



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **DEC 13 2013**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida corporation engaged in the import and export of construction materials and equipment. The petitioner states that it is a subsidiary of [REDACTED], located in Venezuela. The petitioner seeks to employ the beneficiary as its general manager. 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, finding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. The director also concluded that the petitioner failed to establish that beneficiary had been employed abroad in a managerial or executive capacity for at least one of the three years preceding the beneficiary's admission into the United States as an L-1A nonimmigrant intracompany transferee. Finally, the director found that the petitioner failed to demonstrate that the foreign employer is doing business as defined by the regulations.

On appeal, counsel contends that the director misinterpreted the case law and evidence. Counsel asserts that the director overlooked evidence establishing that the beneficiary was employed abroad and will be employed in the United States, in a qualifying managerial or executive capacity. Counsel also asserts that the director overlooked substantial evidence on the record establishing that the foreign employer conducts business regularly, systematically, and continuously.

#### I. The Law

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 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.

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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

## II. The Issues on Appeal

### A. Foreign employer doing business

The first issue to be addressed is whether the petitioner has established that the foreign employer is doing business as defined by the regulations.

The regulation at 8 C.F.R. 204.5(j)(2) defines "doing business," in pertinent part, as the regular, systematic and continuous provision of goods and services. In denying the petition, the director noted the petitioner's failure to submit sufficient documentation to establish that the foreign employer currently provides goods or services.

On appeal, counsel asserts that the director overlooked evidence on the record establishing that the foreign employer is doing business in a regular, systematic, and continuous fashion.

Based on a review of the record, the petitioner has submitted sufficient evidence to establish by a preponderance of the evidence that the foreign employer is doing business as defined in the regulations.

In support of the petition, the petitioner submitted documentation relevant to the foreign employer's operations, including the company's payroll records for 2012 and 2013 and various invoices and shipping documents, but failed to provide certified translations of these documents. Although the petitioner has still failed to provide certified translations of certain documents relevant to the foreign employer's operations, the petitioner has submitted translated accountings of the foreign employer's monthly sales throughout 2012 and 2013 along with corresponding invoices for these sales. The most recent documentation submitted for February 2013 indicates that the foreign employer had 909,531.87 Venezuelan Bolivars in sales during that month, and in the previous month, an accountant indicates that the foreign employer had 1,496,640.25 Venezuelan Bolivars in sales. Further, the petitioner has submitted substantial foreign payroll documentation

from 2012 and 2013 supporting a conclusion that the foreign employer regularly employed a substantial number of employees. In sum, the petitioner has submitted sufficient evidence to establish by a preponderance of the evidence that the foreign employer is doing business.

As such, based on the foregoing, the director's finding that the petitioner failed to establish that the foreign employer was doing business is withdrawn.

**B. U.S. employment in a managerial or executive capacity**

The next issue to be addressed is whether the petitioner has established that it will employ the beneficiary in a qualifying managerial or executive capacity.

In denying the petition, the director stated that the petitioner had submitted a vague duty description for the beneficiary's proposed position which failed to demonstrate his day-to-day activities. Additionally, the director found that the petitioner did not have sufficient staff to relieve the beneficiary from primarily performing non-qualifying operational duties.

On appeal, counsel states that the director overlooked the fact that the petitioner utilizes the services of independent contractors who perform operational duties for the business. Counsel contends that the director's conclusion was based solely on the size of the petitioner's business, and that the director over emphasized the non-managerial nature of two tasks within the beneficiary's duty description that take up only 10% of his time. Counsel states that the beneficiary's primary function is to perform qualifying duties related to planning, organizing, directing and controlling the petitioner's major functions through the direction of subordinate employees. Counsel asserts that the evidence shows with a preponderance of the evidence that the beneficiary is primarily involved in essential and controlling functions for a large and complex business enterprise and thereby qualifies as a manager or executive.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity.

In order to determine whether the beneficiary would be employed in a qualifying executive or managerial capacity, U.S. Citizenship and Immigration Services (USCIS) will look first to the petitioner's description of the job duties. See 8 C.F.R. § 204.5(j)(5). In support of the petition, the petitioner described the beneficiary's duties in his proposed capacity as general manager, including percentages of time he will spend on each task:

- 15% Prepare the business Plan for start operations of the new company
- 10% Execute strategic plan by implementing short and long-term goals that align with the scope of service, mission and values of the company.

