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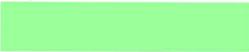


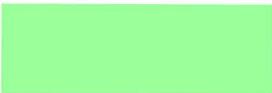
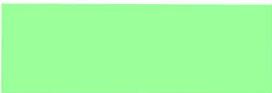
U.S. Citizenship
and Immigration
Services



DATE: FEB 21 2013

Office: VERMONT 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:

SELF-REPRESENTED

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, Vermont Service Center, denied the approval of 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 a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Texas corporation, states that it operates a retail, wholesale, and import/export business for electronics and women's clothing. It claims to be a wholly owned subsidiary of Noor Distributors located in Pakistan. The beneficiary was previously granted one year in L-1A status to open the petitioner's new office in the United States and the petitioner is seeking an extension of stay for an additional two years so that the beneficiary may continue to serve as President/Director.

The director denied the petition on February 16, 2012, concluding that the petitioner failed to establish that it will employ the beneficiary in a primarily managerial or executive capacity n.

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, the petitioner asserts that the evidence of record establishes that the beneficiary will be employed in a qualifying managerial or executive position. The petitioner contends that the director misinterpreted the law and denied the petition without a complete review of the documentation submitted. The petitioner submits a brief 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 the 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.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation

The primary issue to be addressed on appeal is whether the petitioner established that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised,

functions at a senior level within the organizational hierarchy or with respect to the function managed; and

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

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

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

II. FACTS AND PROCEDURAL HISTORY

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 2, 2011. The petitioner indicated that it operates a retail, wholesale, and import/export business for electronics and women's clothing with three full-time employees, one commissioned employee, and a gross annual income of \$275,408 as of September 2011.

In a letter dated October 25, 2011, the petitioner stated that the beneficiary "has been the key company official involved in acquisition negotiations," as well as obtaining bank funding. Specifically, the petitioner stated that the beneficiary has been performing the following duties as its president/director: overseeing business development; negotiating contracts and agreements with suppliers and customers; managing the exportation of goods; analysis to determine value and yield of goods sold; measuring productivity and goal achievement; conducting market research analysis; supervising budget and finance activities; and assessing staffing requirements, hiring, and training new employees.

The petitioner submitted IRS Form 941, Employer's Quarterly Federal Tax Return for the first, second, and third quarters of 2011. The petitioner reported one employee in the first quarter, three employees in the second quarter, and three employees in the third quarter, and reported total salary payments of \$42,000. The petitioner described its staffing levels as "3 full time and 1 under commission." The petitioner did not include position titles or descriptions for any of the employees other than the beneficiary.

The director issued a Request for Additional Evidence ("RFE") on November 12, 2011, requesting *inter alia*, the following: (1) a statement of the duties performed by the beneficiary for the previous year and the duties that the beneficiary will continue to perform under the extended petition; (2) name, title, and complete position description for all United States employees; (3) the petitioner's organizational chart; and (4) if applicable, evidence of contractors used by the petitioning company and the duties they perform.

In response, the petitioner resubmitted its letter dated October 25, 2011. Former counsel for the petitioner asserted that this letter provided a detailed explanation of the beneficiary's executive duties including the following:

[O]verseeing the entire business development for [the petitioner]; negotiating contracts and agreements with suppliers, customers and federal or state agencies; managing the export of goods; reviewing and approving all financial and legal matters on [the petitioner's] behalf; hiring and supervising employees; and developing and implementing the company's strategic business strategy.

In support of the beneficiary's duties, the petitioner includes additional evidence such as an e-mail from a vendor's Account Manager attesting to the petitioner's purchase of goods "sold to and billed" to the beneficiary. The petitioner also included sales quotes for purchases addressed to the beneficiary as evidence of his "executive capacity as President/Director to negotiate all contracts with vendors" on behalf of the company.

