



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF X-D-M-E-, LLC

DATE: SEPT. 11, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a real estate developer, seeks to permanently employ the Beneficiary under the immigrant classification of multinational executive or manager. *See* section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition on December 15, 2014, concluding that the Petitioner has not established that the Beneficiary has been or will be employed in a qualifying managerial or executive capacity.

On appeal, the Petitioner submits a legal brief, supported by copies of previously submitted materials. The Petitioner contends that the Beneficiary has worked and will work in a qualifying managerial capacity, and that the Director's decision is not consistent with the evidence of record.

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 limits 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.

Finally, 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.

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## II. ISSUES ON APPEAL

At issue in this proceeding is whether the Beneficiary's former employment abroad, and her proposed employment in the United States, primarily comprised qualifying managerial duties. The Petitioner does not claim that the Beneficiary has served, or will serve, in an executive capacity, and therefore we need not consider that question.

### A. Managerial Capacity Abroad

#### 1. Facts

In a letter of support dated March 17, 2014, the Petitioner indicated that the Beneficiary "worked with the petitioner's parent company, [REDACTED] (China) [REDACTED] from June 2006 to May 2012 as the Director of Sales and Marketing of [REDACTED] Region." The Petitioner's initial submission included documentation about the foreign employer, and payroll records confirming the Beneficiary's past employment there, but no evidence to establish the nature of the Beneficiary's duties with that company.

The Director issued a request for evidence (RFE) on August 29, 2014, instructing the Petitioner to submit a letter from an authorized official of the foreign organization, clearly describing the Beneficiary's job duties, including her specific daily tasks and the time devoted to each, and information about the Beneficiary's subordinates. The Director instructed the Petitioner to "explain who performs" "the exact productive and administrative tasks necessary to produce the [foreign entity's] products and services," and to identify "all employees and contractors in the Beneficiary's immediate division, department, or team by name and job title." The Director also requested organizational charts to "[s]how the organizations' overall structure and staffing levels."

The Petitioner's response included a letter dated October 22, 2014 from the Petitioner's parent company, stating:

[The Beneficiary] worked with [REDACTED] (China) [REDACTED] from June 2006 to May 2012 as the Director of Sales and Marketing of [REDACTED] Region being fully responsible for the department's operation and management, and sales and marketing activities for projects in the region. She was responsible for directing the marketing, promotion and sales of our company's developed and developing residential community projects, high-end apartment buildings and commercial plaza in [REDACTED] region. . . .

The foreign entity indicated that the Beneficiary devoted 30% of her time to "Administrative Management," broken down as follows:

Under supervision of the general manager, direct daily operation of the department, coordinate works with other departments, such as set the 10%

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department's objectives, and formulate performance assessment standard.	
Setup and improve organizational structure, working procedures, job position, staffing level and job duties, and related policy and occupational manual.	5%
New employee recruitment, interview and assessment. Review resignations of department employees.	5%
Arrange training for subordinates.	5%
Review and assess subordinates' performance and recommend promotions, rewards or discipline.	5%

The foreign entity indicated that the Beneficiary spent the remaining 70% of her time on "Business Management," broken down as follows:

Set up the department's annual sales goal, and allocate to each month's sales plan; formulate marketing strategy and promotional approaches.	5%
Reviewing, finalizing and publishing advertisements. Discuss marketing plan with advertising agencies, and propose modifications. Make final decision on advertisement programs.	6%
Appoint contractors for design of sales brochures, promotional materials and sales props. Review and approve print and distribution.	4%
Make final decision on advertisement publishing media. Determine distribution channel, choose appropriate media to publish. Sign contract with advertising agency.	12%
Plan, organize and implement promotional activities, control and monitor expenses, and coordinate summary reports.	8%
Cost and expense control.	5%
Review the department's daily performance and set sales goals. Set up incentive and promotional strategies.	10%
Choose business partners such as sales agent companies and advertising designers. Manage and communicate with partners, inspect their work. Prepare and revise reports, plans and rules.	5%
	10%

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Propose conceptual design directions for real estate projects, and 5% participate in design of those projects.

