

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

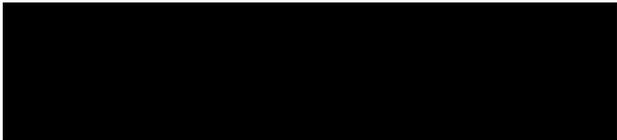
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3000  
Washington, DC 20529



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

**PUBLIC COPY**

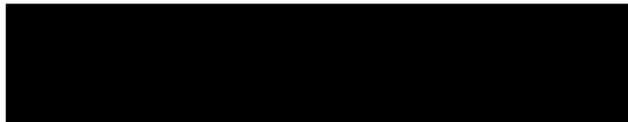
87



File: WAC 06 133 53049 Office: CALIFORNIA SERVICE CENTER Date:

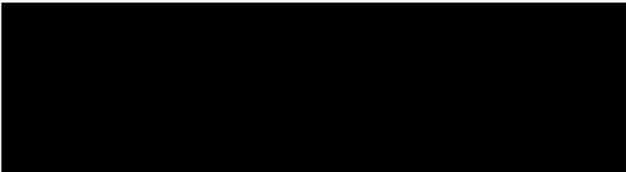
**OCT 02 2007**

IN RE: Petitioner:  
Beneficiary:



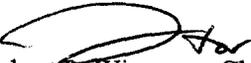
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN 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 visa petition seeking to employ the beneficiary as its "America technical support manager" 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 corporation organized under the laws of the State of Delaware and is allegedly engaged in the contactless technology business.

The director denied the petition concluding that the petitioner did not establish (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; (2) that the beneficiary has been employed abroad in a primarily managerial or executive capacity; or (3) that the petitioner has a qualifying relationship with the foreign entity.

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 to the petitioner asserts that the director erred and that the beneficiary's duties will be, and have been, primarily those of a manager. Counsel further argues that the petitioner established that it has a qualifying relationship with the foreign employer. Counsel submits a brief and additional evidence, including evidence purporting to establish that the foreign entity owns and controls the petitioner.

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 beneficiary will be employed by the United States entity in a primarily managerial capacity.<sup>1</sup>

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 beneficiary's proposed job duties were described in a letter from the foreign entity dated March 17, 2006 as follows:

[The beneficiary] will be responsible for establishing U.S. sales operations, including the hiring of professional staff for the Technical Support Team. Additionally, [the beneficiary] will supervise and coordinate all technical issues with respect to U.S. sales of [the organization's] products. He will report directly to the U.S. General Manager. [The beneficiary's] responsibilities will include the following:

- Establish and manage American Technical Support Team to provide pre and post sales support to the American Sales [T]eam and their customers;
- Direct Technical Support Team in providing support to customers for integration and

---

<sup>1</sup>Because counsel specifically limits the beneficiary to the managerial classification, the AAO will not consider the executive classification.

use of [the organization's] products, including training and diagnostic analysis of technical problems;

- Oversee Technical Support Team support to Sales Team in promoting sales of new products from our product range;
- Lead Technical Support Team in interface between customers and Product Development at corporate headquarters in France where necessary;
- Direct Technical Support Team interface with Product Development Team with respect to products and technologies unique to and required by the American market;
- Prepare reports for senior management and Research and Development regarding hardware issues encountered in the field.

On April 3, 2006, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties, an organizational chart, and wage reports.

In response, the petitioner submitted a letter dated April 30, 2006 further elaborating on the beneficiary's proposed job duties as follows:

- Establish and oversee the American Technical Support Team in accordance with business opportunities, establishing job descriptions and setting forth responsibilities;
- Manage American Technical Support Team to provide pre and post sales support to the American Sales [T]eam and their customers;
- Direct Technical Support Team in providing support to customers for integration and use of [the organization's] products, including training and diagnostic analysis of technical problems;
- Meet with our key American customers on a routine basis to better understand their technical needs and concerns;
- Interface internally with sales, and product development, production and quality control departments at our headquarters in France;
- Oversee Technical Support Team support to Sales Team in promoting sales of new products from our product range;
- Lead Technical Support Team in interface between customers and Product Development at corporate headquarters in France where necessary;
- Direct Technical Support Team interface with Product Development Team with

respect to products and technologies unique to and required by the American market;

- Prepare reports for senior management and Research and Development regarding hardware issues encountered in the field.

