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File: LIN 05 264 51625 Office: NEBRASKA SERVICE CENTER Date:

FEB 05 2009

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 classify 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 Colorado corporation, operates as a contract manufacturer specializing in plastic injection molding, prototyping, mold making, valued added services and product assembly. It states that it is the parent company of the beneficiary's current employer, [REDACTED] located in Mexico. The petitioner seeks to employ the beneficiary as its human resources director for a three-year period.

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

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 beneficiary qualifies as a function manager, as she manages an essential function, exercises discretionary decision-making authority with respect to that function, and functions at a senior level within the petitioner's organizational hierarchy and with respect to the function managed. Counsel submits a brief and additional evidence in support of the appeal.

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

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

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

education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue addressed by the director is whether the petitioner established that the beneficiary has been employed by the foreign entity in a managerial or 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.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term “executive capacity” as 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 nonimmigrant petition was filed on September 15, 2005. In a letter dated September 1, 2005, the petitioner stated that the beneficiary has been employed by the foreign entity in the position of human resources director since July 2002, performing the following responsibilities:

[The beneficiary] is responsible for the management of all human resources and administrative activities for the [foreign entity's] 3 facilities in Mexico. She develops and implements a full range of HR policies and practices. These policies and practices include employee compensation, staff development, and labor issues. [The beneficiary] supervises and coordinates all social security and housing for the 3 facilities in Mexico.

[The beneficiary also serves as the legal representative of the company and manages and coordinates all legal aspects of the company. Part of her role as a Director of the Mexican company includes the coordination and supervision of the imports and exports of the entire company. [The beneficiary's] responsibilities are broad and she is provided with full oversight and strategic direction of our Mexican subsidiary.

[The beneficiary] manages the above critical functions and components of our company's operations and has significant independent responsibility and authority to ensure the successful completion of her particular corporate function. . . . She reports directly to [the] Chief Financial Officer of [the U.S. company].

The petitioner also submitted organizational charts for two of the foreign entity's two facilities, [REDACTED] and "[REDACTED]." The charts show that the beneficiary's subordinates include two human resources supervisors, one human resources coordinator, one human resource assistant, two security supervisors, and an environmental manager. Lower-level employees depicted on the charts include two receptionists, drivers and security personnel.

The petitioner also submitted a copy of the beneficiary's resume, in which her duties are described as follows:

- Management of 3 facilities (in Tijuana and Juarez) on all H.R. and administration duties.
- Manage all legal aspects of the company as a legal Rep.
- Manage all labor law problems of the company.
- Manage all legal procedures and personnel benefits required for the merge of two companies.
- Coordinate and supervise the import/export of the corporation.
- Coordinate and supervise all social security and housing for the 3 facilities in Mexico.

The director issued a request for evidence on October 21, 2005, in part requesting that the petitioner submit additional evidence in relation to the organizational charts for the foreign entity. Specifically, the director requested that the petitioner describe the job duties of the employees the beneficiary supervises in her position abroad, as well as provide evidence of educational credentials for her subordinates. Further, the director noted that if the petitioner claims that the beneficiary has been managing an essential function, the petitioner "must thoroughly document the essential nature of the function and submit additional evidence concerning the specific nature of the beneficiary's involvement in the function." Finally, the director requested a detailed statement and corroborating documentation fully describing the nature of the foreign entity, including its number of employees and organizational structure.

In a response dated January 10, 2006, counsel for the petitioner stated the following:

As the Human Resources Director in Mexico, [the beneficiary] is responsible for the management of all human resources and administrative activities for [the company's] three facilities in Mexico. She develops and implements a full range of HR policies and practices. These policies and practices include employee compensation, staff development, and labor issues. [The beneficiary] supervises and coordinates all social security and housing for the 3 facilities in Mexico. Additionally, she serves as the legal representative of the company and manages and coordinates all legal aspects of the company.

