



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **JUL 25 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)

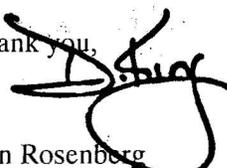
ON BEHALF OF PETITIONER:

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 preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation located in the State of Washington. It operates as an exporter of U.S.-manufactured electric power equipment and seeks to employ the beneficiary in the United States as its vice president of finance and operations. 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 failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

### 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.

## II. Procedural History

The record shows that the petition was filed on May 2, 2013 and was accompanied, in part, by the petitioner's supporting statement, dated April 30, 2013, which included an organizational chart depicting the petitioner's staffing levels. The chart shows a company president at the top of the hierarchy followed by two vice president positions – one in charge of international purchasing and sales and the beneficiary in charge of finance and operations. Each vice president is depicted as having their own subordinate – a senior engineer working under the vice president of purchase and sales and a staff accountant directly subordinate to the beneficiary. The vice presidents are also shown as sharing control over the administrative and logistics department comprised of one manager and her subordinate as the administrative assistant. The record was supplemented with other supporting evidence in the form of the petitioner's corporate and financial documents as well as employee wage and tax statements showing employee salaries for 2011 and 2012. In addition, the

petitioner provided job descriptions for the petitioner's entire staff. The following was the job description provided for the beneficiary's proposed position:

- 40% Overseeing financial matters to ensure [the petitioner]'s accomplishment of its financial goals, including the following:
  - Overseeing and monitoring power project actuarials, financial planning, budgeting, final account statements, working capital management, and financial analyses, etc.
  - Overseeing and directing flow of company funds; monitoring the performance of company investment and operations; ensuring effective control over company financials activities; assisting the President in approving each department's cost and expense proposals, improving cost effectiveness and overall performance; and providing support to other departments.
  - Overseeing and ensuring the timely filing of tax returns with the federal, state and city authorities, and making recommendations and suggestions to the President of the company on financial and operational budget efficiency.
  - Overseeing the preparation of year-end financial statements, corporate tax filings, and all other year-end financial documents; reporting [the petitioner]'s year-end financial status to [the foreign parent entity]'s Board of Directors; overseeing the preparation of monthly financial reports and submitting financial analysis to the President.
  - Overseeing cost control of sub[-]projects that are related to the company's export contracts, and optimizing the system.
  
- 30% Overseeing the implementation of operational goals . . . to ensure the smooth operations of the company, and establishing supplier evaluation and customer credit rating systems, including the following:
  - Under the direction of the President, [the beneficiary] formulates and adjusts monthly, quarterly, and annual operational goals; engages in long-term and short-term strategic, financial, and operational planning; and formulates operating and management policies and system.
  - Overseeing the financial and operational compliance with relevant federal, state, and local government regulations and licensing requirements to ensure continued business operations.
  - Establishing an evaluation system for U.S. suppliers . . . . [The beneficiary] has been fully utilizing her many years of experience in cost control in the power industry to establish a comprehensive supplier evaluation system. This system will be updated frequently and will be robust enough to compare three bids . . . . The system will also be able to provide the most optimized cost analysis based on the bids. After the contracts are entered into, [the beneficiary] directs coordination with the suppliers to ensure that the products meet the contract specifications and that the contract obligations are performed smoothly.
  - Establishing a customer credit rating system . . . . The rating system factors in the customer's market demand, room for further development, financial condition

and history of cooperation, as well as the unique character of each customer group. For new customers, a background check of the company and its customers will be conducted. [The beneficiary] has been responsible for establishing the rating system and overseeing the preparation of rating reports to the company's President on a regular basis to assist the company in efficiently selecting and serving customers.

- Establishing and improving the product distribution operational procedures, such as quality inspection and training procedures with suppliers, and internal product inspection and problem resolution procedures.
- Resolving customer complaints regarding product defect, delivery timing, and contract implementation issues.
- In conjunction with Ms. [REDACTED] the President, [the beneficiary] promotes, recruits or dismisses employees under her direction; and decides their salaries and bonuses based on their performance.

