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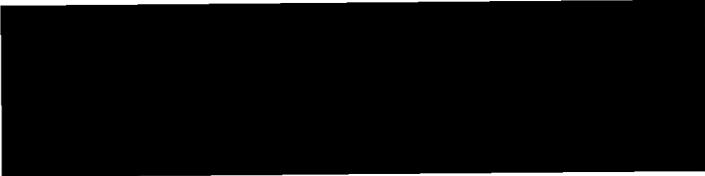
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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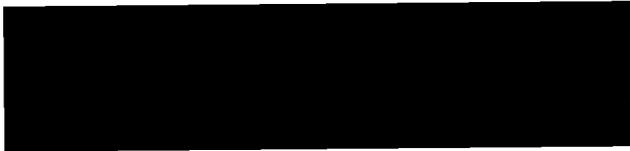
Date: **MAR 04 2010**

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and 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 Delaware corporation with a subsidiary in the Republic of Korea, is engaged in the development and manufacture of metal alloys. The petitioner seeks to employ the beneficiary in the position of finance manager for a period of three years.

The director denied the petition on two separate grounds, concluding that the petitioner had failed to establish: (1) that the beneficiary has been employed by the petitioner's foreign subsidiary in a primarily managerial or executive capacity, and (2) that the beneficiary would be employed in the United States in a primarily 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 beneficiary has been and will be managing an essential component for the petitioner's international organization and managing professional employees. Counsel asserts that the director failed to consider the current and proposed responsibilities in light of the totality of the circumstances and the reasonable needs of the company. 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 has been employed by the petitioner's Korean subsidiary in a primarily managerial capacity. The petitioner does not claim that the beneficiary has been 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.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 29, 2008. In a letter dated December 24, 2008, the petitioner described the beneficiary's employment with its Korean subsidiary as follows:

[The beneficiary's] most recent foreign position with [the foreign entity] is Financial Controller, where he has provided financial accounting, cost accounting and controlling, tax accounting, as well as cash management.

As for the financial accounting, [the beneficiary] supervised daily accounting transactions of the corporate subsidiary, while reporting its financial status to the corporate Chief Financial Officer in the United States. Furthermore, he assisted with quarterly review and annual audit of the corporation's financial statements.

In the area of cost accounting and controlling, [the beneficiary] engaged in cost planning and budgeting for the corporation while creating and developing costing packages to be reported to CFO. He also conducted manufacturing performance analysis to maximize efficiency and reported its status to the corporate executive.

In addition to above duties, [the beneficiary] also performed corporate and VAT (Value Added Tax) accounting as well as monitoring and reporting corporate cash flow.

The petitioner submitted an organizational chart for the foreign entity, but the chart did not identify the beneficiary, his position, or a financial department.

The director issued a request for additional evidence (RFE) on January 7, 2009, instructing the petitioner to submit additional evidence to establish that the beneficiary has been performing the duties of a manager or executive with the foreign entity. Specifically, the director requested that the petitioner submit: (1) a more detailed description of the beneficiary's duties, indicating exactly who the beneficiary supervises and their job titles and position descriptions; (2) the percentage of time the beneficiary spends performing the listed duties; and (3) a detailed organizational chart for the foreign entity which clearly depicts the foreign entity's staffing levels, the beneficiary's position, and all employees under his supervision.

In response to the director's request, the petitioner submitted the following description of the beneficiary's duties:

1. Financial Accounting
 - a. Supervision of daily accounting transactions
 - b. Organize and prepare monthly, quarterly, and yearly end closing statements
 - c. Make up consolidation financial statement between Korea and China
 - d. Assist with quarterly review and annual audits of Company's financial statements
 - e. Analyze financial information to produce forecasts of business, industry, and economic conditions for use in making investment decisions
 - f. Perform year end KGAAP audit
 - g. Report financial status of the subsidiary to the corporate headquarter in the United States
2. Cost Accounting and Controlling
 - a. Assemble manufacturing performance analysis
 - b. Create costing package and report directly to Chief Financial Officer
 - c. Prepare cost management report for the corporate executives (CEO, CFO, COO, and CMO)
 - d. Formulate manufacturing performance analysis
 - e. SAP control
3. Tax Accounting
 - a. Corporate income tax filing
 - b. Value Added Tax filing

4. Cash Management
 - a. Prepare and report cash forecast
 - b. Prepare and report working capital

The petitioner also submitted a revised organizational chart for the foreign entity which includes a finance department notated as "inactive." The department employees include the beneficiary as controller and three "staff." The petitioner stated that this staff includes an employee who is responsible for general ledger account maintenance, month-end closing, assisting with monthly financial statement preparation, and audit document requests. The other two employees are responsible for accounts payable and receivable processing, cash posting and reporting, payroll processing and human resources documentation. Finally, the petitioner indicated that one finance department employee has a four-year college degree, while the other employees have two-year degrees.