- 5% Initiates strategies as necessary, according with the business plan, as to employ new personnel, put into operation new regulations, arrange new investments, between others.
- 5% Direct and coordinate the ma[j]or company activities including hire, supervise and evaluate the professional performance of the executives.
- 5% Schedule meetings and presentations to meet and evaluate potential suppliers.
- 5% Research and analyze the market in the Florida area, in order to incorporate new productive negotiations for the company
- 10% Prepare and present the annually [sic] projection and global strategies of the company
- 5% Analyze, develop and execute new alliances to increase the international business opportunities and profitability for the company.
- 5% Periodic review of financial statements and data related to the incomes and expenses in order to take financial decisions.
- 5% Implement innovating techniques to ensure and improve the company goals.
- 10% Monitor general operations executed in order to align procedures to the plan projects.
- 5% Direct, formulate and continuously update the company policies and procedures in favor of the financial improvement.
- 5% Design and apply the incentives and promotions plan of the employees and planning the training required.
- 5% Provide positive and constructive feedback to the personnel by coaching, mentoring, counseling or corrective guidance and action, as appropriate.
- 5% Ensure a safe work environment for employees by enforcing the execution of all safety programs and makes recommendations for changes as necessary

The petitioner also provided a separate listing of the beneficiary's daily duties throughout a typical forty hour work week. The additional duties included: meeting with executives and managers to discuss matters and resolve issues; coordinating with an export management company in "high-tech complications"; "formulating strategies and policies of how to receive new clients and retain old"; preparing and presenting to the board all payments made to employees, utility services, and professional services; conducting meetings with subordinate personnel; supervising the sales and marketing department to assure consistent flow of information and attainment of sales goals; preparing and creating adequate business transactions for clients in Venezuela; and procuring the development and growth of business alliances in industries related with auto parts. Further, the petitioner stated the following with respect to the duties the beneficiary performs on a typical Wednesday:

- Provide all required support/control for the logistic department of our main offices in Venezuela and the alliance office for the export of all orders of said offices, she [sic] prepares all the exports information to our offices in Venezuela

and coordinate [sic] with our [REDACTED] for the shipment of said exports in coordination with parent company.

- She [sic] is in charge of the expansion of our customers' database and our customer's satisfaction and discusses details of sales
- Attend clients for the second time a week, and solve up only complicated issues.
- Develop ways for increasing inventory curves and reduce levels on hand for Petitioner as she [sic] did for parent company in order to organize the chain distribution properly.

Additionally, on appeal, the petitioner offered the following with respect to the beneficiary's duties:

All the company's functions, including customs brokering, freight forwarding, etc. are performed by outside contractors at the direction of the beneficiary. The beneficiary . . . doesn't perform any of these functions himself but directs these contractors to take action when he deems appropriate to do so. It should be noted these duties are not auxiliary or clerical in nature; however, it constitute[s] the essential functions necessary for the successful operation of the business.

The definitions of executive and managerial capacity 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).

Following a review of the beneficiary's stated duties the petitioner has provided little detail regarding the beneficiary's day-to-day 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. The majority of the duties provided in the petitioner's letter are too general to establish the nature of the actual tasks the beneficiary will perform. For example, the petitioner stated that the beneficiary allocates 15% of his time to "prepare the business plan," 10% of his time implementing short- and long-term goals, 5% of his time to initiating strategies, 5% of his time to "direct and coordinate the major company activities, 5% of his time to "monitor general operations," 5% of his time to "implement innovating techniques to . . . improve the company goals," and 5% of his time to "direct, formulate and continuously update the company policies." These duties, comprising half of the beneficiary's time, merely paraphrase the statutory definition of "executive capacity" and offer little insight into what the beneficiary actually does on a day-to-day basis. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

Further, although the petitioner provided a day-by-day description of the beneficiary's duties in support of the petition, this description included a number of duties that do not coincide with description of the beneficiary's responsibilities provided elsewhere on the record, which are excerpted herein. In fact, to the extent the petitioner has provided details with respect to the beneficiary's proposed duties, these duties support that the beneficiary will perform a number of non-qualifying operational tasks directly involved in the performance of services or provision of goods. The petitioner did not attempt to reconcile the two different versions of the beneficiary's position description. As such, it is unclear which, if either represents an accurate picture of his actual duties.

For example, as reflected in the excerpts specified above, the petitioner indicated in the weekly breakdown that the beneficiary is focused on such operational activities such as providing "all required support/control for the logistic department of our main offices in Venezuela and the alliance office for the export of all orders of said offices," "preparing all the exports information to our offices in Venezuela," coordinating with [REDACTED] for the shipment of exports, preparing business transactions for the Venezuelan parent company, and directly coordinating with an export management companies. The petitioner further stated that the beneficiary attends to client matters at least twice per week, "is in charge of the expansion of our customers' database and our customer's satisfaction and discusses details of sales," and "develops ways for increasing inventory curves . . . to organize the chain distribution." Also, on appeal, the petitioner emphasizes the beneficiary's focus on daily operational aspects of the company, noting that he regularly coordinates with customs brokering and freight forwarding companies to perform operational functions related to the export and import of goods. In sum, the duties provided by the beneficiary, in their totality, support a conclusion that he spends a significant amount of time on the performance of non-qualifying operational duties.

