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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAY 16 2011** Office: CALIFORNIA SERVICE CENTER FILE: 

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:
 C

INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a business process outsourcing company, states that it is a subsidiary of Firstsource Solutions Limited, located in India. The petitioner seeks to employ the beneficiary in the position of Manager of Process Excellence for a period of three years.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity; or (2) that the beneficiary would be employed by the U.S. entity 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 asserts that the director improperly denied the petition, as the evidence submitted established that the beneficiary is "a manager with a significant responsibility overseeing an essential function of the corporation." Counsel asserts that the beneficiary "practiced wide decision making authority and exercised discretion over the day-to-day operations of the function." Counsel requests that the AAO review the arguments already made in the record of proceeding, rather than submitting a brief or 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.

II. Employment Abroad in a Managerial Capacity

The first issue in this matter is whether the petitioner established that the beneficiary has been employed by the foreign entity in a primarily managerial capacity. The petitioner does not claim that the beneficiary 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 April 7, 2009. In a letter dated March 25, 2009, the petitioner stated that the beneficiary has been employed by its parent company in India since May 2003 in the position of Manager – Process Excellence. The petitioner described the beneficiary's duties in this position as follows:

- Understanding client SLA's and Preparing the Quality plan accordingly ;
- Implementation of Quality Management System across Healthcare/Publishing vertical of Chennai center;
- Implementing rigorous measurement and review of quality performance;
- Implementation of Quality MIS in the process;
- Guiding the operations team to focus on priorities;
- Calibration of QA members periodically;
- Attend Customer meeting for business review;
- Implementation of SPC (statistics process control) in the operations such of Pareto Fishbone analysis, Control charts;

- Implementation of Quality Governance mechanism such as Quality Review meeting;
- Conducting [Yellow Belt] and [Green Belt] for healthcare/publishing vertical;
- Building Quality culture in the Chennai Center;
- Increasing the Quality DNA in the Chennai Center;
- Identification, initiation and mentoring of six sigma projects;
- Facilitation of Business Quality Council meetings for reviewing six sigma projects;
- Participating in the Business Review meetings with client;
- Participating in the six sigma projects review meeting with the client;
- Driving Quality initiatives; and
- Implementation of BPMS in the Healthcare/Publishing vertical.

The petitioner submitted an organizational chart for the foreign entity's Process Improvement & Management organization as of January 2008. The beneficiary is depicted on the chart as "Manager, Process Excellence," and reports to an individual with the title "Master Black Belt – Healthcare, Publishing & Domestic Business." This individual reports to the Executive Vice President – Process Excellence. Other employees who report to the beneficiary's direct supervisor include two "COPC Coordinators" and an employee with the title "Black Belt – Airtel & Vodafone Ess."

The petitioner also submitted a copy of the beneficiary's resume in which he states that he is "heading the service quality and process excellence department" at the petitioner's Chennai center. He lists duties that are similar to those identified above, and indicates that his position involves a "Process Excellence Role" and a "Service Quality Role."

On April 16, 2009, the director issued a request for additional evidence ("RFE"), but did not request any additional evidence pertaining to the beneficiary's employment capacity with the foreign entity.

On May 26, 2009, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity, or that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. In denying the petition, the director noted that the duties listed do not appear to be primarily managerial or executive but instead "demonstrate a direct relationship between the beneficiary and the clients" and "duties that involve the day-to-day operations of the business." In addition, the director observed that the organizational chart does not indicate any subordinate personnel who report to the beneficiary.

Finally, the director noted that the petitioner had failed to submit the requested percentage of time the beneficiary devotes to his listed duties. As noted above, the director did not in fact request additional evidence pertaining to the beneficiary's employment capacity prior to denying the petition. Even if the AAO were to find that the director should have requested evidence before denying the petition, the director's error would be harmless. Because the director did not request evidence prior to her decision, the petitioner had the opportunity to submit additional evidence to the AAO on appeal. *Cf. Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The petitioner did not avail itself of this opportunity.

