



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 11856760

Date: NOV. 24, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Petition for Multinational Managers or Executives

The Petitioner, a transportation and logistics business, seeks to permanently employ the Beneficiary as its “international logistics manager” under the first preference immigrant classification for multinational executives or managers. Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary will be employed in a managerial or executive capacity in the United States and that the Beneficiary had been employed abroad in a managerial or executive capacity prior to his entry as a nonimmigrant. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.¹ We review the questions in this matter de novo.² Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

An immigrant visa is available to a beneficiary who, in the three years preceding the time of the petition for classification and admission into the United States, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Worker, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition,³ that the beneficiary is coming to work in the United States for the same

¹ See Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).

² See Matter of Christo’s Inc., 26 I&N Dec. 537, 537 n.2 (AAO 2015).

³ If a beneficiary entered the United States to work for a qualifying entity as a nonimmigrant (for example in L-1B or another work-authorized status), U.S. Citizenship and Immigration Services will reach back three years from the date of his or her admission to determine whether he or she had the requisite one year of employment. Matter of S-P- Inc., Adopted Decision 2018-01 (AAO Mar. 19, 2018); 8 C.F.R. § 204.5(j)(3)(i)(B).

employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. See 8 C.F.R. § 204.5(j)(3).

“Managerial capacity” means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; 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; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

The term “executive capacity” is defined as an assignment within an organization in which the employee primarily: directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

The regulation at 8 C.F.R. § 204.5(j)(5) requires the Petitioner to submit a statement which clearly describes the duties to be performed by the Beneficiary. Beyond the required description of the job duties, we review the totality of the evidence when examining a beneficiary’s claimed managerial or executive 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. Accordingly, our analysis of this issue will focus on the Beneficiary’s duties as well as the company’s staffing levels and reporting structure.

II. U.S. EMPLOYMENT IN AN MANAGERIAL OR EXECUTIVE CAPACITY

The Petitioner is a transportation and logistics company that provides services in supply chain management. It states that it is the main provider to [redacted] [customer] in [redacted] Tennessee, for all their major logistics operations. The Petitioner notes that it provides ground shipments of large orders of [redacted] and parts to and from the [redacted] plant in [redacted] and to purchasers throughout the country.

Preliminarily we observe that the Petitioner does not clearly identify whether the Beneficiary will primarily perform duties as a manager or as an executive. A petitioner claiming that a beneficiary will perform as a “hybrid” manager/executive will not meet its burden of proof unless it has demonstrated that the beneficiary will primarily engage in either managerial or executive capacity duties. See section 101(a)(44)(A)-(B) of the Act. While in some instances there may be duties that could qualify as both managerial and executive in nature, it is the petitioner’s burden to establish that the beneficiary’s duties meet each criterion set forth in the statutory definition for either managerial or executive capacity. A petition may not be approved if the evidence of record does not establish that the beneficiary will be primarily employed in either a managerial or executive capacity.

A. Duties

The Petitioner's initial letter in support of the petition, sets out a lengthy, though vague and repetitive description, and does not include the percentage of time the Beneficiary will devote to the duties generally described.⁴ Additionally, it appears some of the listed duties require the Beneficiary to perform operational tasks. The duties are not outlined in an understandable format and present a confusing view of the U.S. position.⁵

In response to the Director's request for evidence (RFE) the Petitioner submits a "Job Description Form" for the position of [] Program Manager." The job responsibilities for this position include a heading of "Executive Capacity," which repeats portions of the regulatory definitions of both executive capacity and managerial capacity. We note here that 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. *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 Assocs., Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

In this same document, in addition to paraphrasing portions of both the definition of "managerial capacity" and "executive capacity," the Petitioner indicates that the Beneficiary's responsibilities include "[c]ommunicate in a professional and helpful manner with customers and drivers and suppliers," "[p]romote[] safety by your actions and communications," "[b]uild relationships with suppliers and carrier networks," and "[r]eport immediately to the customer any route issues as well as management." Not only are these duties generic, they neither show that the Beneficiary will perform high-level responsibilities nor do they demonstrate that the Beneficiary will perform managerial or executive tasks, but rather demonstrate the Petitioner's business goals for the position. Similarly, having the ability to respond to urgent situations and understanding cross border shipments, describe the kind of qualifications the Petitioner desires the employee to possess. They do not describe the duties the Beneficiary will perform. Again, the Petitioner does not describe how much time the Beneficiary will spend on any of these actions.

