

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: DEC 10 2014

OFFICE: NEBRASKA 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, Nebraska Service Center, denied the employment-based immigrant visa petition and affirmed his decision after granting the petitioner's subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed Form I-140, Immigrant Petition for Alien Worker, to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a publicly traded U.S. corporation engaged in software development with subsidiaries worldwide. It seeks to employ the beneficiary in the position of Senior Program Manager.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary was employed by its foreign subsidiary in a qualifying managerial or executive capacity; and (2) that the beneficiary will be employed in the United States in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. On appeal, the petitioner asserts that the evidence of record establishes that the beneficiary was employed abroad and will be employed in the United States in a managerial capacity, specifically, as the manager of an essential function within the organization.

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 or 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.

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

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

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. FOREIGN EMPLOYMENT

The first issue to be addressed is whether the petitioner established that the beneficiary was employed in a managerial or executive capacity with the petitioner's [REDACTED] subsidiary for at least one year during the three years preceding his admission as an L-1B nonimmigrant intracompany transferee in April 2007.

A. Facts

The petitioner filed the Form I-140 on March 28, 2013. The petitioner, a software products development company, is headquartered in the United States with 55,000 U.S. employees and approximately 94,000 employees worldwide.

In a letter submitted in support of the petition, the petitioner stated that the beneficiary was employed by its [REDACTED] subsidiary from August 2000 until May 2007 in "multiple managerial positions." Specifically, the petitioner stated that he served as a consultant from August 2000 until August 2001, as a senior consultant from August 2001 until September 2005, and as a principal consultant from September 2005 until May 2007, at which time the petitioner indicates that he transferred to the United States in L-1 status to serve in the position of Program Manager.

The petitioner stated that the beneficiary performed the following duties as a principal consultant:

The Beneficiary managed a subdivision, function, or component of the organization. As Principal Consultant with [the petitioner's Consulting Services division], [the beneficiary] was responsible for working with corporate clients and writing functional specifications based on their needs. He worked with clients through the process of solution development, including determining functional specifications, managing tasks across milestones, managing and overseeing the testing process, and providing guidance to the customers. He made key business value assessments with clients and established the business strategy, solutions, infrastructure, and application development based on clients' needs. After he established the business specifications, he provided leadership to Software Design Engineers and Software Design Engineers in Test to ensure that the specifications are met. In order to meet the specifications, he worked with vendor teams in India and at the subsidiary in [REDACTED]

The Beneficiary managed an essential function within the department or subdivision of the organization. The function managed by [the beneficiary] was essential to [the petitioner] because it had a direct impact on [the company's] market position and revenue for the subsidiary. . . . For example, as the Principal Consultant, [the beneficiary] was responsible for establishing a new relationship between [the petitioner] and [REDACTED] which resulted in \$15 million in revenue for [the foreign subsidiary]. Since this function has a direct impact on customer needs and revenue for [the petitioner], [the beneficiary] managed an essential function within the organization.

The beneficiary directly supervised and controlled the work of professionals. The beneficiary managed a team of nine professional employees all of whom possess the educational qualification and relevant work experience equivalent to a Bachelor's degree, or a Master's degree, in a field related to computer software development. [The beneficiary] oversaw six Software Development Engineers, and three Software Design Engineers in Test. Two of the Software Design Engineers were employees of [REDACTED]. The employees he oversaw were responsible for building a system for [REDACTED] identity management needs and also supported identity management needs to ensure compliance. In addition to the nine professional employees, [the beneficiary] also oversaw 10 employees where [sic] were in India.

The Beneficiary functioned at a senior level with respect to the function managed. As a Principal Consultant [the beneficiary] worked at a senior level with respect to establishing relationships and specifications with new customers for the subsidiary. [The beneficiary] operated at a senior level and received only limited supervision in carrying out his managerial duties. Internally, he worked with senior management in the steering committees to foster business relationships and establish plans for the new customers, as well as overseeing the budget identifying the management areas. He worked with external senior-level managers at corporations, for example [REDACTED] to identify their needs and develop a plan to meet their needs.

The beneficiary exercised direction over day-to-day operations of the function or which he had authority. [The beneficiary] had discretion and direction over the day-to-day operations establishing and implement customer requirements for [the petitioner's] Consulting Services and received limited supervision from his manager. He managed the planning, scheduling, coordination and implementation of the day-to-day operations to ensure his client's needs were being met. He oversaw the design and development of the plans, as well as solve issues that arose. He established work plans for the development and testing of programs that were developed based on client requirements. [The beneficiary] possessed the authority to recommend the hiring, firing, and related personnel decisions for professional contract personnel.