The director denied the petition on January 23, 2009, concluding that the petitioner failed to establish that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. In denying the petition, the director noted that the petitioner's description of the beneficiary's position was insufficient to establish that he would be primarily engaged in managerial or executive duties. The director noted that the fact that the petitioner claims that the beneficiary manages the finance department does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity. The director also found insufficient evidence to establish that the beneficiary has been managing a subordinate staff of professional, managerial or supervisory personnel would relieve him from performing the non-managerial functions of the finance department. Finally, the director questioned why the finance department was listed as "inactive" on the foreign entity's organizational chart.

On appeal, counsel for the petitioner asserts that the petitioner "has proved by a preponderance of the evidence that the beneficiary manages a department or an essential 'component' of the foreign subsidiary" pursuant to section 101(a)(44)(A)(i) of the Act. Counsel states that the beneficiary's position of "controller" is equivalent to a manager, and that the beneficiary "was given a complete discretion over a three-member finance department which was a crucial department of the corporation." Counsel asserts that the finance department was listed on the foreign entity's organizational chart as "inactive" because the beneficiary is currently in the United States and "his status with the company is 'inactive' for the purposes of organizational chart." Counsel states that another employee was trained by the beneficiary and is currently running the finance department. In addition, counsel asserts that the beneficiary supervised and controlled professional employees of the finance department who reported directly to him. Counsel states that each employee "has distinct functions that play an essential role in the finance department," and that "the beneficiary is the only person qualified within the subsidiary to hire, terminate or promote employees within the finance department."

Counsel acknowledges the director's conclusion that the beneficiary "was not functioning at a senior level within an organizational hierarchy," and emphasizes that the statutory definition of managerial capacity does not specifically require the beneficiary to do so. Rather, counsel states that the beneficiary "has demonstrated by preponderance of evidence that it [*sic*] had authority to hire and fire or recommend those employees under his supervision," pursuant to section 101(a)(44)(A)(iii) of the Act. Further, counsel states that the foreign entity's organizational chart "clearly positions the beneficiary horizontally equal to other senior level employees within the organization." Finally, counsel asserts that the beneficiary satisfies the provision at section 101(a)(44)(A)(iv)

of the Act because he exercised discretion over the day-to-day operations of the foreign entity's finance department.

Upon review, and for the reasons discussed herein, the AAO concurs with the director's determination. The petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial capacity. As noted above, the petitioner does not claim that the beneficiary will be employed in an 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.* In addition, 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 show 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 the petitioner indicates that the beneficiary manages the foreign entity's finance department, the petitioner has also indicated that the beneficiary was hired by the foreign entity "to perform financial accounting and budgeting." A review of the position descriptions submitted suggests that the beneficiary's duties are primarily associated with accounting and financial analysis functions and that he does not primarily engage in managing a department of the company. For example, the petitioner categorizes the beneficiary's duties as "financial accounting," "cost accounting," "tax accounting," and "cash management." The beneficiary is personally responsible for organizing and preparing monthly, quarterly and annual statements, formulating manufacturing performance analysis, SAP control, corporate and value added tax filing, preparing cash forecasts, analyzing financial information to produce forecasts, and assisting with review and audit of financial statements. While these may be complex tasks requiring an experienced financial or accounting professional, the petitioner has not explained how directly performing the foreign entity's accounting functions elevates the beneficiary's position to a managerial position. Furthermore, the duties do not appear to be those of a department or component manager. 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). The only duty listed which even suggests that the beneficiary has a supervisory or managerial level of authority is the petitioner's statement that he is responsible for "supervision of daily accounting transactions." There is no mention as to how the beneficiary carries out this task, who he supervises, or how this one supervisory responsibility is equivalent to managing a component of the company.

Furthermore, although specifically requested by the director, 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).

The director explicitly requested that the petitioner identify the beneficiary's specific duties and the percentage of time the beneficiary spends on each duty. The petitioner's response, as discussed above, indicated that the beneficiary performs mainly accounting functions as well as "supervision of daily accounting transactions," and failed to include the requested breakdown explaining how his time is allocated. Any 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). While performing non-qualifying duties will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, 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.

In response to the request for evidence, the petitioner also stated for the first time that the beneficiary supervises a subordinate staff of three professional employees, and has the authority to hire and fire department employees. 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).

As discussed above, the job descriptions provided by the petitioner do not clearly indicate that the beneficiary is responsible for any personnel supervision or management functions, and the petitioner did not claim at the time of filing that the beneficiary has been or would be supervising other employees. Therefore, the discussion of the beneficiary's actual duties is at odds with the petitioner's claim that the beneficiary manages the finance department and all the department's employees. The actual duties themselves 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).

