

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



D7

MAY 08 2012

DATE: 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 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 classify 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 is a Chinese company that is qualified to do business in the State of Indiana as "E-Fine Motor USA, Inc." The company is engaged in the manufacture, development, testing and modification of autoparts. The petitioner seeks to temporarily employ the beneficiary as the manager of its research, development and modification department.

The director denied the petition based on two independent and alternative grounds. The director concluded that the petitioner failed to establish: (1) that the U.S. company will employ the beneficiary in a primarily managerial or executive capacity; or (2) that the foreign entity has employed the beneficiary in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel objects to the director's findings and asserts that the petitioner established that the beneficiary has been and would be employed in a managerial capacity. Counsel submits a brief and additional evidence in support of the appeal.¹

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.

¹ Upon preliminary review of the appeal, the AAO reviewed corporate records held by the State of Indiana and learned that the U.S. entity's corporate status was "revoked." The AAO issued a notice to the petitioner to advise it of this information on February 8, 2012, pursuant to 8 C.F.R. § 103.2(b)(16)(i). The petitioner submitted a timely response which included a Certificate of Reinstatement issued by the Illinois Secretary of State on February 27, 2012, and copies of the company's IRS Forms 1120-F, U.S. Income Tax Return of a Foreign Corporation, for the years 2009 through 2011. The petitioner has provided sufficient evidence to demonstrate that the U.S. entity continues to do business as a qualifying organization in the United States pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G).

- (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. Discussion

The director denied the petition based on a finding that the petitioner failed to establish: (1) that the beneficiary would be employed by the U.S. company in a qualifying managerial or executive capacity; and (2) that the beneficiary has been employed by the foreign entity in a qualifying 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. Employment in the United States

1. Facts and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 29, 2009. The petitioner indicated that its U.S. branch office has seven employees and gross annual income of \$1.26 million. The petitioner indicates that the U.S. office was established in 2005 to develop the American market for the automobile parts it manufactures in China.

In a letter dated October 26, 2009, counsel for the petitioner described the beneficiary's proposed duties and the petitioner's need for his services in the United States:

The growth of [the U.S. office] is being hampered by a high turnover rate of employees and the lack of a manager who is familiar with the Shanghai parent company's product lines and facilities. If [the beneficiary] were allowed to come to Indianapolis on an L-1A visa, [the company] is going to rely on his experience and ability to revitalize its Department of Research, Development and Modification. Five more employees are planned to be added to this Department under [the beneficiary's] direct supervision.

[The beneficiary's] duties here will include new products development and existing products modification, business management and supervision. He would pitch in to contribute in business and market development through his existing contacts and old clients in American and Europe. He would also attempt to nurture new management talent locally to take over the day to day operation so he can assist the general manager in exploring the feasibility of opening up more offices elsewhere in the United States.

Counsel emphasized that the person who manages the Research, Development and Modification department should be familiar with the original product lines manufactured and designed in China so that products can be modified to meet the needs of U.S. customers.

Counsel provided a list of the U.S. office's seven employees, which include a general manager, two sales managers, a warehouse manager, a salesman, a website designer and a packing technician.

The director issued a request for additional evidence (RFE) on November 12, 2009. The director instructed the petitioner to provide: (1) a more detailed description of the beneficiary's proposed duties in the United States, including the percentage of time he would allocate to each specific duty; (2) the name, job title, position description and educational level of each person the beneficiary will supervise; and (3) copies of the U.S. entity's state quarterly wage reports for the last two quarters.

In a letter dated December 19, 2009, counsel for the petitioner provided the following description of the beneficiary's proposed position:

[The beneficiary's] duties with the [U.S. office] here will include new products development and existing products modification, business management and supervision. He would pitch in to contribute in business and market development through his existing contacts and old clients in America and Europe. He would also attempt to nurture new management talent locally to take over the day to day operation so he can assist the general manager in exploring the feasibility of opening up more offices elsewhere in the United States.

[The beneficiary] is proficient in English and Spanish. He is the parent company's best sales manager ever; a number of his major clients are all based in North America. He is very familiar with the North American market through his many years of traveling and sales experience. He also has lots of practical experience with the products themselves. He is familiar with the development and production of most of our product lines. This knowledge is very crucial for the development and modification of our products for the American market.

