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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: JAN 15 2015 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:

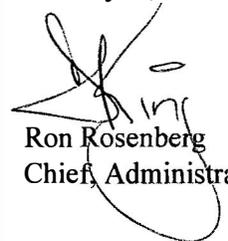
[REDACTED]

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 Minnesota corporation, is engaged in the "development, manufacture [and] supply of dairy sanitation [and] udder hygiene." The petitioner seeks to employ the beneficiary in the position of Sales Director.

On May 16, 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.

In addition, 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.

## 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.

#### 1. Facts

In a letter dated June 12, 2013, the petitioner explained that the beneficiary's most recent role with the foreign company was Business Unit Manager for [REDACTED] and his duties were as follows:

As Business Unit Manager for [REDACTED] [the beneficiary] played a pivotal role in building the company's presence in Europe. He was responsible for developing and implementing commercial strategies for new business growth for the sale of feed and industrial minerals in the [REDACTED] business unit. In 2009, under [the beneficiary's] management, the [REDACTED] Unit reached a sales volume in excess of \$3 million.

As Business Unit Manager for [REDACTED] [the beneficiary] was responsible for overseeing the overall Sales & Marketing operations of [the foreign company's] [REDACTED] products. Specifically, he directed and supervised the Sales & Marketing Departments throughout [REDACTED] including two district sales managers. [The

beneficiary's] ultimate objective was to accomplish the effective and efficient discovery, contact, negotiation and continued support of [the foreign company's] magnesia customers to ensure maximum dollar sales volume in the most profitable way possible.

The petitioner submitted an organizational chart of the foreign company that indicated the beneficiary as [REDACTED] who in turn supervises two [REDACTED]. The organizational chart is not in English and the petitioner did not provide a translation. Because the petitioner failed to submit certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

On November 25, 2013, the director sent a request for additional 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 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 company'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 the Director of Trading of the foreign company, dated February 7, 2014, indicating the beneficiary's duties abroad as follows:

**Management and development of the sales areas, including margin, volumes, and market share (20%)[:]**

Specific tasks include:

- Negotiate and implement sales agreements with main customers in Europe;
- Establish budgets/forecasts;
- Manage customer relationships in Europe;

**Report to upper management and corporate departments within the company[:]**

Specific tasks include:

- Report at monthly Sales Meetings;
- Represent business unit at Quarterly Quality Meeting and annual Corporate Convention;

**Manage market research for new potential markets and products to expand [the foreign company's] revenue and profit (15%):**

Specific tasks include:

- Oversee staff responsible for market studies;
- Meet with potential business partners: distributors and suppliers;

**Participate in industry events and professional conferences (10%)[:]**

Specific tasks include:

- Prepare materials to present and represent company;

**Develop relationships and coordinate supply chain with internal production and external raw materials suppliers (15%)[:]**

**Recruit, Coach, Manage the Commercial Team/Market Managers in charge of [redacted] Markets for [the foreign company] (30%)[:]**

Market Managers are:

- [redacted] Market manager for [redacted]
- [redacted] Market Manager for [redacted]
- [redacted] Market Manager for [redacted]

The petitioner also provided an organizational chart of the foreign company in English. The chart shows that the beneficiary was the Business Unit Manager Western Europe who in turn supervised three market managers. The petitioner also provided a job description for the position of market manager for the foreign company.

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 conducted, 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.

Here, the evidence does not establish 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 that the beneficiary was responsible for "management and development of the sales areas, including margin, volumes, and market share;" and, "recruit, Coach, Manage the Commercial Team/Market Managers in charge of Western Europe Markets for [the foreign company]." This description provides little insight into what the beneficiary primarily did on a day-to-day basis and did not explain the foreign company's operational goals and strategies for sales and marketing. 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 sufficient 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 "negotiate and implement sales agreements with main customers in Europe;" "establish budgets/forecasts;" "manage customer relationships in Europe;" "meet with potential business partners: distributors and suppliers;" and, "prepare materials to present and represent company." According to the job description for the beneficiary's subordinates, it appears that they assisted with finding customers, negotiations and market research, but it appears that the beneficiary still handled a large portion of sales, negotiations, budgeting, and forecasting for the company. Thus, it appears that the beneficiary provided the services such as finding customers, negotiating sales agreements, meeting with buyers, and preparing sales materials. 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 the denial decision, the director noted that the beneficiary's employment history with the foreign company was inconsistent between the information provided in the I-140 supporting documentation and from the Form G-325A. Specifically, the director noted that the January 16, 2014 letter of support indicated that the beneficiary's position abroad was as a [REDACTED] Market Manager from February 2006 until January 2009, and then as a [REDACTED] Business Unit Manager beginning January 2009. However, the director also noted that the Form G-325A, Biographic Information, signed and submitted by the beneficiary, stated that the beneficiary was employed abroad in the position of Business Unit Manager from February 2006 until June 2010. Thus, the information on

