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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

PUBLIC COPY

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[redacted]

DATE: MAY 17 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 a 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 California corporation, is engaged in the import and marketing of handbags and related products. It states that it is a subsidiary of Tianjin Eass Group Trading Co. Ltd., located in China. The petitioner seeks to employ the beneficiary in the position of president for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has been employed abroad or will 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. On appeal, counsel for the petitioner asserts that the director failed to consider the totality of the evidence when considering whether the beneficiary would be employed in a managerial or executive capacity, erred in concluding that the beneficiary would not supervise managerial or professional personnel, and placed undue emphasis on the size of the petitioning entity. Counsel contends that the beneficiary will be employed in both an executive capacity and a managerial capacity based on his duties and level of authority within the United States entity.

I. The Law

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. The Issue on Appeal

The first issue to be addressed is whether the petitioner established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

A. Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 3, 2009. In a letter accompanying the petition, the petitioner stated that the beneficiary will perform the following duties as President of the U.S. company, which is engaged in the import and wholesale of handbags:

> (1) Formulating and determining corporate policies and strategies in accordance with general directives from parent company; (2) Directing and coordinating company activities to obtain optimum efficiency, economy of operations, and maximization of profits; (3) Directing and coordinating activities to develop new markets and to explore business opportunities; (4) Personnel actions including hiring and dismissing; (5) Reviewing operating, sales reports and financial statements to determine business progress; (6) Planning and developing industrial, labor and public relations policies.

The petitioner also submitted a statement from the foreign entity confirming its decision to send the beneficiary to serve as the president of the U.S. company for a period of three years. The foreign entity stated that the beneficiary's responsibilities in the United States will include the following:

> He will have broad scope of responsibilities to direct activities such as procurement, marketing, warehouse management and quality assurance. He will have plenary power regarding the personnel structure and management which include, but not limited to, hire, recruit and evaluate job performances. He will also participate in new product/R&D activities; coordinate outsourcing accounting service office to insure that the accounting issues are appropriately completed, etc.

In addition, the petitioner stated that the beneficiary's "detailed responsibilities" will include:

> Accounting
> Human Resource (Contracts, Payroll, Benefits, etc.)
> Operations including Logistics (Ocean Freight, Air Freight, Warehousing)
> Purchasing
> Letters of Credit
> Information Technology
> Legal
> Imports, Customs Clearance through Receipt in Warehouse
>
> 1. Directs all activities of the branch company implementing company policies and procedures. Activities will consist of procurement, warehouse management, quality assurance and consolidations.

2. Coordinate procurement activities with China headquarters purchasing
3. Identify and implement cost saving procurement initiatives
4. Adhere to company established internal controls by insuring accurate and timely information is conveyed and reported
5. Recruit, train and manage personnel
6. Participate in new product/R&D activities
7. Support company internal distribution efforts
8. Compliance with US business regulation/Procedure etc.
9. Coordinate outsourcing accounting service office to insure that the accounting issues are appropriately completed.

The petitioner submitted an organizational chart indicating that the beneficiary will directly supervise a warehouse manager and a sales manager, while the company's other employees include two sales staff and one warehouse worker. The petitioner provided evidence of wages paid to all five employees during the fourth quarter of 2008, as well as a description of each subordinate position.

The director issued a request for additional evidence (RFE) on February 5, 2009, in which she instructed the petitioner to provide: (1) a more detailed description of the beneficiary's proposed duties, including the percentage of time the beneficiary will spend on each specific task; (2) an organizational chart identifying all employees by name and position title; and (3) a list of all employees including their names, job duties, beginning and end dates of employment, immigration status, educational levels, and source of remuneration.

In a response dated February 5, 2009, the petitioner re-submitted two of the above job descriptions for the beneficiary. The petitioner stated that the company has five full-time employees and expects to hire additional staff in the near future. The petitioner also re-submitted the job descriptions previously submitted for each subordinate employee. With respect to the beneficiary's employment capacity, the petitioner stated:

> [The beneficiary] will be the president of the US Company and will directly supervise two departments: Sales Department and Warehouse Department. The Manager of Sales Department, [redacted], has obtained a bachelor degree from University of Illinois, USA in business administration. The Manager of the Warehouse Department, [redacted], has obtained a bachelor degree from Tatung Institute of Technology, Taipei, Taiwan. [The beneficiary] will supervise and control the work of managerial employees as the president of the U.S. company.