The petitioner submitted a business plan with short position descriptions for each of the beneficiary's three claimed subordinates. According to the business plan, the Export Manager is responsible for duties related to the petitioner's export of electronics and the import of women's clothing, including logistics planning, insurance, packaging and scheduling, completion of transportation and freight forwarder forms, managing pick up and delivery of inventory, and ensuring compliance with U.S. and foreign import and export requirements. The Laptop/Computer Sales Manager is responsible for the petitioner's purchases and sales of computers, laptops, and parts. Finally, the Cell Phone Division Manager is responsible for the petitioner's purchases and sales of cell phones and accessories. The petitioner did not clarify which of the three subordinate employees is working under commission. According to its year-end profit and loss statement for 2011, the petitioner paid \$50,637.75 in salaries and \$11,815 in commissions. The beneficiary's stated annual salary is \$36,000.

The petitioner further claimed that its business is expanding to the "refurbishment and exportation of used automobiles." In support of this claim, the petitioner submitted supporting evidence such as sales contracts for vehicles, a business plan, its webpage listing used vehicles for sale, and a vendor's used car website.

The director denied the petition on February 16, 2012. The director found that the petitioner failed to establish that the beneficiary would be employed in a managerial or executive capacity. The director observed that the record reflected a significant decrease in salaries paid during the fourth quarter of 2011 which raised questions as to whether the petitioner employed three full-time employees at the time of filing.

The director determined that given the size and structure of the company, the beneficiary would not be relieved of performing the day-to-day operational and first-line supervisory functions of the business. Furthermore, based on the position descriptions provided, the director found that the beneficiary would not be supervising managers, supervisors or professionals.

On appeal, the petitioner states that the record supports a finding that the beneficiary will be employed in a managerial or executive capacity. Specifically, the petitioner asserts that the director failed to take into account the petitioner's business expansion and the beneficiary duties, and placed undue emphasis on the size and nature of the petitioner's business. The petitioner provides a more detailed description of the beneficiary's duties, including a percentage breakdown of the time spent performing each duty. The petitioner asserts that the beneficiary "has to combine the roles of Executive and Manager" and states which of the beneficiary's duties are executive and which are managerial. Finally, the petitioner asserts that the director failed to take into account the reasonable needs of the organization in light of its overall purpose and stage of development, as required by section 101(a)(44)(C) of the Act. The petitioner cites unpublished AAO decisions and *Mars Jewelers, Inc. v. INS*, 702 F. Supp. 1570 (N.D. Ga. 1988), in support of its claims that the small size of the company and the beneficiary's performance of some non-qualifying tasks do not prohibit a finding that the beneficiary is employed in a qualifying managerial or executive capacity.

III. DISCUSSION

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

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

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his 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 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").

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. Here, the petitioner fails to document 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. This failure of documentation is important because several of the beneficiary's daily tasks, such as analyzing "past buying trends, sales records, price and quality of merchandise to determine value and yield, conducting market research and analysis, and reviewing performance data to measure productivity," do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

On appeal, the petitioner submits a more detailed list of the beneficiary's job duties with percentages spent performing each. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. Specifically, the director requested a more detailed list of the beneficiary's duties. In response, the petitioner submitted the same list of duties submitted with the initial petition, which the director had already reviewed and found to be insufficient to establish the beneficiary's eligibility. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Additionally, the AAO notes that most of the position description submitted on appeal is vague and merely repeats the language of the statute. The petitioner states that the beneficiary's duties would include development of operational requirements; controlling the work of other employees; monitoring fundamental economic, industrial, and corporate developments, and establishing organizational goals and policies. These duties provided little or no additional insight into what the beneficiary will primarily do on a day-to-day basis or how he will carry out his objectives as President and General Manager.

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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). 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. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Furthermore, the managerial nature of a number of the beneficiary's duties is called into question due to the fact that there is no staff to perform the related non-qualifying duties. Duties such as supervising budget and finance activities; reviewing and approving monthly financial statements; reviewing and approving all tax reports and statements; and reviewing and executive all legal documents on behalf of the company would indicate that there are other financial, administrative, and legal staff to perform the functions associated with the review and oversight of these documents. The petitioner, however, failed to provide evidence of employees or other personnel to relieve the beneficiary of performing the non-qualifying functions related to

the production of these documents. 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)). 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).

Finally, on appeal, the petitioner claims that the beneficiary "has to combine the roles of Executive and Manager as the Petitioner is a small business wanting to expand its operations." The petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. The job descriptions submitted by the petitioner do not establish that any of the employees subordinate to the beneficiary would be professional-level employees.¹ Nor does the evidence of record establish that any of the beneficiary's subordinates perform managerial or supervisory duties, notwithstanding their assigned managerial job titles.