Form G-325A is not consistent with the information provided in support of the current I-140 petition.

On appeal, the petitioner states that the “error on the G-325A was not material to the beneficiary’s eligibility under Section 203(b)(1)(C). The petitioner further stated that the beneficiary was employed with the foreign company in the position of Marketing Manager from 2006 to January 2009, and that the “Beneficiary held the qualifying position, Business Unit Manager, continuously for more than one year abroad from January 2009 until June 2010 as required under 8 CFR 204.5(j).” However, the petitioner did not sufficiently explain why the I-140 supporting documentation and the Form G-325A contained inconsistent information regarding the beneficiary’s employment abroad. The petitioner does not sufficiently explain why it categorized the positions of [REDACTED] Market Manger and Business Unit Manager as two separate positions when the beneficiary stated that he held one position, Business Unit Manager, while employed abroad. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner states that the beneficiary managed 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 [REDACTED] Sales Director. In a letter of support, dated June 12, 2013, the petitioner provided a job description for the proffered position that states the following:

In his current capacity, [the beneficiary] is responsible for planning, developing, establishing and implementing company strategies and objectives relating to the magnesia business objectives, organizational policies to coordinate functions and operations and establishing responsibilities and procedures to obtain business objectives in North America. It is imperative that [the beneficiary's] extensive understanding of the [REDACTED] products and services, marketing experience and management skills continue to be available to [the petitioner] in the U.S. so that he can continue to evaluate the value and profitability of the market for [REDACTED] products in North America.

As [REDACTED] Sales Director for North America, [the beneficiary] is responsible for identifying and implementing emerging markets in the U.S. for [the petitioner] to expand and diversify our products and services to accentuate the dynamism of our parent company offerings. Since his transfer to the United States in June 2010, we have significantly grown the [REDACTED] product line in the U.S. We now have 9 magnesium products being marketed in more than 16 states. [REDACTED] products are being sold to animal feed manufacturers, fertilizer manufactures and [the beneficiary] is currently working on developing the market into the chemical industries. The company realized \$8.7 million dollars in sales in 2012.

[The beneficiary] is responsible for training and managing the [REDACTED] Sales Mangers in the marketing of the [REDACTED] range of products. He currently oversees two sales managers and an Administrative Assistant. He analyzes resource needs and market demand to plan and assess the feasibility of the commercial and financial development of product ranges; executes marketing strategies for emerging markets by building operational relationships, negotiation and optimization of commercial terms (volume, price); assesses unmet customer needs and market opportunities by making use of market research data and determines strategies to capitalize on the opportunities in local, regional and national areas to determine potential sales of diversified and expanded company products and services; performs financial projections including feasibility and profitability at retail and wholesale levels; identifies markets, licensing opportunities, and determines the feasibility of product development; creates overall market entry strategies; attends staff conferences to

provide senior management with information and proposals; is responsible for profitability (net results, cash management); and develops and disseminates information on a continuous basis to all pertinent parties concerning the fulfillment of project goals and objectives.

The petitioner submitted an organizational chart that indicates that a VP/CEO supervises the beneficiary, who in turn supervises two sales Managers and one Administrative Assistant. The organizational chart also shows a Regional Manager [REDACTED], a Regional Manager [REDACTED], and four Tech/Service [REDACTED]

In an RFE, the director requested additional information regarding the beneficiary's duties for proffered position. In response, the petitioner provided the following description of the beneficiary's duties:

**Responsible for planning, developing, establishing and implementing company strategies and objectives in North America (15%):**

Specific Tasks:

- Budget, Forecast;
- Manage relationship between [REDACTED] product US business unit and headquarters in [REDACTED]
- Organizing the US/Canada Sales office[.]