On appeal, counsel for the petitioner states that the director improperly denied the petition. Specifically, counsel states:

[The beneficiary] qualified for this classification as a manager with significant responsibility overseeing an essential function of the corporation. Acting in his senior level managerial capacity [the beneficiary] practiced wide decision-making authority and exercised discretion over the day-to-day operations of the function. All arguments necessary to establish that [the beneficiary] qualifies as an intracompany transferee were made in the initial petition as well as in response to the request for evidence filed with USCIS.

Upon review, counsel's assertions are not persuasive. The petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

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. Here, the petitioner indicates that the beneficiary's current and proposed duties are those of a "function manager." The petitioner does not claim that the beneficiary supervises personnel in India or that he will supervise any personnel in the United States.

When examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). If a petitioner claims that the beneficiary is primarily managing an essential function, the petitioner must furnish a detailed position description that clearly describes the duties to be performed in that capacity, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. If a petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). In addition, the petitioner's description of the beneficiary's daily duties must clearly demonstrate that the beneficiary primarily *manages* the function rather than *performs* operational duties related to the function. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties.)

The petitioner's description of the beneficiary's duties fails to identify his specific tasks or the amount of time he devotes to his areas of responsibility, such that it could be concluded that he is primarily managing an essential function within the foreign entity. Some aspects of the position appear to involve direct involvement and interaction with client projects. For example, the petitioner states that the beneficiary's duties include "understanding client SLA's and preparing the quality plan"; "attend customer meeting for business review," "identification, initiation and mentoring of six sigma projects," "participating in the Business Review meeting with client," and "participating in the six sigma projects review meeting with the client." The beneficiary states in his resume that he shares six sigma projects with clients, works with clients, and delivers "client impact projects."

The petitioner did not, however, clarify the scope or nature of the beneficiary's interactions with clients, and thus it cannot be concluded that such duties rise to the level of managerial duties, rather than simply specialized duties inherent to delivery of customer projects. 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).

The beneficiary indicates in his resume that he is "heading the service quality and process excellence department" at the petitioner's "Chennai center." However, the foreign entity's organizational chart depicts the "Process Improvement and Management Organization." It fails to identify the department the beneficiary claims to head, the "Chennai Center," or the beneficiary's management role within it. The beneficiary is listed as "Manager – Process Excellence" and reports to a "Master Black Belt" in the healthcare, publishing and domestic business. Other persons reporting to the same manager have the job titles "COPC coordinator" and "black belt." The overall "manager" of the component of the organization depicted on the organizational chart is the executive vice president for Process Excellence, rather than the beneficiary.

The petitioner indicates that the beneficiary is responsible for implementing a Quality Management System and Business Process Management systems across the Healthcare/Publishing vertical; implementing "rigorous measurement and review of quality performance"; implementing Quality MIS in the process; implementing "Quality Governance mechanisms"; "building Quality Culture"; "increasing Quality DNA" and driving Quality initiatives. Again, the petitioner does not explain in any detail the specific duties the beneficiary performs to carry out his responsibilities, such that they could be classified as managerial, and the duties described do not clearly demonstrate the beneficiary's level of authority. Without further explanation, it could be concluded that the beneficiary is a staff specialist or subject matter expert with respect to quality and process excellence matters, rather than a manager functioning at a senior level with respect to these company functions. Vaguely described responsibilities such as "building Quality Culture," or implementing "Quality Governance mechanisms" provide little insight into the nature of the beneficiary's actual duties and their impact on the foreign entity's operations.

