



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF F-S-, INC.

DATE: OCT. 6, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a semiconductor manufacturer,<sup>1</sup> seeks to permanently employ the Beneficiary as a quality manager under the first preference immigrant classification for multinational executives or managers. See Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in an executive or managerial capacity.

The Director, Nebraska Service Center, denied the petition, concluding that the evidence of record did not establish that: (1) the Beneficiary will be employed in the United States in a managerial capacity; or that (2) the Beneficiary has been employed abroad in a managerial capacity.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director “clearly overlooked extensive documentary evidence proving that the Beneficiary” qualifies for the benefit sought.

Upon *de novo* review, we will dismiss the appeal.

**I. LEGAL FRAMEWORK**

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

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<sup>1</sup> On appeal, the Petitioner documents its recent merger with another company. Because the merger included the Petitioner’s foreign subsidiaries, the action does not affect the Petitioner’s status as a multinational corporation or its qualifying relationship with the Beneficiary’s former foreign employer.

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.

A United States employer may file Form I-140, Immigrant Petition for Alien Worker, to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. A labor certification is not required for this classification.

The regulation at 8 C.F.R. § 204.5(j)(3) states:

(3) Initial evidence—

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

II. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that: (1) the Beneficiary will be employed in a managerial capacity; and (2) the Beneficiary has been employed abroad in a managerial capacity. The Petitioner does not claim that the Beneficiary will be or has

been employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary will be and has been employed in a managerial capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term “managerial capacity” as “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.

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.<sup>2</sup>

#### A. U.S. Employment in a Managerial or Executive Capacity

The regulation at 8 C.F.R. § 204.5(j)(5) requires the Petitioner to submit a statement which indicates that the Beneficiary is to be employed in the United States in a managerial or executive capacity. The statement must clearly describe the duties to be performed by the Beneficiary.

##### 1. Evidence of Record

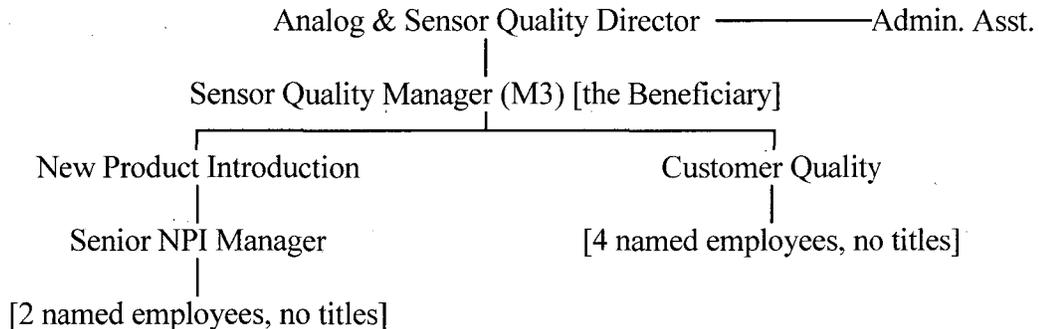
The Petitioner filed Form I-140 on June 26, 2015. In a letter signed by its manager of immigration, the Petitioner stated: “The Quality Manager plays a key role in the Company’s manufacturing operations by supervising and overseeing the entire Quality Control and Quality Assurance Systems –

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<sup>2</sup> See section 101(a)(44)(C) of the Act.

an essential function of our organization.” The Petitioner also stated that the Beneficiary “will supervise and control the work of other professional engineers.” The Petitioner’s letter included a seven-item description of the Beneficiary’s duties, later resubmitted in expanded form (to be discussed below).

The Petitioner submitted an organizational chart for its Sensor Quality Organization:



The Director issued a request for evidence (RFE), instructing the Petitioner to submit, among other things, descriptions of the Beneficiary’s “actual specific, day-to-day tasks” and a list of the Beneficiary’s subordinates, with “a summary of their job duties, educational level, salary, and whether they work full or part-time.”

