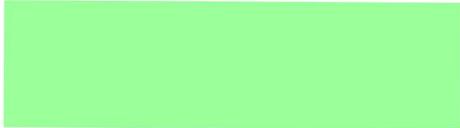


(b)(6)

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



DATE: **MAR 25 2013** 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:

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, 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 seeks to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a California corporation established in 2009. It states that it is in the international import and export business. The petitioner claims to be a subsidiary of [REDACTED], based in China. United States Citizenship and Immigration Services (USCIS) records show that the beneficiary was previously granted one-year visas in the L-1A classification valid from June 17, 2010 to June 16, 2011 and from June 17, 2011 to June 16, 2012. The petitioner now seeks to extend the beneficiary's status so that she may serve for an additional two years in the position of Chief Executive Officer (CEO).

The director denied the petition, finding the petitioner failed to establish that it will employ 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 it to the AAO. On appeal, the petitioner submits a brief and asserts that the job duties it listed for the beneficiary demonstrate that he will be serving in a managerial or executive capacity, and that the director ignored the realities of operating a business in issuing the denial.

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.

Further, the regulation at 8 C.F.R. 214.2(l)(14)(ii) states that a petitioner seeking an extension of a one year "new office" petition accompany their Form I-129 petition with 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 director denied the petition, in part, based on a finding that the petitioner would not employ the beneficiary in a qualifying managerial or executive capacity under the extended petition.

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. The Issue on Appeal

The director denied the instant petition, finding that the petitioner failed to show that it would employ the beneficiary in a managerial or executive capacity.

The petitioner is a self-defined international import and export company. It claims to have three current employees. In 2011, it had \$7,991 in gross annual income and -\$106,101 in net annual income. It states that it is the wholly owned subsidiary of [REDACTED], based in China. The petitioner's business plan states that it provides water-based resins and disposable gloves. The petitioner's target customers are both distributors and end users of its products.

In its letter accompanying the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated the following:

The primary rationale for establishment of the enterprise include [sic] the sale of materials to the large U.S. chemical manufacturers, the export of U.S. chemicals to China, and the development of a U.S. market [sic] for three company products: surgical-use gloves; "IRL" (liquid rubber), a chemical substitute for natural rubber which is most appropriate for use in high-purity applications as opposed to general applications; and advanced chemical adhesives.

The beneficiary has worked for the petitioner in the United States for one year and the petitioner now seeks to employ the beneficiary for an additional two years in the position of Chief Executive Officer.

The Form I-129 lists the beneficiary's proposed duties and responsibilities as:

1. Executive liaison with [redacted] [sic], the parent enterprise, for all planning and coordination of local activities;
2. Initial and long-term staffing of the U.S. office, and the hiring of Employees of Managing and local R&D staff. Supervision of management staff once hired;
3. Prepare and authorizes budgets for operations;
4. Responsibility for negotiation with major U.S. Corporations for management and investment acquisition;
5. Responsibility for corporate planning in the areas of managing, pricing, finance;
6. Determination over time of mid-range and long-term corporate goals in the interest of growing the U.S. commercial activities[;]
7. Continuing responsibilities for China-Based Quality Assurance and manufacturing compliance;
8. Build up a product distribution networks [sic] in the U.S.;
9. Participate in key channel development, maintain contact with major customers;
10. Maintaining an inventory level in the U.S. to fulfill customer orders;
11. Coordinate the U.S. demands with production capability in China;
12. Appropriate the correct percentage of resources in China to stay competitive in the US.