**Identify and implement potential markets in the U.S. for [the petitioner] to expand and diversify its products and services (15%):**

Industries of interest:

- Animal Feed;
- Fertilizer;
- Chemical and Building industries[;]
- Environmental application: waste water treatment[.]

**Recruit, train, coach and manage the commercial and administrative team (20%):**

- [REDACTED] Market Managers;
- [REDACTED], Customer Service, Administrative Assistant;
- 2 open positions for a market manager and a logistics coordinator[.]

**Visit customers, negotiate with national accounts including [REDACTED] etc., & manage supply agreements with main customers in North America (15%):**

**Coordinate supply chain, and establish the adequate logistics and distribution network in order to service customers in North America (15%):**

- Oversee the import of raw material into the US and organization of custom clearance;
- Establish warehousing agreements with third party logistics;
- Contract transport with carriers and trucking companies[.]

**Develop relationships and purchase from internal and external raw material suppliers (15%); and**

**Attend Trade Shows, Conferences and participate in Professional Associations events (5%):**

- Prepare promotional materials and represent company.

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 that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the beneficiary will be "responsible for planning, developing, establishing and implementing company strategies and objectives relating to the [REDACTED] business objectives, organizational policies to coordinate functions and operations and establishing responsibilities and procedures to obtain business objectives in North America;" and, "identifying and implementing emerging markets in the U.S. for [the petitioner] to expand and diversify our products and services to accentuate the dynamism of our parent company offerings." 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 company strategy and objectives for the magnesia business objectives, and did not explain the diversification of the petitioner's products. 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 sufficient 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 "analyzes resource needs and market demand to plan and assess the feasibility of the commercial and financial development of product ranges;" "executes marketing strategies for emerging markets by building operational relationships, negotiation and optimization of commercial terms (volume, price);" "assesses unmet customer needs and market opportunities by making use of market research data and determines strategies to capitalize on the opportunities in local, regional and national areas to determine potential sales of diversified and expanded company products and services;" "performs financial projections including feasibility and profitability at retail and wholesale levels;" "identifies markets, licensing opportunities, and determines the feasibility of product development;" and, "creates overall market entry strategies." It appears that the beneficiary will provide the services such as market research, sales, negotiations, marketing, financial operations and budgeting, and customer service rather than overseeing other employees that will perform the day-to-day tasks of developing and implementing the sales and marketing operations. The beneficiary supervises two marketing managers and an administrative assistant. However, the petitioner submitted a new hire announcement that states one of the marketing managers is actually a junior market manager. Thus, it is not clear how one marketing manager, one junior market manager and one administrative assistant can handle all of the day-to-day tasks of developing and implementing a marketing and sales strategy for the company. Thus, it appears that the beneficiary is performing the duties inherent in running all of the sales and marketing operations. 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).

On appeal, the petitioner states that the "Service's assumptions are overly broad and ignore the capacity of the Petitioner's parent company and affiliates to provide support for the company's non-qualifying administrative or operational tasks." However, the petitioner did not provide sufficient evidence to establish that other offices are assisting the beneficiary with sales, market research,

negotiations and marketing development. 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)).

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. 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.

### C. Qualifying Relationship

Beyond the decision of the director, the petitioner has not established a qualifying relationship with the entity where the beneficiary was employed abroad. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C).

In the present matter, the petitioner claims to be an affiliate of the foreign company where the beneficiary was employed prior to coming to the United States to work for the petitioner. The petitioner claims that [REDACTED] is the parent company of the petitioner and the beneficiary's foreign employer. The petitioner provided affidavits to indicate the ownership of the petitioner and the employer's foreign employer, and provided corporate documents such as articles of association, stock certificates and bylaws. However, the documentation is not complete and does not clearly establish that [REDACTED] is the owner of the beneficiary's foreign employer and the owner of the company that owns the petitioner. 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)).

### 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.