

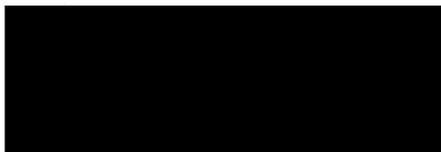
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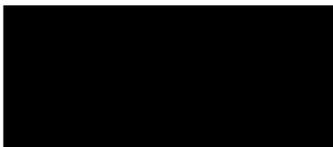
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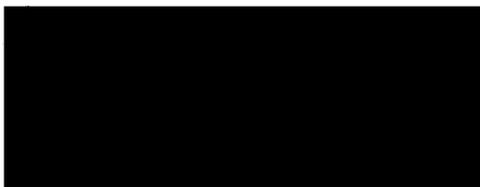
FILE: SRC 05 119 50100 Office: TEXAS SERVICE CENTER Date: **OCT 04 2006**

IN RE: Petitioner:  
Beneficiary:



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, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a Florida corporation, claims to be in the business of rental maintenance. The petitioner states that it is an affiliate of South Croft Stables located in the United Kingdom. Accordingly, the United States entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Act as an executive or manager. The petitioner seeks to employ the beneficiary as its operation department manager for a two-year period.

The director denied the petition concluding that the record contains insufficient evidence to demonstrate the following requirements: (1) that the beneficiary has been employed in a managerial or executive capacity by the foreign entity; and (2) that the beneficiary will be employed in a primarily executive or managerial capacity by the U.S. company.

On appeal, counsel for the petitioner states that the beneficiary was employed in a managerial capacity with the foreign company and will continue to be employed in a managerial capacity with the U.S. entity. Counsel for the petitioner also asserts that the position held by the beneficiary in the United States will not be a first-line supervisor since she will supervise five managers who in turn each supervise two employees. Counsel submits a brief and supporting documentation in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further 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 to be addressed in this proceeding is whether the petitioner has established that the beneficiary has been employed in a primarily managerial or executive capacity by the foreign entity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The instant petition was filed on March 18, 2005. In the support letter dated March 17, 2005, the petitioner states the beneficiary's duties in the position as general manager of the foreign company as the following:

For the past two years she [the beneficiary] has been the General Manager for the stable, she rose to this position when [REDACTED] transferred to head the US affiliate. As General manager she was responsible for management of the day-to-day operations of the company including oversight of all staff.

In addition, the petitioner submitted the beneficiary's resume. The beneficiary described on her resume her duties as general manager for the foreign entity to include the following:

- Assist in developing strong customer relations.
- Responsible and accountable for organising and achieving staff daily targets.
- Manage local programs by planning and implementing ongoing sales and promotional activities,
- Insure customer service by establishing specific service standards.
- Manage and oversee stock levels on a daily basis.

On March 31, 2005, the director determined that the petitioner did not submit sufficient evidence to process the petition. The director requested that the petitioner submit additional evidence in support of its petition. Specifically, the director requested a definitive statement describing the foreign employment of the beneficiary, including the number of employees who report directly to the beneficiary and a brief description of their job titles and duties and educational background. In addition, the director requested an organizational chart for the foreign company listing the titles, positions and education of each employee.

In a response to the director's request, dated April 6, 2005, the petitioner submitted the foreign entity's organizational chart indicating the job title of each employee and a brief description of the job duties of each employee. The petitioner did not submit a detailed job description for the position held by the beneficiary with the foreign entity as requested by the director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner indicated that the beneficiary supervises an administration manager, a maintenance manager and a care and feeding manager and that each manager in turn supervises a subordinate staff.

The director denied the petition on April 20, 2005 on the ground that the petitioner did not establish that the beneficiary has been employed in a primarily managerial or executive capacity with the foreign company.

The petitioner submitted an appeal on May 19, 2005. On appeal, counsel for the petitioner asserts "the foreign organizational chart shows the beneficiary currently supervises three managers who each supervise two employees." In addition, counsel for the petitioner states that the "original Petition clearly contained a letter from [the petitioner] detailing the job duties of the beneficiary in the foreign organization."

Counsel's assertions are not persuasive. Upon review, the petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive 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)(iii).

