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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
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File: WAC 08 252 51448 Office: CALIFORNIA SERVICE CENTER Date: **AUG 26 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting 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, a software development company, states that it is a subsidiary of the KPIT Cummins Infosystems Ltd., located in India, and an affiliate of the beneficiary's current United Kingdom employer. The petitioner seeks to employ the beneficiary in the position of account manager for a period of three years.<sup>1</sup>

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity; or (2) that the beneficiary has been employed by the foreign entity in a qualifying 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's decision does not include a "proper analysis" of the beneficiary's job duties or acknowledge the petitioner's arguments setting forth the beneficiary's qualifications as a function manager. Counsel contends that the beneficiary "has an appropriate mix of job duties, a high level of authority, and that she manages a major function of the Petitioner, working through a number of other employees, to achieve the Petitioner's goals."

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.

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<sup>1</sup> The petitioner stated on Form I-129 that the beneficiary has been offered the position of account manager for a period of three years. In a letter dated September 19, 2008, the petitioner stated that it seeks to employ the beneficiary in the position of Business Development Manager for a period of two years.

- (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 this matter is whether the petitioner established that the beneficiary has been employed by the foreign entity in a primarily managerial capacity. The petitioner does not claim 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.

In a letter dated September 19, 2008, the petitioner stated that the beneficiary has performed the following duties for the past year while employed by its affiliate in the United Kingdom:

- Independently carrying out daily interactions with the customer (Business Objects) and the [petitioner's] Offshore project team to ensure optimal running of business unit operations, creating and maintaining successful working relationships with the client support managers and the various program sponsors. This involves identifying new opportunities within the Business Objects account for revenue growth. She has also

presented Business Objects management with newly identified opportunities and assisting [*sic*] client with implementation of the strategies.

- Contract Management: ensured client Account Managers and Program Sponsors needs have been defined and met through functional and technical requirements per the contract. Discussed and negotiated contracts on behalf of [the petitioner] and signed contracts on behalf of [the petitioner].
- New Business: She has developed and implemented strategies for acquiring new business and has met targets set for this business unit. [The beneficiary] has been charged with bringing in \$6 million in revenues each year for the Business Objects/BPO business unit. She has scoped requirements, created and presented these ideas and opportunities to customers.
- Market Analysis: Beneficiary reviewed and analyzed market trends to determine uses for Business Objects applications and determined North American target markets and demographics.
- Pre-Sales Coordination: She has coordinated the Pre-Sales Team activities and provided guidance to Pre-Sales Team members as to proposals, presentations, documentation and initial contact with potential clients.

The petitioner submitted a copy of the beneficiary's resume, in which she indicates that her role as a "Business Development Manager" with the foreign entity includes the following responsibilities:

- Business Development Manager with major focus on Account Management, and Managing Existing and new Clientele Portfolio.
- Selling new service offerings and solutions to the customer/client group.
- Ensuring profitability of the customer accounts.
- Complete mapping of the account – Business Divisions/Subsidiaries & Technologies/Business Processes/IT Systems.
- Contract negotiations and pricing.

The petitioner also submitted an organizational chart labeled "Project Team Structure," which depicts the beneficiary's line of reporting in her current United Kingdom-based position. The chart identifies the beneficiary in the position of business development manager, reporting to a client partner, who in turn reports to the geography head- sales for the United Kingdom.

The director found the initial evidence insufficient to establish that the beneficiary has been performing primarily managerial duties in her role with the foreign entity. Therefore, the director issued a request for additional evidence (RFE) on October 2, 2008, in which the petitioner was instructed to submit: (1) a more detailed description of the beneficiary's duties, along with the percentage of time the beneficiary spends in each of the listed duties; (2) a more detailed organizational chart depicting the foreign entity's managerial

hierarchy and staffing levels which clearly depicts the beneficiary's position and any subordinates she supervises; (3) information regarding the total number of employees at the foreign location where the beneficiary is employed; and (4) clarification as to the reason for the beneficiary's transfer to the United States.