With respect to the size and organizational structure of the foreign entity, the petitioner noted that the Mexican company includes three manufacturing plants with a total of 1,300 workers. The petitioner provided a position description for a human resources supervisor position based at one of the foreign entity's manufacturing facilities (Dynamic #1), which appears to be one of the beneficiary's current subordinates. All other job descriptions submitted in response to the director's request for evidence appear to reference the beneficiary's claimed U.S. subordinates. The duties of the human resources supervisor include: reviewing job applications; providing guidance to job applicants regarding the positions for which they are applying; coordinating job interviews and requesting references; recruiting personnel for new positions and other job openings; preparing presentations for new personnel to inform about company benefits and policies; maintaining the human resources database; attending to general employee needs; issuing and monitoring employee contracts; auditing personnel files; ordering supplies, assisting the "administrative manager" in departmental activities; and coordinating the work of the receptionist, drivers, and housekeeping staff.

The director denied the petition concluding that the petitioner had not established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. Specifically, the director found insufficient evidence to establish that the beneficiary has been supervising or directing a subordinate staff of professional, managerial, or supervisory personnel who relieve her from performing non-qualifying duties. The director further noted that the petitioner had not provided job descriptions for all of the beneficiary's subordinates with the foreign entity. Finally, the director further concluded that the beneficiary was not managing an essential function or operating at a senior level within an established organizational hierarchy.

On appeal, counsel objects to the director's conclusion, and asserts that the director focused extensively on the employees listed on the organizational charts, and not on the beneficiary's role in the foreign company. Counsel emphasizes that the beneficiary "is responsible for the direction and coordination" of 1,300 employees, and functions at a senior level in corporate management as the company's "legal representative" in Mexico, reporting directly to the Chief Financial Officer of the U.S. company.

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(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.*

Furthermore, the definitions of executive and managerial capacity each 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).

The petitioner's initial description of the beneficiary's duties was extremely broad and failed to explain with any specificity what the beneficiary primarily does on a day-to-day basis. Although the beneficiary's title is human resources director, the petitioner stated that the beneficiary is not only responsible for human resources activities, but for "administrative activities," supervising and coordinating all social security and housing, serving as the company's legal representative, coordinating and supervising imports and exports for the entire company, and having "full oversight and strategic direction of" the Mexican company. The beneficiary's resume also confirmed that her duties include not only "H.R. and administration," but managing all legal aspects, managing "labor law problems," "legal procedures," as well as housing, social security and import/export activities. The petitioner offered no explanation as to how the beneficiary's time is allocated among these diverse areas of responsibility or what specific tasks she performs within the scope of the human resources, administrative, legal, and import/export functions. 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). Significantly, the organizational chart submitted did not show any employees working under the beneficiary's supervision who would be engaged in legal, administrative, import or export tasks.

In response to the director's request for additional information regarding the beneficiary's position and its placement within the organizational hierarchy, the petitioner indicated that the beneficiary's responsibilities include "management of all human resources and administrative activities," development and implementation of human resources policies and practices including compensation, development and labor issues, and coordinating social security and housing, serving as the company's legal representative and coordinating all "legal aspects" of the company. The beneficiary's previously claimed responsibility of coordinating all import and export activities for the foreign entity was conspicuously absent and the petitioner provided no explanation for the amendment of the beneficiary's position 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).

Furthermore, in responding to the request for evidence, the petitioner offered no further insight into exactly what duties the beneficiary performs in relation to the human resources, administrative or legal functions. While the beneficiary's status as the foreign entity's "legal representative" is acknowledged, the record does not show that anyone on its staff assists the beneficiary with "coordinating all legal aspects" of the company, and it remains unclear what specific tasks the beneficiary performs in this regard. 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. The

inconsistencies and lack of detail in the position descriptions provided sufficient grounds for the denial of the petition.

However, in analyzing the beneficiary's employment capacity with the foreign entity, the director did look beyond the vague position descriptions provided to the organizational structure of the foreign entity to determine whether the petitioner established that the beneficiary would be relieved from performing the day-to-day duties of the various functions she was claimed to manage. As noted above, the organizational chart submitted at the time the petition was filed indicated that the beneficiary's direct and indirect subordinates included two human resources supervisors, one human resources coordinator, one human resources assistant, two security supervisors, an environmental manager, two receptionists, drivers and security personnel.

