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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: **JAN 03 2012** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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 is incorporated in the State of California. It claims to be an affiliate of [REDACTED]. The petitioner now seeks to employ the beneficiary in L-1A status as Chief Executive Officer for a period of three years.

The director denied the petition on the grounds that the petitioner failed to establish a qualifying relationship with the foreign employer and that the beneficiary would be working in a 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 asserts that the director acted arbitrarily in denying the petitioner and the decision was based on errors of fact. Counsel submits a brief and additional evidence in support of the appeal.

#### **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. *Qualifying Relationship*

The first issue addressed by the director is whether the petitioner established that it has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

\* \* \*

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

\* \* \*

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner indicated on the Form I-129, Petition for a Nonimmigrant Worker, that it is owned "100% by [REDACTED]" In a letter dated September 4, 2009, the petitioner stated that it is "the U.S. subsidiary of a [REDACTED]"

The petitioner submitted the following evidence relating to the establishment of the U.S. company: (1) Bank money wire statements issued by Hang Seng Bank showing transfer of capital funds to the petitioner; (2) the petitioner's Articles of Organization filed with the California Secretary of State on April 17, 2008; and (3) a stock certificate issued to [REDACTED] for 1,000,000 shares of stock dated April 17, 2008 showing a value per share of \$1. According to the Articles of Incorporation, the petitioner is authorized to issue 1,000,000 shares of common stock.

The director issued a request for additional evidence ("RFE") on October 5, 2009, in which she requested, *inter alia*, additional evidence to establish that the U.S. and foreign entities have a qualifying relationship. Specifically, the director requested: (1) proof of stock purchase, including evidence to show that the claimed foreign parent company has paid for its ownership interest in the U.S. entity; (2) minutes of the meeting for the U.S. company that lists the stock shareholders and the number and percentage of shares owned; (3) copies of all the U.S. company's stock certificates; (4) copies of the U.S. company's stock ledger showing all stock certificates issued to the present date, (5) a copy of the U.S. company's Notice of Transaction Pursuant to Corporations Code Section 25102(f) showing the total offering amounts and, if not already provided, show that the parent company paid for the stock ownership.

In response, the petitioner provided the same wire transfer statements provided with the initial petition showing transfers in the amount of \$53,000 USD, \$35,000 USD, and \$130,669.62 USD to the petitioner. The petitioner did not provide a translation or any other evidence establishing ownership of the funds transferred to the petitioner. The petitioner also provided: (1) a stock certificate showing that 10,000 shares of stock were issued to [REDACTED] dated April 17, 2008 showing a value per share of \$1, (2) a stock transfer ledger showing that 10,000 shares of stock were issued to [REDACTED] on April 17, 2008, and (3) a copy of the U.S. company's Notice of Transaction Pursuant to Corporations Code Section 25102(f) showing a total offering of common stock valued at \$60,000 USD. The number of shares issued was not specified on the notice.

The director denied the petition on November 24, 2009, concluding that the petitioner failed to establish that the U.S. and foreign entities have a qualifying relationship. The director acknowledged the wire transfer receipts, but found insufficient evidence to establish that the foreign entity actually paid for its ownership interest in the U.S. company due to the fact that the petitioner failed to indicate the origin of each of the transfers. Furthermore, the director found the following with respect to the stock issuance:

The stock transfer ledger indicates that 10,000 shares were issued on April 17, 2008 for \$10,000. Following the request for additional evidence, stock certificate #1 was resubmitted with a different number of shares of common stock issued to the foreign entity. The petitioner did not explain the difference of 990,000 shares.

The director determined that due to the inconsistencies in the petition, the stock certificates and ledger alone are insufficient to clarify ownership and control of the petitioner.

On appeal, counsel for the petitioner asserts that the director's conclusion regarding lack of evidence detailing the source of the wire transfers is "only a misconception cause by language barrier [*sic*], that is, the beneficiary (as the owner and executive director of the foreign company) had signed (in Chinese) on the money wire to authorize the money remittance.... Since [REDACTED] signed in Chinese, the immigration examiner was unable to identify the person who had made and authorized the subject money remittances, resulting in the misconception for his/her findings."

