervision are "professional" positions, such that the employees holding those positions may be considered professional employees.

Accordingly, the AAO concurs with the director's assessment that the evidence indicates that the beneficiary is primarily a first-line supervisor of employees who have not been shown to be professionals. Therefore, the beneficiary cannot be deemed to be primarily acting in a managerial capacity as a "personnel manager."

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

In this matter, the petitioner has neither claimed nor demonstrated that the beneficiary manages an essential function. While the beneficiary holds the title of "senior manager, marketing" in the San Francisco office, based on the job descriptions provided, it would appear that the beneficiary's supervisor, as the "Head of the San Francisco Office and Franchise Lead for HR and Sales and Marketing," ultimately controls and directs the sales and marketing function in that office. Thus, the evidence does not support the conclusion that the beneficiary manages that function, nor has the petitioner or counsel articulated how the beneficiary can be considered a manager of any other "essential function."

Finally, the AAO notes that the petitioner has neither claimed nor provided any evidence to demonstrate that the beneficiary will function primarily in an executive capacity. 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-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. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* The petitioner has offered no evidence that would support a conclusion that the beneficiary will function in an executive capacity.

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

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

In the March 6, 2008 letter, the petitioner indicated that, prior to his transfer to the United States in June 2007 under L-1A status, the beneficiary was employed as a marketing manager with Corporate Executive Board Co. (UK) Ltd., a wholly-owned subsidiary of the petitioner. The petitioner provided no other information relating to the beneficiary's employment abroad.

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

1. A list of duties that the beneficiary performed, which should include the actual, specific day-to-day tasks involved in the completion of each duty and an estimate of the percentage of time dedicated to each duty.

2. A detailed and dated organizational chart for the beneficiary's foreign employer that should include the names of all departments and teams, and the names and a detailed description of the job duties of the beneficiary's immediate supervisor and all subordinate employees.
3. Copies of the college or university degrees for those named subordinate employees which are professional in nature.
4. Evidence to establish that the beneficiary completed the requisite period of employment in managerial or executive capacity abroad.

In response, counsel stated that the beneficiary was employed by the foreign entity as a manager, marketing, from January 3, 2006 to June 10, 2007. Counsel listed the beneficiary's duties overseas, along with the time allocated to each duty, as follows:

- Delivering informal performance feedback and formal reviews for each of the associates – 10% -- approximately 4.5 hours per week.
- Partnering with sales management and leadership teams to discuss revenue goals along with the creation and execution of weekly, monthly and quarterly plans -- 10% -- approximately 4.5 hours per week.
- Providing hands-on training for new Marketing/Sales Associates -- 15% -- approximately 6.75 hours per week.
- Serving as a resource for scripting calls as well as handling typical objections and coaching, mentoring and developing the internal sales team -- 50%-approximately 22.5 hours per week.
- Serving as a career steward regarding advancement opportunities throughout the organization --10% -- approximately 4.5 hours per week.
- Forecasting attrition and proactively taking necessary steps to remain fully staffed -- 10% -- approximately 2.25 hours per week.

Counsel explained that the beneficiary worked in one of four sections within the Sales Department. Counsel stated that during his tenure as a "manager, marketing," the beneficiary reported to the "senior manager, sales and marketing." Counsel noted that the role of the beneficiary's supervisor in the U.K. company is identical to the role that the beneficiary now fills in the San Francisco office. Counsel listed 22 marketing associates or senior marketing associates who reported to the beneficiary during that time. The job duties of the marketing and senior marketing associates abroad, as described by counsel, are identical to those of the corresponding positions in the United States.

Counsel submitted an organizational chart entitled "CEB UK Sales Associate Team 2006," which depicts a pyramid with a sales associate director supervising three sales associate managers, each of whom supervises six sales associates. None of the positions on the chart has any individual's name attached.

On appeal, in addition to the brief and evidence described earlier, counsel also submitted two additional organizational charts, one entitled "2006 Organization Structure – European Franchise" and the other entitled "2007 Marketing Reporting Structure – CEB UK (April 2007)." On the 2006 chart, the beneficiary is depicted as one of three marketing associate managers reporting to the senior marketing associate manager; the beneficiary's subordinates are not shown on the chart. The 2007 chart also shows the beneficiary as one of four marketing associate managers reporting to the senior marketing associate manager. Again, the chain of command below the beneficiary is not revealed on that chart.

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

The AAO notes that, in the U.K. company, the beneficiary reports to the senior manager of marketing, a role comparable to that which the beneficiary currently occupies in the San Francisco office. Thus, the beneficiary's position overseas would be subordinate to the beneficiary's position in the United States, which the AAO has not found to be primarily managerial or executive. It is also noted that the beneficiary's subordinates abroad are all marketing associates or senior marketing associates with job duties identical to the beneficiary's non-managerial subordinates in the United States. Thus, by the same analysis that has been applied to the beneficiary's U.S. position, the beneficiary appears to have been primarily a first-line manager of non-professional employees in his position abroad, and therefore *could not be deemed to have been functioning primarily as a "personnel manager."* Similarly, it has not been shown that he qualified as a "function manager," given that there are more senior personnel overseeing the function of sales and marketing in the relevant chain of command, nor has the petitioner offered any evidence that would support a conclusion that the beneficiary functioned primarily in an executive capacity abroad.

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

Finally, the AAO acknowledges that the beneficiary was previously granted an L-1A visa pursuant to the petitioner's approved Blanket L petition. It must be noted that many I-140 immigrant petitions are denied after USCIS or a U.S. Consular officer abroad 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). In this case, the beneficiary was granted an L-1A visa at the U.S. Embassy in London pursuant to a Blanket L petition, and USCIS has not previously reviewed his qualifications as a manager or executive pursuant to the statutory definitions at Sections 101(a)(44)(A) and (B) of the Act. 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.