The petitioner also supplied a separate "job description" in which the beneficiary is generally described as working with customers and setting up the technical support team.

Finally, the petitioner submitted an organizational chart for the United States operation and wage reports. The organizational chart shows the beneficiary reporting to an "Americas" sales employee who, in turn, reports to a "corporate sales" employee. The beneficiary is not portrayed in the chart as having a supervisory function. The wage reports indicate that, in the month the petition was filed, the petitioner employed one person, the beneficiary's proposed direct supervisor. At the time the petition was filed, the petitioner did not employ any members of the technical support team which the beneficiary is being hired to supervise.

On May 15, 2006, the director denied the petition. The director concluded, *inter alia*, that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary's duties are primarily those of a manager.

Upon review, the petitioner's assertions are not persuasive.

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.* In this matter, the petitioner has asserted that the beneficiary will be employed in a primarily managerial capacity.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary will act in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will direct, oversee, and lead a "technical support team." However, the record indicates that the petitioner does not employ a "technical support team." Other than hiring employees and serving customers directly, the record does not clearly establish what the beneficiary will do on a day-to-day basis. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, most of the duties listed by the petitioner appear to be non-qualifying administrative or operational tasks which do not rise to the level of being managerial in nature. For example, the petitioner states that the beneficiary will meet with customers, hire employees who will perform the tasks necessary to provide a

service, and, eventually, supervise hypothetical employees who have not been proven will be supervisory, managerial, or professional workers (*see infra*). Instead, these duties constitute non-qualifying administrative or operational tasks. As the organizational chart fails to identify any employees who will relieve the beneficiary of the need to perform services for customers and other non-qualifying tasks, it must be concluded that he will perform these tasks. It is important to note that the petitioner, as a fully-formed business entity organized in 2002, must establish that the beneficiary will be employed primarily as a manager *immediately* upon his arrival in the United States. Even if the petitioner plans to hire subordinate employees in the future to relieve the beneficiary of the need to perform some non-qualifying tasks, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Therefore, for the reasons outlined above, it cannot be confirmed that the beneficiary will be "primarily" employed as a manager immediately upon his arrival in the United States or even after the "technical support team" is hired. 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).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As explained in the organizational chart and wage reports, the beneficiary will not supervise or control any employees upon his arrival in the United States. Therefore, for this reason alone, the petitioner has not established eligibility under this criterion. Moreover, even assuming that the petitioner hires, and the beneficiary ultimately supervises, the "technical support team," it has not been established that these employees will be supervisory, managerial, or professional employees. To the contrary, it appears that these prospective employees will perform the tasks necessary to provide a service or to produce a product and, consequently, the beneficiary will be primarily their first-line supervisor. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner did not establish the skill level or educational background required to perform the duties of the prospective "technical support team," the petitioner has not established that the beneficiary will manage professional employees.<sup>2</sup>

---

<sup>2</sup>In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.<sup>3</sup>

It is appropriate for Citizenship and Immigration Services (CIS) to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g., Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will be primarily performing managerial duties, and the petition may not be approved for that reason.

The second issue in the present matter is whether the petitioner has established that the beneficiary has been employed abroad in a primarily managerial capacity.<sup>4</sup>

The beneficiary's foreign job duties were described in a letter from the foreign entity dated March 17, 2006 as follows:

[The beneficiary] has held the position of Hardware Operations Manager at [the foreign entity] since 2002. In this capacity, he has complete oversight of the technology of our products. [The beneficiary] directs the industrialization of new hardware products and subsequent technical management of the product, and thus is a functional manager. He has

---

<sup>3</sup>While the petitioner has not clearly argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. 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. 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(1)(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. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. As explained above, the record establishes that the beneficiary will be performing the function rather than managing the function. Moreover, even assuming the "technical support team" is hired, the beneficiary will serve as a first-line supervisor. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties would be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

<sup>4</sup>Because counsel specifically limits the beneficiary to the managerial classification, the AAO will not consider the executive classification.

the following responsibilities:

- Leads the APR (Preliminary Risk Analysis) for new hardware products during product development;
- Defines financial goals for the hardware team and monitor[s] progress of achieving these goals;
- Supervises training and support to hardware team;
- Negotiates with subcontractors with respect to hardware product costs and lead-time;
- Manages development of specific tooling for the final product;
- Directs testing of hardware products and validation of specifications;
- Oversees certification processes;
- Analyzing field reports on hardware products to coordinate corrective actions with Research & Development and/or subcontractors;
- Directs market research with respect to new hardware technologies for potential adaptation of [the foreign entity's] products.

