



U.S. Citizenship
and Immigration
Services



D7

DATE: **DEC 20 2012**

Office: CALIFORNIA SERVICE CENTER

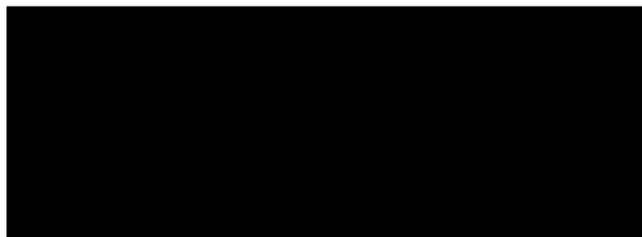
FILE:

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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 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 New Jersey corporation established in 1983, states that it is involved in the electronics business. It claims to be a wholly-owned subsidiary of [REDACTED] America, Inc., which is in turn wholly owned by a Korean corporation [REDACTED]. Further, the petitioner claims that the beneficiary is currently assigned to another wholly-owned subsidiary of the Korean parent company in Mexico, [REDACTED]. The petitioner seeks to employ the beneficiary as Assistant Manager - Purchasing Group for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the petitioner would employ the beneficiary in a primarily managerial or executive capacity. The director concluded that the duties offered for the beneficiary were indicative of an employee primarily providing services, and not primarily acting in a managerial or executive capacity. The director also reasoned that the organizational structure offered by the petitioner, and the beneficiary's place therein, was insufficient to elevate the beneficiary to a level higher than a first-line supervisor of non-managerial and non-professional employees.

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 asserts that the evidence establishes that the beneficiary will act primarily in a managerial capacity. Counsel contends that the beneficiary will be supervising eleven employees, ten of which hold bachelor's degrees, and will be managing a "major function" within the petitioner's organization. On appeal, the petitioner submits an updated version of the beneficiary's duties; a more detailed organizational chart for the beneficiary's group; and job duty descriptions and educational levels for the beneficiary's subordinates.

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 Issues on Appeal:

A. Employment in the United States in a managerial or executive capacity

As stated, the director denied the petition based on a finding that the petitioner failed to establish that the beneficiary will be employed in the United States in a qualifying executive or managerial 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.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will perform primarily executive or managerial duties with the petitioner as required by the Act.

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 offered the following explanation of the beneficiary's duties in response to the director's Request for Evidence (RFE) instructing it to provide a more detailed description of the beneficiary's proposed position:

- [The beneficiary] will direct and coordinate activities of his subordinate assistant manager and supervisors engaged in buying, selling, and distributing materials, equipment, machinery, and supplies. He will exercise wide latitude in discretionary decision-making and have authority to make personnel decisions within his department, including interviewing and hiring staff and overseeing subordinate training. Approximately twenty percent (20%) of his time will be devoted to this duty.
- [The beneficiary] will also be responsible for representing [the petitioner] in negotiating contracts, typically valued in the millions of dollars and formulating policies with suppliers and vendors. As such, he will develop, establish and implement purchasing and contract management instructions, policies, procedures and goals. [The beneficiary] will be required to communicate with the Production, Engineering, and Quality Control Departments in order to forecast the purchasing, budgeting, and inventory needs of each department; they will also interact with the aforementioned departments to develop new items. Approximately twenty (20%) of [the beneficiary's] time will be spent in this capacity.
- Once the materials are delivered, [the beneficiary] will be responsible for updating inventory manual lists and controlling excess inventory, valued at approximately \$30 Million. Due to the significant value of the inventory, it is very critical that most all of it is accounted for in accordance with the incredibly high company standards set for loss mitigation. [The beneficiary] will spend approximately twenty percent (20%) of his time in this capacity.

- [The beneficiary] will also be required to analyze market and delivery systems to assess present and future material availability. This will require [the beneficiary] to coordinate and monitor the incoming and outgoing of materials from various departments. Specifically, [the beneficiary] will monitor material usage during the production process with an underlying aim of economic efficiency. When necessary, [the beneficiary] will develop and implement policies for improvements to the production process to reduce material usage, which will lead to a reduction in production costs. [The beneficiary] will spend approximately fifteen percent (15%) of his time in this capacity.
- Additionally, [the beneficiary] will coordinate, with department purchasers and parts suppliers, purchasing plans for production. [The beneficiary's] suggestions will be presented to our company's department managers and executive officers. [The beneficiary] will also be required to prepare purchasing and material usage reports regarding market conditions and merchandise costs as well as recommendations for upcoming production lines that will be presented to our company's and our Korean Parent's executive officers. Approximately fifteen percent (15%) of [the beneficiary's] time will be spent in this capacity.
- Lastly, [the beneficiary] will be required to review purchase order claims and contracts for conformance to company policy. Due to the nature of the purchasing function that [the beneficiary] will manage, he will work independently with only general specifications for issuing and awarding bids. This step is crucial in that it will contractually bind the company to a long term agreement, typically valued at millions of dollars. In addition, he will resolve vendor or contract grievances, and claims against supplier. [The beneficiary] will spend approximately ten percent (10%) of his time in this capacity.