In a separate undated letter, also submitted in response to the Director's RFE, the Petitioner's chief executive officer (CEO) indicates that the Beneficiary will spend 30 percent of his time managing 10 subordinates⁶ including implementation of their training, performance reviews, salary budgeting,

⁴ For example, the duties include the Beneficiary supervising employees and their work, training department personnel, and conducting employee training programs, as well as the Beneficiary directing organizational operations, projects, or services, which appears to include negotiating with suppliers, or customers to improve supply chain efficiency or sustainability, and negotiating transportation rates or services. Similarly, the Petitioner states broadly that the Beneficiary will develop operating strategies, plans, or procedures and includes a number of duties that suggest the Beneficiary will be performing tasks such as resolving customer complaints and problems concerning the transportation, logistics systems, imports, exports, or customer issues, maintaining operational records, analyzing financial records to improve efficiency, and implementing transportation changes to reduce environmental impact. These duties, as described, are insufficient to discern the Beneficiary's actual role in the Petitioner's U.S. operations.

⁵ The record also includes a letter, dated September 25, 2015, describing the Beneficiary's assignment in the United States, beginning April 15, 2015, in an L-1B, specialized knowledge capacity. The overview of the 2015 duties for the U.S. entity does not appear to be consistent with the position that is the subject of the instant petition.

⁶ The record includes a 2019 organizational chart that shows that the Beneficiary has five subordinate employees. The

and staffing needs, and another 20 percent of his time on quality control managing the quality of work for subordinates and carrier partners. The letter also indicates that the Beneficiary will spend 30 percent of his time on customer service which includes daily and weekly meetings with the customer and several dozen suppliers to facilitate pick up and deliveries. Finally, the Beneficiary will spend 20 percent of his time on operational effectiveness which includes direct weekly communication with the CEO to discuss performance of carrier partners, staff and to seek new opportunities to gain market share from the customer. These broadly stated duties do not include sufficient detail to establish that the Petitioner has satisfied the criteria of either the definition of managerial capacity or executive capacity. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108.

On appeal, counsel for the Petitioner refers to the same documents that identify the Beneficiary as both a manager and an executive and repeats the portion of the description that paraphrases portions of the regulatory definitions for both executive and managerial capacity. Counsel also asserts that the Beneficiary “develops the import and export system that is used to facilitate the purchase, import, distribution, and export of all goods and materials, national and international, that [its customer] receives or supplies” and that once these processes are implemented “oversees a group of subordinates to make sure that those day-to-day functions are properly carried out.” Counsel contends that the Beneficiary does not perform the function “in carrying out his essential functions as International Logistics Manager.” Counsel adds further that the Beneficiary drafts and implements a detailed logistics process that facilitates all negotiations between its customer and partnering organizations which puts him in a supervisory position over other staff. We observe, however, that assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Here, counsel's assertions do not appear to correspond to the descriptions of duties the Petitioner submitted, except in the most general way.⁷ Additionally, the record does not include documentary evidence of the Beneficiary's draft(s) of a detailed logistics process or other evidence demonstrating the work performed.⁸

Further, the Petitioner does not document what proportion of the Beneficiary's duties would be managerial or executive duties and what proportion would be non-qualifying. As the Petitioner does not sufficiently quantify the time the Beneficiary would spend on the different duties,⁹ we cannot

2018 organizational chart in the record shows the Beneficiary with ten subordinate employees. As the Petitioner's CEO's letter is undated, it is unclear when the change in number of employees occurred. However, as the petition was filed in 2019, the 2019 organizational chart is the more accurate depiction of the organizational hierarchy when the petition was filed.

⁷ We understand from the various descriptions in the record, that the Beneficiary will be involved in logistics and the supply chain for its customer(s). However, the various descriptions do not include the type of detail necessary to ascertain the Beneficiary's role within the Petitioner's business operations.

⁸ We observe service records show that the Beneficiary has been employed by the U.S. Petitioner since approximately October 1, 2016, in a specialized knowledge (L-1B) status. Although the Beneficiary appears to have been briefly admitted into the United States in an L-1A status pursuant to a petition that was subsequently denied, the Beneficiary's last admission into the United States was as an L-1B nonimmigrant.