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states vague duties such as the beneficiary will be "responsible for management of the day-to-day operations of the company including oversight of all staff," "responsible and accountable for organizing and achieving staff daily targets," and "insure customer service by establishing specific service standards." The petitioner did not, however, define the petitioner's goals and policies, or clarify the role of the marketing, operational, and personnel functions that the beneficiary will supervise. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of her daily routine. 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). The petitioner's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature.

The job description also includes several non-qualifying duties such as the beneficiary will "manage local programs by planning and implementing ongoing sales and promotional activities," and "manage and oversee stock levels on a daily basis." It appears that the beneficiary will be providing the services of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I & N Dec. 593, 604 (Comm. 1988).

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 at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

As noted above, in the request for evidence, the director requested that the petitioner submit a definitive statement describing the foreign employment of the beneficiary. The petitioner failed to submit this document in its response. This evidence is critical as it would have established if the beneficiary held a position of managerial or executive capacity by the foreign 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). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In the instant matter, the petitioner did not submit a detailed job description of the duties performed by the beneficiary at the foreign company and thus AAO cannot determine if the beneficiary was employed by the foreign entity in a managerial or executive capacity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, counsel for the petitioner asserts that the "foreign organizational chart shows the beneficiary currently supervises three managers who each supervise two employees." Although the petitioner claims that the beneficiary supervised managers or supervisors, the petitioner did not submit any documentation as to whether these employees are actually hired by the company. Although the petitioner submitted an organizational chart indicating the managers supervised by the beneficiary, the petitioner did not identify these employees by name and the record contains no evidence that would support that the foreign entity employs the claimed employees. The petitioner did not provide any financial documents for the foreign entity which would show salaries paid to the employees such as pay statements, tax forms, or financial statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Furthermore, a critical analysis of the nature of the petitioner's business undermines the petitioner's assertion that the beneficiary is "responsible for the management of the day to day operations of the company." If the beneficiary has supervisory control over such functions, it is unclear who will for example actually handle the day-to-day administrative operations of the foreign company. The petitioner claims that the only subordinates assisting the beneficiary is the administration manager, care and feeding manager and maintenance manager who appear to provide assistance with the administrative tasks, maintenance and care of the animals. However, as noted above, it is unclear if these employees are in fact hired by the foreign entity, and even if the claimed employees are in fact hired by the foreign entity, it is unclear if the positions are full-time or part-time positions. Moreover, the petitioner has not explained how the services of the subordinate employees obviate the need for the beneficiary to primarily conduct the petitioner's business. Therefore, although the petitioner claims the beneficiary is in charge of these functions, it must be evident from the record that the beneficiary does not actually perform many of the tasks that she has been assigned to oversee. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Based upon the lack of a comprehensive job description, the lack of evidence of the company's staffing levels, and the minimal evidence submitted regarding the business activities of the foreign entity, it cannot be concluded that the beneficiary has been employed by the foreign entity in a managerial or executive capacity.

The second issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

The nonimmigrant petition was filed on March 18, 2005. The Form I-129 indicates that the beneficiary will be employed in the position of operation department manager for the petitioner, which claimed to have four employees. The beneficiary's proposed duties in the U.S. are described as the following:

As manager of the Operations Department [the beneficiary] will be responsible for managing and directing day-to-day operations of the department, specifically responsible for hiring, training, scheduling, and supervising all staff and subcontract labor, for managing

day-to-day administrative and customer services functions for the department. Also responsible for developing the department and implementing marketing programs to grow the departments [sic] customer base. She will also be the company's liaison with Contempo Florida Holidays, Inc. and the subcontract providers used by the department.

In addition, the petitioner submitted an employment agreement dated February 1, 2005 between the petitioner and the beneficiary. The agreement describes the beneficiary's duties as the following:

As the Operations Manager you will manage the Operations Department of the company. The Operations Department is responsible for managing sixty two villas owned by foreign investors by contract with Contempo Florida Holidays, Inc. As Operations Manager of the Department you will be directly responsible for managing and directing the various department managers, their supporting staff and subcontracting labor. You are also specifically responsible for hiring, training, scheduling and supervising all staff and subcontract labor. You will also be responsible for implementing marketing programs to grow the departments customer base, therefore bring onboard additional home for management.