The petitioner submits new evidence on appeal including: (1) a copy of the Business Registration for the foreign entity showing that the beneficiary is the owner of the foreign entity, and, to show the beneficiary's name in Chinese characters "so that the examiner can compare [REDACTED] Chinese signature that appeared on the money wire remittance form,"; (2) copies of the money wire remittance forms submitted with the initial petition and on appeal; (3) copies of the Outward Remittance Advances issued to the parent company showing amounts of \$530,000 USD and \$130,668.82 USD were remitted to the petitioner by the beneficiary, (4) a promissory note showing that the \$530,000 USD and \$130,668.82 were loans from the beneficiary to the parent company, and (5) copies of minutes, bylaws, stock certificates, stock ledgers, articles of incorporation, and financial documents of the petitioner showing the issuance of stocks to the parent company.

Upon review, the AAO concurs with the director's determination that the petitioner failed to establish a qualifying relationship between the U.S. and foreign entities.

As general evidence of a petitioner's claimed qualifying relationship, stock or membership certificates alone are not sufficient evidence to determine whether a stockholder or member maintains ownership and control of a corporate entity. The corporate stock or membership certificate ledger, stock certificate registry, corporate bylaws, operating agreement and the minutes of relevant annual shareholder or member meetings must also be examined to determine the total number of shares or membership units issued, the exact number issued to the shareholders or members, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986). Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The petitioner did not submit consistent evidence regarding the number of stock shares issued to the foreign entity. Included with the original I-129 submission was a stock certificate #1 dated April 17, 2008. The stock certificate was issued to the foreign company for 1,000,000 shares. In response to the RFE, the petitioner submitted another stock certificate #1 also dated April 17, 2008. This stock certificate was also issued to the foreign company but for 10,000 shares. The petitioner did not provide any evidence or explanation as to how

two stock certificates, both issued as the #1 certificates, could be issued to the foreign entity on the same day for different amounts of stock.

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). Furthermore, 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 (BIA 1988).

On appeal, the petitioner submitted a copy of stock certificate #3 issued April 17, 2008. A corporate resolution dated April 17, 2008 is included. This resolution cancels stock certificates #1 and #2 and authorized the issuance of a stock certificate #3 to the parent company for 10,000 shares. A stock ledger cancelling stock certificates #1 and #2 and reissuing a stock certificate #3 is also included. The petitioner did not include a copy of the stock certificates #1 and #2 that are listed in the stock ledger. It is unclear whether the stock ledger references either the stock certificate #1 issued with the initial submission, or the stock certificate #1 issued in response to the request for evidence.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

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 Obaigbena*, 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.

The petitioner failed to provide consistent evidence regarding the issuance of stock certificates to the parent company. Furthermore, the petitioner submits a stock ledger, corporate resolution, and certificates dated April 17, 2008, predating the filing of the I-129 petition. The petitioner failed to provide an explanation regarding why this information was otherwise unavailable at the time of filing or in response to the RFE.

In addition, the petitioner failed to properly document the source of the wire transfers submitted in response to the RFE and on appeal. The director requested proof of stock purchase, including evidence to show that the claimed foreign parent company has paid for its ownership interest in the U.S. entity. In response, the petitioner submitted copies of three wire transfers in the amount of \$53,000 USD, \$35,000 USD, and \$130,669.62 to the petitioner. The wire transfers each have two lines written in English stating "Please debit my/our account no." Afterwards is an account number. There is no identification of the account origin other than the account numbers. Under these two lines is a third line stating "Others." After the line "Others" is a statement written in a foreign language.

The director denied the petition stating the following:

While the bank statements indicate that the wire transfers were received in the petitioner's corporate bank account, neither the bank statement nor any other evidence in the record disclosed the origin of the total amount of \$1,010,668.62. The wire transfer receipts do not indicate the origin of the transfers, each of the three wires were debited from different account numbers.