Further, the petitioner introduced a third position description in response to the director's request for evidence (RFE) issued on February 5, 2013. The petitioner stated that the beneficiary's duties included planning the business of the company, carrying out evaluations of department performance, developing goals and objectives, analyzing company results, opening and managing bank accounts, coordinating with the administrative offices, creating and maintaining good relations with clients and suppliers, controlling subordinates' activities, protecting the conditions of the company, supervising departments, and hiring and firing employees. Again, the petitioner did not attempt to reconcile this description with those provided at the time of filing and failed to include any specifics. 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. Overall, the petitioner has failed to provide sufficient detail regarding, or corroborate, the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Based on the current record, the AAO is unable to determine whether the beneficiary's claimed managerial duties will constitute a majority of his time, or whether the beneficiary will primarily perform non-

managerial administrative or operational duties. When read together, the petitioner's various descriptions of the beneficiary's job duties do not establish what proportion of his duties would be managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

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 company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The petitioner submitted an organizational chart showing three employees directly subordinate to the beneficiary, including a purchase and sales executive, an assistant manager, and an administrative executive. Further, the organizational chart depicts a purchase assistant and a customer service employee subordinate to the purchase and sales executive, and an administrative assistant subordinate to the administrative executive. On appeal, the petitioner indicates that it also utilizes independent contractors to support the beneficiary's managerial or executive position, specifically, contractors from customs brokering and freight forwarding companies. Counsel states that in addition to six full-time employees, the petitioner "uses independent contractors to perform all its necessary functions in order to export and sell its products in Venezuela." Counsel notes that the petitioner provided evidence that it utilizes the services of a Florida storage company and an accounting service.

By asserting that the petitioner engages another level of employees in the form of independent contractors, counsel suggests that the petitioner has sufficient employees to raise the beneficiary to level beyond that of a first-line supervisor of non-professional employees, or that the beneficiary qualifies as a personnel manager. The statutory definition of "managerial capacity" allows for both "personnel managers" and a "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. § 204.5(j)(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. § 204.5(j)(2). 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'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

The beneficiary's duties and evidence submitted with respect to the petitioner's organizational structure and operations leave question as to whether the beneficiary primarily supervises and controls the work of other managerial, supervisory and professional employees as necessary to qualify him as a personnel manager. For

instance, previous to the appeal, the petitioner made no mention of its engagement of independent contractors to supplement the operation of the business. Further, the petitioner provides no documentation to support the regular engagement of these contractors. In fact, the petitioner's 2012 IRS Form 1120 U.S. Corporation Income Tax Return reflects that the petitioner reported \$70 in expenses for "outside services" during the preceding year and \$0 in expenses on "legal and professional services." The petitioner has also provided no documentation to support the regular export of goods from the United States beyond a series of invoices reflecting a few small transactions and the unexplained charging of rent to a Mr. [REDACTED]. Additionally, bank statements submitted by the petitioner do not include expenses indicative of an export and import company, but largely reflect personal expenses. Lastly, the petitioner has not submitted evidence to establish that any of the beneficiary's subordinates qualify as professionals. As such, the petitioner has not established that the beneficiary would qualify as a personnel manager. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

On appeal, counsel contends that the director's decision placed undue emphasis on the small size of the business in finding that the beneficiary would not act in a qualifying managerial or executive capacity. Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. See *Systronics*, 153 F. Supp. 2d at 15.

The director based his decision, in part, on the petitioner's failure to establish that it had sufficient employees to perform the operational duties of the business necessary to raise the beneficiary to a managerial or executive position beyond that of a first-line supervisor. Further, the director noted that the beneficiary's duty description reflected that the beneficiary was more likely than not performing non-qualifying duties. As discussed herein, the petitioner failed to substantiate its claim that the beneficiary would be employed in a qualifying managerial or executive capacity based upon the inconsistencies in the submitted job descriptions, the vague nature of all three submitted job descriptions, and its failure to support its claims regarding its use of independent contractors. As such, counsel's assertion that USCIS has inappropriately considered the size of the petitioner's business in reaching a decision is not persuasive.

In conclusion, the petitioner has failed to establish that the beneficiary will act in a qualifying managerial or executive capacity in the United States. For this reason, the appeal will be dismissed.