[The beneficiary] is not only very knowledgeable with the products themselves; he is also a good manager with lots of managerial experience When we decide to develop a new product or modify an existing product, [the beneficiary] could easily determine through his experience and knowledge of our Chinese production facilities the cost effectiveness and feasibility of the project.

[The beneficiary] will also be in charge of the DYNO Engine Testing service by the DYNO Testing Equipment the [U.S. office] has recently purchased to expand its service to its US customers.

Counsel re-submitted the employee list provided at the time of filing the petition and identified the beneficiary's proposed position as "vice general manager," rather than "manager of the research, development and modification department." Counsel also indicated that the U.S. entity would hire five additional employees to work in the beneficiary's department, but did not identify the positions to be filled.

The director denied the petition on January 12, 2010 based on a finding that the petitioner did not demonstrate that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. In denying the petition, the director found that the petitioner failed to provide a detailed description of the beneficiary's proposed duties sufficient to establish that he would be performing primarily qualifying duties. The director questioned whether the U.S. company as currently structured would support another managerial

position and emphasized that USCIS could not consider the petitioner's stated intention to hire five additional employees.

On appeal, counsel reiterates the petitioner's need for a manager who is familiar with the parent company's product lines and facilities, and its intention to "revitalize" its Department of Research, Development and Modification." In response to the director's finding that the petitioner failed to provide a detailed description of the beneficiary's proposed duties, counsel states that "it would be difficult and impractical to quantify or itemize" the beneficiary's proposed managerial duties. Counsel reiterates the position description the petitioner provided in response to the request for evidence.

2. Discussion

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

When examining whether a beneficiary is employed in an executive or managerial capacity, 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 performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner has provided a vague and non-specific description of the beneficiary's duties which fails to establish that his duties will be primarily managerial or executive in nature. The petitioner indicates that the beneficiary will "revitalize" its Research, Development and Modification department, and states that his duties will include "new products development," "existing products modification," "business management," and "supervision," as well as "pitching in" to contribute to business and market development, and attempting to nurture new management talent locally so that he can assist the general manager with expansion. The petitioner offered no description of what specific duties the beneficiary would perform in relation to any of these broad areas of responsibility. 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 proposed daily job duties. The petitioner has 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).

Accordingly, the director requested a more detailed description of the beneficiary's duties, and instructed the petitioner to identify specific tasks and the percentage of time the beneficiary would allocate to each task. In response, the petitioner submitted the same brief position description that the director had already reviewed and found to be deficient. The only addition was the petitioner's assertion that the beneficiary "will also be in charge of the DYNO Engine Testing service by the DYNO Testing Equipment" that the company had recently purchased to "expand its service to its US customers." The petitioner did not further explain the "DYNO Engine Testing Service," or indicate who on its staff is actually responsible for providing this service to customers.

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 the petitioner established eligibility for the benefit sought, 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).

On appeal, counsel for the petitioner states that it would be "difficult and impractical to quantify or itemize [the beneficiary's] proposed managerial duties," and reiterates verbatim the job description conveyed in the petitioner's response to the request for evidence. The petitioner provides no further explanation for its inability to describe or delineate the duties of the proposed position beyond a few general statements regarding the overall purpose of the position.

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. Before the petitioner can establish that a beneficiary's duties are primarily managerial or executive, it must identify the beneficiary's actual duties and responsibilities beyond ambiguous terms such as "business management" and "supervision." The petitioner's description of the beneficiary's job duties does not establish what the beneficiary's proposed duties are and therefore does not establish what proportion of the beneficiary's duties will be managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Accordingly, the petitioner's claim that the beneficiary will be employed in a qualifying managerial or executive capacity fails on an evidentiary basis.

Beyond the required description of the beneficiary's job duties, USCIS reviews the totality of the record when examining the beneficiary's claimed managerial or executive capacity, 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 a "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 indicates that it currently employs seven workers, including a general manager, two sales managers, a salesman, a warehouse manager, a website designer, and a packing technician. The petitioner indicated that it intends to hire five employees to work in the Department of Research, Development and Modification under the beneficiary's supervision. The petitioner must establish eligibility at the time of filing the nonimmigrant visa 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'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Accordingly, the AAO will not consider the petitioner's claim that it intends to hire employees to staff the beneficiary's department in the future.