The director later issued a request for evidence (RFE) in which he advised the petitioner that its initial description of the beneficiary's duties was overly broad. The director asked that the petitioner provide a more detailed description and identify the actual, specific day-to-day tasks involved with each duty, as well as information regarding the percentage of time the beneficiary allocated to each specific duty. In addition, the director acknowledged the petitioner's claim that the beneficiary managed an essential function while employed by the foreign entity, but advised the petitioner that it did not provide sufficient detail or define the function. Accordingly, the director requested a detailed explanation of the essential function the beneficiary managed abroad.

The director also requested a detailed organizational chart showing the beneficiary's last position abroad relative to others within the organization. The director requested the names and a detailed description of the job duties and requirements for the beneficiary's immediate supervisor, subordinates, and any indirect reports, and further requested that the chart include other departments and teams. Finally, the director requested that the petitioner support its statements with documentary evidence.

In response to the RFE, the petitioner provided a more detailed description of the beneficiary's duties and indicated that it considered such duties to be 75% managerial in nature and 25% non-managerial. Overall, the petitioner stated that the beneficiary spent 50% of his time coordinating business specifications for corporate clients by managing the solution development process; 10% of his time establishing business strategies based on clients' needs and making key business value assessments and decisions; 25% of his time directly managing Software Design Engineers and Software Design Engineers in Test to ensure that the functional specifications are met; and 20% of his time coordinating and managing projects with vendor teams in India and at the subsidiary in [REDACTED]. Specifically, the petitioner described the beneficiary's duties as follows:

Manage implementation of Identity, Access, and Sarbanes-Oxley (SOX) management system for corporate clients (e.g. [REDACTED]). (10% - Managerial)

- Coordinate customers' global SOX project and coordinate deliverables from IT.
- Prioritize scenarios, features, and development work to meet customers' target dates.
- Oversee and coordinate project steering committee meetings to get a holistic view of how all projects are working together.

- Manage project transitions to the operations team to make sure the product will work in a production environment.

Meet corporate clients' internal customers to gather requirements and translate these to functional specifications . . . (25% - Non-managerial)

Provide leadership and direction to corporate clients' global SOX implementation teams to ensure delivery of the right product to support new processes needed for SOX compliance (10% - Managerial)

- Understand the customers' new processes and goals for SOX and recommend IT processes to cover these.
- Recommend and implement staffing and processes changes.
- Train customers' staff on new tools and processes.
- Act as escalation point for all issues being reported by employees through helpdesk or other processes.

Collaborate with corporate clients' executives to establish roadmap for the project and report on project progress. (5% - Managerial)

- Participate in steering committee meetings with corporate executives.
- Prepare steering committee presentations and write and distribute meeting notes.
- Meet projects' chairmen and owners outside of the regular meetings to discuss finances and resourcing.

Define and implement new global Identity and Access Management policies for corporate clients. (10% - Managerial)

- Work with customers' Chief Security Officer to identify required policies for IT Security.
- Write the IT Policies with input from customer's Global Security Team and IT Governance.
- Manage feedback on IT Policies and update the policies based on the feedback.

Manage the development and test team for features, tasks, and bugs. (5% - Managerial)

- From identified feature requirements, identify task breakdowns and assign these to individual testers and developers.
- Follow up on estimated completion dates and load balance work between team members as needed.

Review, assess, and approve all reported issues and bugs to make sure the product has the right quality when released. (10% - Managerial)

- Lead the bug triage team to decide when and if product bugs should be addressed.
- Coordinate with the test team to drive the correct product quality.
- Document all unresolved issues so the customers can understand what are known issues with the delivered product.

Review and approve proposed technical solutions and direct SDE/SDET to the correct implementation. (10% - Managerial)

- When a feature has been handed over to the developer team, review design specifications and provide feedback.
- Act as a sounding board when developers are in early planning and need help with directions.
- Together with other leaders in the team, approve the design of the item.

Plan, assign and follow-up on development tasks assigned to the vendor team. (5% - Managerial)

- Coordinate and decide which items are to be handed over to the vendor located in India.
- Coordinate with the on-site vendor's contact on features and work to be performed.
- Train the vendor team in India on new features and product functionality.
- Follow up on progress and product quality when completed.