While the AAO does not doubt that the foreign entity employs other workers in its finance and accounting department, the evidence submitted does not clearly corroborate the petitioner's claims that the beneficiary supervises and controls these workers, that the workers are professionals, or that the beneficiary has the authority to hire and fire employees. 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. See *generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (Cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)).

Furthermore, even if the petitioner did demonstrate that the beneficiary supervises subordinates and has the authority to hire and fire employees or make other personnel decisions, the petitioner has not established that the three "staff" depicted on the foreign entity's organizational chart are managers, supervisors or

professionals. The petitioner has not provided job titles for the claimed employees and has provided very little information regarding the nature and extent of their responsibilities. Therefore the petitioner has not established that any of the beneficiary's subordinates supervise subordinate staff, or that they are professionals, notwithstanding the petitioner's claim that one employee has a four-year college degree.¹

For these reasons, the petitioner has not established that the beneficiary qualifies for the benefit sought as a personnel manager.

On appeal, counsel indicates that the beneficiary has been managing an essential function of the foreign entity. 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 job description that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function.

In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner has not clearly or consistently identified the beneficiary's actual duties or his level of authority, much less established that he will perform primarily managerial duties related to the accounting or finance function. Counsel stresses on appeal that the job title of "controller" in Korea is equivalent to a "manager" in the United States. However, even if the beneficiary is the titular head of the finance department, this alone would be insufficient to establish that he is primarily engaged in managing that function. As discussed above,

¹ In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the work of the "staff" claimed to be supervised by the beneficiary.

the majority of the beneficiary's duties, as described by the petitioner at the time of filing, do not fall under the definition of managerial or executive capacity and are primarily related to performing accounting, auditing and financial analysis, rather than managing the finance function of the company. Based on the limited evidence submitted regarding the other department employees, it appears that many of the company's accounting functions are performed directly and entirely by the beneficiary and not delegated to any other staff. Again, while performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, 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 his duties are "primarily" managerial. Here, the petitioner has not met this burden.

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. Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether the beneficiary will be employed by the U.S. entity in a primarily managerial or executive capacity.

In its letter dated December 24, 2008, the petitioner described the beneficiary's proposed U.S. position as follows:

[The beneficiary's] role as Financial Manager of [the petitioner's] corporate headquarters will give him responsibility for participation in the development of new strategies and programs to improve [the petitioner's] financial condition and thus to contribute to the expansion of [the petitioner's] business internationally. [The beneficiary] will work closely with [the petitioner's] senior executives in the development and delivery of these programs to the Korean subsidiary.

[The beneficiary] will develop and propose financial models to [the foreign entity's] executives and investors to provide a sense of direction and ensure corporate financial viability in this time of global economic downturn. Although initial hiring of [the beneficiary] by our Korea subsidiary was to perform financial accounting and budgeting, his services in the U.S. corporate headquarter is of utmost importance because of the corporation's need to attract additional investors to further develop and promote [the petitioner's] technology throughout the U.S. and beyond.

[The beneficiary] will also translate critical Korean financial documents and brief them to senior executives and investors at the corporate headquarters. He is best qualified within the organization to perform such tasks due to many years of experience in dealing with Korean financial documents as well as his familiarity with the corporation, due to his two years of experience with [the foreign entity]. The complexity and technicality of these documents require someone with exceptional knowledge and expertise. . . .

The petitioner submitted an organizational chart for the U.S. company which lists a finance department comprised of a chief financial officer, who supervises a vice president. The chart only lists managerial staff and did not identify any staff members within any of the depicted departments, nor did it identify the placement of the beneficiary's proposed position within the organizational hierarchy.

In the RFE issued on January 7, 2009, the director requested a more detailed description of the beneficiary's proposed duties and the percentage of time the beneficiary will spend in each of the listed duties, as well as an organizational chart which clearly identifies the beneficiary's proposed position and lists all employees he will supervise by name and job title. Finally, the director requested evidence of wages paid to any employees who will be working under the beneficiary's supervision in the United States.

In response to the director's request, the petitioner provided the following description of the beneficiary's proposed duties:

1. Develop and propose financial models to the corporate executives and investors to assist in implementation of financial goals feasible for the corporation
2. Analyze financial information to produce forecasts of business, industry, and economic conditions for use in making investment decisions
3. Communicate daily with managers of the South Korean subsidiary and report its financial status to corporate executives in the United States
4. Supervise preparation of financial information so that outside accountants can complete corporate tax returns.
5. Direct preparation of financial statements, business activity reports, financial position forecasts, annual budgets, or reports required by regulatory agencies
6. Conduct or coordinate audits of company accounts and financial transactions to ensure compliance with SEC and South Korean corporate regulations
7. Monitor financial activities and details such as working capital balances to ensure that corporation has sufficient capital to operate when the research & development costs exceed the accounts receivables
8. Translate any Korean financial documents and brief corporate executives of U.S. headquarter
9. Coordinate preparation of consolidation financial statements between Korea and U.S. to be briefed to corporate executives
10. Supervise daily accounting transactions and audit any significant expenditures
11. Coordinate organization and preparation of monthly, quarterly and yearly end closing statements
12. Direct preparation of cash forecast reports.