25% Overseeing the Administrative & Logistics Department and the Finance Department, including the following:

- Directing the Manager of the Administrative and Logistics Department, Ms. [REDACTED] in carrying out all administrative and logistics functions and implementing all administrative and logistics procedures and policies to ensure the smooth daily operation of the company.
- Meeting and discussing with Ms. [REDACTED] regarding the efficiency of our administrative and logistics systems, such as the data management system, the quality control system, the customer complaint resolution system, the product supply and distribution system, and the contract management and implementation procedures, etc.; recommending methods to improve efficiency and reduce operational costs.
- Overseeing the Finance Department's successful accomplishment of the tasks and goals related to financial and accounting matters of the company, including supervising the work of [the petitioner]'s accounting staff and ensuring the Finance Department's effective cooperation with other departments. Specific duties include overseeing the accounting staff's preparation of monthly, quarterly, and annual financial statements, federal and state corporate tax filings, as well as overseeing the accounting staff's preparation of profit-and-cost calculations for the company's projects.

5% Coordinating with the Vice President of International Purchasing and Sales to ensure the financial goals of the company are accomplished, including the following:

- Meeting and conferring with the Vice President of International Purchasing and Sales on a monthly, quarterly and annual basis to review profit/loss analysis and related reports to ensure that the company's overall financial goals are reached.
- In conjunction with the Vice President of International Purchasing and Sales, [the beneficiary] makes decisions on major financial matters related to the purchasing and sales activities, subject to the President's final approval.

The petitioner also provided a list of functions the beneficiary has carried out to further illustrate the role she has assumed within the petitioner's organization. As one example, the petitioner described how the beneficiary assisted one customer company by meeting with its CEO to gather information and to ultimately use her knowledge of finance to "produce a detailed end-user analytical report" to help the customer introduce its product to new clients. As another example, the petitioner discussed the beneficiary's role as a liaison between a client company and the petitioner's parent company in order to bring the client's product to a new market in South America. The petitioner also indicated that the beneficiary assumes an integral role in conflict resolution by contacting suppliers regarding customer complaints.

On October 3, 2013, the director issued a notice of intent to deny (NOID), informing the petitioner that the record lacks sufficient evidence to establish that the beneficiary would be employed in the United States in an executive capacity as claimed in the petitioner's supporting documents. The director acknowledged the beneficiary's job description, which indicates that the beneficiary would oversee the petitioner's financial activities and determined that the petitioner did not provide sufficient evidence to establish that the beneficiary's role would be limited to overseeing, rather than performing, the petitioner's financial activities. The director also reviewed information provided in the petitioner's organizational chart, pointing out that the petitioner's finance department is comprised of a single employee who is claimed to have been on leave from October 2012 until March 2013 and who, based on her salary for 2012, as shown in the employee's IRS Form W-2, was likely to have been working on a part-time basis. The director questioned the plausibility of the beneficiary's role being limited to mere oversight given the unlikelihood of a single part-time employee being able to carry out all of the finance department's tasks.

In response, the petitioner provided two statements, both dated November 4, 2013. One statement was from counsel, who pointed out the identical statutory definitions for managerial and executive capacity as applied in the immigrant and nonimmigrant contexts. Counsel asserted that in light of the beneficiary's prior approval of an L-1A nonimmigrant visa, which applied the same statutory definitions of managerial and executive capacity as are applied to the immigrant visa category being sought in the matter at hand, the beneficiary's eligibility has already been established. Counsel further asserted that the petitioner and its foreign parent organization should be considered "as a single multinational organization" thus justifying the need to consider the beneficiary's oversight of the foreign entity's employees, including a finance department manager and two staff accountants, as part of her job description. In addition, counsel stated contended that the director placed undue emphasis on the salary of one of the beneficiary's subordinates in the United States.

In a separate statement, the petitioner reiterated counsel's request that United States Citizenship and Immigration Services (USCIS) consider all of the beneficiary's subordinates, including those employed by the foreign entity, prior to determining the beneficiary's eligibility. The petitioner added the foreign employees to a new organizational chart and the foreign employees' job descriptions, which were included in the response statement. The petitioner explained that the beneficiary's oversight of employees of both entities meet "the reasonable needs of a multinational organization" and discussed the petitioner's need for the beneficiary's services given the company's growing needs and an inadequate support staff. Notwithstanding the percentage breakdown, which indicated that the beneficiary focuses her time on matters concerning the U.S. entity, the petitioner indicated that the beneficiary spends some time overseeing matters concerning the foreign entity.

