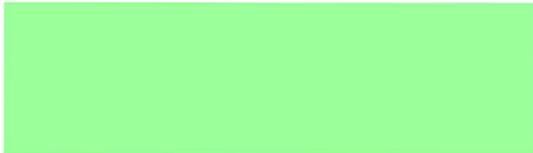
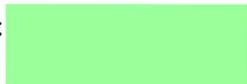


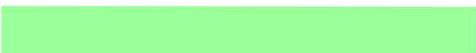


U.S. Citizenship
and Immigration
Services

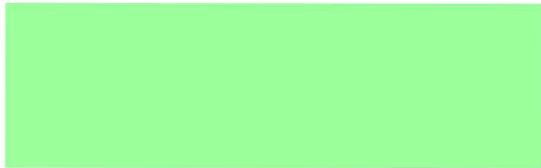
(b)(6)



DATE: **NOV 10 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

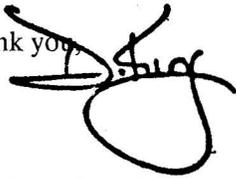
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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

The petitioner filed this Form I-140, Immigrant Petition for Alien Worker, 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 petitioner, a not-for-profit charitable foundation, claims to have a branch office in Fiji where the beneficiary was formerly employed. The petitioner seeks to employ the beneficiary in the position of Logistics and Project Manager.

On March 31, 2014, the director denied the immigrant petition, finding the petitioner had failed to establish that the beneficiary had been and would be employed within a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner submits a brief disputing the director's adverse findings.

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.

Additionally, the regulations at 8 C.F.R. § 204.5(j)(3)(i) state that the petitioner must provide the following evidence in support of the petition in order to establish eligibility:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

II. THE ISSUES ON APPEAL

A. Employment Abroad in a Managerial or Executive Capacity

The first issue to be addressed is whether the petitioner established that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

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.

1. Facts

In a letter dated July 2, 2013, the petitioner explained that the beneficiary's role with the foreign company was as follows:

[The beneficiary] began volunteer work for [the foreign entity] when he was 17, serving as Student Manager of the [foreign entity's] Dormitory, and later became a volunteer Supervisor on a four-student tour of India. In early 2007, he transitioned from being a beneficiary of the Foundation to a paid staff. Since then, he has handled assignments such as transporting injured youth to medical care in remote villages, taking disadvantaged and troubled kids to Court appearances, being an on-site supervisor of our main facility in Savusavu, assisting [the petitioner's] Executive Director in Fiji, handling assignments involving [the petitioner's] farm, managing the distribution of wheelchairs, arranged travel for elderly people in need, and many other projects. Among many responsibilities, he supervised a five-student humanitarian tour of Zimbabwe, Africa and a four-student tour of India. He also assisted as a driver during the 8-Island Humanitarian Tour by [redacted] daughter of

[redacted] [The beneficiary] also managed the financial support given to the family of a woman dying of AIDS, enrolled her daughter in a trade school, made schooling arrangements for one of her sons, and arranged medical care for a handicapped girl. As someone who started with nothing and experienced first-hand the benefits received from [the petitioner's] programs, has experience with our operations and needs, and fluently speaks both English and Fijian, [the beneficiary] is the perfect candidate to operate as a liaison between the two offices and logistically manage the distribution of supplies and arrangements for both offices.

On November 18, 2013, the director sent a request for additional evidence. In part, the director requested a detailed job description of the beneficiary's specific tasks on a normal business day including the percentage of time spent on each task when employed by the foreign branch. In addition, the director requested an organizational chart including the names of all departments, employees, employees' titles, a clear description of their job duties, educational level, salary and whether they worked part-time or full-time. The director also requested a description of the foreign branch's products and services, including the exact production and administrative tasks necessary to produce the product and services, and who performs those tasks, and tasks related to goal-setting, policy-making, and discretionary decision-making.

In response, the petitioner submitted a letter from [redacted] Executive Director, dated February 2, 2014 that described the beneficiary's duties when he was employed abroad as follows:

During his time at [the foreign branch] Fiji, [the beneficiary] was responsible for overseeing and managing several important projects as well as directly working with me to ensure that [the foreign branch] Fiji was fully carrying out the operational and aspirational mission of our parent company, [the petitioner], found[ed] by Mr. [redacted]. Specifically, [the beneficiary] was instrumental in managing the following projects:

- Managed the project of upgrading the extensive telecommunications and computer system at [the branch office's] main facility in Fiji [redacted]. This included negotiating the purchase of new routers, computers, monitors, switches, and wireless systems. He oversaw installation, managing a crew of ten laborers needed to dig new trenches and lay new conduit. He also supervised installation of the closed circuit camera system that monitors student areas at [redacted], and then training Fijian staff on its operation.
- Principal manager of services to [the petitioner's] [redacted]. He directed all aspects of the project, from constant contact with the beneficiaries, understanding what they are working towards, making sure they are keeping their commitments, such as attendance of schooling funded by [the petitioner].