On February 14, 2009, 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 observed that, based on the job description provided, the beneficiary would be performing several non-managerial tasks associated with the day-to-day operations of the company, and it could therefore not be determined whether the beneficiary's actual duties are primarily managerial or executive in nature. The director further found that, while the beneficiary would be supervising two "department managers," these employees would not be acting primarily as managers or supervisors, and thus

the petitioner did not establish that the beneficiary will primarily supervise a subordinate staff comprised of managerial or supervisory employees.

On appeal, counsel for the petitioner asserts that the beneficiary will be performing duties that fall within the statutory definition of "executive capacity" at section 101(a)(44)(B) of the Act. Counsel states:

> The beneficiary will be performing many aspects of the day-to-day operations of the business. Procurement and logistics duties are only part of the job functions the beneficiary will supervise and direct. Your office has concluded that "a significant amount of the beneficiary's proposed duties are comprised of procurement, purchasing, logistics and distribution" and has failed to take a totality criteria to look into all the aspects of the beneficiary's executive and managerial job duties.

Counsel emphasizes that the beneficiary is the founder and president of the petitioner's parent company, which "has vested the beneficiary ultimate and plenary authority to manage and run the U.S. subsidiary." Counsel asserts that the beneficiary's direct subordinates are in fact "managerial or professional in nature." Counsel notes that there are no employees under the warehouse manager as of March 12, 2009, but states that new employees will be recruited. Counsel stresses that the sales manager has a bachelor's degree in business administration, and supervises the salespersons to implement sales and marketing plans. Counsel contends that the petitioner is "a relatively new establishment," and that "it is quite obvious that the company is expected to hire more employees as the business expands."

Finally, counsel suggests that the director placed undue emphasis on the size of the organization and the number of staff managed, without considering the reasonable needs of the organization and its current stage of development. Counsel asserts that, although the number of employees is relatively small, the beneficiary will be managing essential functions and overseeing professionals, thus meeting the criteria for managerial capacity pursuant to section 101(a)(44)(A) of the Act.

B. Discussion

Upon review, and for the reasons discussed below the petitioner has not established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

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

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).

The fact that the beneficiary manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Pursuant to the strict statutory definitions, section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive," such as staff officers or specialists, self-employed persons who perform the management activities involved in practicing a profession or trade, or a first-line supervisor of non-professional employees. See section 101(a)(44)(A)(iv) of the Act; see also 52 Fed. Reg. 5738, 5740 (February 26, 1987)(available at 1987 WL 127799). While the AAO does not doubt that the beneficiary exercises discretion over the petitioner's day-to-day operations and possesses the requisite level of authority with respect to discretionary decision-making as the company president, the petitioner has failed to demonstrate that the beneficiary's duties would be primarily managerial or executive in nature.

The petitioner initially submitted two very different descriptions of the beneficiary's proposed duties as president of the U.S. company. The description included in the petitioner's letter dated January 16, 2008 was vague and largely paraphrased the statutory definitions of managerial and executive capacity at section 101(a)(44)(A) and (B) of the Act. For example, the petitioner indicated that the beneficiary will be "formulating and determining corporate policies and strategies"; "directing and coordinating company activities"; "directing and coordinating activities to develop new markets;" and "planning and developing industrial, labor and public relations policies." While these broad and generalized responsibilities suggest that the beneficiary has authority over the company's policies and activities, they offer no insight into what he will actually do on a day-to-day basis as the president of an import and wholesale distribution company. Specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Concurrently, the petitioner submitted a more detailed list of responsibilities indicating that the beneficiary is responsible for accounting, human resources, purchasing, operations, logistics, letters of credit, information technology, legal matters, imports and customs clearance. The petitioner did not clearly define what specific managerial or executive duties the beneficiary would perform with respect to most of these areas of responsibility. However, the petitioner did indicate that the beneficiary would be personally responsible for coordinating procurement activities, and participating in new product/R&D activities, duties that are clearly not managerial tasks. Furthermore, a review of the detailed position descriptions provided for the existing U.S. employees reflects that none of them are responsible for performing duties related to these company functions. If the beneficiary will be solely responsible for administrative human resource matters, purchasing, logistics, and importing functions, then it is reasonable to conclude that he will perform both managerial and non-managerial duties associated with such functions. 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).

