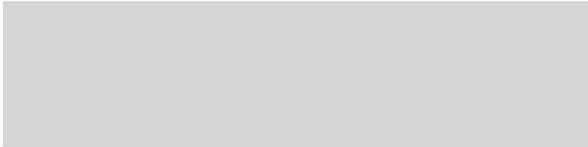




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 14 2015**

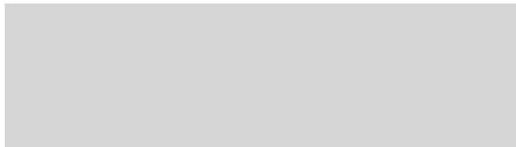
FILE #: [REDACTED]

PETITION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner, a wholesale produce distributor and subsidiary of a parent corporation based in Singapore, seeks to employ the beneficiary in the United States as its general manager. The petitioner filed Form I-140, Immigrant Petition for Alien Worker, on December 30, 2013, seeking to classify the beneficiary as an employment-based immigrant under 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 on November 5, 2014, concluding the petitioner had not established that the beneficiary's duties have been, or will be, primarily managerial or executive.

On appeal, the petitioner submits a legal brief and copies of previously submitted organizational charts. The petitioner contends that it is difficult to provide a precise description of the beneficiary's duties, and that the director based the denial "on several trivial issues that do not warrant the denial of this petition."

### I. 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 the alien 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 only to 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 Form I-140 to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The regulation at 8 C.F.R. § 204.5(j)(5) states:

No labor certification is required for this classification; however, 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 letter must clearly describe the duties to be performed by the alien.

Section 101(a)(44) of the Act, 8 U.S.C. § 1101(a)(44), provides:

(A) 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.

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

## II. Issues on Appeal

The issues under consideration are whether the beneficiary’s duties, both abroad and in the United States, have been and will be primarily managerial in nature. The petitioner does not claim that the beneficiary’s past or intended duties are executive.

## A. Facts

### 1. Managerial Duties in the United States

The petitioner, in this proceeding, has emphasized the beneficiary's work in the United States, and therefore we will address that employment first. An organizational chart submitted with the petition, showing the petitioning entity as of December 2013, showed the beneficiary at the top of the organization as general manager. The second level of the hierarchy consisted of a sales and marketing manager (with a bachelor's degree in business administration) and an office manager (with a master's degree in communication arts). The petitioner stated: "If you google the internet, almost all such two said positions require a minimum of bachelor degree [*sic*]." A quality control inspector and a purchasing representative both reported to the sales and marketing manager, and the office manager supervised a secretary.

The petitioner submitted the following breakdown of the beneficiary's job duties:

- Making the US subsidiary's overall plan such as setting up the company's goals . . . (2-4 hours per week).
- Making company strategies, overall plans, and schemes to achieve the company overall plan (6-8 hours per week).
- Hiring and firing of company staff members . . . (0.5-1 hour per week).
- Making rules and regulations for the management of the company (2-4 hours per week).
- Supervising the work of sales & marketing manager, office manager (10-14 hours per week).
- Examining and checking final agreements & making final decision to buy which seller's product after overall consideration if sales & marketing manager cannot make decision (4-6 hours per week).
- Reading and listening to reports from sales & marketing manager and office manager (5-7 hours per week).
- Attending those business meetings which are extremely important to the company, traveling out of state to meet business partners or potential business partners . . . , making the final decision about the negotiation of important deal[s] and the co-operation of such new business partner relationship (2-4 hours).

The petitioner asserted that "all the actual duties performed by [the beneficiary] were primarily managerial" as defined in the regulations. In describing the tasks performed by the beneficiary's subordinates, the petitioner stated that the office manager performed the following duties:

- Assist General Manager in managing the company's day-to-day operations;
- Report to General Manager about important matters in connection with the management of company;

- Keep and maintain all workers' records, process invoices and bills of lading, set up office protocol for handling administrative tasks;
- Record and maintain all costs and expenditures and accounting records;
- Prepare payrolls and tax records and register license;
- Act as General Manager's liaison with suppliers and growers;
- Supervise and train Secretary, examine and control the work of Secretary.

The director issued a request for evidence (RFE) on June 25, 2014. The director stated that the job description quoted above "includes statements which do not establish what the beneficiary is actually doing." The director also noted: "The petitioner states that the beneficiary hires and fires company employees for about .5 to 1 hour per week, and yet . . . [documents in the record] show that the petitioner has low employee turnover and has held to a total of six (6) employees for several quarters."