In response to the director's request for position descriptions for all subordinate employees supervised by the beneficiary, the petitioner submitted a single position description for a human resources supervisor located at one of the foreign entity's plants, whose duties primarily involve recruitment, explaining benefits and policies to new employees, and issuing employee contracts. The petitioner did not provide position descriptions for any other staff claimed to be supervised by the beneficiary. This evidence was critical, because the petitioner has claimed that the beneficiary manages a total of four areas within the company including human resources, legal, administrative and import/export functions, yet has not clearly described how she goes about managing these functions through subordinate personnel on a day-to-day basis. 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).

Furthermore, although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

Because the petitioner did not provide the requested detailed information regarding the beneficiary's subordinate employees' duties and their educational qualifications, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. Therefore, notwithstanding the claim that the beneficiary oversees two human resources supervisors, the petitioner did not sufficiently document the beneficiary's supervision of supervisory, managerial or professional employees. 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 objects to the director's focus on the employees listed on the organizational charts, and contends that the proper focus is on the beneficiary's role in the foreign company. As noted above, counsel emphasizes that the beneficiary "is responsible for the direction and coordination" of 1,300 employees, and functions at a senior level in corporate management as the company's "legal representative" in Mexico. However, U. S. Citizenship and Immigration Services (USCIS) must determine based on a totality of the

record whether the description of the beneficiary's duties represents a credible depiction of the beneficiary's role within the organizational hierarchy. When examining the managerial or executive capacity of a beneficiary, USCIS reviews descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The beneficiary will not be considered a qualifying manager or executive solely based on her job title and placement on an organizational chart. As emphasized above, 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).

Therefore, looking at the beneficiary's role within the context provided, the petitioner indicates that the beneficiary manages human resources, administrative, legal and import/export functions for a 1,300-person company. Her subordinates are claimed to include a total of four human resources employees, no administrative employees, no legal department employees, and no import/export employees. The petitioner has provided a position description for only one human resource employee. The AAO cannot reasonably conclude based on the minimal evidence presented that the beneficiary's subordinates perform the majority of the non-qualifying duties associated with the human resources, administrative, legal and import/export functions for the foreign entity, such that the beneficiary is able to refrain from performing non-qualifying duties.

This evidentiary deficiency is further exacerbated by the petitioner's failure to provide a clear and detailed description of the beneficiary's actual duties and the amount of time she allocates to each duty. 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. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

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. For this reason, the appeal will be dismissed.

The second issue in this matter is whether the petitioner established that the beneficiary will be employed in a primarily managerial or executive capacity by the United States entity.

In its letter dated September 1, 2005, the petitioner noted that the beneficiary will hold the title of human resources director in the United States and will be a key member of the petitioner's management team. The petitioner further stated:

[The beneficiary] will be responsible for all aspects of HR policies and practices including personnel, resources, budget and policy making. She will manage, develop and directs [sic] implementation of a wide range of HR issues, from staffing development and compensation to equal opportunity and labor relations.

Some of [the beneficiary's] specific responsibilities will include:

- Provide leadership regarding establishment and maintenance of HR measures and key performance indicators;
- Coordinate efforts to put measures into place and monitor performance against targets;
- Lead HR efforts to reach annual targets, and develop clear action plans in response to issues identified in [the petitioner's] employee survey (used to measure employee satisfaction);
- Coach staff members on methods and means to improve overall human resources performance by maximizing the contribution of individuals and teams;
- Manage efforts to deal with HR issues such as upward feedback processes, policy formation, compensation, staff development, forward replacement planning, training, etc.
- Organize staff development and training programs, setting agendas in conjunction with other leadership team;
- Responsible for ensuring the appropriate policies and processes are in place and operating in support of business objectives of the company;
- Supervise preparation of HR information to be presented at Executive Committee Meeting and represent the HR function at these meetings;
- Formulate policy guidance on a wide range of HR issues for the company.

In terms of HR strategic planning with [the petitioner's] overall business objectives, [the beneficiary] will actively manage and participate in the development of operations functions and all related HR strategic planning processes. [The beneficiary] will report directly to the Chief Financial Officer. . . .