In a decision dated December 5, 2013, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive

capacity. The director acknowledged the petitioner's response to the NOID, finding that the petitioner provided little new evidence and added new information about the beneficiary's management of employees overseas, which was inconsistent with information that was originally provided. The director declined to consider the beneficiary's job duties with the foreign entity while employed by the petitioner in the United States, pointing out that the job duties performed abroad are not informative as to the beneficiary's role within the petitioning entity. The director went on to reject the petitioner's assertion that the beneficiary oversees employees from both the U.S. and foreign entities and noted that only one of the employees mentioned can actually be deemed to be a professional. Lastly, the director rejected counsel's assertion that the beneficiary's prior approval of an L-1A nonimmigrant petition should guide the director's determination regarding the beneficiary's eligibility in the instant matter.

The petitioner subsequently filed an appeal supported by an appellate brief from counsel, who, once again, raises issues of the beneficiary's previously approved nonimmigrant petition and the beneficiary's supervision of employees who work for the overseas parent entity.

Upon review, and for the reasons stated below, we find that the petitioner has failed to establish that the beneficiary will be employed in a primarily managerial or an executive capacity.

### III. Issues on Appeal

As indicated above, the sole issue to be addressed in this proceeding is the beneficiary's proposed employment with the U.S. entity and whether the evidence provided thus far establishes that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

In general, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary's proposed job duties with the petitioning entity. See 8 C.F.R. § 204.5(j)(5). Published case law has determined that 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). Beyond the required description of the job duties, USCIS reviews the totality of the record, 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 may contribute to a comprehensive understanding of a beneficiary's actual duties and role within the petitioning entity.

Turning first to the information provided in the initial supporting statement, the petitioner indicated that 40% of the beneficiary's time would be allocated to overseeing the petitioner's financial matters, including project actuarials, financial planning and budgeting, flow of company funds, various tax filings and preparation of financial statements and reports, and cost control of projects. However, with the exception of the job duties that fall specifically within the scope of the beneficiary's subordinate accountant, including the preparation of tax documents and financial statements and reports, it is unclear who would actually be carrying out the underlying tasks over which the beneficiary is to have oversight authority. For instance, it is unclear what role the beneficiary would have in overseeing the petitioner's financial planning and budgeting, or what tasks are involved in managing working capital. Further, while the petitioner indicated that the beneficiary's financial oversight would include "providing support to other departments," there is no information clarifying specifically what types of job duties would fall within this category or whether those job duties would be meet the statutory criteria of managerial or executive capacity.

The petitioner allocated another 30% of the beneficiary's time to overseeing the implementation of operational goals and establishing supplier evaluation and customer rating systems. However, the petitioner failed to establish that the latter portion of this category that deals specifically with establishing the two types of evaluation and rating systems fall within the guidelines of what is deemed to be within a managerial or executive capacity. While we do not question the value of the beneficiary's contributions to the petitioning organization, establishing and updating these two systems indicates that the beneficiary herself would gather various relevant data from suppliers and customers in order to create a finished product based on the information she gathers. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988). It is unclear how the underlying tasks that are required to create two distinct rating systems can be deemed as qualifying within a managerial or executive capacity.

In addition, while the petitioner indicated that background checks would be necessary for new customers, there is no indication as to who would perform the background checks. Without further information, we cannot exclude the possibility that the beneficiary may partake in this non-qualifying task, thus adding to the time she would allocate to the performance of tasks that are outside the scope of what is deemed to be in a managerial or executive capacity. The petitioner also indicated that the beneficiary would assume a key role in resolving customer complaints regarding product defect, delivery, and contract implementation. However, the petitioner did not disclose the specific nature of the beneficiary's involvement, thus precluding a determination that the beneficiary's role is one that would involve the performance of tasks within a qualifying capacity.

Lastly, the petitioner indicated that the beneficiary assists in recruiting and dismissing her subordinates and also takes part in deciding on the subordinates' salaries and bonuses. In reviewing employee salaries, however, we observe that, according to the employee salaries as shown in their respective Form W-2s, the salary of the administrative and logistics department manager, whom the beneficiary and the vice president of international purchasing and sales co-manage, exceeded the beneficiary's salary by more than \$12,000. It is unclear why the beneficiary, who is claimed to have had input as to the salary paid to a subordinate, she would have agreed to pay that subordinate a salary that far exceeds her own. Further, while the vice president of international purchasing and sales and the beneficiary are depicted at the same organizational level and have similar position titles, which include the term "vice president" to indicate similar levels of authority, the beneficiary's 2012 salary fell more than \$28,000 below that of her coworker. While counsel challenged the director's reliance on the salary of the beneficiary's subordinate in the United States as an indicator of the beneficiary's non-qualifying employment, it is reasonable to question the effect of the above described salary variances on the qualifying nature of the beneficiary's proposed employment. In other words, if the petitioner claims that the beneficiary oversees the work of an employee, a reasonable explanation should be offered to clarify why the subordinate receive a salary that far exceeded the beneficiary's salary. Similarly, when two employees are assigned similar position titles and placed on parallel tiers within a company's organizational hierarchy, a \$28,000 salary discrepancy between the two employees should not go unexplained, as it gives rise to questions concerning the accuracy of the beneficiary's level of authority as compared to others within the organization.