- Managed collection and distribution of wheelchairs to villages and other communities on the island of [REDACTED]
- [The beneficiary] directed logistics for two visits to Fiji by bestselling author [REDACTED] who provided a cultural exchange program and donated books to residents of several remote islands.
- Managed communications with Fiji and US Customs to ensure much needed supplies were delivered to [the petitioner] for distribution in villages[.]
- Reviewed and approved [the petitioner's] grant for construction of a bus shelter in the village of [REDACTED] (Residents selling crops currently travel by river to wait for bus to transport crops to market. Before the bus shelter, crops and people were not protected from rainfall while waiting.)

The petitioner also provided an organizational chart of the foreign branch office. According to the chart, the beneficiary was supervised by the board of directors and the executive officers. The chart also indicated that the beneficiary supervised the following: Long-Running Charitable Projects; [REDACTED]; Administration and Resources; [REDACTED] and Volunteer Hosting.

On appeal, the petitioner states that the beneficiary while working abroad "was responsible for overseeing and managing several important projects to ensure that [the branch office] Fiji was fully carrying out the operational and aspirational mission of [the petitioner]." The petitioner also stated that "ensuring that [the branch office] Fiji's charitable projects were properly coordinated and managed is an essential function of the organization providing charitable support for Fijians living in remote villages." The petitioner further states that the organizational chart submitted is a "task oriented chart" whereby the chart is "reflective of the tasks the beneficiary oversees rather than a traditional line and block organizational chart showing hierarchy as that does not reveal the nature of the beneficiary's job duties."

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

2. Analysis

When examining the executive or managerial capacity of the beneficiary, we review the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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 job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the foreign company's subordinate staff, and any other facts contributing to a comprehensive understanding of the

beneficiary's actual role within the foreign entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has the capability of maintaining its daily operations such that the beneficiary was relieved from having to primarily perform the operational tasks.

In the present matter, upon review of the totality of the record, the evidence does not support a finding that the beneficiary allocated his time primarily to the performance of tasks that are within a qualifying managerial or executive capacity.

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties with the foreign entity that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner stated vague duties such as the beneficiary was responsible for "overseeing and managing several important projects as well as directly working with me to ensure that [the foreign branch] Fiji was fully carrying out the operational and aspirational mission of our parent company, [the petitioner], found[ed] by Mr. [REDACTED]" and the beneficiary was "Principal manager of services to [the petitioner's] [REDACTED]" This description provides little insight into what the beneficiary primarily did on a day-to-day basis and did not explain the petitioner's "operational and aspirational mission" or the [REDACTED]. 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 petitioner has failed to provide any detail or explanation of 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. at 1108.

The job description also includes several non-qualifying duties such as the beneficiary would "handle assignments such as transporting injured youth to medical care in remote villages;" "taking disadvantaged and troubled kids to Court appearances;" "being an on-site supervisor;" "supervised a five-student humanitarian tour of Zimbabwe, Africa and a four-student tour of India;" "assisted as a driver during the 8-Island Humanitarian Tour;" "managed collection and distribution of wheelchairs;" and, "directed logistics for two visits to Fiji by bestselling author." It appears that the beneficiary provided the services such as driving, supervising the facilities, and assisting with the charitable projects but it does not appear that the beneficiary oversaw other employees that performed the day-to-day tasks of organizing and running the charitable projects. The petitioner does not provide any evidence of employees abroad that would assist with the charitable projects. Thus, it appears that the beneficiary is performing the duties inherent in running all of the charitable projects. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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).

In addition, the director specifically requested a percentage break down of the duties performed by the beneficiary, which the petitioner failed to submit. The director also asked for additional information of the beneficiary's subordinate employees such as job descriptions for each employee, education level, salary, and payroll documentation. Instead, the petitioner failed to submit any of this evidence as requested by the director. 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). In addition, the petitioner did not submit evidence that all of the individuals listed in the organizational chart were actually employed with the foreign branch office.

The petitioner states that the beneficiary manages an essential function. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 204.5(j)(5). 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 *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)). In this matter, the petitioner has not provided evidence that the beneficiary managed an essential function.

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary performed abroad. In light of the foregoing discussion, the petitioner has not established that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

B. U.S. Employment in a Managerial or Executive Capacity

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

1. Facts

The petitioner has offered the beneficiary the position of Logistics and Project Manager. In support of the petition, the petitioner provided a job description for the proffered position that states the following:

As a functional manager defined in 8 C.F.R. § 214.2(l)(1)(ii)(b), [the beneficiary] will manage an essential function of the U.S. operation, and therefore, qualifies as classification as a manager. As outlined above, he will manage the arrangements for student and volunteer visits, the obtaining and shipping of medical supplies, attend meetings about beneficiaries, arrange medical care, and represent this active organization in America. [The beneficiary] will also oversee and assist in fundraising as it is an essential component of the charity. This important function requires an individual who can bring their specific knowledge and experience of the Fijian culture and can speak from experience about the challenges faced in this developing nation of 300 rural islands. [The beneficiary] will also exercise discretion over the day to day operations of the essential function that he is responsible for managing. [The beneficiary] will have a wide latitude of decision making authority for the management of the procurement of supplies and equipment that the Fijian office requires as well as the arrangements and need of the beneficiaries of [the petitioner's] numerous programs. It should be noted that prior to [the beneficiary's] employment with [the petitioner] in Fiji, the foundations' unpaid Founder made frequent trips between Los Angeles and Fiji to procure equipment (mostly medicine), arrange volunteer trips to Fiji, and make logistical arrangements for Fijian students to whom [the petitioner] had awarded trips to America. As the [the petitioner] has grown over recent years, the need for a permanent Fijian representative to manage the needs between the U.S. and Fijian office is clear. Furthermore, due to the nature of this managerial position it is important that this representative speak fluent English and Fijian, as [the beneficiary] can, in order to communicate with beneficiaries of our programs and volunteers/staff members at our location in Fiji. The Fijian language is very rare and only spoken by a few hundred thousand people on Earth.

On November 18, 2013, the director sent a request for additional evidence. In part, the director requested a detailed job description of the beneficiary's specific tasks on a normal business day including the percentage of time he will spend on each task. In addition, the director requested an organizational chart including the names of all departments, employees, employees' titles, a clear description of their job duties, educational level, salary and whether they work part-time or full-time.

The petitioner provided an organizational chart that indicated that the beneficiary will be supervised by the board of directors and the executive officers. The chart also indicated that the beneficiary will supervise the Community Outreach Developer, Website Administration and Development, and Event's Assistant. On appeal, the petitioner explains that the organizational chart submitted is a "task oriented chart" whereby the chart is "reflective of the tasks the beneficiary oversees rather than a traditional line and block organizational chart showing hierarchy as that does not reveal the nature of the beneficiary's job duties."

The petitioner also submitted a variety of business documents that "demonstrate the discretionary authority with which the beneficiary operates in performing his job duties" such as weekly payroll reports and quarterly maintenance reports in which the beneficiary reviews and approves, and letter of appreciation and letters regarding projects led by the beneficiary.

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

2. Analysis

When examining the executive or managerial capacity of the beneficiary, we review the totality of the record, starting first with the petitioner's description of the beneficiary's proposed job duties. *See* 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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). The AAO will then consider this information in light of other relevant factors, including job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the petitioner's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role within the petitioning entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has the capability of maintaining its daily operations such that the beneficiary would be relieved from having to primarily perform the operational tasks.

In the present matter, upon review of the totality of the record, the evidence does not support a finding that the beneficiary would allocate his time primarily to the performance of tasks that are within a qualifying managerial or executive capacity.

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties with the foreign company that fails to demonstrate what the beneficiary did on a day-to-day basis. For examples, the beneficiary will "manage an essential function of the U.S. operation;" "represent this active organization in America;" "oversee and assist in fundraising;" "exercise discretion over the day to day operations of the essential function that he is responsible for managing;" and, "have a wide latitude of decision making authority for the management of the procurement of supplies and equipment that the Fijian office requires as well as the arrangements and need of the beneficiaries of [the petitioner's] numerous programs." This description provides little insight into what the beneficiary primarily will do on a day-to-day basis and did not explain the petitioner's fundraising operations and goals. 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 petitioner has failed to provide any detail or explanation of 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. at 1108.

The job description also includes several non-qualifying duties such as the beneficiary will "manage the arrangements for student and volunteer visits;" "obtaining and shipping of medical supplies;"

"attend meetings about beneficiaries," and, "arrange medical care." It appears that the beneficiary will provide the services such as fundraising, handling customs and shipping, and assisting with the charitable projects but it does not appear that the beneficiary will oversee other employees that will perform the day-to-day tasks of organizing and running the charitable projects. The petitioner does not provide any evidence of employees that would assist with the charitable projects. Thus, it appears that the beneficiary is performing the duties inherent in running all of the charitable projects. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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).

In addition, the director specifically requested a percentage break down of the duties the beneficiary will perform which the petitioner failed to submit. The director also asked for additional information of the beneficiary's subordinate employees such as job descriptions for each employee, education level, salary, and payroll documentation. Instead, the petitioner failed to submit any of this evidence as requested by the director. 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).

The petitioner states that the beneficiary manages an essential function. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 204.5(j)(5). 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 *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)). In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function.

The petitioner has failed to provide a sufficiently detailed explanation, along with credible and probative supporting documentation, establishing the U.S. entity's overall organizational structure, staffing levels, and the scope of its business activities at the time of filing. The record is unclear as to the beneficiary's actual role will be, and as to the petitioner's actual staffing levels. The petitioner did not provide any job descriptions or explanations regarding any of its other employees. Overall,

the record is insufficient to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary will perform.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See sec. 291 of the Act, 8 U.S.C. 1361; see also *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (discussing "more likely than not" as a greater than 50 percent probability of something occurring).

Here, the submitted evidence does not meet the preponderance of the evidence standard. As noted in the director's decision, the petitioner did not provide sufficient evidence to establish the petitioner meets the regulatory requirements to establish eligibility for the I-140 immigrant visa petition.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reason. 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.