In a letter dated November 3, 2008, the petitioner provided the following description of the beneficiary's duties with the foreign entity:

. . . [The beneficiary] does not have direct subordinates, but she works in the upper levels of the company. She is responsible for managing existing Business Process Outsourcing ("BPO") clients and developing new services for potential new customers. Each major account that is under the control of [the beneficiary] has a value of at least \$1.1 million to [the foreign entity]. This part of the job takes up 50% of her time.

Not only does Beneficiary maintain control over how those accounts are handled, but she has authority to bind the company on a contract with those customers. In order to have authority to negotiate and execute contracts on behalf of [the company], our managers must work at a high level within the company. Beneficiary manages the negotiating process, transition process and directs the Service Level management. [The beneficiary] has gained and uses knowledge of [the petitioner's] internal processes for preparing and presenting proposals, as well as [the petitioner's] procedures for negotiating and concluding high-revenue contracts. She finesses the complex interactions with our customers and interfaces with our Global Delivery Centers to ensure customers are happy with the timeliness and quality of [the petitioner's] deliverables (40%)

Further, she is responsible for market intelligence and trends to ensure that [the petitioner's] service proposals will have the latest technology available. Beneficiary provides technical expertise to the Operations team members in the development of plan proposals (10%).

The petitioner also submitted a "UK Territory – Sales Org Chart" which depicts the beneficiary in the position of "BPO Sales," reporting to [REDACTED] who is identified as "GBS Europe & Auto UK & DFS UK."<sup>2</sup> Other positions reporting to the same manager include a "Client Principal – Auto UK" and a position identified as "Auto, Biz IT Sales." The chart indicates that the beneficiary has a dotted line relationship with three employees identified as "Operations Manager – Hi Tech," an "Operations Manager – F&A," a "Pre-sales and Marketing (Hi Tech)" employee, and a "Pre-Sales and Marketing (DFS & IFE)" employee.

In its letter dated November 3, 2008, the petitioner further explained the organizational structure as follows:

Beneficiary works with the operations team. The Operations Managers have a dotted line reporting to her position in order to have standardized communications and customer

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<sup>2</sup> [REDACTED] was identified as "Client Partner – UK" on the organizational chart submitted at the time of filing.

relations management processes. She is responsible for the service deliverables of the operations to ensure customer satisfaction with all services provided under the contract.

She is instrumental in managing the day-to-day operations which have been outsourced to [the petitioner's] Global Delivery Centers in India and Poland. Being in the UK, [the beneficiary] is responsible for maintaining and managing the Transition, Knowledge Management, Project Management and Customer Expectations. She also provides guidance to the Marketing Teams in India to assemble proposals, which depend on market requirements.

The Team in India that is guided by Beneficiary is responsible for the Operations and Marketing. There are four (4) people in Operations and two (2) in Marketing that provide the necessary support to her managerial role.

In a letter dated November 11, 2008, counsel for the petitioner stated that the beneficiary has been serving in a managerial capacity, and summarized her qualifications as follows:

While the beneficiary does not manage professionals or supervisors, directly, she does manage every aspect of the Petitioner's Business Objects account from independently implementing business strategies, to conducting market analysis, to interacting daily with customers and managing customer expectations, to negotiating contracts with customers, to managing the delivery service process, including being responsible for the work performed by the professionals at Petitioner's offshore development centers.

The director denied the petition on November 24, 2008, concluding that the petitioner failed to establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. The director acknowledged the petitioner's claim that the beneficiary has been managing an essential function, i.e., growth of the Business Objects account, but determined that "the record does not demonstrate that the beneficiary will be primarily managing or directing, rather than actually performing, the function itself." The director further determined that the petitioner had not established that the beneficiary serves at a high level within the organizational hierarchy, noting that the organizational charts submitted were incomplete.

On appeal, counsel for the petitioner asserts that the director erred as a matter of fact in determining that the petitioner has not established that the beneficiary's job duties meet the definition of "managerial capacity" under section 101(a)(44)(A) of the Act. Counsel contends that the director failed to acknowledge "the large offshore IT team the Beneficiary directs . . . or the sales team that she directs, evaluates and provides performance reviews for to upper management." Counsel further asserts that pursuant to section 101(a)(44)(C) of the Act, the number of people supervised is not a determining factor to determine whether someone is working in a 'managerial capacity.'"