⁹ As noted above, the Petitioner assigns time percentages to four broad categories of tasks, however, the brief descriptions

determine whether the Beneficiary will primarily perform the duties of a manager or an executive as of the date the petition was filed. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Even though the Beneficiary may exercise some discretion over the Petitioner's day-to-day logistics and supply chain operations for its customer(s) and possess the requisite level of authority with respect to discretionary decision-making regarding the logistics and supply chain, the position description alone is insufficient to establish that his actual duties would be primarily managerial or executive in nature. In reviewing the totality of the record, the Petitioner has not submitted a sufficiently detailed duty description describing the Beneficiary's actual day-to-day managerial or executive-level duties to credibly establish that he would devote his time primarily to qualifying managerial or executive tasks.

B. Staffing

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 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. Again, as discussed, the Petitioner must demonstrate that the Beneficiary was eligible for the benefit sought as of the date the petition was filed in May 2019. As such, we look to the Petitioner's staffing and organizational structure at this time, rather than the earlier organizational charts submitted for the record.

The Petitioner's 2019 U.S. organizational chart depicts the Beneficiary reporting to the chief commercial officer and shows the names of five individuals who appear to be the Beneficiary's subordinates. In the undated letter signed by the Petitioner's CEO, the Petitioner identifies ten individuals he claims are subordinate to the Beneficiary's position and provides a job title, education level, and length of employment for each individual. However, the 2019 organizational chart which lists five individuals by name, includes only three individuals who can be identified in the undated letter. These three individuals hold positions of traffic coordinator region 1, carrier specialist, and extended coverage and carrier coordinator.¹⁰ Two of the identifiable individuals possess bachelor's degrees and one possesses a high school diploma. The Petitioner's state quarterly employment form for the quarter in which the petition was filed lists seven individuals who are identified in the undated letter. The additional four individuals listed in the letter and not on the 2019 organizational chart as subordinate to the Beneficiary's position hold positions as traffic coordinator 2,¹¹ traffic coordinator 3,¹² documentation specialists (2),¹³ and invoice specialist. According to the Petitioner, one of these individuals holds a bachelor's degree, one holds an associate's degree, and two attended university,

of those categories is insufficient to ascertain whether the Beneficiary will be primarily a supervisor, will perform non-qualifying duties, or will perform duties in an executive or managerial capacity.

¹⁰ One of these three individuals is identified as [redacted] on the 2019 organizational chart, while the Petitioner's letter and the state quarterly employment form for the quarter in which the petition was filed identify an individual named [redacted]. It is unclear if this is the same person and the organizational chart contains a typographical error, or whether this is an additional unidentified person.

¹¹ This individual is listed on the 2019 organizational chart as reporting to the chief operating officer, not the Beneficiary.

¹² According to the state quarterly employment report for the second quarter of 2019, the quarter in which the petition was filed, this individual receives a higher salary than the Beneficiary. Thus, it would appear that she may not be the Beneficiary's subordinate employee. Additionally, her name does not appear on the Petitioner's 2019 organizational chart.

¹³ One of the documentation specialists is identified on the 2019 organizational chart as under the supervision of another individual, not the Beneficiary; the other is not listed on the 2019 organizational chart.

though no degree is identified. The Petitioner does not describe the duties these individuals perform, and the organizational chart does not indicate that any of the five individuals subordinate to the Beneficiary's position supervise others.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A) of the Act. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," 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." *Id.* 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. 8 C.F.R. § 204.5(j)(2).

Although the Petitioner indicates the Beneficiary may spend approximately 50 percent of his time supervising others, the record does not sufficiently demonstrate that the Beneficiary would act primarily as a personnel manager supervising subordinate supervisors or managers. Additionally, the record does not include supporting documentation to substantiate the Beneficiary's delegation of duties to his subordinates or his personnel authority over them. As the record does not include the subordinates' duties, it is also not possible to conclude that the subordinates perform duties that relieve the Beneficiary from performing non-qualifying duties.

Moreover, the record does not include evidence that the Beneficiary would qualify as a personnel manager based on his supervision of subordinate professionals. To determine whether a beneficiary manages professional employees, we evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor.¹⁴ Therefore, we focus on the level of education required by the position, rather than the degree held by subordinate employees. 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. Here, as noted, the Petitioner does not describe the subordinates' duties and it is not clear from the titles of the subordinate positions that such positions would require a bachelor's degree in order to perform them. Thus, from the limited information in the record, it is not possible to conclude that the Beneficiary is more than a first-line supervisor over five non-professional subordinates. The record does not include evidence sufficient to satisfy the definition of a personnel manager.