Review and approve technical proposals by the vendor and direct them to the correct technical solution. . . . (10% - Managerial)

Coordinate deliverables by the team in India and the development team in [REDACTED] to ensure all required tasks are delivered at the same time across the teams. (10% - Managerial)

- Coordinate with the different teams to make sure all deliverables needed for a specific date come in at the same time and can be tested in one scenario testing.
- Coordinate testing for the components being delivered from the two teams to make sure the end to end scenario is working as expected by customers.

The petitioner also submitted an organizational chart for the foreign entity which depicts the beneficiary as "Principal Consultant and Lead Analyst." The chart shows his immediate supervisor as a "Senior Consultant Lead" and the reporting hierarchy above this position includes a Principal Consultant Lead, a Services Manager, and finally, the foreign entity's General Manager. The chart does not identify the beneficiary's department or division, the beneficiary's placement within the department, other teams in the same department, or other departments within the foreign entity's organizational structure.

According to the submitted organizational chart, the beneficiary directly supervised two "Analysts." The chart indicates that the beneficiary indirectly supervised a total of nine developers including two "Core Developers," four "[REDACTED] Developers," two "[REDACTED] Developers" and one "[REDACTED] Developer." Finally, the chart shows that the beneficiary indirectly supervised a ten-person vendor team located in India. The petitioner provided names and a brief summary of duties for the analyst and developer positions, noting that the developer and analyst positions require a Bachelor's degree or equivalent work experience.

The petitioner also briefly described the duties performed by the beneficiary's immediate supervisor, a "Senior Consultant Lead," noting that he assigned consultants to projects led by the company's Consulting

Services organization, ensured that projects were completed on time and within budget, and ensured that consultants are trained and equipped to deliver projects based on new technologies.

The petitioner also maintained that the beneficiary managed an essential function in his role as Principal Consultant, noting that he was a member of the Security and Identity group, which is "an integral component of [the petitioner's] Consulting Services." In this regard, the petitioner explained that this division boosts the company's market position and revenue, while the Security and Identity group provides the company's partners with comprehensive security and identify for their businesses that protects their IT infrastructure, applications and data from threats. The petitioner emphasized that the beneficiary established a new relationship with [REDACTED] corporation which resulted in \$15 million in revenue for the foreign subsidiary. The petitioner asserts that such relationships would not be possible without the services provided by the company's Security and Identity group.

The director denied the petition on December 10, 2013, concluding that the petitioner did not establish that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity. The director addressed the petitioner's claim that the beneficiary managed an essential function within the Security and Identity group of the foreign entity's Consulting Services group, but found that the petitioner failed to establish how the beneficiary functioned at a senior level with respect to this function given his described duties and placement within the organizational hierarchy. The director noted that the beneficiary's supervisor has the authority to assign projects to consultants, and suggested that a project manager cannot be equated to a manager of an essential function.

The petitioner subsequently filed a combined motion to reopen and reconsider. On motion, the petitioner asserted that the totality of the evidence was sufficient to establish that the beneficiary held functional management authority over the foreign entity's Security and Identity group and was employed in a managerial capacity. The petitioner emphasized that this group is a fundamental component of the group's Consulting Services organization. It stated that "under [the beneficiary's] leadership, the Security and Identity group possessed a deep technical and engineering skill set coupled with business and management skills."

Further, the petitioner contended that "[the beneficiary's] management responsibilities went well beyond 'a project'" and noted that he "held functional management authority over Security and Identity group project milestones, the testing process performed by Software Development Engineers in Test, the establishment of cross-group strategies for key clients, and the indirect supervision of a large team of Software Development Engineer employees and two Analysts."

In addition, the petitioner asserted that the director failed to consider whether the beneficiary operated at a senior level with respect to the function he managed, and instead only considered his position within the foreign entity's overall organizational hierarchy. In this regard, the petitioner asserted that the record "overwhelmingly supports" that the beneficiary held "senior level management over project milestones, the testing process, establishment of cross-group strategies for key clients, and indirect supervision of large teams of Software Development Engineer employee[s] and vendor professionals, as well as two [REDACTED]"

Analysts." The petitioner also emphasized that, given that the company has over 99,000 employees, many of its managerial positions fall "several layers deep within the organization's reporting structure."