The fact that the beneficiary is charged with implementing quality and business process management systems for a component of the organization not automatically elevate his responsibilities to the level of managerial capacity. The petitioner operates a business process outsourcing consulting company, as such, it is reasonable to believe that the process and quality management functions are undoubtedly complex, implemented organization-wide, and require the expertise and skills of an experienced professional. However, the petitioner has not established that the beneficiary serves at a senior level with respect to the quality or process excellence functions or that his responsibilities for implementing internal or client systems and processes in these functional areas rise to the level of managerial capacity.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). Based on the statutory definition of managerial capacity, a petitioner must prove the following elements to establish that a beneficiary is primarily serving as a function manager within an organization:

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

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

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

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

An analysis of the beneficiary's qualifications as a function manager must begin with an examination of his actual job duties. If the petitioner's description does not demonstrate that the beneficiary's duties are primarily managerial in nature, then it cannot establish that he primarily acts as a function manager. Given that many of the beneficiary's duties have not been sufficiently defined, and given the discrepancies between the job description and the organizational chart with respect to the beneficiary's level of authority, the AAO cannot conclude that the beneficiary performs primarily managerial duties, or that he meets all components of the statutory definition of managerial capacity pertaining to function managers. In addition, as discussed above, the evidence of record does not sufficiently identify the beneficiary's level of authority or degree of discretion over the day-to-day operations of the function he is claimed to manage. The beneficiary appears to be available to the organization and to clients as an advisor, consultant, trainer and mentor on quality assurance matters.

Finally, we note that while the petitioner places emphasis on the beneficiary's certification as a "Six Sigma Black Belt" as evidence of the beneficiary's stature within the organization, the record shows that the beneficiary had received this certification in July 2008, less than one year before the petition was filed. The organizational chart for the foreign entity lists many other "Black Belts" and "Master Black Belts," and this credential issued by a third party appears to be common in the petitioner's industry. While it may be a notable professional achievement, the beneficiary's possession of the credential does not lend support to its claim that the beneficiary is employed as a function manager for the purposes of this classification.

Based on the foregoing discussion, the petitioner has not established that the beneficiary has been employed by the foreign entity in a primarily managerial capacity. Accordingly, the appeal will be dismissed.

B. Employment in the United States in a Managerial Capacity

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

In its letter dated March 25, 2009, the petitioner provided the following description of the beneficiary's proposed duties as Manager of Process Excellence:

Conducting Training Workshops (20%)

- Providing training for Six Sigma quality control tools, Green Belt, Yellow Belt training.
- Beneficiary will also participate in providing Black Belt training for those North America employees that have been identified as candidates to join Process Excellence

Coaching and Mentoring Six Sigma Green Belts and Black Belts (25%)

- Support [the petitioner's] managers who have undertaken Six Sigma projects after training
- Beneficiary will hold project review sessions with [company] managers, answer questions, assist in the design and implementation of projects.

Leading Business Process Measurement Systems and Improvement Projects (35%)

- Implement Business Process Management Systems, process improvement and Six Sigma projects for [the petitioner]

Business and Project Reviews (10%)

- Participates in [the petitioner's] operations planning meeting.
- Beneficiary manages the monthly Business Quality Council that tracks the project of all Six Sigma projects for [the petitioner] as well as the Process Excellence deployment.

Business Analytics (10%)

- Statistical expertise positions beneficiary to provide advanced business analytical support to [the petitioner's] Operations team.
- Beneficiary will generate reporting and provide analysis of data to the senior management and operations managers at [the petitioning company].

The petitioner further stated that the beneficiary will manage the essential function of "Process Excellence deployment, a core component of which centers on 6sigma methodology." The petitioner stated that the beneficiary's "day-to-day responsibilities" associated with managing this function are the following:

- Leading 6sigma projects focused on improving performance and reducing expenses for [the company's] Healthcare vertical, specifically on the payer side.
- Establishing BPMS and performance metric dashboards
- As senior level specialist he will be providing 6 sigma QC tool, yellow belt and green belt training to managers and supervisors
- Supporting Process Excellence
- Establishing a governance structure to ensure compliance with global process deployment strategy.