In addition, a number of the subordinate employee's job duties are duplicative with the beneficiary's duties. The petitioner claimed that tasks such as negotiating and determining the quality and quantity of items to sell and ensuring compliance with both State and Federal agencies were the responsibility of the beneficiary, but also assigned such duties to his claimed subordinates. A review of the petitioner's invoices, receipts and purchase orders suggests that the beneficiary is in fact engaged in the purchase of goods for export and resale. 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).

¹ 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).

Furthermore, in response to the RFE, the petitioner failed to clarify which of the claimed positions were full-time and which one was the commissioned employee. Assuming *arguendo* that any of the subordinate positions were professional level positions, without evidence of the employment status, the record does not support a conclusion that the beneficiary has both supervision and control of the alleged professional level employee. 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. 1972)).

Finally, as noted by the director, the record does not support a finding that the petitioner actually employed three full-time employees and a commissioned worker at the time the petition was filed. While the record reflects total salary payments of \$42,000 and commissions of \$10,900 during the first three quarters of 2011, the petitioner reported year-end salaries of \$50,637.75 and commissions of \$11,815. Based on this information, it appears that the petitioner paid only \$8,637.75 in salaries and \$915 in commissions during the quarter in which the petition was filed. Given that the beneficiary's stated salary alone is \$9,000 per quarter, the director correctly questioned the petitioner's claims regarding its staffing levels at the time of filing. The petitioner has not addressed this discrepancy on appeal.

When examining the managerial or executive capacity of a beneficiary, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

In the present matter, the totality of the record does not support a conclusion that the beneficiary's subordinates are supervisors, managers, or professionals. Instead, the record indicates that the beneficiary's subordinates perform the actual day-to-day tasks of operating the import/export business. The petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial or executive under the statutory definitions.

Based on the foregoing, the petitioner has not supported a claim that the beneficiary will be primarily responsible for supervising subordinate managers, supervisors or professionals. The record does not clearly define the beneficiary's duties, the structure of the organization, or the number and types of employees working for the company at the time of filing

The proposed position of the beneficiary is president of an import/export business to be composed of three employees other than the beneficiary. The petitioner has not demonstrated that the beneficiary, as a personnel manager, will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. *See* section 101(a)(44)(A)(ii) of the Act. Furthermore, the petitioner has not established that it will employ a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial duties.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and staffing levels of the petitioner. *See* 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in USCIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position.

The petitioner cites *Mars Jewelers, Inc. v. INS*, 702 F.Supp. 1570, 1573 (N.D. Ga. 1988), to stand for the proposition that the small size of a petitioner will not, by itself, undermine a finding that a beneficiary will act in a primarily managerial or executive capacity. First, the AAO notes that the petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Mars Jewelers, Inc.* The AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

In *Mars Jewelers, Inc.*, the courts emphasized that the former INS should not place undue emphasis on the size of a petitioner's business operations in its review of an alien's claimed managerial or executive capacity. The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium-size businesses. However, consistent with both the statute, the AAO has required the petitioner to establish that the beneficiary's position consists of primarily managerial or executive duties and that the petitioner will have sufficient personnel to relieve the beneficiary from performing operational and/or administrative tasks. We emphasize that our holding is based on the conclusion that the beneficiary is not primarily performing managerial duties; our decision does not rest on the size of the petitioning entity. 889 F.2d at 1472, n.5.

Reading section 101(a)(44) of the Act in its entirety, the "reasonable needs" of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be

"primarily" employed in a managerial or executive capacity as required by the statute. See *Brazil Quality Stones v. Chertoff*, 531 F.3d 1063, 1070 n.10 (9th Cir., 2008).

Here, the petitioner has not provided a sufficient description of the beneficiary's duties or those performed by his subordinates, nor has it provided sufficient evidence of the number of workers employed by the company as of the date of filing. As such, the record does not support a finding that the beneficiary will be employed in a qualifying managerial or executive capacity under the extended petition and the appeal will be dismissed.

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

ORDER: The appeal is dismissed.