An organizational chart for [REDACTED] indicated that the Beneficiary and four others reported directly to the general manager. (The four others at the Beneficiary's level were directors of, respectively, engineering; design; finance; and administration.) The Beneficiary's only immediate subordinate was the manager of marketing and sales, who, in turn, supervised two sales supervisors and two customer services employees. The Petitioner did not identify those workers' subordinates (if any). The chart listed three contracting companies, unconnected to the company's chain of command.

The organizational chart was accompanied by a summary of the foreign entity's employees which listed their positions and respective duties. In relevant part, the summary stated the following with regard to the foreign entity's staff:

Marketing manager (holds master's degree): Assist the Director of Marketing and Sales in management of the department's daily operation, including: conferences with outside contracting agencies, advertising companies to discuss marketing strategy; propose assessment of outside contracting agencies and advertising companies. Assist the Director in communications with other departments. . . . ; Train, manage and evaluate employees within the department on a daily basis.

Sales supervisors (both hold bachelor's degrees): Coordinate with sales contracting companies, prepare report on daily sales statistics, participate in supervision of sales persons' quality of work and assessment of performance. Responsible for verification of sales price and available properties, and input the data into the company's sales system.

Customer service employees (both hold bachelor's degrees): Coordinate with advertising companies, preliminarily check ad drafts; contact advertisement publishing companies; prepare contracts, assess contracting company's performance and make payments; coordinate with Sales Department to resolve any disputes; responsible for management of fix[ed] assets in sales department, such as equipment, stationary.

The Director denied the petition, stating: "the foreign organizational chart depicts employment of nine (9) employees, while the summary of employees in China submitted by the petitioner concludes [*sic*] employment of five (5) employees." The Director concluded: "[t]he petitioner has not provided a consistent, credible description and evidence of the [foreign entity's] actual structure and staffing," and "the record does not establish that [the Beneficiary's] direct subordinates are actually managers or supervisors of other personnel."

On appeal, the Petitioner states that "the detailed department organizational chart [showed] 5 staff employed in [the Beneficiary's] department," omitting "employees in other departments" because

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they were outside of the Beneficiary's jurisdiction. The Petitioner adds that the Beneficiary "directly supervised the Manager of Marketing and Sales, oversaw three professional contracting companies. . . and had full authority to make personnel decision[s] within her department."

## 2. Analysis

Upon review, and for the reasons addressed herein, the Petitioner has not established that the Beneficiary was employed abroad in a primarily managerial capacity.

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 his or 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).

As a preliminary matter, the record does not support the Director's finding that the Petitioner's evidence is inconsistent. That conclusion rests, to a significant extent, on the assertion that the list of the Beneficiary's subordinates is not consistent with the organizational chart showing nine subordinates. The exhibits in question, however, show no inconsistency. The five individuals named in the employee list have the same names and titles as the five individuals identified as the Beneficiary's subordinates on the organizational chart. The organizational chart named other employees, but the chart identified those individuals as department directors rather than as the Beneficiary's subordinates.

The record consistently identifies the Beneficiary's only immediate subordinate in China as the manager of marketing and sales, who, in turn, had four identified subordinates in sales and customer services. The Director did not explain how the submitted evidence was deficient in this regard.

According to its submission in response to the RFE, the Petitioner claimed that the Beneficiary's direct subordinate, ██████████ held the position of "marketing manager," and that his duties included assisting the Beneficiary with the "management of the department's daily operation, including: conferences with outside contracting agencies, advertising companies to discuss marketing strategy; [and] propose assessment of outside contracting agencies and advertising companies." The Petitioner also indicated that the marketing manager was tasked with assisting the Beneficiary in communications with other departments within the foreign entity as well as the training, management and evaluation of employees within the department.

Upon review, it appears that a substantial number of the marketing manager's tasks directly overlap with those attributed to the Beneficiary. For example, the Petitioner claimed that 30% of the Beneficiary's time was devoted to "administrative management," which included directing the daily operation of the department as well as arranging training for subordinates and reviewing and assessing their performance. These duties are virtually identical to those attributed to the marketing manager, making it unclear exactly who performs the majority of the administrative management duties and manages the department's daily operations.

