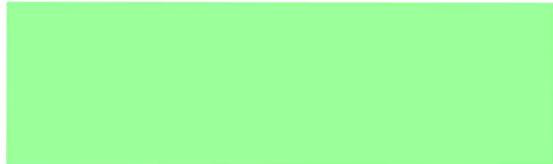
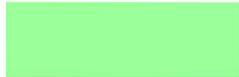


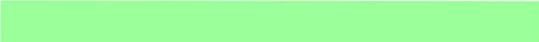


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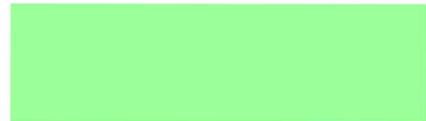


DATE: **OCT 30 2014** OFFICE: TEXAS SERVICE CENTER FILE: 

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)

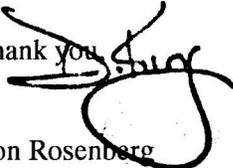
ON BEHALF OF PETITIONER:



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 Texas Service Center Director denied the employment-based immigrant visa petition, which 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 is engaged in "global provider customer contact." The petitioner seeks to employ the beneficiary in the position of Director of Implementation and Support.

The director denied the petition on February 25, 2014, concluding that the petitioner failed to establish that the beneficiary's employment abroad was 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, counsel 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 ISSUE ON APPEAL

A. Employment Abroad in a Managerial or Executive Capacity

The 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 the initial petition, the petitioner did not explain the beneficiary's assignment with the foreign employer. On May 20, 2013, the director sent a request for evidence ("RFE"). 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 company. In addition, the director requested an organizational chart of the foreign company, including the names of all departments and teams, and the names and detailed description of the job duties for the beneficiary's immediate supervisor and subordinate employees. The RFE also stated that if the beneficiary did not supervise other employees, that the petitioner should specify the essential function within the organization the beneficiary managed.

In a response letter dated August 16, 2013, counsel for the petitioner stated that "the beneficiary worked for the [REDACTED] from 2003 to 2005 when he was transferred upon the approval of an L-1B visa on March 2005 and valid until 2/28/2008." Counsel for the petitioner also described the beneficiary's position abroad as follows:

The beneficiary in this case . . . served as System Engineer for Installations and Support at the foreign company in [REDACTED]. While serving as a System Engineer abroad he did not supervise any personnel. He was in charge of the Implementation (Installation and Configuration) of the new systems, Pre-Sales and Post Sale Support, Overseeing improvement of activities of different systems and optimization of their Operation for the following clients abroad:

[REDACTED]

The petitioner also submitted a letter dated February 1, 2005 from the general manager of the foreign company, detailing the job duties performed by the beneficiary with the foreign company as follows:

Up to this moment, [the beneficiary] has been doing the activities of System Engineering and maintenance and consultation for our actual clients and potential clients in the Dominican Republic; among the works done by him, are found the following:

[REDACTED]

The installation and configuration of the Integration system CTI (Computer Telephone Integration) that permits to the users to the Call Center (Center of the attention to the client) to identify the automatic form to the clients that call in order to request assistance, at the same time are supplied major information and agility in the service offered to said clients.

This implementation makes up the integration of one of the products of our distribution, [REDACTED] Business Edition, to the actual systems of the bank. At the same time that the distribution of the screens of the integration with the final users or representatives of the center.

[REDACTED]

The implementation of the systems of predictive dialing (Predictive Dialer) for the area of Call Center, said system facilitates and improve in some 90% of the contracts with the clients that for some reason called by the bank for the offering of the new products and services, due diligence of collecting, etc.; at the same time for the attention of the calls in coming.

These installations require the integration with their respective telephone systems [REDACTED], in order to obtain the distribution of all of the calls to the diverse points of the center according to the specifications of the clients. After they there [sic] was realized the actualization (upgrade) to the version 5.x of the product for [REDACTED] and at present there is being plan[n]ed the actualization of the [REDACTED] (6.x).