In response, the Petitioner submitted an affidavit from a business unit automotive quality director at the petitioning company. The official stated that the Beneficiary “leads, directs, and exercises extensive discretion over an essential company function in the Sensor Business Unit and six (6) professional engineers and one (1) Senior NPI Manager.” The Petitioner repeated the previous list of seven items, with the approximate percentage of time devoted to each, and broke each item down into more specific responsibilities:

- 1) Advocate to the Sensor Business Unit (BU) to assure new and existing products meet [the Petitioner’s] and Customer Quality expectations (15%);**
  - a) Manage the disposition and manufacturing of material review boards;
  - b) Oversee the disposition of customer return material requests;
  - c) Direct the review and disposition product change notices prior to customer notification;
  - d) Oversee the quality review responsible for change action boards;
- 2) Assure that new products are qualified to the various expectations ([the Petitioner], Customer, industry standards) (10%);**
  - a) Represent the Quality function team in Product Councils and Product Reviews;
  - b) Manage the disposition of new technology and new product introduction waivers;
- 3) Promote cross-functional teams to the resolution of existing product quality issues (20%);**

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- a) Lead and direct the launch of cross-functional task forces to resolve complex issues by applying solid problem solving methodologies;
- b) Lead and sponsor [REDACTED] projects;
- c) Approve Eight Discipline (8D) reports prior to customer notification;
- 4) Promote continuous quality improvement activities of products and processes (15%);**
  - a) Direct and implement the promotion of sponsor lessons learnt activities and best practices;
  - b) Manage the measurement of Sensor products quality performance levels;
  - c) Direct the launch of sponsor cross-functional activities to identify and implement continuous improvement actions;
  - d) Lead and implement internal quality initiatives;
- 5) Assure that quality business processes are defined and followed to meet Quality and Business objectives (10%);**
  - a) Manage internal and external product audits;
  - b) Direct the projects to assure timely correction of any detected non-conformances;
  - c) Lead and convene the Sensors Product Review Boards (PRB);
  - d) Direct and develop changes to global quality specification and work instructions in response to identified weaknesses or as proactive measure to simplify, enhance, or increase the robustness of the processes;
- 6) Represent the Sensor BU for product quality (15%);**
  - a) Represent the quality function team at the Business Unit Operations Reviews and the Sensors General Manager Staff Meetings;
- 7) Maintain effective functional relations and links to the customers (15%);**
  - a) Manage the regular face to face and phone contact with key customer's management teams and quality decision makers;
  - b) Direct and manage customer quality reviews and steering management meetings; and
  - c) Lead, promote, and participate [in] quality initiatives with customers.

The Director denied the petition, concluding, in part, that the Petitioner did not establish that the Beneficiary will be employed in a managerial capacity in the United States. The Director stated:

The short phrases [in the position description] do not reveal specific tasks that the beneficiary carries out in the course of his daily routine. For instance . . .

....

The petitioner does not explain how the beneficiary acts in an executive or managerial capacity in providing leadership towards [REDACTED] projects or in applying solid problem solving methodologies; nor does the petitioner explain what 8D reports are, and how the beneficiary acts in a qualifying capacity in regards to approving them.

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The Director also found that “the petitioner did not submit job descriptions for the Beneficiary’s subordinate employees.”

On appeal, the Petitioner states that the job descriptions and organizational chart were sufficient to establish that the Beneficiary will work in a managerial capacity. The Petitioner also notes the prior approval of an immigrant petition for one of the Beneficiary’s subordinates.

## 2. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has not established that it will employ the Beneficiary in a managerial capacity in the United States.

When examining the managerial capacity of a given beneficiary, we will look first to the petitioner’s description of the job duties.<sup>3</sup> The Petitioner’s description of the job duties must clearly describe the duties to be performed by the Beneficiary and indicate whether such duties are in a managerial capacity.<sup>4</sup>

In response to the Director’s finding that the Petitioner “did not provide a specific description of the beneficiary’s duties,” the Petitioner quotes, in full, the expanded job description submitted in response to the RFE. The Petitioner, however, has not addressed the Director’s finding that much of the job description consists of “short phrases” including undefined terms. Many of these terms, such as “8D reports,” “██████ projects,” and “new product introduction waivers,” may be familiar in the Petitioner’s industry, but they are comparatively opaque to laymen and, therefore, give little understanding about the actual nature of the Beneficiary’s day-to-day activities. On appeal, the only term that the Petitioner defines is “function.”