Additionally, the Petitioner claims that the remaining 70% of the Beneficiary's time is devoted to "business management," which requires the Beneficiary's direct involvement in the selection and approval of advertising and promotional materials. The Beneficiary is tasked with signing contracts with advertising agencies, among other tasks, after selecting and approving various media and print materials for promotional purposes. Again, we note that the marketing manager is also tasked with similar duties, such as engaging in conferences with advertising companies and outside contracting agencies to discuss marketing strategies.

A significant amount of the Beneficiary's claimed duties overlap with those of her claimed subordinate manager. It is unclear, therefore, whether the Beneficiary is delegating these non-qualifying marketing and administrative duties to marketing manager in whole or in part, or whether they share responsibility for these critical tasks essential to the foreign entity's operations. Here, the Petitioner does not document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-managerial, and instead presents evidence suggesting the Beneficiary performs the same or similar duties as those of her direct subordinate. While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the Beneficiary as long as those tasks are not the majority of her duties, the Petitioner still has the burden of establishing that the Beneficiary is "primarily" performing managerial or executive duties. See section 101(a)(44) of the Act. Here, the Petitioner's description of the Beneficiary's job duties does not clarify what proportion of her duties is managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Moreover, although the organizational chart depicts the Beneficiary in a supervisory role, overseeing a subordinate manager who in turn supervises additional subordinate employees, the validity of this claimed hierarchy and the Beneficiary's role therein is questionable. Although the beneficiary is not required to supervise personnel, if the petitioner claims that the beneficiary's duties involve supervising employees, then the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See section 101(a)(44)(A)(ii) of the Act.

In this matter, in evaluating whether the Beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817, 818 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686, 687-8 (D.D. 1966).

Therefore, we must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee

does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the Petitioner claims that all the listed subordinates hold either a master's degree or a bachelor's degree. However, the Petitioner has not, in fact, established that a such a degree is actually necessary, for example, to perform the marketing work of the marketing manager, or the sales and customer services duties of the other identified subordinates. The Petitioner has not established that their positions require such degrees, such that we can consider the employees to be professionals.

Despite its claims to the contrary, the Petitioner has also not established that the marketing manager supervises subordinate staff members or manages a clearly defined department or function of the Petitioner, such that he could be classified as a manager or supervisor. Although the marketing manager appears below the Beneficiary and above the sales supervisors and customer service employees on the organizational chart, the record contains no evidence or assertion that the marketing manager is directly tasked with supervising these individuals. In fact, the Beneficiary and the marketing manager appear to share the same duties with regard to the management, evaluation, and training of personnel, therefore making it impossible to conclude that the marketing manager, and not the beneficiary, is directly responsible for the management and supervision of these subordinates.

A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988). As noted above, the evidence of record does not establish that the other employees identified in the organizational chart are professional as contemplated by the discussion above. Nor has the Petitioner has not shown that the Beneficiary's subordinate employees are supervisory, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Therefore, the Petitioner's inability to clarify the percentage of time the Beneficiary will devote to qualifying duties, coupled with the lack of evidence establishing that the Beneficiary's role within the foreign entity's organizational hierarchy goes beyond that of a first-line supervisor, precludes a finding that the Beneficiary has been employed abroad in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

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## B. Managerial Capacity in United States

### 1. Facts

On Form I-140, the Petitioner stated that it seeks to employ the Beneficiary as “Director of West Coast branch [REDACTED] and Chief Representative of [REDACTED] in West Coast Region in the US.”<sup>1</sup>

An organizational chart for the petitioning entity shows ten employees. At the top is the managing director, with three immediate subordinates: the Beneficiary (labeled “Chief representative of US west coast operations”), with one subordinate; the “Director of development in east coast,” with five subordinates; and the “Director of [REDACTED] operations.” The chart provided the names, but not the titles, of the six subordinates.

An Internal Revenue Service (IRS) Form 941, Employer’s Quarterly Federal Tax Return, showed that the Petitioner paid wages or salaries to seven employees during the last three months of 2013. The Petitioner appears to have added workers to its payroll during that time, as the return indicates that it paid \$4,759.94 in October; \$6,855.86 in November; and \$11,872.57 in December, a difference consistent with an increase in the number of employees.