In response, the petitioner submitted a statement dated August 7, 2014 from [REDACTED] identified as the president of the foreign entity, the petitioning U.S. employer, and an affiliate in China. [REDACTED] who is also the beneficiary's spouse, stated:

As the head of [the petitioning company], her responsibility includes:

Assist planning and develop the Company's organization structure. The main decision maker for all critical business related matters; approver for all financial activities, approver for all activities in the human resource department. Increase management's effectiveness by recruiting, selecting, orienting, training, coaching, counseling, and disciplining managers.

In charge of all incoming and outgoing payments, international wire-transfer, and maintain available cash flow. Apply and update federal business licenses, certifications, and permits. Invest in properties, office furniture and supplies, company's equipment, and transportation vehicles. Updates job knowledge by remaining aware of new regulations; participating in educational opportunities; reading professional publications [REDACTED] maintaining personal networks with growers, inspectors, and fresh produce commissioner. Participate in professional organizations such as [REDACTED]

Telephone and video conference with the President and the b[oa]rd of directors in Singapore and China. Report and discuss current business related activities and update business results. Plan and host company meetings, sets business goal, communicating values, strategies, and objectives, assigning accountability, planning, monitoring, and appraising job results, developing incentives, developing a climate for offering information and opinions. Such as:

- Develop and update strategic planning and proposal for new and existing products every year.
- Develop yearly program business with large supermarket chains in China and Southeast Asia Countries.
- Research and consolidate growing region, season, weather, and product information.
- Research, innovate and develop new packaging design and style to cater [to] each different customer's preference.
- Maximizes return on invested funds by identifying investment opportunities.
- Give specific instructions to all department managers. Checking for feedbacks from managers. Obtains profit contribution by managing staff. Coordinate daily operational activities, making sure all operating departments are fully functional. In different events, [the beneficiary] and her team managers are working closely together to complete important assignment[s], such as:
  - Establish new business partnership with chosen domestic and international businesses. . . .
  - Constantly research and develop new products for the customers.
  - Market and launch new products.
  - Planning and allocating weekly orders through newly established U.S. business partners/suppliers.
  - Planning and allocating weekly orders through newly established international business partners/suppliers/packers/shippers.
  - Exporting fresh produce from different growing regions by air and sea.
  - . . . [A]rrange cargo pickup and drop off.
  - Personalized customer service. . . .
  - Traveling oversea[s] to visit existing customers. . . . Have annual sales meeting with customers before new season start.
  - Traveling oversea[s] to meet new customers. . . .
  - Host marketing campaigns. Sales meeting with fresh produce retailer and supermarket chain fresh produce buyers and directors. . . .
  - Networking with domestic and international produce industry professionals, leaders and experts.

█ stated that he did not track the beneficiary's work hours, but estimated the time that the beneficiary devoted to her various tasks as shown below:

**Strategy, Mission & Vision Planning:** Establishes and formulates 30% company's management policies, objectives, and strategies; establishes development objectives; establishes the whole organization of the company; implements the strategic goals and objectives of the organization; actively seeks out opportunities for investment; reviews and evaluates potential investment projects; approves investment proposals of managers, etc.

**Internal Management:** Reviews and approves the business plan presented by other managers; manages the whole company through other managers; approves and oversees other manager's financial reports and activities that ensures attainment of company goals and profitability; amends manager's business plan when necessary based on status of the company; coordinates business operations between each department; directs business growth 30%

**Financial Planning:** Oversees budgets, investments, and operations of company; develops yearly budget; develops the organization's overall financial policies and management systems; in charge of fund raising, revenue management, and commercial loans 20%

**Hiring Quality Staff Members:** Selects, hires and trains managers, assistants, and representatives; exercise the authority to hire, terminate or promote managers, assistants, and representatives; reviews and analyzes employee and management performance 10%

**Customer Service and Business Relations:** Negotiates and attends meetings on behalf of the company; approves purchase and sales agreements and other major contracts on behalf of the company; maintains good relationships with key customers, independent contractors, sellers, and other associated entities; supervises commercial and customer support; maintain positive image to the public 10%

A new organizational chart, showing the petitioning entity as of August 2014, is similar to the chart submitted earlier, but the beneficiary is now at the second hierarchical level (below the president) instead of the top level. The chart also shows a second subordinate, a business financial consultant, reporting to the office manager. The description for that position indicates that the consultant is an independent contractor, receiving a monthly fee of \$500.