In a letter accompanying the Form I-129, counsel for the petitioner indicated that, for the past year, the beneficiary has been performing job duties numbers 1 through 7 above. The letter also includes tables of planned future hires:

First year – 2012

- 1) Hire Director of Sales and two sales people
- 2) Establish customer contact in California, Arizona and Nevada
- 3) Hire office assistant person
- 4) Hire and train technical support person

- 5) Stock minimum inventory of products
- 6) Utilize standard ERP system
- 7) Track variances

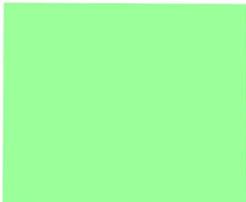
Second year – 2013

- 1) Hire three more sales people
- 2) Hire and train more technical support person [sic]
- 2) [sic] Make plans to expand to the markets in the Midwestern and Southern areas
- 3) Establish sales presence in most of states in the US
- 4) Hire additional customer service person

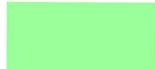
Third year—2014

- 1) Set up warehouses in Chicago and Houston
- 2) Hire additional customer service person
- 3) Hire additional sales person
- 4) Hire additional purchasing person

The petitioner provided a letter from the president of the foreign parent company dated May 26, 2012 attesting to the beneficiary's work there as the Director of R&D from 2004 to 2011. The petitioner also included a similar letter from the president dated March 3, 2010 that was presumably used in a previous petition. For the year 2011, the petitioner provided a list of its employees, the period worked, and the amount paid per month:

<u>Name</u>	<u>Months of 2011</u>	<u>Salary (per month)</u>
	03/2011 to 12/2011	\$5,000.00
	12/2011	\$3,000.00
	09/2011 to 12/2011	\$2,100.00
	09/2011 to 10/2011	\$2,000.00
	05/2011 to 09/2011	\$2,200.00
	05/2011 to 06/2011	\$2,000.00

It did the same for the year 2012:

<u>Name</u>	<u>Month of 2012</u>	<u>Salary (per month)</u>
	01/2012 to Present ¹	\$5,000.00
	01/2012 to Present	\$3,000.00

¹ The petitioner filed the instant petition on June 7, 2012, and so it is this date that will be considered "Present."

01/2012 to Present

\$2,100.00

The director issued a Request for Evidence (RFE) and asked for additional evidence to show that the beneficiary will be employed in a managerial or executive capacity. The RFE listed examples of such evidence as: 1) a more detailed description of the beneficiary's day-to-day activities and the percentage of time required to perform each, 2) an organizational chart for the petitioner, and 3) the petitioner's state quarterly wage reports for the third and fourth quarters of 2012.

In response, the petitioner provided a list with a slightly more detailed list of duties for the beneficiary, as well as the percentage of time the beneficiary would be required to spend on each:

1. Primary executive liaison with [REDACTED]. [sic], the parent enterprise, for all planning and coordination of local activities with the activities and capabilities of the Chinese parent company. Percentage of time – 10%;
2. Initial and long-term staffing of the U.S. office, including the responsibility and authority for personnel actions, and specifically the hiring of Employees of Managing and local R&D staff. Supervision of management staff once hired. Percentage of time – 10%;
3. Based on the broad financial initiatives outlined in this letter, and acting in coordination with the Beijing, prepare and authorizes budgets for operations, including facilities and equipment acquisition. Checking the company's income and tax with the local accounting company and going to banks for the funds transferring and depositing. Percentage of time – 15%;
4. Primary responsibility for all the negotiations with major U.S. Corporations for product acquisition and/or formation of the sales/requirements contracts, with goal of formation of long-term relevant American seller and buyers of product. Directing the Marketing Manager to Contact and to negotiate with the U.S. Corporations and sometimes need to answer their questions directly. Percentage of time – 15%;
5. Primary responsibility for corporate planning in the areas of managing, pricing, finance. Percentage of time – 5%;
6. Determination over time of mid-range and long-term corporate goals in the interest of growing the U.S. commercial activities of [the petitioner] achieved via management knowledge, direction of all staff in market/investing research, and consultation with China-based executive authority. Percentage of time – 10%;
7. Continuing responsibilities for China-Based Quality Assurance and manufacturing compliance as a critical element in establishing the U.S. Company's credibility as a partner of U.S. Corporations and customers. Percentage of time – 5%;