The petitioner never clearly indicated whether the beneficiary would be supervising any of the company's existing personnel. In fact, at the time of filing, it appeared that the beneficiary was to be responsible for establishing or re-establishing a department that had not yet been staffed. In response to the request for evidence, the petitioner identified the beneficiary's job title as "vice general manager," a role which would suggest broader authority than that of a department manager. The petitioner provided no explanation for the change in the beneficiary's job title.

Regardless, the director instructed the petitioner to submit a copy of the company's line and block organizational chart, and to provide the names, job titles, position descriptions, and educational levels of all employees who will be working under the beneficiary's supervision. The petitioner provided a list of current employees by name and job title and offered no information regarding whether the beneficiary will be supervising them or what duties they perform. Further, the petitioner offered no information regarding the proposed positions to be filled in the beneficiary's department. 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).

As the petitioner has not clearly defined the beneficiary's duties or the number or type of employees he would supervise, the AAO cannot conclude that he would primarily supervise and control a subordinate staff comprised of supervisory, professional, or managerial employees, pursuant to section 101(a)(44)(A)(ii) of the Act. The petitioner has not established that the beneficiary qualifies for the benefit sought as a "personnel manager."

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 describe the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. The petitioner has not articulated a claim that the beneficiary will manage an essential function, nor has it provided a detailed description of the beneficiary's proposed duties sufficient to establish that he will perform duties that are primarily managerial in nature. The fact that the petitioner granted the beneficiary a department manager job title is insufficient to establish that he has been charged with managing an essential function. 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)).

Based on the foregoing discussion, the petitioner has not established that the U.S. company would employ the beneficiary in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

B. The Beneficiary's Employment Abroad

The second issue to be addressed is whether the petitioner established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

In his letter dated October 26, 2009, counsel for the petitioner described the beneficiary's employment history with the company in China:

[The beneficiary] has been with the [redacted] parent company for over five years. He started out as a salesman and because of his work ethics and ingenuity; he rose through the rank and became the sales manager for [the petitioner] in Shanghai in 2004. In 2007, he became the assistant general manager of the Shanghai Speed Electronic Manufacturing Co., which is another wholly owned subsidiary of the parent company [redacted]. He was promoted to be the general manager last year.

In his letter, counsel indicated that [redacted] has 55 employees and is engaged in the manufacture of "exhaust systems, headers and down pips for the OEM and aftermarket."

The petitioner also provided a copy of the beneficiary's resume, in which he indicates that he assumed the position of general manager for [redacted] in October 2008.

In the request for evidence issued on November 12, 2009, the director requested the following to establish that the beneficiary's employment with the foreign entity is in a qualifying managerial or executive capacity: (1) a more detailed description of the beneficiary's position, including the percentage of time he allocates to specific duties; (2) an organizational chart for the foreign entity; (3) names, job titles, position descriptions and educational level for all employees the beneficiary supervises; and (4) payroll records pertaining to the beneficiary for the year preceding the filing of the petition.

In response, counsel for the petitioner briefly addressed the beneficiary's employment in China:

As the sale manager for [the petitioner] in Shanghai and as the general manager of the [redacted], [the beneficiary] usually spent a significant amount of time traveling to Europe, North and South America and other parts of Asia frequently for business representing the parent company. [The beneficiary] also had spent months at [the petitioner's] Indianapolis office around October 2006 and again on October 2007. . . .

When he is not traveling, he devoted his time to the business management and also product development. He is a hands-on manager and he is very familiar with every part of the business, from the design, development, manufacturing and to the marketing and sales.

The petitioner submitted an organizational chart depicting the structure of [REDACTED]. According to the chart, the beneficiary serves as general manager and reports to [REDACTED]. [REDACTED] is also claimed to serve as a sales manager for the U.S. office. The chart indicates that the beneficiary supervises a vice general manager, and employees responsible for sales, quality control, equipment, general office and finance. The chart does not indicate the number of employees in each department. In addition, according to a note accompanying the organizational chart, the general manager "is also in charge of the Supply and the Development department."

In response to the director's request for the foreign entity's payroll records pertaining to the beneficiary, counsel explained that the beneficiary's "base salary is issued by the parent company [REDACTED] and not by its subsidiary [REDACTED]. The petitioner submitted the foreign office's payroll records for the period December 2008 through December 2009 and highlighted the beneficiary's name as one of the company's 18 employees.