On appeal, counsel contends that the director "exhibited partiality" when he declined to consider the beneficiary's previously approved L-1A nonimmigrant petition, which relies on the same statutory definitions of managerial or executive capacity. We find that the director properly rejected counsel's assertion, which was originally made in counsel's NOID response statement. Regardless of evidence that a prior nonimmigrant petition was approved, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof. As such, each petition must stand on its own individual merits. USCIS is not required to assume the burden of searching through previously provided evidence submitted in support of other petitions to determine the approvability of the petition at hand in the present matter. The approval of a nonimmigrant petition in no way guarantees that USCIS will approve an immigrant petition filed on behalf of the same beneficiary.

Furthermore, if the previous nonimmigrant petition was approved based on similar assertions and supporting evidence that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Another contentious issue discussed on appeal is the beneficiary's continued supervision of employees who work for the petitioner's parent entity. Counsel stated, both on appeal and in response to the NOID, that the beneficiary oversees not only employees of the petitioning entity, but also several employees who work for the petitioner's parent entity abroad. Counsel asserts that overseeing the foreign entity's employees meets the reasonable needs of the U.S. and foreign entities and contends that the director's refusal to consider this aspect of the beneficiary's employees "is against legal and practical grounds." Counsel points out that the statutory language incorporates references to "the same employer" when referring to the beneficiary's proposed employment, suggesting that the petitioner and the foreign entity are part of the same organization and that the beneficiary's supervisory duties over the foreign entity's employees should be considered in concert with the job duties she performs directly for the U.S. entity.

We find that counsel's assertions are not supported by statute or regulations. First, counsel's assertions are based on the understanding that the phrase "same employer" refers specifically to the foreign entity at its foreign location outside of the United States. This interpretation is incorrect as it overlooks the context of the statutory language, which expressly states that the provisions are to be applied to an individual who seeks to enter United States, thus implying that the purpose of the U.S. entry is to be employed in the United States. Second, counsel overlooks the statute's use of the term "or" when discussing the proposed employment. Specifically, the statute applies to an alien who seeks to enter the United States for the purpose of continuing to provide services to "the same employer, or to a subsidiary or affiliate thereof . . . ." Section 203(b)(1)(C) of the Act. (Emphasis added). In other words, the beneficiary's purpose for entering the United States must be for the purpose of working for one entity, as indicated by use of the term "or," rather than for multiple entities, i.e., the beneficiary's employer abroad and the proposed employer in the United States. Furthermore, the reference to "the same employer" simply indicates that the proposed employer is a branch of the foreign office. *See* 8 C.F.R. § 214.2(l)(1)(ii)(J) (for definition of the term "branch" in the nonimmigrant context of the L-1 visa). It would be illogical for the petitioner to file a petition on the beneficiary's behalf if the location of the prospective employer was someplace other than the United States. Here, counsel's assertions hinge on an implausible interpretation of the statutory language for which counsel offers no supporting evidence.

Accordingly, while the petitioner claims that the beneficiary will continue to intermittently provide services for the foreign entity by means of overseeing certain employees within the foreign entity's finance department, the petitioner has failed to establish that such oversight duties are related to the beneficiary's proposed position with the petitioning U.S. employer. Furthermore, the petitioner has provided no evidence to establish that the beneficiary's subordinates at the foreign entity play a role in supporting the beneficiary in her position with the petitioning U.S. entity. If that were the case, the petitioner would be required to provide evidence to establish the means by which it compensates the overseas employees for any services they would render specifically for the petitioner. The parent-subsidary relationship between the foreign entity and the petitioner in no way permits the petitioner to commingle its finances or its staff with the foreign parent entity. As indicated in the supporting evidence, the petitioner and its foreign parent are two separate entities, despite their affiliation through common ownership or close business ties.