**B. Managerial or executive capacity with the foreign employer**

The next issue to be addressed is whether the petitioner has established that the beneficiary was employed abroad in a qualifying managerial or executive capacity for at least one year in the three years preceding his admission to the United States.

In concluding that the petitioner had not established that the beneficiary had acted in a managerial or executive capacity with the foreign employer, the director noted that the petitioner submitted a non-specific duty description for the beneficiary's in his previous role as general manager. Further, the director stated that the petitioner had failed to demonstrate that the beneficiary had professional subordinates and that he primarily performed executive or managerial duties.

On appeal, counsel asserts that the director overlooked that the beneficiary was engaged by the foreign employer in a managerial or executive capacity for several years prior to his entry into the United States as a nonimmigrant intracompany transferee.

Again, in order to determine whether the beneficiary would be employed in a qualifying executive or managerial capacity, U.S. Citizenship and Immigration Services (USCIS) will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). In concluding that the petitioner had failed to demonstrate that the beneficiary was employed by its foreign parent company in a qualifying executive or managerial capacity, the director noted the vague nature of the beneficiary's position description submitted in response to the director's RFE. In the RFE, the director had requested that the petitioner submit a definitive statement from the foreign employer describing the beneficiary's title, his specific daily job duties, and the percentage of time he spent on each specific task. In response to the RFE, the petitioner provided the following explanation of the beneficiary's duties in his former capacity as the foreign entity's general manager:

1. To plan the business of the company. 5%
2. To carry out, from time to time, evaluations on the performance of the supervised departments. 5%
3. To plan and develop short-term and middle-term goals and annual objectives, and submit the projection of such goals for its approval. 5%
4. To analyze the results of the company's activities and operations. 5%
5. To open, manage and close current bank accounts. 5%
6. To coordinate with administrative offices to ensure that the records and the analysis of thereof are being performed properly. 5%
7. To create and maintain good relations with clients and providers for the best interest of the company. 5%
8. To control the activities carried out by his subordinates both in the operational and administrative areas. 5%

9. To take any step that he may deem necessary to improve or protect the conditions of the company. 5%
10. To manage and supervise the department under his control. 25%
11. To hire and fire employees as he may deem necessary in the best interests of the organization. 5%
12. To analyze, develop and execute new alliances to increase the business opportunities and profitability of the company. 5%
13. To provide positive and constructive feedback to the managers by coaching, mentoring, counseling or corrective guidance and action, as appropriate. 5%
14. To ensure a safe work environment for employees by enforcing the execution of all safety programs and makes recommendations for changes as necessary. 5%
15. To assess financial risk and opportunities of the account and communicates results to the clients and shareholders; initiates action plans as necessary. 10%

Again, 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. As noted by the director, the duties offered for the beneficiary in response to the director's RFE, such as planning the business of the company, planning and developing short-term and middle-term goals and annual objectives, analyzing the results of the company's activities and operations, controlling activities carried out by subordinates, taking steps to improve and protect the conditions of the company, ensuring a safe work environment and assessing financial risk are overly vague and provide little probative value as to the beneficiary's day-to-day activities. As such, in response to the director's request, the petitioner failed to provide meaningful detail necessary to convey the beneficiary's former daily activities abroad. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

For instance, the petitioner failed to articulate specific activities and operations the beneficiary analyzed, steps he took to improve the company, safety policies he implemented or enforced, or financial issues he handled. It is reasonable to expect that the petitioner would provide more specifics regarding the beneficiary's past actions and accomplishments in his capacity as general manager abroad, since he is asserted as having worked in this capacity from June 2006 through September 2011. Also, the petitioner has provided no documentation to support his performance of the duties set forth in his duty description. Indeed, the petitioner states in the duty description that 25% of the beneficiary duties were devoted to "manag[ing] and supervis[ing] the department under his control." However, the foreign employer's organizational chart does not reflect the beneficiary at the head of a department, but acting as both the president and general manager, overseeing the entire foreign company. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Overall, the petitioner has failed to provide sufficient detail regarding, and corroborate, the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

On appeal, the petitioner does not specifically contest the director's finding that the petitioner failed to establish that the beneficiary was employed in a managerial or executive capacity abroad, but only vaguely states that the director overlooked the evidence. The AAO does not find this assertion persuasive. In fact, as noted above, the director stated in both the RFE and his decision, that the petitioner had failed to sufficiently articulate the specifics of the beneficiary's duties abroad. However, the petitioner fails to address this finding on appeal. The AAO will not disturb the decision of the director as it concurs that the duties provided for the beneficiary's position with the foreign entity are overly vague and provide little probative value as to the beneficiary's actual day-to-day duties as the company's general manager.

As such, the petitioner has not established that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity. For this additional reason, the appeal must be dismissed.

### III. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.