The Director, in the August 2014 RFE, requested a letter from an authorized official of the petitioning organization, clearly describing the Beneficiary’s job duties, including her specific daily tasks and the time devoted to each. The Director also requested the names, titles, work schedules, and payroll documentation of all of the Beneficiary’s subordinates.

In response, the Petitioner stated:

[The Beneficiary] has been working as the Director of our West Coach branch . . . and Chief Representative of [REDACTED] in [the] West Coast Region since November 2013, a position which is . . . managerial in nature. In this position, [the Beneficiary] is responsible for directing all sales and marketing functions of this company. . . . Our major real estate project in California is the [REDACTED] a finished condominium project located in [REDACTED] . . . [The Beneficiary’s] tasks include to propose marketing strategy and plan as well as direct sales and marketing activities for our [REDACTED] in [REDACTED] oversee the financial activities and position of [the] West Coast branch, and coordinate with [the Petitioner’s] headquarters in New York; communicate and coordinate with local contractors; monitor and examine works of local contractors, and track progress;

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<sup>1</sup> [REDACTED] is not a branch of the petitioning entity, but rather a separately organized affiliate. If [REDACTED] were the prospective employer, that would be grounds for denial because the petitioner must be the intending employer, and [REDACTED] did not file the petition. Nevertheless, pay receipts in the record demonstrate that, while the beneficiary works at the Irvine location, her employer is the petitioning entity. Therefore, [REDACTED] status as an affiliate rather than a branch does not appear to be a disqualifying circumstance.

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cooperate with our business partner, the local developer [REDACTED] cooperate with and oversee our sales contractor, [REDACTED] communicate and cooperate with land development consulting company, [REDACTED] At the same time, she also oversees the marketing and sales plan, strategy and activities of our [REDACTED] which started construction in November 2013. . . . [The Beneficiary] reports directly to our managing director of our International headquarter[s]. . . . She has full power to make personnel decisions on all her subordinates.

In a separate letter dated October 22, 2014, the Petitioner repeated much of the passage quoted above, and provided a detailed list of the Beneficiary's tasks:

Administrative and Operation Management

Manage [REDACTED] and its marketing and sales activities. The project team consists of a real estate sales broker and its onsite salesperson. Set monthly sales goal and develop marketing strategy. Manage daily operation of branch office. 10%

Oversee and coordinate sales team in East Coast Office and coordinate with sales teams in China. Set sales goals and marketing strategy for sales teams. 10%

Business Management

[REDACTED]  
Manage and communicate with real estate broker, set sales goals and supervise related marketing strategy and promotion designs; make final decision on marketing plan and promotion; oversee onsite customer reception procedure, salesperson's service standard and visitor's log, give necessary advice and suggestions; monitor completion of the whole formalities process for property title transfer; evaluate sales performance of the broker and its salespersons. 15%

Communicate with real estate developer, conduct net sales proceeds analysis, set monthly profit goal and formulate monthly sales goals, set final selling price according to the property's profitable goal, sales goal and market trend, and advise salesperson of the cost price for negotiation. 5%

Review and approve expenditures for marketing, promotion, advertising, etc.; approve sales discount within authorized scope; monitor property's management services, including maintenance, decoration, and remodeling works. 5%

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Develop collaborative relationship with real estate developers and brokers, seek potential opportunity for new real estate development in the West Coast region, collect available land information from the brokers, and conduct preliminary market research and analysis, make report to the senior management in US and China for potential real estate development projects. 5%

Management of and communication with real estate broker, collaboratively develop the pricing schedule, marketing stages and sales strategy, make final decision on developer's behalf, and report to top management for approval; supervise and coordinate marketing and sales strategy implementation, set and supervise sales goals and available property quota, reception procedure and formalities process of closing sales to ensure sales goals can be met and transactions can be smoothly completed; review and adjust marketing strategy and promotion plan; evaluate sales performance of the broker and its salespersons. 15%