In addition, counsel asserts that the notice of denial does not reflect that the director performed an analysis of the beneficiary's job duties. Counsel asserts that the beneficiary's duties relate primarily to operational and policy management as she is required to "perform contract management and negotiation, develop and

implement strategies for acquiring new business, oversee pre-sales team, determine North American target markets, interact with customers, coordinate with the direct offshore delivery team, etc."

Counsel contends that the beneficiary "manages the organization, or a department, subdivision, function or component of the organization," as required by section 101(a)(44)(A)(i) of the Act, because she is responsible for the Business Objects account, a major component of the petitioner's business. Counsel further contends that the beneficiary manages an essential function of the petitioner's organization, namely "revenue generation," and therefore meets the requirements of section 101(a)(44)(A)(ii) of the Act. Counsel states that that each account under the beneficiary's control has a value of at least \$1.1 million, and that she "has control over how these accounts are handled and authority to bind the Petitioner on a contract with these customers."

Counsel asserts that the beneficiary also functions at a senior level within the foreign entity's organizational hierarchy, and thereby meets the requirement at section 101(a)(44)(A)(iii) of the Act. Specifically, counsel asserts that the organizational charts submitted show that the beneficiary "is at a senior level with respect to the function she manages." Finally, counsel states that the beneficiary "exercises discretion over the day to day operations of the activity or function for which the employee has authority," pursuant to section 101(a)(44)(A)(iv) of the Act. In this regard, counsel asserts that "the Beneficiary is involved in the day to day operations of the revenue generating function she manages from contract negotiation and customer interaction on a daily basis to contract management."

In addition, counsel objects to the director's conclusion that the submitted organizational charts are "incomplete" and to the director's finding that the charts submitted do not establish that the beneficiary is employed at a senior level within the organizational hierarchy of the company. Counsel asserts that the beneficiary is "one level removed from head of the European operations," and states that "the fact that the Petitioner only gives contract negotiating authority to high-level employees, such as the Beneficiary, appears to have been completely overlooked or dismissed."

Finally, counsel contends that the director "did not articulate a basis as to why the statements made in the Petitioner's support letters . . . , describing the job duties for the U.S. position and overseas position, do not meet the definition of working in a "managerial capacity" under the law." Counsel concludes by stating that "the Petitioner has clearly shown that the Beneficiary has an appropriate mix of job duties, a high level of authority, and that she manages a major function of the Petitioner, working through a number of other employees, to achieve the Petitioner's business goals."

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary will be employed in a primarily managerial capacity in the United States.

However, as a preliminary matter, the AAO notes that, when denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

Upon review of the director's decision, the AAO agrees that the reasons given for the denial are conclusory with few specific references to the evidence entered into the record. As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

When examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). If a petitioner claims that the beneficiary is primarily managing an essential function, the petitioner must furnish a detailed position description that clearly describes the duties to be performed in that capacity, 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. If a petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial, the AAO cannot determine whether the beneficiary is primarily performing 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). In addition, the petitioner's description of the beneficiary's daily duties must clearly demonstrate that the beneficiary primarily *manages* the function rather than *performs* operational 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 "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.)

The petitioner's initial description of the beneficiary's duties indicated that her primary responsibility, is to "independently carry out daily interactions with the customer (Business Objects) and the [petitioner's] Offshore project team," and "identifying new opportunities within the Business Objects account for revenue growth," with "target sales" of \$6 million annually. The petitioner indicates that this responsibility also includes "managing successful working relationships with client support managers and the various program sponsors," and "presenting Business Objects management with newly identified opportunities." The petitioner did not, however, clarify the nature of the beneficiary's "daily interactions" with the customer or offshore project team, such that it could be concluded that such duties rise to the level of managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Without additional explanation, it could be concluded that the beneficiary is available on a day-to-day basis to respond to the customer's needs or inquiries. The initial organizational chart identified the beneficiary's immediate supervisor as "client partner," which would further support a conclusion that the beneficiary's role with respect to client interactions, while undoubtedly valuable to maintaining successful relations with the client, is not at a senior level.

