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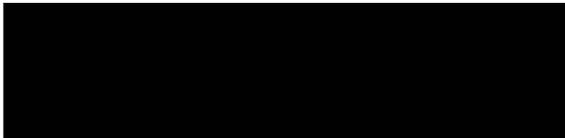
File: EAC 09 045 51733 Office: VERMONT SERVICE CENTER Date: **OCT 22 2009**

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)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa and certified his decision to the Administrative Appeals Office (AAO) for review. Upon review, the AAO will affirm the director's decision and deny the petition.

The petitioner filed this nonimmigrant petition on November 28, 2008 seeking to employ the beneficiary in the position of "account manager" as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner claims to be an affiliate of the beneficiary's previous employer in the United Kingdom, William Lea Limited.

The director recommends denial of the petition based on the petitioner's failure to establish that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years immediately preceding the filing of the petition. Relying on 8 U.S.C. § 1101(a)(15)(L) and 8 C.F.R. §§ 214.2(l)(1)(ii)(A) and (3)(iii), the director concludes that the beneficiary's stay in the United States in L-2 derivative status commencing September 21, 2005 was interruptive of his employment abroad and, thus, "he does not have qualifying employment within the required three-year period," even though the beneficiary was employed by the petitioner in the United States in L-2 status after securing an employment authorization document in November 2005. The director states that the beneficiary's employment in the United States was "incidental to his L-2 status" and that he "did not enter the United States in H-1B status or in any nonimmigrant status in order to be employed by a firm related to the foreign entity." Rather, the beneficiary was admitted to the United States "as an L-2 derivative of his spouse." The director certified his decision to the AAO for review.¹

On certification, counsel to the petitioner submits a letter dated January 19, 2009 in which he argues that the

¹ The AAO takes note that, according to the beneficiary's L-2 nonimmigrant visa, the beneficiary's status in the United States is derived from his spouse's L-1 employment with the former Lehman Brothers, Inc. (EAC 08 201 51516). However, Lehman Brothers, Inc. filed for Chapter 11 bankruptcy and ceased doing business in the United States in September 2008. On September 20, 2008, the bankruptcy court authorized the sale of Lehman Brothers, Inc. to Barclays Capital, Inc. Effective on the closing date of the sale, September 22, 2008, the beneficiary's spouse was no longer employed by Lehman Brothers, Inc.; she no longer maintained her status as an intracompany transferee as of the date her employment was terminated or transferred. Accordingly, as the beneficiary's L-2 status is derived from his spouse's L-1 status, he also failed to maintain his L-2 status and his derivative employment authorization ended when his spouse's employment with Lehman Brothers, Inc. was terminated or transferred. The current petition was filed on November 28, 2008, or 67 days after the sale of Lehman Brothers, Inc. *See generally*, www.lehman-docket.com (accessed October 19, 2009) (compiling information regarding the bankruptcy of Lehman Brothers, Inc.)

Consequently, it appears likely that the "change of status" and "extension of stay" components of the instant petition could not be approved even if the underlying petition were approvable. *See* 8 C.F.R. §§ 214.1(c)(4) and 248.1(b). Furthermore, if the beneficiary's spouse's employment terminated and the beneficiary's derivative status thereby ended, the legality of the beneficiary's current employment by the petitioner is called into question. As such, if the instant petition were not being denied for the reasons set forth herein, these additional issues would need to be further addressed by USCIS before a finding of eligibility could be found.

director's recommended denial contradicts the Act, the regulations, and U.S. Citizenship and Immigration Services (USCIS) policy. Also relying on 8 U.S.C. § 1101(a)(15)(L) and 8 C.F.R. §§ 214.2(l)(1)(ii)(A), counsel claims that the beneficiary's employment in the United States in L-2 status was not interruptive of his employment abroad. Counsel argues that the beneficiary need only have been employed abroad in a qualifying capacity for one out of three years "preceding the time of his application for admission into the United States" and that "periods spent in the United States in lawful status" working for the petitioning organization and briefs trips for business or pleasure "shall not be interruptive of the one year of continuous employment abroad." 8 U.S.C. § 1101(a)(15)(L); 8 C.F.R. § 214.2(l)(1)(ii)(A).