Finally, the petitioner submitted a letter of appointment dated October 8, 2008, which indicates that the beneficiary was appointed to the position of "interim general manager" of [REDACTED] "to be in charge of the business of the entire company." The letter indicates that the beneficiary's "previous position as the sales manager of the [REDACTED] is being terminated."

The director denied the petition based on a finding that the petitioner failed to establish that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity. The director emphasized that the petitioner failed to provide the requested detailed description of the beneficiary's job duties. The director also questioned which foreign entity serves as the beneficiary's employer, noting that the beneficiary is paid by [REDACTED] but is claimed to be the general manager of [REDACTED]. Finally, the director noted that the payroll records reflect that the beneficiary earns only slightly more than the median salary out of the parent company's 18 employees, and questioned whether he is in fact the company's general manager.

On appeal, counsel for the petitioner clarifies that the Chinese parent company determines and pays the salaries and bonuses of all executives and managers of the parent company as well as its subsidiary companies' general managers. Counsel states that the beneficiary is the general manager of the subsidiary, [REDACTED] and earns less money than some executives of the parent company.

In support of this claim, the petitioner submitted a policy statement from the Chinese parent company, dated January 10, 2008, indicating that "all transferred employees salaries, bonuses and other benefits will be issued by the parent company, the subsidiary company will not be responsible for them any longer." The beneficiary was named as one of three employees impacted by this policy.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the foreign entity has employed the beneficiary in a qualifying managerial or executive capacity.

As discussed above, 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 performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The petitioner has failed to provide a detailed description of the beneficiary's current position sufficient to establish that he is employed in a primarily managerial or executive capacity. In fact, the petitioner has provided little information regarding the position beyond identifying the position title. At the time of filing the petition, the petitioner emphasized that the beneficiary is familiar with the foreign company's products, sales and clients, but it offered no concrete description of what he does in his stated role as general manager of the petitioner's Chinese subsidiary. 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. at 165 (*citing Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Accordingly, the director specifically requested that the petitioner provide a detailed description of the beneficiary's duties focused on the specific tasks he performs, the percentage of time he allocates to each specific duty, the names, job titles, job descriptions and educational levels of the workers he supervises, and an organizational chart for the foreign company. While the petitioner responded to the request for evidence, it failed to provide most of the requested information.

With respect to the beneficiary's duties, counsel indicated that the beneficiary travels internationally for business representing the parent company, and "when he is not traveling he devoted his time to the business management and also product development." These statements fall significantly short of responding to the director's request for a detailed description of the beneficiary's specific duties, and offer little insight into what the beneficiary actually does on a day-to-day basis. 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).

USCIS cannot deem the beneficiary to be working in a qualifying managerial or executive capacity because he engages in international travel and is involved in undefined tasks associated with "business management" and "product development." Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of 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).

Although the director denied the petition, in part, based on the petitioner's failure to provide a description of the beneficiary's job duties, the petitioner has not addressed the beneficiary's position description on appeal. The petitioner's failure to provide a description of the beneficiary's job duties in response to the request for evidence provides sufficient grounds for dismissal of the appeal.

Beyond the required description of the beneficiary's job duties, USCIS reviews the totality of the record when examining the beneficiary's claimed managerial or executive capacity, 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 AAO acknowledges the petitioner's claim that the beneficiary serves as general manager of a company with 55 employees. The fact that the beneficiary manages or directs a business, however, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 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). As discussed above, the petitioner has not established that the beneficiary's duties are primarily managerial or executive because it has not provided a meaningful description of the beneficiary's duties.

While the organizational chart for the foreign entity identifies the beneficiary as "general manager," it does not clearly indicate the number or types of employees he supervises, their job titles or their duties. The chart identifies only eight people by name, does not indicate the number of people in each department, and appears to indicate that the beneficiary is directly in charge of the "supply department" and the "development department," with no subordinates named in either of these departments. The submitted chart does not provide a clear illustration of the foreign entity's organizational hierarchy, and, again, was not fully responsive to the director's request for evidence. 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).

The AAO's review of this issue is severely restricted by the petitioner's failure to provide the evidence requested by the director. The petitioner sought to rely on the beneficiary's job title in lieu of providing the requested detailed description of his duties and detailed information regarding the structure of the company.

Absent a detailed description of the beneficiary's actual duties and a clear illustration of the foreign entity's organizational hierarchy, the petitioner has not established that the beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity.

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.