Furthermore, while the petitioner did not explicitly state that the beneficiary is responsible for sales activities, it did indicate that she has a targeted sales quota and responsibility for "presenting new opportunities" to the client. The beneficiary explicitly states in her resume that her duties include "selling new service offerings and solutions" to clients, and the AAO notes that the beneficiary's job title on one of the submitted

organizational charts is "BPO Sales." While the petitioner has made various claims regarding offshore teams of employees who support the beneficiary in her role, the petitioner has not identified any lower-level employee who is responsible for directly selling services to the client. The fact that the beneficiary is charged with generating significant revenue through her sales activities does not automatically elevate her sales responsibilities to the level of managerial or executive capacity. Given the nature of the petitioner's business, the sales function is undoubtedly complex, involves significant monetary transactions, and requires the expertise and skills of an experienced salesperson. However, the petitioner has not established that the beneficiary serves at a senior level with respect to the sales function or that her responsibilities for identifying and selling services within the scope of an existing client account are managerial in nature.

The petitioner initially indicated that the beneficiary is responsible to "develop and implement strategies for acquiring new business" and to meet her \$6 million revenue target for the Business Objects account. In this regard, the petitioner stated that the beneficiary would "develop new sales opportunities, create and present these ideas and opportunities to customers." These duties appear to overlap with the above-stated responsibilities, and the petitioner once again failed to identify the specific day-to-day tasks the beneficiary performs to "develop new sales," or indicate whether she has any assistance in researching opportunities, or creating sales proposals and presentations. Again, without additional explanation, it cannot be concluded that such duties are managerial in nature.

The petitioner further stated that the beneficiary was responsible for "contract management" and "ensured client Account Managers and Program Sponsors needs have been defined and met through functional and technical requirements per the contract." The petitioner stated that the beneficiary also discussed, negotiated and signed contracts on behalf of the company. The petitioner did not, however, explain what duties the beneficiary performed to ensure that clients needs were defined and met, or identify, even in general terms, the types of contracts negotiated and signed by the beneficiary or the significance of such contracts. The fact that the beneficiary has authority to negotiate sales and service contracts, without more, is not sufficient to establish that she performs primarily managerial duties, particularly as the record does not show that there are any lower-level sales staff working with the same client, account, or even in the Business Process Outsourcing domain.

The remainder of the initial description indicated that the beneficiary is responsible for performing market research and analysis, a duty that has not been shown to be managerial in nature, and coordinating the activities of a pre-sales team. The petitioner did not provide any additional information regarding composition of the "pre-sales team" or its role in supporting the beneficiary's claimed managerial position.

Overall, the AAO finds that the initial description was overly generalized, and included duties, specifically related to sales and market research, that did not clearly fall under the statutory definition of managerial or executive capacity. 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 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).

Accordingly, the director explicitly requested a more detailed description of the beneficiary's duties, and instructed the petitioner to "be specific," and to indicate the percentage of time the beneficiary spends in each of the listed duties. The job description the petitioner submitted in response to the directors' request was even more generalized than the description included in the previous letter, and divided the beneficiary's areas of responsibility into three different areas, rather than five areas. As such, it provided no additional insight into what specific duties the beneficiary performs on a day-to-day basis.

Furthermore, the AAO notes that the petitioner's response to the RFE included unexplained changes in the beneficiary's job description and role within the foreign entity's organization. For example, the petitioner indicated in response to the RFE that the beneficiary devotes 50 percent of her time to "managing existing Business Process Outsourcing clients and developing new services for potential new customers." In the initial job description, the petitioner stated that the beneficiary works specifically with the Business Objects account, and there was no reference to her responsibility for managing multiple Business Processing Outsourcing clients.

The petitioner's initial organizational chart and the chart submitted in response to the RFE also appear to reflect this change in level of responsibility. The initial chart showed the beneficiary's position within a "project team structure," and indicated that she reports to [REDACTED]. The chart submitted in response to the RFE assigns different job titles to both the beneficiary and her supervisor and reflects that the beneficiary's title or role is "BPO Sales." The petitioner also stated for the first time that the beneficiary has "dotted-line" authority over a team of operations managers, as well as two pre-sales and marketing employees. At the time of filing, the petitioner stated that the beneficiary provides guidance to a pre-sales team and interacts with an unidentified "project team," but there was no reference to the beneficiary's indirect authority over operations managers. Regardless, the petitioner has not indicated how the indirect reports support the beneficiary in her day-to-day duties.