Counsel also cites a February 14, 1994 letter written by [REDACTED] of the Nonimmigrant Branch, Immigration and Naturalization Service (INS). In this letter, the author addressed whether an alien working for a qualifying organization in the United States in H-1B visa status is eligible for the L-1 classification even though he or she had been in the United States for a period of time in excess of three years. Relying on 8 C.F.R. § 214.2(l)(1)(ii)(A), the author concludes, in the H-1B visa context, that if an alien is employed in lawful status in the United States for a firm related in a qualifying capacity to the foreign employer, USCIS will reach over this period of employment in the United States to determine whether the alien is eligible for L-1 nonimmigrant status as one who was employed abroad for one continuous year in a qualifying managerial, executive, or specialized knowledge capacity. Therefore, according to the author of the letter, an alien's period of H-1B employment for a qualifying organization in the United States shall not be interruptive of his or her one-year of continuous employment abroad.

Accordingly, counsel reasons that the beneficiary's employment by the petitioner in the United States since November 2005 in L-2 derivative status was not interruptive of his foreign employment and that USCIS, similar to the H-1B visa scenario addressed in the February 14, 1994 legacy INS letter, should reach over his stay in the United States to conclude that he was employed for one year within the three years preceding his admission into the United States in September 2005. As the beneficiary was allegedly employed in a qualifying capacity for the petitioner's affiliate from December 2000 until December 2005, counsel claims the beneficiary is eligible for the benefit sought.

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.

Furthermore, "intra-company transferee" is defined in 8 C.F.R. § 214.2(l)(1)(ii)(A) as follows:

Intra-company transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge. *Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted towards fulfillment of that requirement.*

(Emphasis added.)

The primary issue in this proceeding is whether the petitioner has established that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization within the three years immediately preceding the filing of the petition. Specifically, the issue is whether USCIS should reach over the beneficiary's "admission" into the United States and subsequent three-year stay in L-2 status in determining whether the beneficiary has been employed abroad for one continuous year within the three years preceding the filing of the petition in a qualifying capacity.

The instant petition was filed on November 28, 2008. As indicated above, the petitioner asserts that the beneficiary was employed in a managerial or executive capacity for a qualifying organization, William Lea Limited, from December 2000 until September 2005. In September 2005, the beneficiary was admitted into the United States in L-2 derivative status as the spouse of an L-1A who was employed by an unrelated company, Lehman Brothers, Inc. In November 2005, the beneficiary obtained an employment authorization document and began lawfully working for the petitioner, an affiliate of the beneficiary's foreign employer in the United Kingdom, in L-2 derivative status.

Upon review, the AAO concurs with the director's decision, and the petition will be denied.

First, the beneficiary's "admission" into the United States in L-2 classification and subsequent stay pursuant to this status will not permit USCIS to reach over this stay and consider employment abroad which concluded three years prior to the filing of the instant petition.

To review the required one year of continuous employment abroad, USCIS must count back three years from the date that the L-1A petition is filed. The regulation at 8 C.F.R. § 214.2(l)(3)(iii) clearly requires that an individual petition filed on Form I-129 be accompanied by evidence that the beneficiary "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." The definition of "intra-company transferee" also indicates that, if the beneficiary has been employed abroad continuously for one year by a qualifying organization within three years preceding the time of the beneficiary's "application for admission into the United States," the beneficiary may be eligible for L-1 classification. 8 C.F.R. § 214.2(l)(1)(ii)(A).

However, when the definition of "intra-company transferee" is construed together with the regulation at 8 C.F.R. § 214.2(l)(3) and section 101(a)(15)(L) of the Act, the phrase "preceding the time of his or her application for admission into the United States" refers to a beneficiary whose admission or admissions pertained to the rendering of services "for a branch of the same employer or a parent, affiliate, or subsidiary thereof" or for "brief trips to the United States for business or pleasure." Statutes and regulations must be read as a whole, and interpretations should be consistent with the plain purpose of the Act to avoid absurd results. *See generally Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

Therefore, according to the plain purpose of the Act and regulations, USCIS may not reach over *any* admission and subsequent stay, including an admission and stay in L-2 status, unless that admission was "for a branch of the same employer or a parent, affiliate, or subsidiary thereof [or] brief trips to the United States for business or pleasure." 8 C.F.R. § 214.2(l)(1)(ii)(A). Unless the authorized period of stay in the United States is either brief or "on behalf" of the employer, the period of stay will be interruptive of the required one year. *See* 52 Fed. Reg. 5738, 5742 (Feb. 26, 1987) ("Time Spent in the United States Cannot Count Towards Eligibility for L Classification"); *see also Matter of Continental Grain Company*, 14 I&N Dec. 140 (D.D. 1972) (finding that an intervening period of stay is not interruptive when the beneficiary was in the United States as an H-3 trainee on behalf of the employer).