Several elements of the job description begin with words such as “oversee,” “lead,” “direct,” and “manage,” but most of the individual elements do not show identifiable tasks. Apart from the Director’s illustrative examples, the Petitioner stated that the Beneficiary will “[d]irect the launch of sponsor cross-functional activities to identify and implement continuous improvement actions.” This phrase does not identify the “cross-functional activities,” indicate who will actually perform those activities, or specify what directing the launch of those activities would entail.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining a beneficiary’s claimed managerial capacity, including the company’s organizational structure, the duties of a beneficiary’s subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary’s actual duties and role in a business.

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<sup>3</sup> See 8 C.F.R. § 204.5(j)(5).

<sup>4</sup> *Id.*

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The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.”<sup>5</sup> The Petitioner has claimed that the Beneficiary qualifies both as a personnel manager and as a function manager, but the deficiencies described by the Director prevent a finding in the Petitioner’s favor on either claim.

Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. The statute plainly states that 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.”<sup>6</sup> If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions.<sup>7</sup>

To determine 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.<sup>8</sup>

The Director, in the denial notice, noted that the Petitioner had not provided the requested job descriptions for the Beneficiary’s subordinates. On appeal, the Petitioner notes that the affidavit submitted in response to the RFE specified that the Beneficiary manages “six (6) professional engineers and one (1) Senior NPI Manager.” The Petitioner submits a copy of “performance reviews completed by the Beneficiary . . . for his subordinate manager . . . over whom he has direct authority to hire or fire.” The previously submitted affidavit and organizational chart identified that person as the “Sensor NPI Manager,” but the performance review documents show the title as “Quality Mgr.” Another performance review concerns an “Reliability Engr.”

The above materials and statements do not address the Director’s concerns. Management of managers and professionals, such as engineers,<sup>9</sup> is an element of a managerial capacity for a personnel manager. The Petitioner, however, has not provided enough information about the subordinates to show that they are, in fact, managers and/or professionals, as claimed. Titles are not job descriptions, and the use of the terms “manager” and “engineer” without elaboration does not meet the Petitioner’s burden of proof.

The Director requested summaries of the subordinates’ job duties in order to determine what functions the Beneficiary will delegate to those subordinates, rather than perform himself. The

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<sup>5</sup> See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii).

<sup>6</sup> Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 204.5(j)(4)(i).

<sup>7</sup> 8 C.F.R. § 204.5(j)(2).

<sup>8</sup> Cf. 8 C.F.R. § 204.5(k)(2) (defining “profession” to mean “any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation”). 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.”

<sup>9</sup> See section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), which includes engineers in the definition of “profession.”

Petitioner did not provide that information, and the Director was justified in denying the petition for that reason. The Petitioner, on appeal, has not remedied this deficiency in the record. The record does not rule out the possibility that the Beneficiary's position is managerial in nature, but the Petitioner has not provided enough information to support that determination. The Petitioner must affirmatively demonstrate eligibility by a preponderance of the evidence.<sup>10</sup>

The two submitted performance reviews include evaluations of how well two of the Beneficiary's subordinates performed their duties, but not descriptions of what those duties are. Where the evaluations do go into detail, those details rely on additional undefined terms that provide little information outside of a shared frame of reference. Therefore, the evaluations do not suffice to establish that the Beneficiary qualifies as a personnel manager.

The Petitioner shows, on appeal, that USCIS approved an immigrant petition which classified one of the Beneficiary's subordinates as a multinational manager or executive. The Petitioner states that the approval of that petition demonstrates that the Beneficiary, too, is eligible for that classification.

The Director's decision does not indicate whether the Director reviewed the prior approval of the subordinate's petition in connection with the instant petition. The record of proceeding for the approved petition is not before us, and the Petitioner did not submit any job descriptions for the individual in question. Therefore, we cannot determine whether the Director approved that petition in error. We are not required to approve applications or petitions where the petitioner has not demonstrated eligibility, merely because of prior approvals that may have been erroneous.<sup>11</sup> It would be unreasonable for USCIS or any agency to treat acknowledged errors as binding precedent.<sup>12</sup>

For the reasons described above, the Petitioner has not established that it will employ the Beneficiary primarily as a personnel manager.

The Petitioner has not established, in the alternative, that it will employ the Beneficiary primarily as a "function manager." The term "function manager" applies generally when a beneficiary's managerial role arises not from supervising or controlling the work of a subordinate staff but instead from responsibility for managing an "essential function" within the organization.<sup>13</sup> The statute and regulations do not define the term "essential function." If a petitioner claims that a beneficiary will manage an essential function, that petitioner must clearly describe 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 dedicated to managing the essential function.<sup>14</sup> In addition, a petitioner's description of a beneficiary's daily

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<sup>10</sup> See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

<sup>11</sup> See *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988).