A new set of job descriptions included in [REDACTED] August 7, 2014 letter refers to the office manager as the "Office/Logistic Manager." The new job description for that position reads as follows:

Supports company operations by maintaining office systems and supervising staff. Maintains office services by organizing office operations and procedures, preparing payroll, controlling correspondence, designing filing systems, reviewing and approving supply requisitions, assigning and monitoring clerical functions. Designs and implements office policies by establishing standards and procedures, measuring results against standards, and making necessary adjustments. Completes operational requirements by scheduling and assigning employees, following up on work results. Achieves financial objectives by preparing an annual budget, scheduling expenditures, analyzing variances, initiating corrective actions. Maximize the

logistics to ensure our fresh produce arrives in perfect condition on time. Utilizing tracking system designed to track every shipment around the world. Organize the storage and distribution. Working closely with steamship lines . . . to ensure the right products are delivered to the right location on time and at a good cost. Research and utilize the fastest and most reliable services available. Negotiate with carriers for the most competitive transportation cost. Working closely with the freight forwarders on vessel bookings, loading, trucking, air shipment, export documents, and preparing bill of lading. Obtain insurance on outgoing shipments. Coordinate with other managers and individual contractors to alleviate any difficulties and unforeseen situations.

In the denial notice, the director stated: “The grouped listing does not reveal what the beneficiary actually does. For instance, the petitioner does not indicate what tasks the beneficiary does when she actively seeks opportunities, nor does it indicate the amount of time or the proportion of her time she spends on whatever those tasks are.” The director questioned the plausibility of the assertion that the beneficiary spends two to four hours per week traveling out of state. The director also noted that the petitioner changed one worker’s title from “Office Manger” to “Office/Logistic Manager,” with “expanded . . . duties and tasks,” and that the new organizational chart shows a new “Business Financial Consultant.” The director stated that these changes amounted to inconsistencies that the petitioner had not addressed.

On appeal, the petitioner asserts that “generic descriptions are inevitable and necessary to describe job positions that involve complex tasks.” The petitioner also states that the beneficiary’s specific duties change from day to day and therefore “it is incredibly difficult for the Petitioner and Beneficiary to list every single task performed in the past years . . . [and] estimate the percentage of time spent on each task.”

The petitioner contends that the change in the office manager’s title “should not have a significant impact on this Petition.” The petitioner states that the differences between the two lists of that employee’s duties are the result not of changes in the actual duties, but rather of the director’s request for additional details about those duties, and “[t]herefore, there are no inconsistencies.”

Calling the matter of the business financial consultant “a frivolous issue,” the petitioner states that “[t]he addition or elimination of this independent contractor’s position does not significantly change the Beneficiary’s position and duties as a General Manager.”

## **2. Managerial Duties Abroad**

The petitioner’s initial submission included minimal information and evidence regarding the beneficiary’s employment abroad, before she entered the United States in 2007. In its introductory letter, the petitioner stated that, because the beneficiary has been in the United States for more than three years, “the petitioner only needs to prove that the beneficiary had been employed for one year [out of the last three] by the petitioner.” This interpretation of the statute and regulations is erroneous. Section 203(b)(1)(C) of the Act requires at least a year of qualifying employment before

the beneficiary's admission to the United States, and the regulation at 8 C.F.R. § 204.5(j)(3)(i)(B) requires the petitioner to document at least one year of qualifying employment during the three years preceding the beneficiary's entry as a nonimmigrant.

The petitioner submitted a business profile from Singapore's Accounting and Corporate Regulatory Authority (ACRA), dated December 23, 2013, identifying six officers of the petitioner's parent company, including the beneficiary, her spouse, and her daughter:

Name	Position	Date of Appointment
[redacted] [spouse]	Director	3/25/1999
"	Managing Director	1/15/2002
[redacted]	Director	10/11/2011
[redacted]	Secretary	10/1/1997
[redacted]	Director	8/3/1995
[redacted] [beneficiary]	Director	8/3/1995
[redacted] [daughter]	Director	11/1/2012

The document indicated that the beneficiary has served as a director since the entity's incorporation on August 3, 1995. The profile attested to the beneficiary's seat on the foreign entity's board of directors, but did not describe her duties with the foreign company.