Second, and in view of the above, the beneficiary's admission in L-2 status and subsequent employment in the United States by the petitioning organization was not a "[period] spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof" and, thus, was also interruptive of the one year of continuous employment abroad.

As noted above, the beneficiary was admitted into the United States in L-2 derivative status in September 2005. In November 2005, the beneficiary acquired an employment authorization document and began lawfully working for the petitioner, an affiliate of the beneficiary's foreign employer in the United Kingdom, in L-2 derivative status. Citing the Act, 8 C.F.R. § 214.2(l)(1)(ii)(A), and a February 14, 1994 legacy INS letter, counsel argues that the beneficiary's employment by a qualifying organization in L-2 status was not

"interruptive of the one year of continuous employment abroad," and the petition filed on November 28, 2008 should be approved.

Upon review, counsel's argument is not persuasive. The incidental employment of beneficiaries by qualifying organizations is distinguishable from the scenario described in the February 14, 1994 legacy INS letter and is not within the purview of the last sentence of the definition of "intra-company transferee" in 8 C.F.R. § 214.2(l)(1)(ii)(A). Once again, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(A) states in pertinent part the following:

Periods spent in the United States in lawful status *for* a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted towards fulfillment of that requirement.

(Emphasis added).

In addition, section 101(a)(15)(L) of the Act expressly states in pertinent part the following:

[A]n alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof *and* who seeks to enter the United States temporarily *in order to continue to render his services to the same employer or a subsidiary or affiliate thereof* in a capacity that is managerial, executive, or involves specialized knowledge

(Emphasis added).

In this matter, because the beneficiary's three-year stay in the United States cannot be reasonably described as a brief trip for business or pleasure, the key phrase to be construed is whether the beneficiary's employment in the United States was in lawful status *for* or *in order to render services to* the petitioning organization. The AAO concludes that the beneficiary's period of stay in the United States was not spent *for* or for the purpose of rendering services to the petitioning organization. To the contrary, the beneficiary's period of stay in the United States was spent as an L-2 derivative spouse and his choice to seek employment with an affiliate of his previous employer in the United Kingdom was merely incidental to his stay in the United States as a family member of an L-1 intra-company transferee.

Although L-2 spouses of L-1 intra-company transferees are authorized to seek employment in the United States pursuant to 8 U.S.C. § 1184(c)(2)(E), an L-2 spouse's admission and period of stay is tied to the L-1 intra-company transferee. An L-2 spouse's choice to exercise his privilege to accept employment in the United States incidental to his stay and to become an employee of the petitioner will not transform his stay into one being *for* the petitioning organization. If the petitioner in this matter had wanted the beneficiary's stay in the United States to be *for* or in order to render services to the petitioning organization, and thus not be interruptive of the one year of continuous employment abroad, the petitioner should have timely filed the appropriate petition

seeking his admission *for* employment with its enterprise. *See also* section 101(a)(15)(L) (again, indicating that an intracompany transferee is one who "seeks to enter" the United States to temporarily render services to a qualifying organization). Importantly, an L-2 derivative spouse is not described as one who seeks to enter the United States to render services; rather, an L-2 derivative spouse is described as "accompanying" or "following to join" the L-1 intracompany transferee. *Id.*²

Accordingly, as USCIS may not reach over the beneficiary's stay in the United States in L-2 status to determine whether the beneficiary was employed abroad in a qualifying capacity for one year in the three years preceding the filing of the petition, the petitioner has not established that the beneficiary had at least one continuous year of full-time employment abroad with a qualifying organization, and the director's denial of the petition is therefore affirmed.

Beyond the decision of the director, the petition shall also be denied because the petitioner failed to establish that the beneficiary was employed in a primarily managerial or executive capacity in the United Kingdom.

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

²Although the legal conclusions in this decision are consistent with the reasoning in the February 14, 1994 legacy INS letter cited by counsel, it must be noted that letters and correspondence issued by the Office of Adjudications are not binding on the AAO. Letters written by the Office of Adjudications do not constitute official USCIS policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any USCIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

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 petitioner describes the beneficiary's foreign employment in a letter dated November 26, 2008 as follows:

Since December 2000, the beneficiary has been employed within our worldwide organization in a managerial capacity, when he commenced employment with [the foreign employer]. He initially worked as a Team Lead/Reprographics Operations Manager, where he was responsible for managing all operations within the Reprographics Center. In this position, he was responsible for ensuring outstanding customer service to our clients and for building and maintaining strong user relationships. More specifically, he was accountable for financial performance against budgets and for ensuring that labor and costs were efficiently managed. He participated in forecasting processes and reported on productivity and measured performances. The beneficiary monitored the administrative process to ensure that invoicing was efficient and waste was minimal. Additionally, he managed the performance of supervisors and other direct reports, coaching and developing these direct reports and making regular reviews of staff structure and recruitment needs. The beneficiary build solid working relationships with customer service representatives and clients too [sic] resolve any operational problems or issues immediately. **He participated in client meetings and maintained up to date knowledge of the client's organizational structure.** Additionally, the beneficiary supported the formation of proposals and the implementation of new services and contracts.