The Petitioner also has not articulated a specific function that the Beneficiary will manage. 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. If a petitioner claims that a beneficiary will manage an essential function, it must clearly describe the duties to be performed in managing the essential function. In addition, the petitioner must demonstrate that "(1) the function is a clearly defined activity; (2) the function is 'essential,' i.e., core to the organization; (3) the beneficiary will primarily manage, as opposed to perform, the function; (4) the beneficiary will act at a senior level

¹⁴ Cf. 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a U.S. baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). Section 101(a)(32) of the Act, 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."

within the organizational hierarchy or with respect to the function managed; and (5) the beneficiary will exercise discretion over the function's day-to-day operations." Matter of G- Inc., Adopted Decision 2017-05 (AAO Nov. 8, 2017). In this matter, the Petitioner has not described or provided evidence that the Beneficiary manages an essential function.

For instance, the Petitioner does not clearly define the essential function. In an undated letter, the Petitioner's CEO states that the Beneficiary "manages the day to day operations and has direct contact with the principals of the account [referring to the customer]." This again appears to include communicating with the customer and suppliers and the Petitioner's CEO. The Petitioner also describes the services provided to the customer as "routing large carrier assignment and logistics of parts to and from the [m]anufacturing plant in [redacted] from their supplier networks." Thus, it appears that he is performing the necessary customer services and is discussing or resolving issues within the customer's supply chain. The Petitioner neither identifies an essential function with specificity nor establishes that the Beneficiary manages a function, rather than performing the duties associated with the customer's logistics function itself.

On appeal, the Petitioner, through counsel, opines that the Beneficiary "does not perform those day to day functions . . . and is not aided by other staff member[s] in carrying out his essential functions as International Logistics Manager." Counsel adds that the Beneficiary "develops the import and export system that is used to facilitate the purchase, import, distribution, and export of all goods and materials, national and international that [the customer] receives or supplies."¹⁵ However, neither the Petitioner nor counsel further elaborate on what is required to develop an import/export system and if this is a function that is essential or core to the Petitioner's operations. Moreover, the record is insufficient to establish that the Beneficiary will primarily manage the function rather than perform the duties necessary to develop and maintain the import/export system. Again, although the Beneficiary may exercise some discretionary authority over the logistics processes, the record is deficient in establishing that he will be relieved of primarily performing the duties required to carry out the logistics processes. The record does not establish the Beneficiary will perform the duties of an essential function manager.

The Petitioner also does not establish that the Beneficiary will be employed in an executive capacity as of the date the petition was filed. As discussed above, the Petitioner's state employer's quarterly wage documentation from the second quarter of 2019, corresponding with the date the petition was filed, does not correspond with the Petitioner's identification of the Beneficiary's subordinate employees on the organizational chart or the list of ten employees identified in the CEO's undated letter. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-592 (BIA 1988). Without clarifying consistent evidence, it does not appear that the Petitioner's organization was sufficiently developed to support the Beneficiary as an executive. Additionally, the Petitioner does not provide supporting evidence reflecting the Beneficiary's performance of executive-level tasks related to directing the company's management or setting its broad goals and policies. That is, the record does not establish that the Beneficiary primarily directs the management of the organization or a major component or function of the organization. Therefore, the record also does not establish the Beneficiary will perform duties in an executive capacity.

¹⁵ As noted above, counsel's assertions do not constitute evidence. Obaigbena, 19 I&N Dec. at 534 n.2 (BIA 1988).

III. FOREIGN EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

As discussed, the Director also denied the petition concluding that the Petitioner did not establish that the Beneficiary had been employed abroad in a managerial or executive capacity prior to his admission into the United States. Because of the dispositive effect of the above finding of ineligibility; we will only briefly address this remaining issue.

In denying the petition, the Director determined that the Beneficiary's foreign duty description was broad and ambiguous and noted that the Petitioner did not include specific tasks and the percentages of time devoted to the Beneficiary's tasks for the foreign entity. The Petitioner contends on appeal that the Beneficiary's foreign position is identical to the position in the United States and that the Director did not consider all the information provided regarding the foreign position.

