

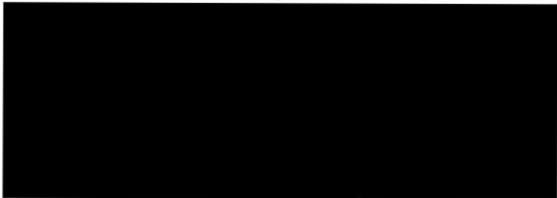
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



07

NOV 13 2006

File: WAC 05 030 51726 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

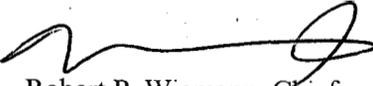
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a California limited liability company engaged in heavy equipment rental. The petitioner claims to be a branch office of [REDACTED], located in Hamilton, New Zealand. The petitioner seeks to employ the beneficiary as its market research/budget manager for a two-year period.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity; or (2) that the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director mischaracterized the nature of the beneficiary's duties with the foreign and U.S. entities and contends that the beneficiary has been and would be performing primarily managerial duties as well as supervising managerial or supervisory employees. Counsel submits a brief in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in the present matter is whether the petitioner established that the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity. The petitioner does not contend that the beneficiary will be employed in an executive 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.

The nonimmigrant petition was filed on November 12, 2004. In a letter dated October 9, 2004, the petitioner stated that the beneficiary would perform the following duties in his proposed role as Market Research/Budget Manager:

He will be responsible for analyzing the current and past budgets of the California Branch and preparing and analyzing budget requests as well as identifying opportunities in the area of market research and development for new locations and business sales and rental for retail and wholesale of our machinery. He will also develop and investigate marketing strategies for expansion of our California branch as well as expansion in other parts of the United States.

The petitioner stated on Form I-129 that it currently has 19 employees and submitted an organizational chart for the U.S. entity. The chart depicts a general manager/vice president/operations manager over four departments headed by a dispatch manager, an office manager, a sales manager and a service manager, each of whom supervises support staff including drivers, a mechanic, a foreman, and shop and office assistants. The chart

identifies a total of sixteen employees, and included an attachment with brief job descriptions for each position. The chart did not identify the beneficiary's proposed position.

On November 22, 2004, the director requested additional evidence to establish that the beneficiary will be employed in a managerial or executive capacity, including: (1) a copy of the U.S. company's organizational chart clearly identifying the beneficiary's proposed position and listing all employees under the beneficiary's supervision by name and job title; (2) a brief description of the job duties, educational level, and annual salaries/wages for all employees under the beneficiary's supervision; and (3) evidence that the beneficiary will supervise and control the work of supervisory, professional or managerial employees, or manage an essential function within the organization, or a department or subdivision of the organization.

In a response dated December 1, 2004, counsel for the petitioner provided the following expanded job description for the beneficiary's proposed role in the United States:

[The beneficiary] will manage and oversee all sales/marketing and budgeting activities of the US branch including developing, directing, controlling sales staff and all sales programs. This includes hiring and firing capability for all employees working under [the beneficiary]. He will oversee sales distribution, the setting of goals and quotas for sales personnel. Will be responsible for analyzing sales statistics and formulating long and short term policies. Will oversee the development of sales campaigns and analyze market conditions in order to determine customer needs and preferences.

[The beneficiary] will also focus on assessing and evaluating Southern California's (and neighboring states) construction industry for appropriate growth and expansion strategies. The objectives of this being to identify: A) expansion opportunities in current market locations B) appropriate and profitable addition to the current fleet (growth) C) expansion of ground engaging attachments D) possible new product lines E) geographic expansion for strategically placed satellite yards.

[The beneficiary] will also be responsible for establishing a marketing strategy and streamlining marketing activities to increase market awareness in established markets and make plans for market entry strategies in new markets. He will also spend an appropriate amount of time on reviewing budgets and financial reports on a monthly basis in order to ensure that budget objectives are being met and to streamline the operation to reach its optimum profit and growth. Because of [the beneficiary's] extensive experience with the parent company which parallels this position he is being transferred to ensure that the same company standards are used in the sales/marketing and budgeting approach as have been and are used by the parent company. . . .

As can be seen from the above information, [the beneficiary] as executive Marketing/sales/budget manager has an assignment within branch in which he manages a department as well as supervises and controls the work of other supervisory employees. He has the authority to hire and fire those that are underneath him on the organizational chart as well as exercises discretion over the day to day activities over which he has authority. . . .