Given the divergence between the two job descriptions submitted at the time of filing, and the fact that one of the job descriptions revealed that the beneficiary's duties would include both managerial and non-managerial

functions, the director reasonably requested clarification regarding the specific duties the beneficiary would perform and the amount of time he would devote to specific duties. 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; *see also Brazil Quality Stones, Inc. v. Chertoff*, 531, F.3d 1063, 1069-70 (9th Cir. 2008).

In response to the director's request for evidence, the petitioner chose to simply re-submit the above-referenced job descriptions which had already been reviewed and found to be insufficient to establish either that the beneficiary's duties would be primarily managerial or executive in nature, or whether the beneficiary would be primarily performing duties relating to the company's purchasing, procurement, logistics, importing and other operational and administrative functions. 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).

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary would primarily perform non-managerial administrative or operational duties. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them, despite the director's specific request for such information. This failure of documentation is important because several of the responsibilities attributed to the beneficiary, as discussed above, do not fall directly under traditional managerial or executive duties as defined in the statute, and the petitioner has identified no other company employees to whom such non-qualifying activities would be delegated. For this reason, the AAO cannot determine whether the beneficiary would be primarily performing the duties of a manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The petitioner's personnel structure at the time of filing included a sales department manager, a warehouse manager, two sales staff, and one warehouse worker who was no longer working for the company at the time the appeal was filed in March 2009. While the director noted that there is some overlap between the duties

performed by the petitioner's sales manager and his subordinate staff, the AAO is satisfied that the sales manager can be considered a supervisory position. Upon review of the totality of the evidence, however, we cannot conclude that the supervision of a subordinate staff comprised of supervisory personnel is among the beneficiary's primary tasks. As discussed above, the petitioner failed to provide the requested information regarding how the beneficiary allocates his time among his responsibilities. Further, all of the petitioner's existing personnel are assigned to either sales or warehouse functions, while the beneficiary is claimed to be responsible for essentially every other aspect of the company. Thus, while we conclude that the portion of time the beneficiary devotes to overseeing the company's supervisory personnel would be considered a qualifying managerial task, the record does not support a finding that this would be the beneficiary's primary area of responsibility.

On appeal, counsel asserts that the beneficiary will manage the U.S. company's "essential functions." 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 clearly describes the duties to be performed in managing the essential function, 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.

Counsel's broad assertion that the beneficiary will manage the company's essential functions as its president is insufficient to establish that the beneficiary will primarily act as a function manager. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). As noted above, the beneficiary is claimed to be responsible for a number of company activities, including logistics, procurement, and research and development. It is the petitioner's obligation to establish that the day-to-day non-managerial tasks of the function managed are performed by someone other than the beneficiary. Again, the only tasks that have been delegated to someone other than the beneficiary are sales and warehousing. The beneficiary will not be considered to be "managing" all other functions of the company simply because he is the sole employee responsible for such activities. 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. As discussed above, the petitioner has not sustained this burden.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within an 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, 8 U.S.C. § 1101(a)(44)(B). 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.* Here, while the beneficiary will be responsible for the goals and policies of the company as its president, the evidence of record fails to demonstrate that these would be the beneficiary's primary duties. The petitioner has attributed a number of non-qualifying responsibilities to the beneficiary and has failed to indicate how much of his time would be available for executive tasks.

The AAO notes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In reviewing the relevance of the number of employees a petitioner has, however, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F 2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava,* 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). It is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner operates a handbag import and wholesale business that has been in business for slightly more than one year. It is staffed by three sales personnel and one to two warehouse personnel, and does not have any administrative employees. The petitioner states that the beneficiary will be responsible for all other activities including administrative, human resources, logistics, customs clearance, research and development, purchasing, operations, and importing tasks. Therefore, notwithstanding the beneficiary's job title of "president" it appears that the petitioner presently has a reasonable need for him to perform a number of non-managerial and non-executive tasks that would preclude him from performing primarily qualifying duties.

We acknowledge counsel's arguments that the petitioner is a relatively new company and expects to grow quickly and hire additional employees. Regardless of the fact that the petitioner is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirements. It is a long-established rule in visa petition proceedings that a petitioner must establish eligibility as of the time of filing the petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his or her duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties.

Based on the foregoing, the petitioner has not established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. Accordingly, 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.