The petitioner also clarified that the beneficiary's former manager had authority to assign expense reports related to consulting project assignments, but was not involved in the day-to-day management of projects. It stated that the beneficiary met with his direct manager once per year, while "the deep structure relying on independent contractors and vendor professionals was created to facilitate project-driven goals so that the beneficiary, who indirectly managed the professional employees and vendors, did not have formal direct reporting lines to him."

Finally, the petitioner asserted that the director did not accord appropriate weight to the beneficiary's supervision of personnel simply because some of the personnel were vendor staff or independent contractors. The petitioner emphasized that he indirectly supervised nine of the foreign subsidiary's employees and that his supervisory duties should have been considered within the scope of the function he managed.

The petitioner's evidence on motion included an expanded organizational chart depicting the beneficiary's position with the foreign entity. The chart indicates that the beneficiary indirectly managed two analysts (both [REDACTED] employees), the aforementioned nine developers, as well as 10 vendor employees based in India, identified on the chart as "SDE" and "SDET."

The director granted the petitioner's motion, but affirmed his determination that the petitioner did not establish that the beneficiary was employed by the foreign entity in a managerial or executive capacity. The director acknowledged the petitioner's assertions and the new organizational chart, but found the evidence as a whole insufficient to establish that the segment of the Security and Identity group managed by the beneficiary is an "essential function" of the foreign entity. In reaching this conclusion, the director observed that "[g]enerally USCIS understands that projects do not qualify as an essential function."

On appeal, the petitioner submits a brief that includes the same assertions made on motion and contends that the evidence of record establishes the beneficiary's eligibility for the benefit sought.

B. Analysis

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary was employed by the foreign entity for at least one year in the three years preceding his transfer to the United States to work for the petitioner in L-1B nonimmigrant status in April 2007.¹

When determining whether a beneficiary was employed in a managerial or executive capacity, 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

¹ In a letter submitted in support of the petition, counsel for the petitioner stated that the beneficiary "was previously granted L-1A status." The beneficiary was in H-1B nonimmigrant status at the time of filing. USCIS records reflect that an I-129 petition requesting an extension of the beneficiary's *L-1B* nonimmigrant status was denied on April 13, 2010 and that the beneficiary had been maintaining H-1B status since 2010.

whether such duties are either in an executive or managerial capacity. *Id.* A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's 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). We will then consider this information in light of other relevant factors, including (but not limited to) job descriptions of the beneficiary's subordinate employees, the nature of the business conducted, and any other facts that may contribute to a comprehensive understanding of the beneficiary's actual duties and role in the organizational hierarchy of the entity in question.

The petitioner has consistently claimed that the beneficiary managed an essential function of the foreign entity. The term "function manager" applies generally when a beneficiary does not directly 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 provide a job description 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). 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 "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'r 1988).

Here, the petitioner provided a breakdown of the beneficiary's duties as principal consultant² in response to the RFE, but did not adequately support its claim that 75% of the beneficiary's time was allocated to performing managerial duties. The petitioner acknowledged that 25% of his time was spent performing duties that it considered to be non-managerial including meeting with clients to gather requirements and translate requirements to functional specifications, completing scenario testing, interacting with helpdesk staff to obtain feedback, keeping track of requirements, communicating with project stakeholders, and guiding staff in translating requirements to use cases and user interface design.

However, the petitioner classified all other tasks performed by the beneficiary as managerial without providing sufficient explanation in some instances as to how such duties qualify. For example, the petitioner stated that the beneficiary provided leadership to clients' teams by understanding customer processes, training customer staff, and handling escalated helpdesk issues. The petitioner did not explain how such duties can be distinguished from those necessary to provide agreed upon consulting services to the client. The petitioner indicated that the beneficiary directly performed such tasks rather than allocating them to indirectly supervised employees in Sweden or vendors in India. The petitioner did not establish that

² We note that the record reflects that the beneficiary was employed by the foreign entity as a senior consultant from August 2001 to September 2005. The petitioner did not provide the beneficiary's job duties for this position, or otherwise assert that this position qualifies the beneficiary as a manager or executive with the foreign entity.

provision of guidance, training and technical support to clients' teams, which required 10% of his time, is a qualifying managerial duty.