The petitioner also included a graphic depiction of the position in the form of a flowchart, for the beneficiary's proposed position. As the chart is part of the record, its contents will not be repeated here. The chart indicates that the beneficiary will interface with department managers, be a member of the company's Business Unit Leadership Team, and participate in Executive Committee meetings, representing human resources.

The petitioner submitted a "general organizational chart" depicting the management structure of the organization, which indicates that the beneficiary reports to the Chief Financial Officer, who in turn reports to the Chief Executive Officer of the company. No subordinates are depicted under the beneficiary's supervision.

The director issued a request for evidence on October 21, 2005. The director observed that it did not appear that the beneficiary would supervise any employees in the United States. The director requested that the petitioner explain whether the beneficiary would supervise employees in the human resources department, and, if applicable, submit a new chart clearly depicting the department's staffing. The director also requested job descriptions and copies of educational credentials for all employees to be supervised by the beneficiary. The director further advised the petitioner that if the beneficiary will be managing an essential function, the petitioner must document the essential nature of the function and submit additional evidence to establish that the beneficiary will be employed in a senior-level position within the organizational hierarchy with respect to the function managed.

The petitioner submitted a response to the director's request dated January 10, 2006. The petitioner stated:

Based at the corporate offices in Colorado, [the beneficiary] will direct and implement the human resources policies and procedures affecting 800 employees at Plant #1, 250 employees at Plant #2, 250 employees at Plant #3 and 80 employees at the corporate offices.

As Human Resources Director, [the beneficiary] will be a key member of our management team. She will be responsible for all aspects of HR policies and practices including personnel, resources, budget and policy making. She will manage, develop and direct implementation of a wide range of HR issues, from staffing development and compensation to equal opportunity and labor relations

* * *

In terms of HR strategic planning with [the petitioner's] overall business objectives, [the beneficiary] will actively manage and participate in the development of operations functions and all related HR strategic planning processes. Not only will she be responsible for HR administration, she will also coordinate activities of departments in the company with the objective of complying with production goals.

Although, physically she will be in the U.S., [the beneficiary] will continue to be responsible for all personnel in the foreign entity as well as personnel in the U.S. She will have the discretion in the hiring and termination of company employees, as well as performance evaluation and promotion recommendations.

The petitioner submitted an expanded organizational chart for the U.S. company which indicated that the beneficiary will supervise: the human resources staff of the three Mexican plants, including two managers and one supervisor; an account manager, who in turn supervises a human resources supervisor, a human resources generalist, and an accounts employee; an information technology manager; and the operations manager. The chart further shows that the operations manager supervises the engineering manager, warehouse manager, and quality control manager, all of whom supervise lower-level personnel.

The director denied the petition concluding that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. With respect to the beneficiary's U.S. employment, the director noted that the initial U.S. organizational chart submitted by the petitioner did not include any subordinate staff, and questioned why the beneficiary's claimed subordinates were not depicted at the time of filing. The director found it "highly irregular" that the beneficiary would actually supervise an IT manager or operations manager, and determined that the revised organizational chart represented a material change in employment conditions and an attempt to modify the organizational structure into one that may receive more favorable consideration. The director also questioned the petitioner's claim that the beneficiary would continue to oversee staff based with the Mexican operations. The director stated that it could not be concluded that the beneficiary would supervise managerial, professional or supervisory-level subordinate employees, manage an essential function of the U.S. organization, or operate at a senior level within an established organizational hierarchy.

On appeal, counsel for the petitioner emphasizes that the petitioner submitted sufficient evidence to establish that the beneficiary will manage the human resources function for the petitioning company. Counsel states that as a function manager, the beneficiary “will be developing, directing and implementing human resources policies for a company with annual revenues of over \$45 million, and occupying 40,000 square feet of business premises in Colorado.”

Upon review, the petitioner has not established that the beneficiary will be employed in the United States 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(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.*

Furthermore, the definitions of executive and managerial capacity each 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). Here, while it appears that the beneficiary would exercise the requisite level of authority over the petitioner’s human resources activities, the evidence of record does not establish that her day-to-day duties would be primarily managerial or executive in nature.