8. Build up a product distribution networks [sic] in the U.S. and directing the Marketing Manager to do the advertisings in the U.S. Percentage of time – 5%;
9. Participate in key channel development, maintain contact with major customers. Sending the necessary letters to them. Checking the major customers' emails every day and answering their emails every day. Percentage of time – 10%;
10. Maintaining an inventory level in the U.S. to quickly fulfill customer orders. Percentage of time – 5%;
11. Coordinate the U.S. demands with production capability in China. Percentage of time – 5%;
12. Appropriate the correct percentage of resources in China to stay competitive in the U.S. Percentage of time – 5%;

The petitioner also submitted an organizational chart for the petitioner that shows three employees: a CEO (the beneficiary), a Sales Manager (), and an Office Manager (). The chart also contains five other employees with the label "to be hired." These include a Director of Business Development, an R&D Manager, Sales Representatives, a Technician, and an Office Assistant.

The petitioner provided lists of job duties and position requirements for the petitioner's two current employees, the Sales & Marketing Manager, and an Office Manager & Purchasing Manager:

Job Title: Sales & Marketing Manager
Educational Level: Bachelor's Degree
Salary: \$3,000/per month

Summary of Duties:

- 1) On-site sales calls, visit customers and present [the petitioner]'s products and communicate with customers on a daily basis;
- 2) Analyze customer's requirements and provide corresponding service;
- 3) Provide sales forecast, budget etc. to CEO;
- 4) Provide feedback to its China parent company; work with colleagues overseas in quality, R&D manufacturing department to meet customers' needs;
- 5) Work with office manager to maintain inventory level to fulfill orders timely[;]
- 6) Develop local Consumers' volume and profit in the U.S. in accordance with policies and guidelines set by the company, including the overall marketing plan and philosophies of the company;
- 7) Promote the local consumers name to be synonymous with the quality of China parent company;

- 8) Identify new markets for penetration and act as liaison with distribution to assure that these markets are accessed;
- 9) Develop formulating market plan, sales and marketing strategy to reach both retailers and consumers;
- 10) Oversee the inventory control of the product in the U.S.

Job Title: Office Manager & Purchasing Manager

Educational Level: Bachelor's Degree

Salary: \$2,100/per month

Summary of Duties:

- 1) Work with sales department and manufacturing facilities to fulfill delivery commitment of contracts;
- 2) Select freight carrier to minimize shipping cost;
- 3) Hire and train staff to be able to handle routine tasks: clearing all import duties from Custom and preparing all paperwork;
- 4) Release material from warehouse to customers;
- 5) Release shipment documents including invoice, packing list and certification of origin etc. to customers[;]
- 6) Provide all after-sale service; [and]
- 7) Control inventory.

It also submitted copies of documents showing the educational qualifications of the petitioner's two employees. [REDACTED] has a degree in medicinal plants from [REDACTED] which was awarded in 1974. [REDACTED] has an associate's degree in accounting from [REDACTED], which was awarded on March 21, 2011.

The petitioner submitted a letter from its accountant dated June 26, 2012 explaining that it is too early in the year to have the wage reports for the third and fourth quarters of 2012. The petitioner did submit the wage report for the first quarter of 2012, which shows that the petitioner paid [REDACTED] \$9,000, [REDACTED] \$6,300, and [REDACTED] \$15,000; the wage report for the fourth quarter of 2011, which shows that the petitioner paid [REDACTED] \$3,000, [REDACTED] \$6,300, [REDACTED] \$500 and [REDACTED] \$15,000; and the wage report for the third quarter of 2011, which shows that the petitioner paid [REDACTED] \$4,400, [REDACTED] \$2,100, [REDACTED] \$2,000, and [REDACTED] \$15,000.

The director ultimately denied the petition, finding that the petitioner failed to show it will employ the beneficiary in a managerial or executive capacity. Specifically, the director looked to the list of job duties provided and concluded that they were not consistent with those of a manager or executive, but rather seemed to be the tasks necessary to produce a product or provide a service. In addition, the director concluded that the petitioner did not provide sufficient detail regarding the

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beneficiary's daily activities to demonstrate that she would in fact primarily perform managerial or executive tasks.