<sup>12</sup> See *Sussex Eng'g Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

<sup>13</sup> See section 101(a)(44)(A)(ii) of the Act.

<sup>14</sup> See 8 C.F.R. § 204.5(j)(5).

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duties must demonstrate that the beneficiary will manage the function rather than perform the duties related to the function.

The Petitioner has indicated that the Beneficiary manages an essential function by leading the company's business unit. As explained above, the Petitioner has not provided enough information about the Beneficiary's duties, and those of his subordinates, to establish that the Beneficiary primarily manages, rather than performs, the essential functions undertaken by the business unit.

The Beneficiary's discretionary authority over a unit or function of the petitioning employer does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity 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.<sup>15</sup> 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 established that the Beneficiary's actual duties, as of the date of filing, would be primarily managerial in nature.

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a managerial capacity in the United States.

#### B. Foreign Employment in a Managerial or Executive Capacity

If the Beneficiary is already in the United States working for the foreign employer or its subsidiary or affiliate, then the regulation at 8 C.F.R. § 204.5(j)(3)(i)(B) requires the Petitioner to submit a statement from an authorized official of the petitioning United States employer which demonstrates that, in the three years preceding entry as a nonimmigrant, the Beneficiary was employed by the entity abroad for at least one year in a managerial or executive capacity.

##### 1. Evidence of Record

The Petitioner identified the Beneficiary's foreign employer as [REDACTED] and described the Beneficiary's duties abroad for the three years preceding the filing of the petition as follows:

From January 2007 to April 2015, the Beneficiary held the position of **EMEA (Europe, Middle East, and Asia) Field Quality Engineering Manager** with [REDACTED]. In this role, [he] managed [the] European Field Quality Engineering (FQE) team, which consists of 12 direct reports, based in Germany, France, and the United Kingdom, and the [REDACTED] Quality Failure Analysis Lab.

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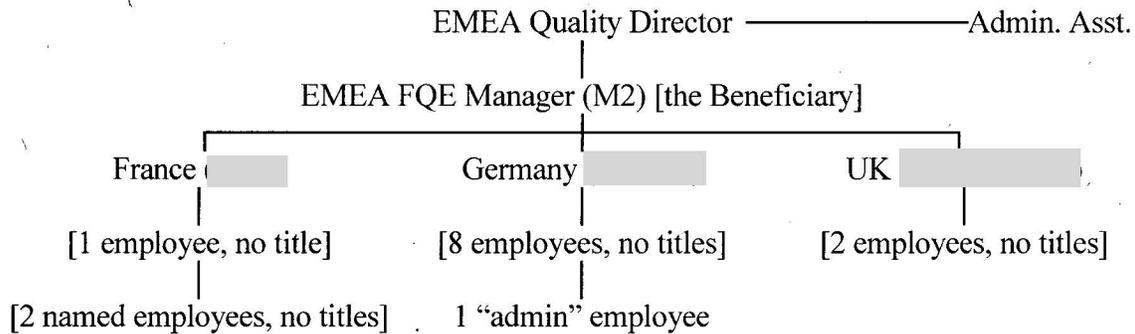
<sup>15</sup> Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A) and (B).

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The Petitioner stated that “the Beneficiary supervised and controlled the work of engineering professionals, as well as managed an essential function within the organization.”

The Petitioner submitted an organizational chart for the “EMEA Field Quality Engineering Organization” containing the following information:



In the RFE, the Director instructed the Petitioner to submit evidence that the Beneficiary’s position abroad was in a managerial or executive capacity. The Director requested a list of the Beneficiary’s “actual specific, day-to-day tasks” and information about the Beneficiary’s subordinates, including “a summary of their job duties.”