Manage and communicate with advertisement company to formulate property advertising plan and presentation strategy; set up reception procedure for buyers from China. 10%

Evaluate performance of contractors and make corresponding recommendations or suggestions; consolidate properties sold and proceeds on a weekly and monthly basis, and calculate commission for the contractor, prepare commission report; review, approve and monitor marketing and advertisement budget and expenses; train the sales team in China; prepare weekly sales summary report, and present to the senior management in the United States and China 10%

#### Other Tasks

Represent the company to promote (a media and entertainment subsidiary in China), projects and events in the United States, communicate and maintain good relationship with Media and Entertainment companies in negotiate copyright authorization for export to China, and coordinate movie and documentary film production in the United States. 8%

Promote and protect brand name, trade mark and public reputation in the United States. 2%

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Keep contact with state and local government agencies to seek more investment opportunities for the company; complete other tasks assigned by higher management. 5%

The Petitioner submitted a revised organizational chart, showing two, rather than three, people immediately subordinate to the managing director. The chart now showed seven subordinates below the “Director of development in east coast” and, as before, one subordinate under the Beneficiary, for a total of 11 identified workers.

The RFE response identified the Beneficiary’s subordinate as an office assistant, who holds a master’s degree in architecture and urban design, but there is no evidence that her work requires that degree. The Petitioner stated: “Her duty is to assist [the Beneficiary] in taking care of daily secretarial [*sic*] works and sales works in New York, such as communicate with contractors, delivery weekly sales reports, take care of buyers from China to visit our projects and briefly introduce or show the project to the” (*sic*; the description cuts off mid-sentence).

Another organizational chart reflected the Beneficiary’s oversight over several contractors and the “Sales Team in China for [redacted] Project.” The Petitioner provided no further details about this sales team (such as the number of employees, their titles, or their duties). A brochure for the [redacted] (a luxury residential development in [redacted] New York) confirmed the involvement of [redacted]” but did not identify any of its employees or specify their individual roles in the project.

In the denial notice, the Director found that “[t]he petitioner has not provided a consistent, credible description and evidence of the actual structure and staffing of the [petitioning company].” The Director also found that the Petitioner had not established that her only U.S. subordinate, the office assistant, is a professional.

On appeal, the Petitioner states:

[The Beneficiary] is one of the senior level managers in our US company. In addition to managing [redacted] and directing all marketing and sales activities of our [redacted] Project in [redacted] California, she [is] also responsible to direct all marketing and sales activities of our new [redacted] project in [redacted] New York. She needs to exercise direction over the services provided by our 5 contracting companies as listed in the List of Projects’ Contractors, including oversee marketing and sales plan, strategy and activities, oversee and examine their works. She is fully authorized to retain professional individuals or contractor services whenever required by the projects or business operations. She has full power to make personnel decisions on all her subordinates and make discipline or award decisions on both sales team members in US and China, and recommend further actions to senior level management. . . .

The majority of the day-to-day non-managerial tasks associated with the function she manages are performed by her staff of direct and indirect subordinates and by external service providers. . . .

Further, we have indicated in our response letter that the working schedule for all employees of the US company is: our company's normal business hours . . . from 9:00 am to 6:00 pm local time, Monday through Friday.

The Petitioner asserts that the Beneficiary "supervises and controls" the work of the parent company's "International Sales Team in China . . . and its manager."

## 2. Analysis

Upon review, and for the reasons set forth below, the Petitioner has not established that the Beneficiary would be employed in the United States in a primarily managerial capacity.

As discussed above, the Petitioner provided an overview of the Beneficiary's position in the United States, noting that her duties would be divided between administrative and operation management (20%); business management (65%) and other tasks (15%). Overall, while many of the duties broadly described by the Petitioner would generally fall under the definition of managerial capacity, the lack of specificity coupled with the inconsistencies surrounding the Petitioner's organizational structure, raise questions as to the Beneficiary's actual day-to-day responsibilities, as do the nature of the Petitioner's business and the company's staffing levels as of the date of filing. Managing or directing a business does not necessarily establish the Beneficiary's eligibility for classification as a multinational manager or executive within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possesses the requisite level of authority with respect to discretionary decision-making, the Petitioner has not submitted a complete and detailed position description sufficient to establish that the Beneficiary's actual duties, as of the date of filing, would be primarily managerial or executive in nature.