In addition, while we do not dispute that the foreign and petitioning entities are part of a common organization, the beneficiary's eligibility must be based on her proposed job with the petitioning U.S. entity. The very fact that the petitioner limited the description of the beneficiary's proposed employment to include only those activities that depict her role with respect to the U.S. entity and its employees further undermines counsel's assertion that the beneficiary's supervisory job duties abroad should be considered as part of her employment in the United States. Therefore, any job duties that the beneficiary would continue to perform directly for the foreign entity would be considered as being outside the scope of the beneficiary's role with the petitioner, as such duties would be performed for a separate entity and thus would be deemed irrelevant to the question of whether the proposed employment in the United States would be in a qualifying managerial or executive capacity. Furthermore, counsel erroneously relies on an unpublished decision where it was determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee. Counsel has furnished no evidence to establish that the facts of the instant petition, where the petitioner provided no evidence to establish that the foreign entity's employees in any way support the beneficiary's position with the petitioning entity, are analogous to those in the unpublished decision. Moreover, while 8 C.F.R. § 103.3(c) provides that this office's precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Finally, counsel asserts that the director's decision was arbitrary and capricious and objects to the director's reference to the beneficiary's lack of professional subordinates, pointing out that the beneficiary would be employed in an executive capacity, which does not require that the beneficiary manage professional employees. While counsel is correct that employment in an executive capacity does not focus on the beneficiary having a staff of professional subordinates, the overall issue of the petitioner's staffing is highly relevant and cannot be overlooked when determining whether the beneficiary would be employed in a qualifying 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 management of the organization or a major component. 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 or a major component. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than

the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. 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.*

In the present matter, by virtue of the staffing hierarchy the petitioner depicted in its organizational chart and the statements it submitted in support of the petition, the petitioner indicates that the purpose of the beneficiary's proposed employment is to direct the management of the petitioner's finances and operations. As indicated previously in this discussion, the petitioner has failed to establish that the employment of a single part-time accountant is sufficient to relieve the beneficiary from having to allocate her time primarily to the underlying operational tasks of the finance department to which the beneficiary would allocate approximately 40% of her time. As discussed earlier, the petitioner provided a job description that contained a number of vague references to the beneficiary's oversight responsibilities without disclosing who would actually perform the underlying tasks. The petitioner was similarly unsuccessful in establishing that the beneficiary's role with regard to operations was executed through primarily executive-level tasks. While we acknowledge the existence of an administrative and logistics department, which would assist the beneficiary in her role as vice president of operations, we nevertheless question the qualifying nature of several of the beneficiary's assigned job duties with regard to operations. Specifically, the petitioner failed to establish that creating and updating the systems for evaluating suppliers and rating customers are indicative of the beneficiary's role with respect to the petitioner's operations. Given that the petitioner assigned time allocations to four broad categories rather than to the job duties that comprise those categories, we are unable to determine precisely what percentage of time the beneficiary would allocate to each individual job duty.

While we acknowledges that no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to the proposed position. As previously stated, 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 International*, 19 I&N Dec. at 604. Where, as here, the beneficiary's proposed position is comprised of both qualifying and non-qualifying tasks and where the petitioning entity has a limited support staff, it is critical for the petitioner to state which job duties the beneficiary would perform, establish what portion of the beneficiary's time would be allocated to qualifying versus non-qualifying tasks, and disclose who would perform the operational tasks that fall within the scope of the beneficiary's directorial responsibilities. Given the numerous evidentiary deficiencies discussed above, it cannot be concluded that the petitioner has provided the necessary information to establish that the beneficiary would allocate her time primarily to the performance of tasks within a qualifying executive capacity.

The petitioner also failed to establish that the beneficiary would be employed in the capacity of a function manager, whose focus is on the management of an essential function rather than the management of personnel. *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, 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.

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.

In this matter, the petitioner has not provided sufficient evidence to establish that the beneficiary would be relieved from having to allocate her time primarily to the performance of the non-qualifying tasks associated with the operational and financing components of the petitioner's organization. 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)).

Accordingly, in light of the various ambiguities and lack of supporting evidence as discussed above, the petitioner has failed to establish that the beneficiary's proposed employment would be within a qualifying managerial or executive capacity and on the basis of this adverse finding this petition cannot be approved.

#### IV. Conclusion

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.