On appeal, the petitioner submits a copy of the Business Registration for the foreign entity showing that the beneficiary is the owner of the foreign entity, and to show the beneficiary's name in Chinese characters "so that the examiner can compare [REDACTED] Chinese signature that appeared on the money wire remittance form." The copy of the Business Registration for the foreign entity will not suffice as a substitute for a certified translation of the claimed signature line on the wire transfer document. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Consequently, the appeal will be dismissed.

***B. Employment in a Managerial or Executive Capacity***

The second issue addressed by the director is whether the petitioner established that the beneficiary will be employed by the United States entity in a 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.

In a letter dated September 4, 2009, the petitioner described the beneficiary's authority as [REDACTED] as having "the ultimate control of the company's business operations." The petitioner stated that the beneficiary would perform the following duties:

1. Determine the number of additional employees to be recruited, and the level of education and qualifications required for each position.
2. Determine if the office and warehouse spaces are sufficient to facilitate the business operations.
3. Determine if additional departments will be implemented.
4. Determine the target to achieve business revenue for the following five years.
5. Determine budget allotment.
6. Determine credit limit for each customer.

The petitioner described the beneficiary's breakdown of duties as follows: 5% of time "to decide if more office and warehouse spaces will be required, and the purchasing and installing of necessary office furniture and furnishings as deemed required;" 10% of time "determining the number of manpower necessary to run the business operation, including recruitment, training, and work performance evaluation;" 50% of time "researching the U.S. markets and financial data to set company goals and plans;" 15% of time "networking with local and overseas suppliers and customers;" and 20% of time "to focus on presiding meetings and writing reports, which, of course, emphasis will be added to the business progress."

The petitioner submitted an organizational chart with the initial I-129 submission that failed to show the proposed position anywhere on the chart.

In the director's RFE dated October 5, 2009, she instructed the petitioner to submit, *inter alia*, the following: (1) copies of the U.S. company's California Employment Development Department (EDD) Form DE-6, Quarterly Wage Reports for all employees for the last four quarters that were accepted by the State of California; (2) copies of the U.S. company's payroll summary, W-2s and W-3s; and (3) a list of the specific goals and policies the beneficiary has established over the last six months, specific discretionary decisions exercised by the beneficiary over the last six months, evidence that the organization requires only general

supervision over the beneficiary, and a specific day-to-day description of the duties the beneficiary performed over the last six months.

In response to the request regarding the managerial or executive nature of the beneficiary's duties, the petitioner provided a business plan showing the goals and policies the beneficiary established over the past six months including a procurement plan, a sales plan, and a logistics plan.

The petitioner also provided a list of the specific discretionary decisions made by the beneficiary over the past six months. The petitioner describes the beneficiary's decisions as follows: "From the past six months, [the beneficiary] approved to deal with the following vendors." The petitioner then included the names of five companies located in the United States, Malaysia, Thailand, and Singapore.

The petitioner provided a day to day description of the duties performed by the beneficiary over the past six months. The beneficiary's duties were listed as follows:

- Meeting with clients
- Decision making through telephone or email
- Dealing with vendors to bargain the best rate for purchasing
- Oversee all staff
- Meeting with Managers in regular [sic]
- Net meeting with US office

The beneficiary's powers were described as follows:

- Full power to do all such acts and things and enter into such contracts and engagements on behalf of the Company as he may consider necessary or desirable and may also appoint and remove or suspend any officers, clerks, accountant, agents, servants and other employees
- To pay the costs, charges and expenses preliminary and incidental to the promotion, formation, establishment, and registration of the Company
- To engage, dismiss, and fix the salaries or emoluments of the employees of the Company
- To refer any claims or demands by or against the Company to arbitration and oversee and perform the awards
- To enter into all such negotiations and contracts
- From time to time to make, vary or repeal rules for the regulation for the business of the Company, its officers and servants.