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 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 and made unexplained changes when compared to the initial description. 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 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). Based on the statutory definition of managerial capacity, a petitioner must prove the following elements to establish that a beneficiary is primarily serving as a function manager within an organization:

First, the beneficiary must manage an "essential function" within the organization, or a department or subdivision of the organization;

Second, the beneficiary must function at a "senior level" within the organizational hierarchy or with respect to the function managed; and

Third, the beneficiary must control and "exercise discretion" over the day-to-day operations of the function.

See sections 101(a)(44)(A)(ii), (iii), and (iv) of the Act.

The AAO acknowledges counsel's arguments that "revenue generation" is the essential function managed by the beneficiary, that she serves at a senior level within this function based her authority to negotiate and sign contracts on behalf of the company, and that she "is involved in the day-to-day operations of the revenue generating function she manages." However, an analysis of the beneficiary's qualifications as a function manager must begin with an examination of her actual job duties. If the petitioner's description does not demonstrate that the beneficiary's duties are primarily managerial in nature, then it cannot establish that she primarily acts as a function manager. Given the petitioner's vague descriptions of the beneficiary's position, and the discrepancies between the two job descriptions and organizational charts provided, the AAO cannot conclude that the beneficiary performs primarily managerial duties, or that she meets all components of the statutory definition of managerial capacity pertaining to function managers.

Based on the foregoing discussion, the petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

The second issue discussed in this matter is whether the petitioner established that the beneficiary will be employed by the U.S. entity in a primarily managerial capacity.

As noted above, the petitioner has referred to the beneficiary's proposed position as both "account manager" and "business development manager," and indicates that she "will be generally responsible for growth of the Business Objects account (increase revenues) and for managing the growth in sales for that region." Specifically, the petitioner stated that the beneficiary will perform the following duties:

- Independently carry out daily interactions with the customer (Business Objects) and the [petitioner's] Offshore project team to ensure optimal running of business unit operations, creating and maintaining successful working relationships with the client support managers and the various program sponsors. This involves identifying new opportunities within the Business Objects account for revenue growth, her target sales is \$6 million/year. She will also present Business Objects management with newly identified opportunities and assisting client with implementation of the strategies. (60%)

- Contract Management: ensure client Account Managers and Program Sponsors needs have been defined and met through functional and technical requirements per the contract. Discuss and negotiate contracts on behalf of [the petitioner] and sign contracts on behalf of [the petitioner].(10%)
- New Business: develop and implement strategies for acquiring new business and meet targets set for this business unit. [The beneficiary] will be charged with bringing in \$6 million in revenues each year for the Business Objects business unit. She will develop new sales opportunities, create and present these ideas and opportunities to customers. (25%)
- Market Analysis: review and analyze market trends to determine uses for Business Objects applications and determine North American target markets and demographics. (5%)
- Pre-Sales Team coordination: She will continue to provide guidance to the Pre-Sales Team in India and will perform reviews of their work and provide recommendations to upper management.

During this period of authorized stay in the United States, Beneficiary may interface with Business Object IT personnel on technical matters. She will carry out her responsibilities with only general guidance and oversight. Beneficiary will not be controlled by, or paid by, Business Objects or its employees.

The petitioner stated that the beneficiary's work will be directed and controlled by the director of sales, who in turn reports to the Geography Head – Sales. The petitioner submitted an organizational chart labeled "project team structure" which identifies the beneficiary's proposed position as account manager, and her direct supervisor as "Head BPO Sales."

The director issued a request for additional evidence (RFE) on October 2, 2008, in which she requested that the petitioner submit a more detailed organizational chart for the U.S. company. The director indicated that the chart should include the current names of all executives, managers, supervisors, and the number of employees within each department. The director instructed the beneficiary to clearly identify the beneficiary's position and provide information regarding all employees who would work under the beneficiary's supervision. The director also referred to the statutory definition of "managerial capacity" and requested that the petitioner "provide documentation to establish that the beneficiary meets each of the four criteria set forth in the statutory definition.