On March 31, 2005, the director determined that the petitioner did not submit sufficient evidence to process the petition. The director requested that the petitioner submit additional evidence in support of its petition. Specifically, the director requested an explanation of how the duties of the beneficiary will be executive in nature and how the beneficiary will not perform the day-to-day functions of the company. In addition, the director requested a copy of the organizational chart for the U.S. company, including the title position description and educational level for each employee, as well as evidence that the beneficiary will manage other managers or professionals.

In a response dated April 6, 2005, the petitioner submitted the organizational chart of the U.S. company. However, the petitioner did not submit job duties or the educational background of any employee as requested by the director. The petitioner indicated that the beneficiary's proposed duties in the U.S. entity would be the following:

In the US [the beneficiary] will manage the Operations Department of the company. The Operations Department is responsible for managing sixty two vacation villas owned by foreign investors by contract with Contempo Florida Holidays, Inc.

As Manager of the Operations Department [the beneficiary] will be responsible for managing and directing the various departmental managers, their supporting staff and subcontracting labor. She is also specifically responsible for hiring, training, scheduling and supervising all staff and subcontract labor as shown in the organizational chart on the following page.

The petitioner submitted an organizational chart for the U.S. entity. The organizational chart indicates the president supervises the beneficiary as the operations manager. The beneficiary supervises the housekeeping manager, the maintenance manager, the landscaping manager, the pest control manager and the reservations manager. The housekeeping manager supervises two cleaners; the maintenance manager

supervises two pool technicians; the landscaping manager supervises two landscapers and the reservation manager supervises one employee as administration and one employee in reservations. The organizational chart indicates 15 employees including the beneficiary. The petitioner indicated on the Form I-129 that the U.S. entity had four employees. The petitioner does not explain the discrepancy between the Form I-129 and the organizational chart submitted in response to the director's request for additional information. 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 director denied the petition on April 20, 2005 on the ground that insufficient evidence was submitted to demonstrate that the beneficiary performed managerial duties abroad, and that the beneficiary will be employed in a primarily executive or managerial capacity by the U.S. company. The director noted that the petitioner did not submit sufficient evidence to demonstrate that the subordinate employees supervised by the beneficiary at the foreign company are professional or managerial positions. In addition, the director noted that it is unclear if the individuals listed in the U.S. organizational chart are currently employed by the U.S. company, and the petitioner did not provide evidence describing the duties or educational background of the managers supervised by the beneficiary.

The petitioner submitted an appeal on May 19, 2005. On appeal, the petitioner submits letters from five individuals who identify themselves as the petitioner's landscaping manager, housekeeping manager, maintenance manager, reservations manager and pest control manager, indicating their job duties and the employees they supervise. This information was initially requested by the director, however, the petitioner failed to provide this information in its response. The petitioner now submits the remainder of the requested evidence on appeal, but has failed to explain why these documents were not previously available.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

In addition, counsel for the petitioner asserts that the beneficiary will hold a managerial position in the United States since the beneficiary is responsible for five departments within an organization; the beneficiary will supervise five managers who are responsible for a department within the organization; the beneficiary shall be responsible for and has full discretionary authority over the managers and is responsible for hiring and firing of new employees; and the beneficiary is not a first-line supervisor since the beneficiary supervises five managers.

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive 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(l)(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 definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. An employee who "primarily" performs the tasks necessary to produce a product or provide a service is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I & N Dec. 593, 604 (Comm. 1988).

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states vague duties such as the beneficiary will be: "responsible for managing and directing day-to-day operations of the department, specifically responsible for hiring, training, scheduling, and supervising all staff and subcontract labor, for managing day-to-day administrative and customer service functions for the department." In addition, the job description of the beneficiary included non-managerial duties such as: "developing the department and implementation marketing programs to grow the departments customer base," and "be the company's liaison with Contempo Florida Holidays, Inc. and the subcontract providers used by the department." The petitioner did not, however, define the petitioner's goals and policies, or clarify the role of the marketing, operational, and personnel functions that the beneficiary will supervise.

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of her daily routine. 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). The petitioner's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature.