Similarly, the beneficiary's responsibility for defining clients' Identity and Access Management policies, which the petitioner stated required another 10% of his time, has not been shown to be managerial in nature. The petitioner specified that the beneficiary was responsible for identifying the clients' requirements for IT policies, writing IT policies for the customer with input from its security and IT governance teams, and updating policies based on feedback. This duty is comparable to the beneficiary's responsibility for gathering functional requirements and developing a solution based on those requirements, a duty that the petitioner characterized as non-managerial in nature. Further, the petitioner indicated that the beneficiary directly provided this service to the client to fulfill the terms of the foreign entity's consulting agreement.

In addition, portions of other responsibilities identified as managerial included non-qualifying duties, such as reviewing and assessing reported bugs, documenting unresolved issues for customers, providing training to vendors and coordinating testing. As the petitioner assigned percentages of time to groups of duties rather than to specific duties, we cannot determine how much time the beneficiary allocated to these additional non-managerial duties. Overall, the descriptions of the beneficiary's duties are insufficient to demonstrate that he allocated his time primarily to managerial tasks. Rather, it is more likely than not that he divided his time approximately equally between qualifying and non-qualifying tasks.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In the case of a function manager, where no subordinates are directly supervised, these other factors may include the beneficiary's position in the organizational hierarchy with respect to the function managed, the depth of the company's organizational structure, the scope of the beneficiary's authority and its impact on the petitioner's operations, 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.

The petitioner has consistently stated that the beneficiary was employed in a qualifying capacity as a function manager, but has not clearly or consistently identified what essential function he managed for the foreign entity. At the time of filing, the petitioner mentioned the impact the company's Consulting Services business segment had on the subsidiary's revenue and market position, and noted that the beneficiary "was responsible for establishing a new relationship" between the foreign entity and [REDACTED] which resulting in \$15 million in revenue. While this figure is significant, the petitioner did not clearly define the beneficiary's role in establishing the relationship or explain what this relationship entailed or how it required the beneficiary to manage an essential function.

In response to the RFE and on motion, the petitioner stated that the beneficiary held functional management authority over Security and Identity Group, and stated that "the Security and Identify [*sic*] function is of utmost importance to the successful operation of [the company's] Consulting Services and [the company] in

general," and "is the essential function within the organization." The petitioner also contends that the beneficiary operated at a higher level than that of a project manager, noting that he held authority over Security and Identity group project milestones, the testing process, the establishment of cross-group strategies for key clients, and the indirect supervision of a large team. The petitioner contends that the record "overwhelmingly supports the conclusion that [the beneficiary] functioned at a senior level with respect to the Security and Identity function he managed."

Upon review of the totality of the evidence, the record does not support the petitioner's claim that the beneficiary managed the Security and Identity function for the foreign entity. The organizational chart submitted identifies only the beneficiary's immediate chain of command, but did not include other information requested by the director, such as other departments and teams within the foreign subsidiary. Critically, the chart does not identify the Consulting Services organization, the Security and Identity group or the beneficiary's placement within it. This failure of documentation is important because this information may have served to corroborate the petitioner's claims that the beneficiary functioned at a senior level within the subsidiary's Security and Identity group. 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)).

As noted by the director, the record reflects that the beneficiary's supervisor was responsible for assigning consultants to projects and accountable for delivering projects on time and within budget. The chart did not show the other consultants who reported to the same Senior Consultant Lead or what their areas of responsibility were. Without this information, it is unclear how the record supports the petitioner's claim that the beneficiary was in charge of all Security and Identity Group functions for the subsidiary, particularly as the petitioner mentioned only one client with which the beneficiary worked during his tenure as a Principal Consultant. In addition, the description of the beneficiary's duties indicated that his role in the assigned client projects did not extend to budgetary authority or responsibility, and his job description refers to "other team leaders" who had a role in approving designs from vendor staff. Therefore, the record does not establish that he had full authority over his assigned project(s), much less over all projects within the Security and Identity group.

Further the director's determination that the beneficiary's role as principal consultant was comparable to that of a project manager was not unreasonable based on the job duties and organizational chart submitted. However, we do not agree with the director's finding that a project manager is categorically excluded from qualifying as a function manager under section 101(a)(44)(A) of the Act. As the term "essential function" is not defined in the statute or regulations, we review all function manager claims on a case-by-case basis. As noted above, it is the petitioner's burden to clearly define the function manager, explain the essential nature of that function, provide a detailed description of the beneficiary's duties, and establish that the beneficiary's duties are primarily related to the management of an essential function.