In the June 2014 RFE, the director instructed the petitioner to submit a letter from an authorized official of the foreign entity, providing specific information about the beneficiary's duties and the time spent on each, and about the entity's employees. In his August 7, 2014 letter, [redacted] stated:

[The beneficiary] was employed by [redacted] since August 3<sup>rd</sup>, 1995 as the Managing Director/General Manager. . . .

As the head of [redacted] her duties include[d]:

- Assist planning and develop the Company's organization structure. The main decision maker for all critical business related matters, approver for all financial activities, approver for all activities in the human resource department. . . . [R]ecruiting, selecting, orienting, training, coaching, counseling, and disciplining managers.
- [M]eeting with the company's President to report and discuss current business related activities and update business results. Planning and host company meetings, sets business goal, communicating values, strategies, and objectives, assigning accountability, planning, monitoring, and appraising job results, developing incentives, developing a climate for offering information and opinions, such as:

- Develop and update strategic planning and proposal for all products every year.
- Develop yearly program business with supermarket chains in China and Southeast Asia Countries.
- Give specific instructions to all department managers. Checking for feedback[] from managers. Obtains profit contribution by managing staff. Coordinate daily operational activities. Work . . . to complete important assignments, such as:
  - Planning and place weekly orders through [a subsidiary in China].
  - Receiving weekly import fresh produce and coordinate inspection . . . and . . . transportation. . . .
  - Coordinate with local cold storages to store our shipments in their warehouse. . . .
  - . . . [D]etermine the appropriate price point.
  - Daily product delivery to retail buyers and supermarkets.
  - Sales meeting with fresh produce retailer and supermarket fresh produce buyers and directors. Coordinating and attending social/promotional events and fresh produce tradeshow, roughly 4-8 times yearly.

The petitioner submitted a percentage breakdown of the beneficiary’s duties, which is identical to the chart (reproduced above) relating to the beneficiary’s duties for the petitioner in the United States. [REDACTED] stated that the beneficiary supervised the following employees in Singapore:

Name	Title	Hire Date
[REDACTED]	Operational General Manager and Purchasing	8/3/1995
[REDACTED]	Financial Manager	1/10/1997
[REDACTED]	Marketing and Sales Manager	1/10/1997
[REDACTED]	Secretary	1/1/1997
[REDACTED]	Quality Control and Logistics Manager	7/1/2004

An organizational chart for the foreign entity as of 2006 showed [REDACTED] one level below the beneficiary; [REDACTED] and [REDACTED] a level below; and [REDACTED] and [REDACTED] at the lowest level. The only official listed above the beneficiary was [REDACTED]. [REDACTED] attested to this arrangement in a June 21, 2010 affidavit.

Six payment vouchers dated August 2006 showed a total of S\$29,400 in monthly salary payments, including S\$8,000 paid to the beneficiary. Assuming all employees worked year-round, the total salaries would add up to S\$352,800 per year. The petitioner submitted a copy of the foreign entity’s annual report for the year ending April 30, 2006, and a “Statement of Comprehensive Income” for the year ending April 30, 2013. These documents included the following figures:

	2005	2006	2012	2013
Director’s Remuneration	S\$48,000	S\$96,000	S\$0	S\$13,800

Director's Fee	-	-	60,000	60,000
Salary	-	2,800	32,400	18,600

The director denied the petition, stating that the supplied list of duties shows “grouped tasks which do not reveal what the beneficiary actually did and how much time she spent performing each discrete task.” The director also found that the 2005 and 2006 salary figures shown in the company’s 2006 annual report are not consistent with the claim that the foreign entity has employed many of the beneficiary’s subordinates continuously since 1997. As noted above, the payment vouchers from August 2006 alone add up to S\$29,400, which is more than the total salaries paid throughout the 2012-2013 fiscal year.

Upon review, and for the reasons stated below, we find that the petitioner did not establish that the beneficiary’s proposed position with the petitioning entity or her former position abroad with the petitioner’s parent entity can be classified as positions that fall within the statutory parameters of managerial or executive capacity.