The AAO notes that the above position description is essentially the same as the description submitted at the time of filing. On appeal, counsel submits a modified version of the beneficiary's duties with material changes that remove the beneficiary performing duties specific to the provision of services and emphasize the performance of managerial functions. For instance, as noted above, the beneficiary is offered as personally analyzing market and delivery systems to assess present and future material availability; updating inventory manual lists and controlling excess inventory; coordinating with department purchasers and parts suppliers; and preparing purchasing reports. However, in the duty description presented on appeal, the beneficiary is no longer offered as personally performing these services, but dictating them to subordinates. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). 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'r 1998). As such, the updated version of duties submitted on appeal will not be considered.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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. However, in the offered job duties, the petitioner lists several daily tasks that cannot be classified as traditional managerial or executive duties as defined in the statute, such as: (1) updating inventory manual lists and controlling excess inventory; (2) analyzing market and delivery systems to coordinate and monitor the incoming and outgoing of materials; (3) preparing purchasing and material usage reports regarding market conditions and merchandise costs and recommending action to certain higher level managers and executives; (4) reviewing purchase order claims and contracts for conformance to company policy; and (5) issuing and awarding bids. Further, qualifying and non-qualifying duties are confusingly intertwined within the various sections of the offered duties making it impossible to discern whether a majority of the beneficiary duties are indeed managerial or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Additionally, to the extent the petitioner references the beneficiary performing managerial or executive tasks, these directly recite the statute, such as exercising wide latitude in discretionary decision making; and establishing and implementing policies. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Acyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

On appeal, the beneficiary is offered as a personnel manager under the regulations. However, in the organizational chart submitted in response to the director's RFE, the beneficiary is not identified as having any subordinates. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). In a letter submitted in response to the RFE dated May 27, 2011, the beneficiary is listed as having one direct supervisory subordinate, assistant manager [REDACTED]. Also, the aforementioned letter suggests that further positions will be filled under the beneficiary. However, the organizational chart submitted in response to the RFE does not include [REDACTED] as a subordinate to the beneficiary, but rather depicts him in a position that is lateral to the beneficiary's assistant manager position. Additionally, the aforementioned organizational chart includes employees all with managerial titles, listing no employees to perform the day-to-day functions of the company. 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. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Therefore, based on the insufficiency of the evidence submitted in response to the director's RFE related to the beneficiary's subordinates, it cannot be determined that the beneficiary will act as a personnel manager.

On appeal, counsel submits an updated organizational chart that reflects the beneficiary having eleven subordinates, including a supervisory assistant manager. As noted above, none of these subordinates were offered on the record in response to the director's RFE. Further, the previously claimed subordinate of the beneficiary, [REDACTED], is again listed as being a position lateral to the beneficiary and not as a subordinate as previously offered. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. As such, the record submitted in response to the director will only be considered, and therefore insufficient to establish that the beneficiary has subordinates to qualify him as a manager or executive.

In response to the RFE, the petitioner claimed the beneficiary would be employed as an executive. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 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 managerial 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.*

In the present matter, the petitioner has not submitted sufficient evidence to establish the beneficiary as an executive. As established, the beneficiary has not been shown to have any managerial subordinates, let alone a level of managerial employees to direct the component of the organization and allow the beneficiary to primarily focus on broad goals and policies. In fact, as discussed, non-qualifying duties predominate in the beneficiary's duty description, suggesting he will be primarily involved in the day-to-day operations of the function rather than primarily directing and managing the function. Further, the beneficiary has not been shown to exercise wide authority in discretionary decision making. Indeed, the duties themselves state that the beneficiary will only make recommendations to the parent company's executive officers, suggesting he does not have wide discretionary authority. Lastly, the organizational chart provided by the petitioner does not reflect that the beneficiary reports to higher level executives, a board of directors, or stockholders; but that he reports to a senior manager within the purchasing group. As noted by the director, the petitioner's organizational chart submitted in response to the RFE shows that the beneficiary's group includes a director, two senior managers, four managers, and three assistant managers, including the beneficiary. Based on this structure, the beneficiary will not occupy an elevated position within the petitioner's organizational hierarchy. As such, the petitioner has not established with sufficient evidence that the beneficiary will act as an executive.