Here, the beneficiary's job description indicates that he led teams of developers to gather requirements and implement solutions within the Security and Identity group, but it did not define his duties in terms of managing the entire group, nor did it identify a specific essential function managed by him within that group or explain how he operated at a senior level within the function managed. Rather, the petitioner attempted to

define his role within the function by repeating his job description, which, as addressed above, does not establish that his duties were primarily managerial in nature. Further, although we do not discount that the company's relationship with [REDACTED] resulting in \$15 million in revenue may have qualified as an essential function within the Security and Identity group, but the petitioner did not adequately describe exactly what this client project or contract entailed or explain how the beneficiary established and managed the relationship, particularly in light of the petitioner's claim that the beneficiary's supervisor assigned his projects to him and held ultimate financial responsibility for these projects. There is simply insufficient evidence to establish that the beneficiary functioned at a senior level with respect to a clearly defined function or component of the foreign entity's organization or that he performed primarily managerial duties related to that function.

For the foregoing reasons, the petitioner has not established that the beneficiary was employed by the foreign entity in a qualifying managerial capacity. Accordingly, the appeal will be dismissed.

III. U.S. EMPLOYMENT

The remaining issue to be addressed is whether the petitioner established that the beneficiary would be employed in the United States in a managerial capacity.

A. Facts

The petitioner indicates that the beneficiary, in his role as Senior Program Manager, is and will be responsible for managing the design, implementation and feature lifecycle for Synchronization Service, a component that is shipped with the company's [REDACTED] product. It provided a detailed position description in response to the director's RFE and specified the amount of time the beneficiary allocates to his duties. Overall, the petitioner indicated that the beneficiary primarily allocates his time to managerial duties, which include the authority to assign subcomponents and deliverables to engineering and technical staff, authority over the product's short- and long-term upgrade and release strategy, signing off on new product releases, and acting as the Product Group's authoritative source on the Synchronization Service component of its [REDACTED] product.

The petitioner provided an organizational chart and job descriptions for the beneficiary's immediate supervisor and for his indirect subordinates. The petitioner indicated that the beneficiary's manager, a Senior Program Manager Lead is responsible for identity infrastructure across cloud and "on-prem" products, and manages a total of Senior Program Managers. The petitioner explained that the beneficiary manages an essential function, as the [REDACTED] product generates over \$80 million in annual revenues and he is responsible for a key component of this product.

The director determined that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. The director acknowledged the petitioner's claim that the beneficiary would manage an essential function but found that, based on the evidence submitted "it would appear that it is more likely that the beneficiary's supervisor, as Senior Program Manager Lead, manages an essential function of providing identity infrastructure for cloud and on-prem[ises] products." The director

further determined that the petitioner did not demonstrate that the beneficiary would function at a senior level within the organization to qualify as a function manager, or that the [REDACTED] qualifies as an essential function within the petitioner's business. In addition, the director determined that some portion of the beneficiary's time spent performing managerial duties would in fact be spent managing vendor or contractor staff, which the director found to be "non-qualifying reports."

On motion, the petitioner reiterated its claim that the beneficiary acts as a function manager with authority over the design, implementation and feature lifecycle for the company's [REDACTED]. The petitioner emphasized that although the beneficiary reports to a Program Manager Lead who supervises other Senior Program Managers, each of these managers is responsible for different functions related to the Identity Infrastructure, apart from [REDACTED]. In addition, the petitioner emphasized that the beneficiary indirectly manages 32 software development professional employees and vendors devoted to completed [REDACTED] tasks assigned and managed by the beneficiary. The petitioner maintained that the fact that the beneficiary has other senior-level managers and executives above him in the overall organizational hierarchy does not undermine his responsibility for managing a function, particularly in light of the depth of the company's structure.

In support of the motion, the petitioner provided a certified statement of the beneficiary's duties as Senior Program Manager from the beneficiary's manager, who confirmed that the beneficiary "holds functional management authority to assign, manage and oversee specific projects related to [REDACTED], the most important component of the [REDACTED] product." In addition, he stated that the beneficiary "retains discretion and direction over [REDACTED] operations including control over policy" and "provides indirect management and leadership to one Project Management professional and four teams." The petitioner also submitted a redacted copy of a Statement of Work between the petitioner and a vendor for the development and extension of [REDACTED] 2010 connectors for various systems and scenarios. The statement of work identifies the beneficiary as the petitioner's primary contact for work to be performed by the vendor.