The petitioner submitted a revised organizational chart for the U.S. entity which includes the beneficiary's position of market research/budget manager over the sales manager and sales staff, who are now identified as "regional sales managers." The remainder of the organizational chart is essentially unchanged. Counsel noted in her letter that the sales manager, who receives an annual salary of \$85,000, supervises the two sales personnel, liaises with the dispatch manager, and will report to the beneficiary. Counsel indicated that the "regional sales managers" are responsible for sales within their assigned geographic area and receive salaries between \$40,000 and \$60,000 "according to experience."

The director denied the petition concluding that the petitioner had failed to establish that the beneficiary would be employed by the U.S. entity in a managerial or executive capacity. The director observed that although the beneficiary would have three employees under his supervision, none of them would be performing managerial or professional duties. The director further found that "duties such as developing a market strategy and streamlining marketing activities [are] tasks necessary to provide a service or produce a product." The director determined that the beneficiary would at most be a first-line supervisor and found that his daily activities would not be primarily managerial or executive in nature. Finally, the director determined that the U.S. entity does not have the "organizational complexity" to support the beneficiary in a managerial position.

On appeal, counsel for the petitioner asserts that the director erred by determining that the beneficiary must supervise professionals in order to be considered a manager for purposes of this visa classification. Counsel asserts that the director incorrectly determined that the beneficiary would not supervise managerial personnel and emphasizes that all three of the beneficiary's proposed subordinates are managers. Finally, counsel emphasizes that the beneficiary is being transferred to the United States to oversee marketing, sales and budgeting activities associated with the petitioner's expansion. Counsel asserts that the economic value and importance of these activities should be considered when determining whether the beneficiary will be employed in a managerial capacity.

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary will be employed by the U.S. entity in a primarily managerial capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). 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 either in an executive or managerial capacity. *Id.*

The initial job description submitted by the petitioner was brief and lacking in detail, and failed to establish that the beneficiary would be performing managerial duties in the United States. The AAO notes that the focus of the initial job description was clearly on the beneficiary's responsibility for analyzing budgetary matters and preparing and analyzing budgetary requests, as well as performing market research and identifying new locations for the expansion of the petitioner's operations. Such duties suggested that the beneficiary would perform duties similar to that of a budget analyst and market research analyst, and would likely hold a specialized role with responsibility for supporting and making recommendations to management on budgeting and marketing matters. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and

(B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Accordingly, the initial job description did not establish that the beneficiary would be employed in a managerial capacity, other than in position title. Notably, there was no reference in the initial job description to the beneficiary's role in managing the entire sales organization of the U.S. company, developing marketing strategies or short- and long-term policies, or having the authority to hire and fire employees.

In its response to the director's request for further evidence, the petitioner expanded the beneficiary's duties to include sales management and supervisory duties, hiring and firing authority over subordinate employees, formulating short-term and long-term policies, and establishing a marketing strategy. At the same time, the petitioner reduced the beneficiary's role in budgeting activities to spending "an appropriate amount of time reviewing budgets: . . . on a monthly basis." In sum, the initial description appeared to have the beneficiary performing specialized budget analysis and market research tasks, while the second iteration of the job has the beneficiary instilled with authority to manage essentially all marketing and sales functions undertaken by the U.S. company.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description, and appeared to significantly change the beneficiary's level of authority and the scope of his responsibility.

Such a conclusion is further supported by a review of the petitioner's quarterly wage reports, which show that only nine of the petitioner's nineteen current employees earn a salary lower than the \$40,000 salary offered to the beneficiary. Although the petitioner indicates that the beneficiary will manage all sales staff, the AAO notes that the sales manager receives a salary in excess of \$80,000, while the "regional sales managers" also receive annual salaries between \$45,000 and \$60,000. Therefore, it does not appear that the beneficiary will be compensated at a level consistent with that of the petitioner's managerial employees. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates

correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative. In the present matter, the totality of the record does not persuasively establish that the beneficiary will actually manage the sales manager and regional sales managers as claimed by the petitioner. However, the AAO concurs with counsel that one of these employees, the sales manager, is employed in at least a supervisory capacity, and further concurs that it is not necessary for the petitioner to establish that the beneficiary will supervise professionals, as suggested by the director.