The petitioner submitted a revised organizational chart which depicts the beneficiary's proposed position of finance manager, reporting to the vice president of finance. The chart indicates that the beneficiary would supervise a senior accountant and an accounting assistant. The petitioner submitted copies of IRS Forms W-2, Wage and Tax Statement, for 2008, for these two employees.

Upon review of this evidence, the director concluded that the petitioner had failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The director found that the petitioner described the beneficiary's proposed duties in only broad and general terms and failed to describe the actual duties to be performed. The director determined that the beneficiary would be acting at most as a first-line supervisor.

On appeal, counsel asserts that the beneficiary's role in the United States will be similar to the position he occupied abroad, except that he will have "wider discretion over the corporate financial decisions and will have opportunity to have a direct input in annual budgeting," as he will be able to attend daily executive meetings. Counsel asserts that the beneficiary will supervise two U.S. employees, and also continue to supervise the foreign entity's finance department and its employees. Counsel further states that the beneficiary will exercise discretion to hire and fire employees and recommend personnel actions for both departments. Counsel states that the beneficiary will primarily "participate in the development of new strategies and programs to improve U.S. company's financial condition" by working closely with senior executives "in development and delivery of these programs to the Korean subsidiary." Counsel concludes by stating that "the primary objective of accounting employees within the finance department is to assist the beneficiary so that he can prepare such reports in a timely manner in furtherance of the corporation's success."

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

While the petitioner indicates that the beneficiary's proposed role will entail wider discretion over corporate financial decisions, and the position appears to be a promotion over his previous role with the foreign entity, the petitioner's description of the beneficiary's duties is vague, lacks the detail requested by the director, and appears to include both qualifying and non-qualifying duties associated with the company's finance and accounting function. The petitioner indicates that the beneficiary will "coordinate," "supervise" or "direct" preparation of consolidated financial statements, cash forecast reports, periodic financial statements, daily accounting transactions, business reports, forecasts and budgets, and "preparation of financial information," but the record does not clearly indicate the specific tasks he will perform in relation to these responsibilities, or to what extent the preparation of such financial documents is actually delegated to a subordinate staff or outside contractors. 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, tasks such as monitoring financial activities, translating Korean financial documents, analyzing financial information to produce forecasts, and developing financial models, without additional explanation, have not been shown to be managerial in nature. Again, whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and operational tasks, but fails to quantify the time the beneficiary spends on them, despite the director's specific request for a breakdown indicating the percentage of time the beneficiary would spend on specific duties. Any 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). This failure of documentation is important because several of the beneficiary's daily tasks, as noted above, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary will be primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

As with the beneficiary's overseas position, the petitioner indicates that the beneficiary will supervise a subordinate staff (comprised of an senior accountant and accounting assistant), and now states for the first time on appeal that the beneficiary will also oversee the foreign entity's accounting department, as well as have the authority to hire and fire finance department employees for both the U.S. and foreign entities. As with the beneficiary's foreign position, the beneficiary's U.S. position description does not include any of these claimed supervisory duties, and there was nothing in the initial filing to suggest that the beneficiary's role would be that of a department manager with supervisory responsibilities. 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). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Furthermore, while the petitioner has provided evidence of wages paid to the two employees who are claimed to work under the beneficiary's supervision, the petitioner has not provided any description of their job duties and it cannot be determined that the proposed subordinate employees are managers, supervisors or professionals. 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). As discussed above, 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). Here, due to the

lack of evidence and the petitioner's failure to mention any supervisory responsibilities among the beneficiary's proposed job duties, the petitioner has not met these criteria.

Finally, the petitioner has not established that the beneficiary will manage an essential function of the petitioning company. Absent additional evidence regarding the duties performed by the beneficiary, the two other accounting department employees, and any contracted accountants, the AAO cannot determine to what extent the beneficiary would be relieved from performing the non-managerial functions of the petitioner's financial department. Again, while performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, 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 his duties are "primarily" managerial. Here, the petitioner has not met this burden. In addition, the petitioner has not established that the beneficiary functions at a senior level within the organizational hierarchy or with respect to the function he is claimed to manage. According to the petitioner's organizational chart, the beneficiary will report to the vice president of finance, who in turn reports to the chief financial officer. With this structure, it is not clear that the beneficiary would be considered a senior employee within the function or to what extent he would be authorized to exercise discretion over the day-to-day operation of the department.

Overall, the evidence of record is insufficient to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. For this additional reason, the petition cannot be approved.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.