The petitioner’s initial description of the beneficiary’s duties broadly identified the beneficiary’s areas of responsibility, but failed to detail her specific duties. For example, the petitioner stated that the beneficiary would “manage, develop and direct implementation” of human resources issues; “be responsible for all aspects of HR policies and practices”; provide leadership regarding human resources measures; lead efforts to reach annual targets; and “manage efforts to deal with HR issues.” The petitioner failed to describe what specific tasks the beneficiary would perform to lead and manage various human resources efforts. 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).

As noted by the director, the petitioner’s initial evidence also included an organizational chart in which the beneficiary was depicted as reporting to the company’s chief financial officer, with no subordinates. The petitioner’s initial organizational chart showed that the engineering manager reports to the engineering director, while most other managerial employees within the company report to the chief operating officer, who in turn reports to the chief executive officer of the company.

Upon review of the initial evidence, the director sought evidence that would assist to clarify whether the petitioner was claiming that the beneficiary will be employed as supervising managerial, professional or supervisory personnel, or whether it was claiming that she would be managing an essential function. The statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial

employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

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 detailed job description that clearly explains the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes 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 day-to-day tasks associated with the function.

The petitioner's response to the RFE offered little information to clarify the nature of the beneficiary's duties or her role as a function manager or personnel manager. The petitioner reiterated the same generalized position description and added that the beneficiary "will also coordinate activities of departments in the company with the objective of complying with production goals." The petitioner also noted for the first time that the beneficiary will be responsible for all personnel in the company, including those employed in Mexico, and that she "will have discretion in the hiring and termination of company employees, as well as performance evaluation and promotion recommendations." 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 proposed 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, in response to the RFE, the petitioner submitted an organizational chart for the U.S. company that is materially different from the chart submitted at the time of filing. The entire management structure and certain employees' job titles were changed, certain staff of the Mexican operations were included, and the beneficiary's proposed position was depicted as senior to almost every managerial employee within the company, including an IT manager, an operations manager (who was previously depicted as a superintendent), a quality control manager who was previously depicted as reporting to a vice president, an engineering manager who was previously shown as reporting to an engineering director, etc. Whereas the petitioner's initial evidence indicated that the beneficiary's subordinate staff in Mexico included two human resources supervisors, a human resources coordinator, and an assistant, the new chart depicted two human resources managers and two human resources supervisors working in Mexico. The petitioner provided no explanation regarding the significant differences between the organizational charts. As noted by the director, 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). Given the lack of explanation from the petitioner, the AAO agrees that the organizational chart submitted in response to the RFE is not credible.

While it is reasonable to believe that the beneficiary would supervise the Colorado-based and Mexico-based human resources staff, the petitioner provided only the requested position descriptions for the position of human resources supervisor located at the Dynamic 1 plant in Mexico, and a "staff accountant/HR generalist" position, whose human resources duties are limited to preparing weekly payroll and administering benefit programs. Absent position descriptions and educational credentials for all of the beneficiary's subordinate employees, the AAO cannot conclude that she will supervise a subordinate staff of managerial, professional or supervisory personnel. 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).

Although the director discussed these discrepancies and deficiencies at length in the notice of decision, the petitioner makes no attempt on appeal to clarify the beneficiary's proposed position within the company's hierarchy or her supervisory responsibilities. Accordingly, the petitioner has not established that the beneficiary will be employed as a personnel manager.

Furthermore, despite its previous claim that the beneficiary would manage a large staff, the petitioner now claims on appeal that the beneficiary will be managing the human resources function and therefore qualifies for L-1A status as a function manager. However, in the case of a function manager, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial.

In the present matter, the petitioner fails 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 actual duties to be performed by the beneficiary and the amount of time she will spend on each duty, the AAO cannot determine what proportion of her duties would be managerial, nor can it deduce whether the beneficiary will 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).

Furthermore, the petitioner must still establish that someone other than the beneficiary is performing the day-to-day operational and administrative tasks associated with the human resources function for a staff of over 1,300 employees. At most, the entire organization appears to employ a total of five or six human resources personnel, and the petitioner has failed to provide any position description for the majority of these employees. Therefore, it cannot reasonably be determined that they relieve the beneficiary from performing non-managerial duties associated with the company's human resources activities. The petitioner's claim that the beneficiary primarily manages the function and does not engage in the day-to-day tasks associated with the function is not adequately supported in the record. 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)).