**B. Analysis**

As indicated above, the two primary issues to be addressed in this proceeding are whether the petitioner provided sufficient evidence to establish that the beneficiary was employed abroad and would be employed by the petitioning entity 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). We then consider the beneficiary’s job description in the context of the petitioner’s organizational structure, the duties of the beneficiary’s subordinates, and any other relevant factors that may contribute to a comprehensive understanding of the beneficiary’s actual duties and role within the petitioning entity.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

**1. Managerial Duties in the United States**

The petitioner’s assertion that the beneficiary’s specific duties vary from day to day does not resolve the issues underlying the denial of the petition. The petitioner’s initial list of the beneficiary’s duties included “[m]aking the US subsidiary’s overall plan such as setting up the company’s goals” and, separately, “[m]aking company strategies, overall plans, and schemes to achieve the company overall plan.” These stated duties appear to overlap, and provide no information about specific

activities that the beneficiary performs. Furthermore, the assertion that the beneficiary makes “overall plans . . . to achieve the company overall plan” is circular.

In the percentage breakdown, the petitioner has grouped disparate duties together under broad headings, with few specific details. Therefore, the breakdown does not establish that the beneficiary’s duties are primarily (or, as the petitioner initially claimed, entirely) managerial. The petitioner’s separate itemized list of the beneficiary’s duties includes activities such as packaging design that relate to providing products and services, and which therefore are non-managerial.

The petitioner, on appeal, asserts that the office manager’s change of title and position, and the petitioner’s engagement of a contractor, are insignificant issues that do not bear on the outcome of the petition. The petitioner contends that the office manager’s assumption of new duties reflects the company’s growth, but the record contains no evidence that the new duties coincide with the petitioner’s growth.

The petitioner asserts that the job descriptions for the office manager and the office/logistic manager are consistent, citing, as an example: “[t]he updated job description also emphasized how the Office manager will act as a liaison with suppliers and growers.” The updated job description, however, did not mention this duty. Furthermore, the petitioner had initially stated that “maintaining personal networks with growers” was one of the beneficiary’s own duties.

While not the sole determining factor, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company. *See, e.g. Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The company’s size may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *See Systronics*, 153 F. Supp. 2d at 15.

The record contains other inconsistencies. A chart, labeled “Employment History,” names 15 current and former employees and shows their dates of employment. This chart is not consistent with other evidence in the record. It shows, for example, that [REDACTED] left the company after December 2012, but that name is on payroll documentation from 2013 and on the August 2014 organizational chart. The “Employment History” chart also indicates that the petitioner has consistently had five employees since January 2013, when other evidence shows six employees (not counting the contractor shown on the August 2014 organizational chart).

The petitioner does not resolve these inconsistencies by changing its account of the beneficiary’s duties. The director, in the RFE, asked how a company with six employees and minimal turnover would require the beneficiary to devote up to an hour a week to “hiring and firing of company staff members.” Rather than address this issue, the petitioner submitted a new list of duties, with hiring and firing decisions consolidated under a broader category that also included personnel evaluations. Also, the petitioner originally stated that the beneficiary listens to reports from subordinates for 5 to 7 hours per week, but the subsequent percentage breakdown did not mention these reports. The lack

of consistency and the lack of detail, separately and together, preclude a finding that the petitioner has met its burden of proof in this proceeding.

The petitioner has established the beneficiary's leadership role at the company, but, for the reasons listed above, the petitioner has not demonstrated that the beneficiary primarily performs managerial functions rather than lower-level duties directly involving the provision of products or services.

## 2. Managerial Duties Abroad

The petitioner, on appeal, only addresses elements of the beneficiary's present position with the petitioning U.S. entity. The appellate brief includes no discussion of the beneficiary's earlier position with the foreign entity, and it does not address or rebut the discrepancies that the director described, in detail, in the denial notice. When an appellant fails to offer an argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims abandoned when not raised on appeal to the AAO).

The record supports the director's uncontested findings. Because the petitioner provided the same breakdown for the beneficiary's positions abroad and in the United States, the same conclusions apply to both. Discrepancies in the foreign entity's payroll documentation call into question the extent to which the entity employed other workers to relieve the beneficiary from primarily performing operational or administrative tasks. The petitioner has not established that the beneficiary primarily performed managerial or executive duties for the foreign entity.

Accordingly, we find that the petitioner has not provided reliable, probative evidence sufficient to establish that the beneficiary was employed abroad, or will be employed in the United States, in a qualifying managerial or executive capacity. For this reason, USCIS cannot approve this petition.

## III. Conclusion

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

**ORDER:** The appeal is dismissed.