Upon review, the record is not persuasive in establishing that the beneficiary primarily performed qualifying managerial or executive duties abroad.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. §§ 214.2(l)(3)(ii) and (iv). The petitioner's description of the job duties must clearly describe the duties performed by the beneficiary and indicate whether such duties were either in an executive or managerial capacity. *Id.*

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary acted in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific one-paragraph job description which fails to sufficiently describe what the beneficiary did on a day-to-day basis. For example, the petitioner states that the beneficiary "was responsible for managing all operations with the Reprographics Center." He was allegedly responsible for "ensuring outstanding customer service" and "for building and maintaining strong user relationships." He also allegedly participated in forecasting, reported on productivity, measured performances, monitored the administrative process as it pertained to invoicing, directly "managed" the performance of "supervisors" and other employees, supported the formation of proposals, and supported the implementation of new services and contracts. Finally, the beneficiary allegedly met and worked with clients and customer service representatives.

However, the petitioner failed to establish what, exactly, the beneficiary did on a day-to-day basis to perform these duties. The record is devoid of evidence addressing the duties, or the organization, of the beneficiary's subordinate staff of "supervisors" and employees. The fact that a petitioner has given a beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that a beneficiary actually performed managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties were 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). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Consequently, the record is not persuasive in establishing that the beneficiary primarily performed qualifying duties abroad. It has not been established that most of the vaguely ascribed duties were bona fide managerial or executive duties, e.g., participating in forecasting, reporting on productivity, measuring performance, monitoring invoicing, managing and coaching staff, supporting the formation of proposals, supporting the implementation of services, and meeting with clients and customer service representatives. Absent evidence to the contrary, it appears that these duties were non-qualifying administrative or operational tasks necessary for the provision of a service. It has also not been established that the beneficiary was relieved by a subordinate staff of the need to perform the non-qualifying operational or administrative tasks inherent to his ascribed duties. While the petitioner claims that the beneficiary "managed" supervisors and other workers, the record is devoid of evidence establishing the number of subordinates managed or addressing the purported duties of any of these subordinates.

Accordingly, it cannot be concluded that the beneficiary "primarily" performed qualifying duties in the United Kingdom. Rather, it appears more likely than not that the beneficiary primarily performed the tasks necessary to provide a service. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary supervised and controlled the work of other supervisory, managerial, or professional employees, or managed an essential function of the organization. As noted above, the record is devoid of evidence addressing the number, organization, duties, education, or skills of the beneficiary's claimed subordinates abroad. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. Accordingly, it has not been established that any of these workers was a bona fide supervisory, managerial, or professional worker. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. § 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Furthermore, as the petitioner failed to establish the education required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary managed professional employees.³ Therefore, the petitioner has not established that the beneficiary was employed primarily in a managerial capacity.⁴

³In evaluating whether the beneficiary managed professional employees, the AAO must evaluate whether the subordinate positions required a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

⁴Although the petitioner does not claim that the beneficiary managed an essential function abroad, the record would not support this position if taken. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary managed an essential function, the petitioner must furnish a written job offer that clearly describes the duties performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary managed the function rather than performed the tasks related to the function. In this matter, the petitioner has not provided evidence that the beneficiary managed an essential function. The petitioner's vague job description fails to document that the beneficiary's duties were primarily managerial. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties were managerial, nor can it deduce whether the beneficiary primarily performed 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).

Similarly, the petitioner has failed to establish that the beneficiary acted in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary acted primarily in an executive capacity. Therefore, the petitioner has not established that the beneficiary was employed primarily in an executive capacity.

Accordingly, the petitioner has failed to establish that the beneficiary primarily performed managerial or executive duties abroad, and the petition may not be approved for this additional reason.

If the initial evidence does not demonstrate eligibility, USCIS in its discretion may deny the petition. 8 C.F.R. § 103.2(b)(8)(ii).

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The director's decision is affirmed. The petition is denied.