The director affirmed the denial of the petition on motion. With respect to the beneficiary's U.S. position, the director observed that "[REDACTED] is but a component or segment of [REDACTED]" and that [REDACTED] is "a component of the petitioner Server and Cloud Platform." The director determined that the petitioner did not establish that the beneficiary's position is "high enough in the organizational structure to commit the entire organization, or even the petitioner's Cloud Computing product and operations."

The director acknowledged the statement from the beneficiary's manager and the petitioner's claim that the beneficiary's oversight of [REDACTED] qualifies as management of an essential function. The director determined that "it appears more likely that the [REDACTED] product or the broader identify infrastructure or the Cloud Platform would be considered an essential function of the petitioner and that the petitioner has attempted to define a component of an essential function as the essential function itself."

On appeal, the petitioner emphasizes the claims and evidence it submitted on motion and further asserts that the director erred by finding that the beneficiary, as a function manager, must operate at a senior level within the petitioner's overall organizational hierarchy.

B. Analysis

Upon review, the petitioner has established that the beneficiary will be employed in a managerial capacity. Accordingly, the director's decision will be withdrawn with respect to this issue.

When examining the executive or managerial capacity of the beneficiary, USCIS looks first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(3). 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 in either an executive or a managerial capacity. *Id.*

The statutory definition of managerial capacity under section 101(a)(44)(A)(ii) of the Act allows for both "personnel managers" and "function managers." Personnel managers must primarily supervise and control the work of other supervisory, professional, or managerial employees, whereas function managers must primarily manage an essential function within the organization. While the term "essential function" is not further defined by statute or regulation, a petitioner who claims that the beneficiary qualifies as a function manager must identify the essential function and describe in detail the duties to be performed in managing that function. 8 C.F.R. § 214.2(1)(3)(ii).

Furthermore, the petitioner must demonstrate that the beneficiary will manage the function rather than perform the duties related to the function. Whether the beneficiary will be a function manager turns on whether his or her duties will be "primarily" managerial. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). While a function manager may use his or her business or technical expertise to perform some operational or administrative tasks, he or she primarily must manage an essential function; someone else must primarily perform the day-to-day, non-managerial tasks associated with that function.

To determine whether a beneficiary would primarily manage an essential function, USCIS must consider the totality of the record and weigh all relevant factors, including: the nature and scope of the petitioner's business; the petitioner's organizational structure and a beneficiary's position within it; the scope of a beneficiary's authority and its impact on the petitioner's operations; the work performed by other staff within the petitioner's organization, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business. When staffing levels are considered in determining whether an individual will act as a "function manager," an officer must also take into account the reasonable needs of the organization as a whole.

The director's adverse decision was based on a finding that the beneficiary's management of a component of a product cannot qualify as an "essential function" or as a "department, subdivision, function or component of the organization," pursuant to section 101(a)(44)(A) of the Act.

As the term "essential function" is not defined by statute or regulation, USCIS must evaluate each function manager claim on a case-by-case basis and not based on a preconceived view regarding what type of function may qualify as "essential."

Here, the petitioner has established that the beneficiary's responsibilities as a Senior Program Manager are primarily managerial duties associated with overall technical development for a component of a key product. The petitioner has provided sufficient support for a conclusion that, within the context of its business, the management of the development of a critical component of a product that generates \$80 million in revenue qualifies an essential function within the organization. See section 101(a)(44)(A)(iii) of the Act.

In addition, the petitioner has established that the beneficiary manages this function independently, that he operates at a senior level with respect to the development and continuous upgrade of [REDACTED] and that he has significant authority over the day-to-day operations of the development activities for which he has authority as required by sections 101(a)(44)(A)(iii) and (iv) of the Act.

Finally, the petitioner has described the beneficiary's duties in sufficient detail to establish that he will be primarily performing managerial duties and will not allocate a significant portion to his time to tasks that are not within the statutory definition of managerial capacity. The beneficiary indirectly supervises several teams of professional staff who relieve him from having to primarily perform non-managerial duties associated with the development of [REDACTED]. The fact that some of the employees are vendors or contractors does not undermine the petitioner's claim that the beneficiary's duties are primarily managerial in nature or otherwise detract from its claim that he manages an essential function.

Accordingly, the petitioner has established by a preponderance of the evidence that the beneficiary is employed in a managerial capacity. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The director's adverse finding with respect to this issue will be withdrawn.

IV. CONCLUSION

The petition will be denied and the appeal dismissed based on the petitioner's failure to establish that the beneficiary was employed abroad in a managerial capacity. 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.