Finally, the petitioner's initial letter provided additional information regarding the nature and scope of the beneficiary's duties as follows:

This is a managerial position of significant responsibility and the beneficiary will be responsible for deployment of Process Excellence framework, developing in-house resources and driving improvement projects. His role can be divided into two categories, process management and process improvement deployment.

His core responsibilities will involve driving Business Improvement Projects, training employees on Six Sigma methodology, conducting workshops, mentoring Green Belts and Black Belts in their respective projects and helping them to achieve their desired targets including targets. The beneficiary will apply his expertise in setting up Business Process

Measurement Systems (BPMS) for Healthcare/Service sector business processes using management methods, including statistical methods obtained through his Six Sigma training, through which he obtained Black Belt Certification.

[The foreign entity] as a business has constantly focused on the healthcare sector and has been steadily increasing revenues from the USA. The beneficiary, being a part of the emerging business process outsourcing (BPO) industry and more importantly, having a rich BPO industry background, understands both the Indian and the USA operations. His expertise in handling Six Sigma in the healthcare environment makes him the ideal candidate for the position of Manager of Process Excellence at [the petitioner]. His role will include all the above-mentioned duties as well as the additional responsibility of translating the best practices, deploying Six Sigma and integrating the business in the USA and India.

The petitioner provided the following explanation of Six Sigma:

Six Sigma is a business management strategy, which seeks to identify and remove the causes of defects and errors in manufacturing and business processes. It uses a set of quality management methods, including statistical methods, and creates a special infrastructure of people within the organization ("Black Belts" etc.) who are experts in these methods. Each Six Sigma project carried out within an organization follows a defined sequence of steps and has quantified financial targets (cost reduction or profit increase).

The petitioner submitted a copy of the beneficiary's Six Sigma Black Belt Certification issued by "Benchmark Six Sigma" on July 21, 2008, along with evidence that he completed "Six Sigma DMAIC Green Belt Training" in July 2005.

The petitioner submitted a chart titled "Salt Lake City RMO Organization Chart," depicting the beneficiary's proposed position as "Manager, Process Excellence." The chart shows that he will have a reporting relationship with the "Director – Operations," and no subordinates.

In the RFE issued on April 16, 2009, the director advised the petitioner that it submitted insufficient evidence concerning the number and types of employees the beneficiary will supervise and the location of such workers.

In response, the petitioner explained that the beneficiary "will not be supervising employees but rather managing essential functions of the company." The petitioner re-submitted the position description provided at the time of filing, and cited unpublished decisions to stand for the proposition that "the AAO has interpreted positions to be managerial even where an incumbent does not directly supervise employees, so long as there is wide decision making authority, significant control over the financial and technical operations, or where the incumbent formulates policies, negotiates contracts and develops business."

The petitioner further stated that "the beneficiary is an industry expert who controls and commands business operations at a top managerial level," and that "in such circumstances the presence or absence of directly supervised employees does not determine his managerial capacity." The petitioner submitted a revised breakdown of the beneficiary's day-to-day duties as a function manager as follows:

- Driving continuous improvement through direct role of leading six sigma projects. This would include the highest level and most complex analytical exercises, coordinating work activities between the US and India operations centers, and reporting results (20%)
- Beneficiary would be conducting classroom training of managers and supervisors in the six sigma methodology (20%)
- Beneficiary would be mentoring managers who have completed the six sigma Green Belt training as they take on projects of their own (20%)
- Deploying [company] Global Process excellence initiatives in the Health Care – Payer operation centers. (20%)
- Managing governance structure for Health Care Payer Centers. This includes managing monthly Business Quality Councils with the senior operation executives, holding monthly project review meetings with managers and project sponsors, etc. (20%)

Finally, the petitioner stated:

As a senior level manager within the organization, the beneficiary will have a great deal of decision-making authority within the scope of the above activities. Me will exercise managerial discretion using his authority to make final decisions on operation matters. Each week may vary in job duties content, but a typical week may consist of the beneficiary spending three full consecutive days training and the remaining two days conferencing with the most senior executives reviewing project strategies and prioritizing new projects. The beneficiary will be a major influencer (working directly with C-level executives – CEO, COO and CFO) to the priority order in which projects are taken on. The beneficiary will have regular exposure to the North American executive team. A cornerstone to the Process Excellence governance plan is the Business Quality Council (BQC). This is a monthly status review with the top executives participating. The beneficiary will lead these reviews for the Health Care Payer vertical. He will make decisions on a regular basis as to the six sigma tools and strategies deployed to achieve improvements and drive performance. All secretarial and administrative tasks will be delegated as needed.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. In denying the petition, the director determined that several of the beneficiary's duties appear to involve "performing the actual work of the business," as opposed to managerial or executive tasks. The director observed that the beneficiary's responsibilities for "supporting" managers and training and mentoring personnel are also not clearly managerial in nature.

As noted above, on appeal, counsel asserts that "all arguments necessary to establish that [the beneficiary] qualifies as an intracompany transferee were made in the initial petition as well as in response to the request for evidence filed with USCIS." Counsel contends that the beneficiary has "significant responsibility overseeing an essential function of the corporation," acts in a "senior level managerial capacity," practices "wide decision-making authority," and "exercises discretion over the day-to-day operations of the function."

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, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). As noted above, if a petitioner claims that the beneficiary is primarily managing an essential function, the petitioner must furnish a detailed position description that clearly describes the duties to be performed in that capacity, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. If a petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). In addition, the petitioner's description of the beneficiary's daily duties must clearly demonstrate that the beneficiary primarily *manages* the function rather than *performs* operational duties related to the function. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties.)

At the time of filing the petition, the petitioner provided a description of the beneficiary's proposed duties, along with the percentage of time he is expected to allocate to each area of responsibility. The petitioner indicated that the beneficiary will devote 20 percent of his time to providing Six Sigma training at various levels (green, yellow and black belt). This responsibility appears to require specialized business skills the beneficiary acquired during his own Six Sigma certification training, rather than managerial skills or a senior level of authority within the organization. The petitioner noted that the beneficiary will be providing training "as a senior level specialist" in Six Sigma.

The petitioner indicated that the beneficiary will devote an additional 10 percent of his time to "business analytics" in which he will use his "statistical expertise" to provide "advanced business analytical support" to the petitioner's operations team, and generate reports and data analysis for review by senior management and operations management. These technical and analytical tasks also appear to be more akin to those of a staff specialist than a function manager.

The petitioner initially indicated that the beneficiary will devote the largest portion of his time, 35 percent, to "leading Business Process Measurement Systems and Improvements Projects." The petitioner indicated that this would involve "implementing" such projects, and explained that this role would require him to "apply his expertise in setting up BPMS for Healthcare/Service Sector business processes using management methods, including statistical methods obtained through his Six Sigma training." Although the petitioner explained the knowledge and skills required to perform this responsibility, the petitioner did not define the duties involved in "leading" or "implementing" BPMS projects for the petitioner, did not identify who the beneficiary would "lead" or what tasks the beneficiary would perform on a day-to-day basis with respect to this role. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The petitioner did not adequately articulate how these project leadership responsibilities entail primarily managerial duties.

An additional 25 percent of the beneficiary's time would be devoted to a "coaching and mentoring" role for Six Sigma Green Belts and Black Belts, which involves supporting managers who undertake Six Sigma

projects, reviewing projects with them, answering their questions, and assisting in the design and implementation of their projects. This mentoring role appears to be that of a staff specialist or subject matter expert available as a resource to project managers using Six Sigma, rather than a role that would allow the beneficiary to exercise significant discretion over the company's day-to-day operations. The petitioner clarified that the beneficiary helps Green Belts and Black Belts "to achieve their desired targets" such as increasing revenues or reducing costs. As noted above, the beneficiary will not supervise any employees, and his role in "supporting" managers does not appear to rise to the level of a function manager.