Finally, even if the AAO considers the job description submitted in response to the director's request for evidence, the later description includes a number of non-qualifying duties, and fails to specify how much time the beneficiary would allocate to them. For example, the petitioner indicated that the beneficiary will analyze sales statistics, analyze market conditions to determine customer needs and preferences, and assess and evaluate Southern California's construction industry. These duties suggest that the beneficiary would be responsible for routine market research and analysis tasks, rather than managing or overseeing the performance of these tasks by subordinate personnel, particularly since the petitioner does not currently employ any marketing staff. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's 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). However, given the petitioner's initial job description, which, as discussed above, was limited to the beneficiary's performance of budget analysis and market research tasks, it is reasonable to conclude that these non-qualifying duties would be among the beneficiary's primary duties. Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. The word "primarily" is defined as "at first," "principally," or "chiefly." *Webster's II New College Dictionary* 877 (2001). Where an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, that individual cannot also be "principally" or "chiefly" performing managerial or executive duties.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive position in the United States. For this reason, the appeal will be dismissed.

The second issue in this matter is whether the petitioner established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

In an October 9, 2004 letter submitted in support of the petition, the president of the foreign entity stated that the beneficiary has been employed with the New Zealand parent company since September 2001 in the capacity of market research and budget manager, and had been "employed by the company in various positions begin [sic] trained and groomed" for the position.

On November 22, 2004, the director issued a request for additional evidence, in part instructing the petitioner to submit: (1) a more detailed description of the beneficiary's duties, including the beneficiary's specific duties and the percentage of time the beneficiary spends on each of the listed duties; and (2) a copy of the foreign company's organizational chart identifying the beneficiary's position and all employees under the

beneficiary's supervision by name and job title; and (3) brief descriptions of the job duties, educational level and annual salaries for all employees under the beneficiary's supervision.

In a response dated December 1, 2004, counsel for the petitioner provided the following description of the beneficiary's employment with the foreign entity:

As Marketing Manager [the beneficiary] performed the following duties:

- 1) Marketing Strategy and development – [the beneficiary] spent 25% of his time in this area. He managed and oversaw all sales and marketing activities including developing, marketing strategy, marketing mix, directing and controlling sales staff and sales programs to streamline marketing functions. Provided suggestions and alternatives to general manager.
- 2) Research and Analysis – [the beneficiary] spent 25% of his time in this area. He analyzed internal and external sales statistics to formulate long and short term, projections, goals and sales policies taking into account budgeting issues and concerns. He analyzed market conditions to determine customers needs, expectation and performance. He created sales reports for upper management as well as provided information to assist in decision making. He analyzed feedback for future alterations.
- 3) Goals and Performance – [the beneficiary] spent %15 [sic] of his time setting goals and quotas for individual sales personnel, tracking sales performances. He provided direction to sales personnel and branch managers. He ensured individual direct sellers project and emphasized desired messages and values to customers.
- 4) Advertising and Promotion – [the beneficiary] spent %35 [sic] of his time in the development and implementation of advertising and promotional activities. He developed outlines and briefs for advertisements and events, oversaw marketing assistant in the design and formatting of advertisements and promotional items. He also oversaw the organizing of promotion events such as branch openings, sporting events to ensure that the desired image and messages were projected to existing and potential customers.

The petitioner submitted an organizational chart for the foreign entity which depicts the beneficiary as marketing manager, reporting to the "[REDACTED]." Under the beneficiary's supervision are a "Sales Manager/Rep," a marketing assistant, and two sales representatives. Counsel for the petitioner provided the following job descriptions for the beneficiary's subordinates:

- 1) Sales manager: this individual is directly in charge of sales representatives. He provides direction to sales representatives. Provides information to assistant marketing manager. Assigns tasks to marketing assistant. Provides reports and market trends and behavior as well oversees branch manager and sales representatives pricing and performance. Is directly answerable to and works under the Marketing Manager.

- 2) Marketing Assistant: Performs tasks and duties for Marketing Manager and Sales Manager. Performs data collection, basic analysis, formatting and data base collection.
- 3) Sales Representatives: is on the road selling in the field. Performs customer relations. Works along side branch manager. Works with new or existing customers. Has designated regions. Also responsible for providing market feedback to sales manager.

On December 14, 2004, the director denied the petition, concluding that the petitioner did not establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. The director noted that the beneficiary's job description included several non-qualifying duties and concluded that the position description failed to establish that his position with the foreign entity is in a primarily managerial or executive capacity. The director further acknowledged the beneficiary's subordinates with the foreign entity, but determined that none of them are performing managerial or professional duties.

On appeal, counsel for the petitioner contends that the director mischaracterized the nature of the beneficiary's duties with the foreign entity as non-qualifying and asserts that "the beneficiary's core activities . . . are much more related to the managerial activities of the business as opposed to the operational activities." Counsel acknowledges that the beneficiary spent some time analyzing, developing and implementing marketing and advertising strategies, but asserts that the sales staff and marketing assistant "perform the hands on duties even of research, marketing activities, etc., which the beneficiary managed and oversaw and reported."