In response to the director's request, the petitioner submitted an organizational chart for the petitioner's U.S. operations which indicates that the beneficiary, as business development manager, reports to the Head of BPO. The chart shows that the beneficiary would have dotted-line supervisory authority over four Hi-Tech operations managers assigned to "BPO Operations" and two "BPO Pre-Sales and Marketing" staff, all based in India. The only other employees identified on the organizational chart are employed on the same

managerial level as the beneficiary's supervisor, and include the Heads of Hi-Tech, Industrial & Farm Equipment, Automotive, Diversified Financial Services and Global Business Solutions. All of these employees report to the "Head – US Operations (KD)."

The director denied the petition concluding that the petitioner had failed to establish that the beneficiary will be employed by the U.S. company in a primarily managerial or executive capacity.

The AAO notes that the petitioner has consistently indicated that the beneficiary's foreign and U.S. positions are essentially identical. The director did not distinguish between the two positions in the notice of denial, and counsel's arguments on appeal apply to both the beneficiary's current and proposed employment.

Therefore, for the reasons discussed above, the AAO concurs with the director's conclusion that the petitioner failed to establish that the beneficiary will be employed by the U.S. entity in a primarily managerial capacity. The description of the beneficiary's job duties in the petitioner's letter dated September 19, 2008 indicated that she will spend 60 percent of her time "carrying out daily interactions" with the customer and the unidentified members of the "offshore production team." Again, the petitioner did not clarify the nature of the beneficiary's "daily interactions" with the customer or offshore project team, such that it could be concluded that such duties rise to the level of managerial duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, while the petitioner did not explicitly state that the beneficiary is responsible for sales activities, it did indicate that she has a targeted sales quota and responsibility for "presenting new opportunities" to the client. In addition, the petitioner has not identified any lower-level employee who is responsible for directly selling services and solutions to the client. Again, the petitioner has not established that the beneficiary will serve at a senior level with respect to the sales function or explained how her responsibilities for identifying and selling services within the scope of an existing client account are managerial in nature.

The petitioner stated that the beneficiary will devote an additional 25 percent of her time to "develop and implement strategies for acquiring new business" and to meet her \$6 million revenue target for the Business Objects account. In this regard, the petitioner stated that the beneficiary would "develop new sales opportunities, create and present these ideas and opportunities to customers." These duties appear to overlap with the above-stated responsibilities, and the petitioner once again failed to identify the specific day-to-day tasks the beneficiary performs to "develop new sales," or indicate whether she has any assistance in researching opportunities, or creating sales proposals and presentations. Again, without additional explanation, it cannot be concluded that such duties are managerial in nature.

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. at 1108.

Moreover, as with the beneficiary's foreign position, the petitioner initially stated that the beneficiary would be working specifically as account manager for the Business Objects account, and even went so far as to specifically confirm that she would be paid by the petitioning company and not by the client. In response to the RFE, the petitioner stated that the beneficiary would be responsible for multiple customer accounts, as well as targeting additional potential customers in the United States. Again, 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. at 591-92.

Similarly, the petitioner initially stated that the beneficiary would "continue to provide guidance to the Pre-Sales Team in India and perform reviews of their work and provide recommendations to upper management." In response to the RFE, the petitioner indicated that the beneficiary would indirectly supervise "BPO Operations" and "BPO Pre-Sales and Marketing" teams located in India. Regardless, the petitioner has not established how the claimed indirect subordinates would support the beneficiary in her "daily interactions" with the client, or her market research and sales activities.

A beneficiary's "control," management or direction over a company or an essential function within a company cannot be assumed or considered "inherent" to her position merely on the basis of broadly-cast job responsibilities. USCIS will not accept a managerial job title and a general job description in lieu of the required detailed description of the beneficiary's job duties. In the present matter, the petitioner has failed to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. Absent a clear and credible breakdown of the time spent by the beneficiary performing specific, well-defined duties, the AAO cannot determine what proportion of her duties would be managerial or executive, nor can it deduce whether the beneficiary would be primarily performing 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).

Therefore, the AAO concurs with the director's conclusion that the petitioner failed to establish that the beneficiary would be employed in a managerial capacity in the United States. For this additional reason, the appeal will be dismissed.

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.

**ORDER:** The appeal is dismissed.