In response to the RFE, the Petitioner submitted a copy of the previously submitted organizational chart and an affidavit signed by the quality director who had supervised the Beneficiary in his foreign position. The affidavit indicated that the Beneficiary “performed the following managerial duties”:

- 1) Led the [redacted] FQE Lab and developed a flexible FQE model built on technical excellence and proven effective in resolving customer-caused and [redacted] test coverage issues (20%);
  - a) Led the [redacted] field quality engineering laboratory;
  - b) Oversaw the capital investments and compliance to internal, industry, and governmental regulations;
  - c) Directed the integration of field failure verification and correlation into the company incident handling process;
- 2) Led the global introduction in [redacted] with companies, such as [redacted] (10%);
  - a) Led the client project team and interface with business process sponsors;
  - b) Managed the integration with other project teams;
  - c) Represented the project in the leadership projects reviews;
- 3) Led the global [redacted] partnership project, which achieved a 38% reduction in non-[redacted] caused incidents in a one-year time frame, totaling \$1.5 million USD in failure analysis savings (20%);
  - a) Directed and drove the project strategy and led a global cross-functional project team;

- b) Oversaw and led resolution of customer caused issues and reduction of complaints;
- c) Managed the internal and external communication plan;
- 4) Oversaw and managed the support model for targeted customers (15%);**
  - a) Directed differentiated customer support strategies and effective working relations with customers;
  - b) Led the re-engineer of customer support models;
  - c) Drove internal awareness of customer's expectations and gain organization buy-in;
  - d) Managed crisis situations and the resolution of complex technical problems;
- 5) Managed and maintained effective functional relations and links to the customers (25%);**
  - a) Managed the regular face to face and phone contact with key customer's management teams and quality decision makers;
  - b) Directed and managed customer quality reviews and steering management meetings; and
  - c) Led, promoted, and participated in quality initiatives with customers;
- 6) Took ownership of the FQE process by developing and providing processes and support models to influence strategy development and to lead local strategy deployment (10%);**
  - a) Led the company field quality strategy deployment in the region;
  - b) Led customer scorecard improvement strategies; and
  - c) Directed the harmonization of worldwide processes and working procedures.

The Director denied the petition concluding, in part, that the Petitioner did not establish that the Beneficiary had been employed in a managerial capacity abroad. In denying the petition, the Director stated:

The petitioner did not provide, as requested, a description of the beneficiary's duties abroad which clearly describes his daily routine. The petitioner only provided a description similar to the description it provided to describe his U.S. duties . . . , which does not identify specific tasks. Additionally, the petitioner did not submit, as requested, job descriptions for the beneficiary's subordinate employees.

On appeal, the Petitioner quotes from the above affidavit and asserts that the Beneficiary was a function manager who also managed "**numerous engineering professionals**, shown on the organizational chart."

## 2. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has not established that the Beneficiary was employed abroad in a managerial capacity.

The duties listed in item 5 on the foreign job description are the same as those listed in item 7 on the U.S. job description, except that the verbs are in the past tense. Other sections of the two descriptions are different, but the Director's objection to both was the same. The Petitioner does not address the Director's finding that the Petitioner has not explained what specific, identifiable duties the Beneficiary performed abroad.

As with the Beneficiary's U.S. position, the Petitioner asserted that the Beneficiary's former foreign position met the requirements of a personnel manager and a function manager. The Director found these claims deficient for the same reasons cited for the U.S. position. Our above discussion of the Beneficiary's U.S. position essentially applies here as well. The Petitioner has established that the Beneficiary had hiring authority and oversaw subordinates, but the Petitioner cannot demonstrate eligibility with the unsubstantiated claim that the foreign subordinates were professionals. Also, given the lack of specificity in the Beneficiary's own job description, the Petitioner has not shown that the Beneficiary primarily managed those subordinates rather than performed operational tasks.

The Petitioner, on appeal, states that "the Beneficiary managed **five levels** of engineering professionals (C1 through C5)" at the foreign entity. The organizational chart showed designations such as "C1" and "C5" after individual names, but these designations are not inherent evidence of the professional status of the named employees. The Director duly allowed the Petitioner an opportunity to remedy this deficiency, issuing an RFE that asked for the subordinates' titles and job descriptions. By omitting the requested information, the Beneficiary effectively requested a decision based on the existing record, without that information.<sup>16</sup>

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary was employed in a managerial capacity abroad.

### III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains with the petitioner.<sup>17</sup> Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-S-, Inc.*, ID# 12371 (AAO Oct. 6, 2016)

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<sup>16</sup> See 8 C.F.R. § 103.2(b)(11). See also 8 C.F.R. § 103.2(b)(14) (omission of requested evidence shall be grounds for denying a petition).

<sup>17</sup> Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013).