Based on the foregoing discussion, the petitioner has failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. For this additional reason, the appeal will be dismissed.

The third and final issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists between the U.S. company and the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) 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;
 - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner asserts that is the parent company of [REDACTED], located in Mexico, and claims to own a 100 percent interest in the foreign entity. In its letter dated September 1, 2005, the petitioner stated:

On October 1, 2001, [the petitioner] purchased all outstanding shares of California-based, [REDACTED] for over \$5 Million resulting in [the petitioner] owning 100% of [REDACTED] (formerly [REDACTED]). Therefore, [REDACTED] in Mexico is a wholly-owned subsidiary of [the petitioner].

In support of the petition, the petitioner submitted: (1) the petitioner's articles of incorporation; (2) the articles of incorporation of [REDACTED], a California corporation; (3) a Certificate of Status for [REDACTED] issued by the California Secretary of State on June 30, 2004, indicating that the company has not been dissolved or otherwise terminated its existence; (4) a unanimous written consent of the board of directors of the petitioning entity, dated August 17, 2001, approving the terms of a purchase agreement involving the purchase of all of the capital stock of [REDACTED], and one share of stock in [REDACTED], for a purchase price of \$5,020,000; (5) a unanimous written consent of shareholders of [REDACTED], approving the referenced purchase agreement, dated October 1, 2001; (6) a shareholder buy-sell agreement between the petitioner and the shareholders of the foreign entity, executed on October 1, 2001; (7) evidence of the foreign entity's name change from [REDACTED] to [REDACTED] registered with the Tijuana government on September 29, 2003, and identifying [REDACTED] as the owner of all but one share of the entity's issued stock; and (8) an IRS Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return for the 2004 tax return, on which the petitioner indicated that it intends to file a consolidated return with [REDACTED] as part of an affiliated group.

In the request for evidence issued on October 21, 2005, the director instructed the petitioner as follows:

The Service acknowledges the documentation which indicates the petitioner has agreed to purchase the stock of [REDACTED] and [REDACTED]. However, you must submit documentary evidence establishing that the petitioner does in fact ultimately own 100% of the shares of the foreign entity. Such evidence must include stock certificates and stock ledgers that establish the ownership of all outstanding stock of [REDACTED] and [REDACTED].

The petitioner submitted copies of stock certificates numbers 1 through 18 for [REDACTED], each of which was accompanied by an "Assignment Separate from Certificates" acknowledging each individual

stockholder's transfer and assignment of his or her stock in the company to the petitioning company, [REDACTED] Inc., as of October 1, 2001. The petitioner also submitted an excerpt from the financial status notes of the Mexican company's audited 2004 general status financial report, in which the company is identified as a subsidiary of the petitioning company.

The director denied the petition, concluding that the evidence submitted does not clearly establish the ownership and control of the foreign entity, and therefore is insufficient to establish that the U.S. and foreign entities have the claimed parent-subsiary relationship. In denying the petition, the director observed that the stock certificates for [REDACTED] remain in the names of the original stockholders.

On appeal, counsel for the petitioner outlines the evidence previously submitted and states that the petitioner has fully established that it owns 100% of the foreign entity by virtue of purchasing all shares of [REDACTED]

Upon review, the petitioner has submitted sufficient evidence to establish the claimed parent-subsiary relationship between the foreign entity and the U.S. company. The petitioner has sufficiently documented that the Mexican entity is directly owned by [REDACTED], which in turn is wholly-owned by the petitioner. While the stock certificates submitted for [REDACTED] were not canceled and re-issued, the director cited no reason to doubt the authenticity of the transfer and assignment certificates attached to each stock certificate. The record contains objective evidence of the claimed relationship, including the notes accompanying the foreign entity's audited financial statements, which identify the company as a subsidiary of the petitioner. The petitioner also submitted photographs of the foreign entity's manufacturing plants on which the petitioner's name is depicted on the company signs along with the name of the foreign entity, and excerpts from its own website, which identify the three manufacturing facilities located in Tijuana and Juarez Mexico. The director's decision with respect to this issue alone will be withdrawn.

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.