After the installation of these systems, there is done [sic] the consultation to the [REDACTED] with the finality of the improvement of their systems of quality or metering of the representatives in their centers of attention to the client. The same had as results the creation of new reports of metering of the parameters of telephone attention and the process of acquisition of a digital recording system, for the purpose of assuring of the quality as legal implications.

[REDACTED]

In these institutions dedicated to the sale of services of attention of the call centers (outsourcing Call Center) for clients in the Dominican Republic [REDACTED] and in the United States and Puerto Rico [REDACTED]. [The beneficiary] has shown himself as a consultant for the design of personalized reports and optimization of the distribution and attention of calls; and support of the hard ware of the digital recording. [REDACTED]

The petitioner also submitted a description that states the obligation of the post as follows: "Implementation (Installation and Configuration) of the new systems; Pre-Sales and Post Sales support; Consultations to the clients for the improvement of their activities and the optimization of their operations."

The petitioner failed to provide a percentage breakdown of the beneficiary's duties abroad or an organizational chart of the foreign company, or information regarding the essential function managed by the beneficiary since he did not supervise any subordinates. 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 director denied the petition on February 25, 2014, concluding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. In denying the petition, the director determined that the petitioner provided a vague job description that failed to convey an understanding of what the beneficiary primarily did on a day-to-day basis. The director concluded that the beneficiary did not submit evidence to establish that he supervised a staff comprised of subordinate managerial, supervisory or professional employees, or that he was otherwise relieved from primarily performing non-managerial and non-executive functions

associated with the operation of the foreign company's business. The director also noted that the beneficiary was initially admitted into the U.S. in L-1B nonimmigrant classification which may suggest that the beneficiary was not employed abroad as a manager but instead was operating in a specialized knowledge or technical capacity.

On appeal, counsel for the petitioner states that the director erred in denying the petition since the "Service failed to take into consideration the true nature of the position of manager occupied by [the beneficiary] at the Dominican Republic because he not only had the specialized knowledge of the interworking procedures and products of [redacted] in Dominican Republic but also was the sole director of the local office in Dominican Republic." Counsel further states that the "multi-national nature of the company allowed him to fully control and administer the office in [redacted] with the assistance of Engineers and other staff from the other offices in Brazil, Colombia and Puerto Rico." Counsel also contends that the director erred in "denying this petitions solely because the beneficiary entered in to the USA with the L-1B."

2. Analysis

As a preliminary manner, counsel on appeal states that the Service erred in "denying this petition solely because the beneficiary entered into the USA with the L-1B." However, upon review of the director's decision, the director did not deny the petition based on the fact that the beneficiary entered the U.S. in L-1B nonimmigrant classification. The director only stated that the beneficiary's previous L-1B classification "suggests that he had not been employed as a manager abroad but was operating in a specialized knowledge or technical capacity." The director also outlined the lack of evidence to establish that the beneficiary was employed abroad in a managerial or executive capacity.

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 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 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 company 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 "Implementation (Installation and Configuration) of the new systems;" "Pre-Sales and Post Sales support;" and, "consultations to the clients for the improvement of their activities and the optimization of their operations." The petitioner also provided a few examples of specific projects the beneficiary was a part of but they were also vague and general. The description provides little insight into what the beneficiary primarily did on a day-to-day basis and did not explain the details of the implementation of new systems and pre and the post-sales support process. Furthermore, 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.

In addition, the director requested in his RFE a percentage breakdown of the duties performed by the beneficiary, an organizational chart of the foreign company, and a detailed job description for the beneficiary's subordinates at the foreign company or information of the essential function managed by the beneficiary if he did not manage personnel; however, the petitioner failed to provide any of this evidence. 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 the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary performed abroad. 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)).

In response to the director's RFE, counsel for the petitioner stated that "while serving as a Systems Engineer abroad he did not supervise any personnel." 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 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)(3)(i)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary managed the

function rather than performed 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 any evidence that the beneficiary managed an essential function for the foreign company or any evidence of the organizational structure and hierarchy of the foreign company. Again, 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. at 165.

In light of the foregoing discussion, the petitioner has not established that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.