As Hardware Operations Manager, [the beneficiary] interfaces with hardware subcontractors, external laboratories and customers as well as [the foreign entity's] Production and Test Engineers, Product, Packaging, Quality Assurance and Logistics teams. His position can clearly be defined as managerial in nature as he has supervisory responsibility for professionals, staff and a key department at [the foreign entity]. [The beneficiary] plans, organizes, and directs the management [of] all Hardware Operations and has full discretion to decide how best to perform these essential duties.

The petitioner also submitted a series of organizational charts for the foreign entity which place the beneficiary in the operations department under "hardware & systems." He is portrayed as supervising a "validation" employee and a "control & repair" employee. The petitioner did not provide job descriptions for the two subordinate workers.

On April 3, 2006, the director requested additional evidence. The director requested, *inter alia*, an organizational chart in which the job duties of the beneficiary's subordinate employees are described and a more detailed description of the beneficiary's duties.

In response, the petitioner submitted a letter dated April 30, 2006 which includes a description of the beneficiary's foreign duties which is identical to the description contained in the March 17, 2006 letter. The petitioner did not provide job descriptions for the beneficiary's purported subordinate employees abroad.

On May 15, 2006, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary has been employed abroad in a primarily managerial or executive capacity.

On appeal, counsel to the petitioner asserts that the beneficiary has been employed abroad in a primarily managerial capacity. In support of this assertion, the petitioner submitted additional evidence regarding his job duties abroad and the responsibilities of his subordinate employees. Furthermore, counsel argues that the director erred in failing to consider whether, alternatively, the beneficiary had been employed abroad in a capacity which involved specialized knowledge.

Upon review, the petitioner's assertions are not persuasive.

As a threshold issue, it must be noted that the petitioner's attempt to supplement the record on appeal with additional information regarding the duties of the beneficiary and his subordinate employees abroad was inappropriate and will not be considered by the AAO. 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 Request for Evidence clearly requested a more detailed description of the beneficiary's duties abroad and "a brief description of job duties, educational level and annual salaries" for all employees under the beneficiary's supervision abroad. 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). The appeal will be adjudicated based on the record of proceeding before the director.

Moreover, counsel's assertion that the director was obligated to determine whether the beneficiary had been employed abroad in a capacity involving specialized knowledge is completely without merit. The petitioner clearly asserted in the letter dated March 17, 2006, which was appended to the initial petition, that the beneficiary had been a "functional manager." The petitioner does not even assert in the alternative that the beneficiary was employed in a capacity involving specialized knowledge. On appeal, 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 the associated job responsibilities. The petitioner must establish that the beneficiary's position merits classification as a managerial, executive, or specialized knowledge position at the time the petition was filed. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. at 249. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Regardless, the petitioner failed to identify any specialized or advanced body of knowledge which would distinguish the beneficiary's role from that of other workers employed by the petitioner or in the industry at large. Going on record without 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). Specifics are clearly an important indication of whether a beneficiary's duties involved specialized knowledge; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *See Fedin Bros. Co., Ltd. v. Sava*, 724, F. Supp. 1103, *aff'd*, 905 F.2d 41.

Once again, 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) and (iv). The petitioner's

description of the job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were either in an executive or managerial capacity. *Id.* In this matter, the petitioner has asserted that the beneficiary was employed in a primarily managerial capacity.