The job description also includes several non-qualifying duties such as the beneficiary will be "responsible for implementing marketing programs to grow the departments customer base, therefore bringing onboard additional homes for management." It appears that the beneficiary will be marketing the services of the business rather than directing such activities through subordinate employees. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties are managerial in nature, and what proportion are actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

According to the petitioner's statement on Form I-129, the U.S. company has four employees. However, in the organizational chart submitted by the petitioner, the U.S. company appears to have fifteen employees. The petitioner has not presented any evidence to document the existence of these additional employees. The petitioner has not submitted any evidence of hiring these employees such as payroll statements, Forms W-2 or W-3, quarterly wage reports or tax returns. Thus, it has not been established that the listed employees are even employed by the petitioner. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I & N Dec. 190 (Reg. Comm. 1972)).

Based on the vague job description submitted with the petition, and considering the petitioner's failure to document the employment of any other workers as of the date of filing, the director reasonably concluded that the petitioner has failed to demonstrate that the beneficiary would be primarily performing managerial or executive duties in her proposed position.

In addition, the petitioner submitted an organizational chart for the U.S. company with the original petition indicating the president supervises a controller, operations manager and sales manager. The controller supervises two employees, the sales manager supervises one employee, and the operations manager supervises two foreman and the operations staff. After the director requested a copy of the organizational chart of the U.S. entity, the petitioner then submitted a completely different organizational chart for the U.S. company. The new chart indicates a president who supervises the operations manager who in turn supervises the housekeeping manager, maintenance manager, landscaping manager, pest control manager and reservation manager, who in turn supervise a supporting staff consisting of cleaners, pool technicians, landscapers, administration and reservations employees. The initial organizational chart indicates that the beneficiary will only supervise one department, however, the subsequent organizational chart indicates that the beneficiary will supervise five departments. The two charts are completely inconsistent. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Although the petitioner submitted letters from five of its claimed managers on appeal, the submitted letters do not establish the U.S. company's employment of these individuals as of the date of filing, as they are not accompanied by payroll records or other evidence of wages paid by the petitioner. Further, a review of CIS records reveals that three of the five individuals who provided letters in support of the appeal were beneficiaries of nonimmigrant petitions filed by other U.S. employers. Accordingly, the evidence submitted is not credible and will not be given any weight in this proceeding. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. See, e.g. *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5<sup>th</sup> Cir. 1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C. 1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

On appeal, counsel for the petitioner asserts that the beneficiary carries out the "essential function" of the subsidiary, and contends that it is therefore not necessary for the beneficiary to supervise employees.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

Beyond the required description of the job duties, CIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operations duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In the case of a function manager, where no subordinates are directly supervised, these other factors may include the beneficiary's position within the organizational hierarchy, the depth of the petitioner's operations, the indirect supervising of employees within the scope of the function managed, and the value of the budgets, products, or services that the beneficiary manages.

As discussed above, the beneficiary's job description is too vague to establish that she would perform primarily managerial or executive duties, and appears to include non-qualifying duties associated with the petitioner's day-to-day functions. The petitioner has not provided evidence that it employs any other employees, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to operating the business. The fact that the beneficiary has been given a managerial job title and general oversight authority over the business is insufficient to elevate her position to that of a "function manager" as contemplated by the governing statute and regulations. Based on the foregoing discussion, the petitioner has not established the beneficiary will be employed in the U.S. in a managerial or executive capacity.

Beyond the decision of the director, the minimal documentation of the foreign entity's business operations raises the issue of whether the foreign company is still doing business so that a qualifying relationship exists pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner indicates that it is affiliate of South Croft Stables, a United Kingdom partnership, based on common ownership and control by the same individuals, [REDACTED] and [REDACTED]. The only documents submitted to establish the ongoing activities of the foreign entity are [REDACTED] statements for a United Kingdom-based account, addressed to [REDACTED] at the petitioner's U.S. address. The bank statements do not demonstrate any business activities, and are insufficient to establish that the foreign entity is a qualifying organization for the purposes of this visa classification. [REDACTED] is employed by the U.S. company in L-1 status, and [REDACTED], her spouse, has been granted L-2 status and appears to reside

in the United States. The lack of evidence of business activity for the foreign entity and the presence of both owners of the foreign entity in the United States raises questions regarding the current and ongoing existence of the foreign entity as a qualifying organization. For this additional reason, the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied 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 entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.