Specifically, we note numerous inconsistencies regarding the Beneficiary's claimed duties in light of the Petitioner's current organizational hierarchy. For example, the record does not support the claim that "the working schedule for all employees of the US company is . . . from 9:00 am to 6:00 pm local time, Monday through Friday." The Petitioner submitted payroll documentation for only one worker other than the Beneficiary, specifically the Beneficiary's office assistant. The pay receipts are semimonthly, each reflecting slightly more than two weeks' work. The thirteen submitted pay receipts show 715 hours over 199 days, which averages out to 55 hours per pay period, or 25 hours per week. While the Beneficiary's pay receipts refer to her pay as "salary," the office assistant's pay receipts refer to "1099 Misc Comp," indicating that the office assistant is a contractor whose compensation is reported on IRS Form 1099-MISC, Miscellaneous Income.

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The Petitioner asserts that the Beneficiary “has an assistant to help her” with “daily secretarial and administrative works.” Apart from this part-time assistant, based in New York, the Petitioner did not identify any other subordinates who would relieve the Beneficiary from having to perform primarily non-qualifying operational functions.

The Petitioner has claimed that a sales team in China reports to the Beneficiary, but the record contains no evidence or information about this team. The Chinese entity, in its contribution to the RFE response, did not claim that any employees in China continued to report to the Beneficiary after she began working in the United States. The Director instructed the Petitioner to identify the Beneficiary’s subordinates, and the Petitioner identified only the office assistant in New York.

Likewise, the record contains no evidence regarding any of the contractors said to report to the Beneficiary, with the exception of the part-time office assistant in New York. The Petitioner has identified five contracting companies (two sales brokers, a developer, a land development consultant, and an advertising firm), but the record does not establish the extent to which the Beneficiary controls the activities of the contractors’ employees. Additionally, the Petitioner has not explained how the services of the contracted employees obviate the need for the Beneficiary to primarily conduct the Petitioner’s business. Without documentary evidence to support its statements, the Petitioner does not meet its burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998).

Section 101(a)(44)(C) of the Act requires that, 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. To establish that the reasonable needs of the organization justify the Beneficiary’s job duties, the Petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development.

The Petitioner, established in 2012, claims to be engaged in real estate development. The only project for which the Petitioner has submitted documentation is the [REDACTED] project, which does not identify the Beneficiary or establish the extent of her involvement in the project. Filings with the U.S. Securities and Exchange Commission, excerpted in the record, show that the Petitioner’s parent company has established a separate limited liability company called [REDACTED] related to the [REDACTED] project. The Petitioner has not established that the Beneficiary has any authority over [REDACTED] or that the parent company has delegated authority over elements of the [REDACTED] project to individuals at other affiliates, such as the Beneficiary in [REDACTED]. The extent of the Petitioner’s business in California appears to be limited to the resale of 15 finished condominium units that [REDACTED] had purchased.

In the present matter, the Petitioner has not demonstrated that the Beneficiary primarily performs qualifying managerial or executive functions to offset her evident performance of non-managerial or non-executive duties which, according to the evidence of record, appear to include the sale and promotion of its California-based condominium units. There is insufficient evidence before us to establish that the Beneficiary is overseeing the claimed projects noted above, and the record contains

no evidence to demonstrate that the Beneficiary has sufficient subordinate staff, contractual or otherwise, to relieve her from performing non-qualifying duties. Conclusory assertions regarding the Beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See 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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

The information and evidence discussed above supports the Director's finding that the Petitioner has not shown that the Beneficiary will work in a qualifying managerial capacity in the United States. For this additional reason, the petition may not be approved.

### III. CONCLUSION

The Petitioner has not established that the Beneficiary has been or will be employed in a qualifying managerial capacity. 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.

Cite as *Matter of X-D-M-E-, LLC*, ID# 13192 (AAO Sept. 11, 2015)