In a letter authored by the foreign entity's HR manager, dated September 25, 2015, the foreign entity provided a broad overview of the Beneficiary's foreign position as the "[m]anager of [c]ontrolling of all logistics, traffic and transport processes for Volkswagen." Many of the duties appear to show the Beneficiary performing different tasks such as: administering the supply chain, coordinating exports with transporters, custom agents, and company staff, coordinating imports with different custom agents, and optimizing the provisioning and distribution of the company, organization and planning of order preparation and distribution, and of all working processes. The letter also referred to organizing staff time weekly, recruiting and training the staff, and evaluating and providing feedback to the staff. The Petitioner's undated organizational chart for the foreign entity shows the Beneficiary with three subordinates. It is not possible to conclude from this 2015 letter that the Beneficiary was employed in a managerial or executive capacity for the foreign entity. The letter does not include the percentages of time the Beneficiary will spend on the various duties and the duties themselves do not convey the day-to-day duties the Beneficiary performed while employed at the foreign entity.

In response, to the Director's RFE, the Petitioner submitted the undated letter from the U.S. entity's CEO. The letter provides the same breakdown of four categories of tasks (managing subordinates, (30%), quality control (20%), customer service (30%), and operational effectiveness (20%)) as provided for the U.S. entity. For the same reasons as discussed above, this information is not sufficiently detailed to conclude that the Beneficiary primarily performed the duties of an executive or a manager. The U.S. entity's CEO indicated further that the Beneficiary as an operations manager managed the day-to-day operations, that the purpose of the job is to manage the flow of parts to the client, and that the Beneficiary managed a staff of five subordinates. The record does not include evidence of the claimed subordinates' duties at the foreign entity. The Petitioner also does not clarify the inconsistency with the foreign entity's organizational chart, identifying three subordinates to the Beneficiary's position and its claim in response to the Director's RFE that he managed five subordinates.

The record also includes an April 14, 2019 "Job Profile" for an operations manager, also submitted in response to the RFE.¹⁶ The Petitioner does not list any job responsibilities associated with supervising subordinates, although the document refers to "[d]evelop awareness in the staff on your charge about

¹⁶ It is not clear from this translated document whether the April 14, 2019 "Job Profile" is the same as or similar to the Beneficiary's position for the foreign entity between August 2014 and December 2016.

following policies of the management system.”¹⁷ The “Job Profile’s” list of responsibilities include generic responsibilities such as “[d]efine suitable means for the development of the operations through the analysis or the requirements showed [sic] in posters, internal requirements and services of methodologies MTM,” “[f]ollow KPIs of service, productivity, profitability and quality of the operations, promoting at all times improving those results,” and “[s]upport activities of the industrialization of the processes; coordinate and manage new projects and processes, making sure the ranking of them.” This list does not communicate the Beneficiary’s overall responsibility, his actual daily tasks, and the context of any of the responsibilities as they pertained to the foreign entity’s business operations between 2014 and 2016, the time period of the Beneficiary’s pertinent foreign employment.

Similar to the Beneficiary’s U.S. duties, the Beneficiary’s foreign duty description is generic and could apply to any manager or executive, or non-manager or non-executive, acting in any business or industry. There is little discussion of the foreign entity’s actual business and the Beneficiary’s role therein. Once again, whether the Beneficiary is a managerial or executive employee abroad turns on whether the Petitioner has sustained its burden of proving that their duties would be “primarily” managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Here, again the Petitioner does not document what proportion of the Beneficiary’s foreign duties were managerial or executive functions and what proportion were non-qualifying operational tasks. Upon review of the totality of the record we cannot conclude that the Beneficiary primarily performed the duties of a manager or an executive for the foreign entity. See *IKEA US, Inc.*, 48 F. Supp. 2d at 22.

IV. CONCLUSION

The appeal must be dismissed because the Petitioner has not established that the Beneficiary was employed in a managerial or executive capacity abroad or that he will be employed in a managerial or executive capacity in the United States.

ORDER: The appeal is dismissed.

¹⁷ The “Job Profile” document appears to be a generic outline for an operations manager position and not for a particular position. We observe that the document identifies a space for a company “logo” at the top left-hand corner of the document that has not been filled in with the Petitioner’s company name or logo. Additionally, the duties do not include information that is specific to the Petitioner’s business operations.