In addition to the above duties, the majority of which were not shown to be managerial, the petitioner stated that the beneficiary will be "establishing BPMS and performance metric dashboards," "Supporting Process Excellence," and "establishing a governance structure to ensure compliance with global process deployment strategy." Although the petitioner described these as the "day-to-day responsibilities" associated with managing the "Process Excellence deployment function," the petitioner did not include these tasks in the breakdown of the beneficiary's duties or further discuss what managerial duties are involved in establishing "performance metric dashboards," a "governance structure," or "supporting Process Excellence." The petitioner also indicated that the beneficiary will be responsible for "translating the best practices, deploying Six Sigma and integrating the business in the USA and India," but again failed to elaborate upon the specific tasks he would perform to achieve these goals. 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 many of the beneficiary's activities in the course of his 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.

In response to the RFE, the petitioner offered a slightly revised account of the beneficiary's proposed duties, including different percentages of time, and restated responsibilities. Notably, the petitioner indicated that the beneficiary would devote 20 percent rather than 35 percent of his time to leading projects. The petitioner removed the "business analytics" responsibility from the description and stated that the beneficiary would spend 20 percent of his time to "deploying [company] Global Process excellence initiatives in the Health Care – Payer operation centers." The petitioner provided no explanation for these changes. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner indicated that the beneficiary will be a "senior level manager" and a "major influencer," will work closely and regularly with top executives, and will have the authority to make "final decisions on operations matters." At the same time, the petitioner stated that "a typical week may consist of the beneficiary spending three full consecutive days training and the remaining two days conferencing with the most senior executives reviewing project strategies and prioritizing new projects." The petitioner's organizational chart indicates that the beneficiary will report to the "director – operations" of the Salt Lake City RMO organization. The petitioner did not explain what the "RMO" organization is or where it fits within the hierarchy of the U.S. operations as a whole.

As noted above, the term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii).

Based on the statutory definition of managerial capacity, a petitioner must prove the following elements to establish that a beneficiary is primarily serving as a function manager within an organization:

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

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

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

See sections 101(a)(44)(A)(ii), (iii), and (iv) of the Act. Most importantly, the petitioner must establish that the beneficiary's actual duties are primarily managerial in nature. Here, while the beneficiary will likely be a valuable resource to the U.S. organization as an experienced and trained expert in Six Sigma and process excellence, and the beneficiary is clearly knowledgeable of the company's best practices in these areas, the petitioner has not supported its assertions that the actual duties of the position are primarily managerial in nature, or that the beneficiary will in fact "manage" the Process Excellence deployment function for the U.S. company or exercise discretion over the day-to-day operations of the function. The beneficiary will spend much of his time training and mentoring U.S. staff working with Six Sigma processes, conducting statistical and business analysis and generating reports. While these may be critical functions, the petitioner has not established that such responsibilities fall within the definition of managerial capacity at section 101(a)(44)(A) of the Act. The petitioner has not identified the nature or scope of the beneficiary's decision-making authority or its impact on the U.S. company's operations, nor does the limited organizational chart submitted show how the beneficiary functions at a senior level within the organizational hierarchy. The chart depicts his immediate peers' job titles as "technology support." The beneficiary himself appears to be primarily a staff specialist with expertise that may be sought out by managers and executives, rather than a manager based on his own duties or level of authority within the company.

A beneficiary's "control," management or direction over a company or an essential function within a company cannot be assumed or considered "inherent" to his position merely on the basis of broadly-cast job responsibilities or the beneficiary's job title. USCIS will not accept a managerial job title and a general job description in lieu of the required detailed description of the beneficiary's actual job duties. The AAO concurs with the director's conclusion that the petitioner failed to establish that the beneficiary would be employed in a managerial capacity in the United States. For this additional reason, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.