The petitioner did not provide any evidence that the organization requires only general supervision over the beneficiary as requested by the director.

The petitioner submitted a second set of job duties for the beneficiary in response stating that “as soon as he reports to the U.S. subsidiary, his priority will be focused on the following issues:

- Determine the number of additional employees to be recruited, and the level of education and qualification required for each position;
- Determine if the office and warehouse spaces are sufficient to facilitate the business operation;
- Determine if additional departments will be implemented;
- Determine the target to achieve business revenue for the following five years;
- Determine the budget allotment;
- Determine credit limit for each customer.

With regard to the organizational chart and the petitioner’s managerial hierarchy, the petitioner provided an organizational chart showing seven employees reporting to the beneficiary including positions listed as [REDACTED] marketing, secretary, office clerk, manager assistant, warehouse manager, and audit clerk.

The director denied the petition stating that “the record as presently constituted is not persuasive in demonstrating that the beneficiary has been or will be employed in a primarily managerial or executive capacity.”

On appeal, counsel for the petitioner asserts that the job duties submitted with the initial I-129 petition “correspond with the FAM’s guidelines.” Furthermore, counsel states that “since even a sole employee of a company may qualify as an executive for L-visa purposes, the petitioning company that currently employs a staff of eight employees should have sufficiently established the necessity to maintain a chief executive officer temporarily for a period of three years.”

Upon review, and for the reasons discussed below, the petitioner has not established that the beneficiary would 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 either in an executive or 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 a business, or part of 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. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every

type of "manager" or "executive"). Here, the petitioner has failed to show that his actual day-to-day duties will be primarily managerial in nature.

The petitioner's initial description of the beneficiary's job duties appears to be vague and speculative. For example, the petitioner states that the beneficiary will spend 50% of his time "studying and researching the U.S. markets and financial data to set company goals and plans," and he will spend 20% of his time "to focus on presiding meetings and writing reports." Here, a minimum of 70% of the beneficiary's time is ambiguous as to his actual day-to-day duties. This position description falls significantly short of being "detailed" or "specific." While such responsibilities generally suggest that the beneficiary is responsible for oversight of the company, it provides little insight into how he would actually allocate his tasks on a day-to-day basis. 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 failed to provide any detail or explanation 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

While the petitioner has submitted a revised job description on appeal, the AAO notes that it diverges significantly from the prior description provided. The petitioner's description of the job duties in response to the RFE included a number of duties that, without further explanation, do not appear to fall under the statutory definitions of managerial or executive capacity, and such duties do not appear to be incidental to any qualifying managerial or executive duties the beneficiary performs. For example, the petitioner states that the beneficiary will be responsible for "meeting with client" as well as "dealing with vendors to bargain the best rate for purchasing," and "decision making through telephone or email." The petitioner did not describe the specific tasks the beneficiary would perform or otherwise describe what this area of responsibility entails or who would perform administrative tasks associated with these compliance functions. These duties appear to relate to the actual production work of the company. An employee who primarily performs the tasks necessary to produce a product or to provide a service, rather than managerial or executive duties, is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Furthermore, the petitioner failed to provide a specific list of managerial decisions made within the past six months as requested by the director in the request for additional evidence. The petitioner responded by providing a short list of vendors the beneficiary approved for dealing with the company. Here again, the petitioner failed to provide the specificity required to demonstrate a managerial or executive level position. The AAO cannot accept an ambiguous position description and speculate as to the related managerial or executive duties to be performed. 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. at 1108.

Beyond the required description of the job duties, 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.

An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Although requested by the director, the petitioner failed to provide evidence that the organization requires only general supervision over the beneficiary.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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). Here, the petitioner failed to provide the requested evidence to show that the higher level executives, the board of directors, or stockholders of the organization require only general supervision of the beneficiary.

The petitioner has not submitted evidence on appeal to overcome the director's determination that the beneficiary will not be employed in a managerial capacity. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.