The petitioner's description of the beneficiary's job duties has failed to establish that the beneficiary acted in a "managerial" capacity. In support of its petition, the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner states that the beneficiary led, managed, and directed the processes related to the development of products and their technical management. However, the record is devoid of any explanation regarding the identities, duties, or skill levels of the "hardware team" which the beneficiary was purportedly leading. Moreover, the petitioner failed to explain how the beneficiary was being relieved of the need to perform the non-qualifying tasks inherent in such duties as "directs testing of hardware products," "manages development of specific tooling," "analyzes field reports," "directs market research," and "negotiates with subcontractors." As explained above, the organizational chart for the foreign entity, which does not include job descriptions, only identifies two employees as being subordinate to the beneficiary. Specifics are clearly an important indication of whether a beneficiary's duties are primarily managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, *aff'd*, 905 F.2d 41. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Therefore, it cannot be confirmed that the beneficiary was "primarily" employed as a manager abroad. An employee who "primarily" performed the tasks necessary to produce a product or to provide services is not considered to have been "primarily" employed in a managerial capacity. See sections 101(a)(44)(A) 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. at 604.

The petitioner has also failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As explained in the organizational chart, the beneficiary apparently supervised two employees abroad. However, even though the director specifically requested further evidence regarding the duties, salaries, and educational levels of these subordinate workers, the record is devoid of any evidence establishing that these workers were supervisory, managerial, or professional in nature. 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). Therefore, for this reason alone, the petition must be denied. Regardless, the record establishes that, at most, the beneficiary was employed as a first-line supervisor of non-professional employees. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. 101(a)(44)(A)(iv) of the Act; see also *Matter of Church Scientology International*, 19 I&N Dec. at 604. Furthermore, the petitioner has not established that the beneficiary managed an essential function of the organization. The term "function manager" applies generally when a beneficiary did not supervise or control the work of a subordinate staff but instead was primarily responsible for managing an "essential function" within the organization. See *supra*. As explained previously, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary managed the function rather than performed the duties related to the function. In this matter, the petitioner has not provided evidence that the beneficiary managed an essential function. As explained above, the record is devoid of evidence that the beneficiary was relieved by a subordinate staff of the need to perform the non-

qualifying tasks inherent to his function. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties were managerial, nor can it deduce whether the beneficiary was primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d at 24.

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary was primarily performing managerial duties abroad, and the petition may not be approved for this reason.

The third issue in the present matter is whether the petitioner has established that it has a qualifying relationship with the foreign entity.

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

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.

Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." A "subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity."

In this matter, the petitioner, a corporation, asserts that it is 100% owned by the foreign employer. In support, the petitioner submitted an "attestation" signed by the *directeur general* of the foreign entity stating that the petitioner is 100% owned by the foreign entity as well as a copy of the petitioner's Delaware certificate of incorporation.

On April 3, 2006, the director requested additional evidence. The director requested, *inter alia*, copies of stock certificates, the petitioner's stock ledger, and proof of stock purchase by the foreign entity.

In response, the petitioner did not provide any of the evidence requested by the director regarding its ownership and control by the foreign entity, although the petitioner did submit a copy of its 2005 federal tax return in which the petitioner avers that it is 100% owned by the foreign entity.

On May 15, 2006, the director denied the petition. The director concluded that the petitioner failed to establish that it has a qualifying relationship with the foreign entity.

On appeal, counsel asserts that the record sufficiently establishes the existence of a qualifying relationship. Counsel also seeks to supplement the record on appeal with further evidence allegedly establishing that the foreign entity and the petitioner are qualifying organizations.

Upon review, the petitioner's assertions are not persuasive.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes

of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595. The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 214.2(1)(3)(viii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the self-serving averments of the petitioner and the foreign entity and request additional evidence such as paper stock certificates, stock ledgers, and the means by which stock ownership was acquired.

In this matter, the director's Request for Evidence was entirely appropriate, and the petitioner chose not to provide the requested evidence regarding its ownership and control. 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). Moreover, the petitioner's attempt to supplement the record on appeal with additional evidence regarding the petitioner's ownership and control was inappropriate and will not be considered by the AAO. 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; *Matter of Obaigbena*, 19 I&N Dec. 533. The appeal will be adjudicated based on the record of proceeding before the director.

Therefore, as the petitioner failed to submit evidence sufficient to establish the petitioner's ownership and control, the petitioner has not established by a preponderance of evidence that it is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). As explained above, the petitioner did not submit a stock certificate or any corporate organizational documents confirming the petitioner's ownership and control.

Accordingly, the petitioner has not established that it and the foreign entity have a qualifying relationship, and the petition may not be approved for this reason.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.