Counsel suggests on appeal that the beneficiary is a function manager as the beneficiary is offered as managing a "major function" for the petitioner. 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 written job offer 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(1)(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. 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 *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function. In fact, the evidence presented shows that the beneficiary will likely be primarily focused on the day-to-day operations of the function rather than managing or directing the function.

Therefore, the AAO cannot conclude the record supports the beneficiary's claimed managerial or executive capacity due to the prevalence of non-qualifying duties within the beneficiary's job duty description; the unsupported nature of the beneficiary's provided qualifying duties; the lack of professional or managerial subordinates reporting to the beneficiary; and the discrepancies in the petitioner's organizational structure. Accordingly, the appeal must be dismissed.

B. Employment with the foreign employer in a managerial or executive capacity

Beyond the decision of the director, the petitioner has also not established that the beneficiary acts in a managerial or executive capacity with the foreign employer.

As stated, 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(1)(3)(ii). In the I-129 petition, the petitioner explains the beneficiary's foreign position and duties as follows:

In January 2010, [the beneficiary] was transferred back to [redacted] of the Mechanical Material part team in the purchasing group. As such, [the beneficiary] controls and manages eight (8) lower-level employees. As Assistant Manager of Mechanical material part team of the purchasing group, [the beneficiary] is responsible for determining quantity, quality, cost, and delivery of materials for all production process. He is also responsible for analyzing SCM (Supply Chain Management) Index with all 36 criteria and improving Purchasing [redacted] resource planning Voice of Customer) Charger. In addition, [the beneficiary] is in charge

of maintaining purchasing department key reports, such as Purchasing Monthly Report, Air Cost analysis, General Vendor Index for CEO, CFO and other executive managers.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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. However, in the beneficiary's foreign duty description, the beneficiary is offered as primarily performing non-managerial and non-executive duties, such as tracking certain key purchasing indicators and reporting these results to higher level executives and managers. Additionally, the petitioner has not documented 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 administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager or an executive. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Further, although the petitioner states that the beneficiary manages employees, such subordinates are not established as supervisors, managers or professionals to show that the beneficiary is a personnel manager according to the Act. 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). See § 101(a)(44)(A)(ii) of the Act. 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'r 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 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 offers that the beneficiary has eight subordinates, including an accessory buyer, a cushion buyer, a box buyer, a back-front buyer, a back-stand buyer, a press leader and a

bracket/stand/back buyer. The petitioner claims that five of these employees are "staff" and three are "supervisors" but the submitted organizational chart does not depict a tiered structure within the "Procurement Local" department in which the beneficiary serves as assistant manager. Further, the petitioner has not specified any managerial duties or subordinates for these claimed managers or supervisors. In addition, although the petitioner offers that four of the beneficiary's foreign subordinates have bachelor's degrees, no evidence is offered to establish that a bachelor's degree is necessary for entry into the position or to perform the work. Indeed, the petitioner suggests it is not a position requiring a degree by reflecting four employees reporting to the beneficiary without a bachelor's or professional degree. As such, the petitioner has not shown with sufficient evidence that the beneficiary is more than a first-line manager of non-managerial and non-professional employees with the foreign employer. *See* Section 101(a)(44)(A)(ii) of the Act.

Additionally, the petitioner has not shown that the beneficiary is an executive with the foreign employer. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 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 managerial 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.*

In the present matter, the petitioner has not submitted sufficient evidence to establish the beneficiary as an executive. As established, the beneficiary has not been shown to have any managerial subordinates with the foreign employer, let alone a level of managerial employees to direct the function and allow the beneficiary to primarily focus on broad goals and policies. In fact, and as discussed, non-qualifying duties predominate in the beneficiary's foreign duty description, suggesting he will be primarily involved in the day-to-day operations of the function rather than primarily directing and managing the function. Further, the beneficiary has not been shown to exercise wide authority in discretionary decision making. Indeed, the duties themselves state that the beneficiary will only be tracking certain key purchasing indicators and reporting this information to the foreign employer's executive officers, suggesting he does not have wide discretionary authority. Lastly, the organizational chart provided by the petitioner does not reflect that the beneficiary reports to higher level executives, a board of directors, or stockholders; but that he reports to a manager within the foreign employer's "support & innovation" group, who in turn reports to a "Purchasing Mechanic" with the designation "senior manager" within the purchasing group.

As such, the petitioner has not shown with sufficient evidence that the beneficiary acts primarily in a managerial or executive capacity with the foreign employer. For this additional reason, the appeal must be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

III. Conclusion

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.