Counsel further asserts that the director erred by finding that the beneficiary does not supervise professional or managerial personnel, noting that the beneficiary need not supervise professionals in order to qualify for the benefit sought. Counsel emphasizes that one of the beneficiary's subordinates, the sales manager, is employed at the managerial or supervisory level.

Upon reviewing the petition and the evidence, the petitioner has not established that the beneficiary has been employed in a managerial capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). 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 either in an executive or managerial capacity. *Id.*

As a preliminary matter, the AAO notes that the petitioner initially indicated that the beneficiary's role with the foreign entity is as a "Market Research and Budget Manager" and in response to the director's request for evidence, identified the beneficiary as the foreign entity's "Marketing Manager." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner did not initially submit an organizational chart for the foreign entity, nor did it provide a job description for the beneficiary's current position. The foreign entity's president, however, implied in his October 9, 2004 letter that the position is similar to that offered in the United States, which was described as including budget analysis and market research duties.

In response to the director's request for evidence, the petitioner submitted a description of the beneficiary's duties accompanied by a new job title and an organizational chart. Although the beneficiary's job title was initially identified as "market research and budget manager," the job description ultimately provided in response to the director's request for evidence makes no reference to any duties related to the company's budget activities. Considered with the unexplained change in the beneficiary's job title, the response to the request for evidence suggests an attempt by the petitioner to conform the beneficiary's job description to the requirements for this visa classification. Again, when responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition: *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Nevertheless, it is not possible to determine from the description provided whether the beneficiary's duties are primarily managerial duties or whether the duties involve the routine daily tasks associated with sales and market research. The position description provided does not sufficiently demonstrate that the beneficiary's tasks are the high-level responsibilities that are specified in the definition of managerial capacity. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

For example, the petitioner states that the beneficiary devotes 35 percent of his time to "advertising and promotion" including developing advertisements, organizing promotion events and ensuring that the company's "desired image and messages" were projected to existing and potential customers. Although the petitioner indicated that the marketing assistant would "format" advertising and promotional items, the remainder of the advertising and promoting function, including non-qualifying duties associated with the function, appears to be the direct responsibility of the beneficiary. The petitioner indicated that the beneficiary devotes an additional 25 percent of his time to analyzing sales statistics in support of sales goals, analyzing marketing conditions to determine customer needs, creating sales reports and other information for upper management, and analyzing customer feedback. Again, the marketing assistant is described as performing "basic analysis" and data collection, but has not been shown to relieve the beneficiary from devoting a significant portion of his time to non-managerial market research tasks. Overall, these responsibilities, which account for 60 percent of the beneficiary's time, have not been shown to be managerial in nature. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

With respect to the beneficiary's supervisory authority, the AAO notes that the petitioner indicated that the beneficiary devotes 15 percent of his time to providing direction to sales personnel and branch managers, including responsibility for setting goals and quotas and tracking sales performance. The sales manager is also described as performing essentially the same supervisory duties, as well as apparently sharing responsibility with the beneficiary for assigning tasks to the marketing assistant, while receiving a higher salary than the beneficiary. The petitioner's organizational chart doesn't depict either the beneficiary or the sales manager as having supervisory authority over the company's branch managers, as claimed by the petitioner. Again, the petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective

evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has presented a confusing account of the reporting structure within its sales and marketing function that does not persuasively establish that the beneficiary devotes a significant portion of his time to supervising managerial, professional or supervisory positions within the foreign organization. *See* § 101(a)(44)(A)(ii) of the Act.

The petitioner indicated that the remaining 25 percent of the beneficiary's time is allocated to "marketing strategy and development" including managing and oversight of "all sales and marketing activities" including "developing marketing strategy, marketing mix," "directing and controlling sales programs to streamline marketing functions" and providing suggestions and alternatives to the general manager. The petitioner failed to define the beneficiary's marketing strategies, identify the specific tasks the beneficiary performs to "oversee" marketing and sales activities, indicate how the beneficiary controls the "streamlining of marketing functions," or explain the general manager's role with respect to the marketing function. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Overall, the inconsistent job titles provided for the beneficiary, the non-qualifying duties included in the job description, the apparent overlap in responsibilities between the beneficiary and the sales manager, and the lack of specificity in describing the beneficiary's responsibilities overall precludes a finding that the beneficiary is currently employed in a primarily managerial position with the foreign entity. For this reason, the appeal will be dismissed.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.