On appeal, the petitioner submits a letter, as well as copies of previously submitted documents. The letter states that the petitioner believes the director's decision was erroneous, *inter alia*, because the beneficiary is on the company's executive committee which sets all corporate policies and strategies for purchasing, marketing, and research. It also states that the company's two other employees are responsible to the beneficiary.²

III. Analysis

Upon review, the petitioner's assertions are not persuasive. The petitioner has not established that the beneficiary will primarily work in a managerial or executive capacity.

The petitioner does not specify whether the beneficiary will be engaged in primarily 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. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

Section 101(a)(44)(C) of the Act requires the AAO to "take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function." The AAO has long interpreted the statute to prohibit discrimination against small or medium-size businesses. However, the AAO has also consistently required the petitioner to establish that the beneficiary's position consists of "primarily" managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8

² The petitioner also expresses the opinion that its petition was denied because its response to the RFE pointed out that the third and fourth quarter reports for 2012, documents requested in the RFE, had not yet been produced at the time the RFE was issued. The AAO notes that the director does not mention these reports in her denial and that they are therefore not the basis for the denial.

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).

When examining the managerial or executive 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 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.* In addition, the definitions of executive and managerial capacity have two parts. To meet these definitions, the petitioner must first show that the beneficiary performs the high level responsibilities specified in the definitions. Second, the petitioner must prove the beneficiary will *primarily* perform these specified responsibilities and will 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).

An examination of the beneficiary's proposed job duties and the time required for each shows only three duties that involve managing or supervising others. The beneficiary will spend 10% of her time on the initial and long-term staffing of the U.S. office, including the responsibility and authority for personnel actions, and specifically the hiring of "Employees of Managing" and local R&D staff. This will include supervision of the management staff once hired. Another 10% of her time will be spent determining the mid-range and long-term corporate goals which will be accomplished via her management knowledge, direction of all staff in market/investing research, and consultation with China-based executive authority. Lastly, the petitioner will spend 5% of her time building up a product distribution network in the U.S. and directing the Marketing Manager to do the advertising in the U.S. The three tasks will account for a projected 25% of the petitioner's time.

The statute requires that the petitioner demonstrate the beneficiary will be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his 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.

In this case, the petitioner alleges that the beneficiary will spend only 25% of her time on tasks that involve managing or supervising others. As she will spend less than half of her time on such tasks, the beneficiary will not be working in a primarily managerial position.

Furthermore, 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. 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).

The petitioner states that it currently has two employees whom the beneficiary will manage: a Sales & Marketing Manager and an Office & Purchasing Manager. Despite their titles, the petitioner does not allege that these two employees currently manage or supervise anyone. The petitioner stated that it intends to hire subordinate employees in the future; however, the two managers are currently the petitioner's only employees. 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 such that the petitioner will be performing primarily managerial or executive tasks, the petitioner is ineligible by regulation for an extension. In this case, the petitioner has failed to show that the employees the beneficiary will supervise are themselves managers or supervisors.

Similarly, the petitioner does not specifically allege that either of its managers is a professional. On the lists of the two employees' job duties, the petitioner does state that each of them has a bachelor's degree. The petitioner submitted a copy of a diploma stating that [REDACTED] the petitioner's Sales and Marketing Manager, studied Medicinal Plants in the Biology Department of [REDACTED] in 1974 and graduated in 1977. It also submitted a diploma for [REDACTED] the petitioner's Office & Purchasing Manager, stating that she received an Associate's degree in Accounting from [REDACTED] on March 1, 2011.

First, the AAO notes that [REDACTED] has an associate's degree, which typically takes two years of study, not a bachelor's degree, which traditionally requires four. See *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm'r 1977) (finding that a United States baccalaureate degree is generally found to require four years of education). Second, the relevant inquiry in determining whether a position is professional is not the level of education possessed by the individual currently in that position, but the minimum level of education required for entry into the position. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is necessary to perform the work of the Sales & Marketing or Office & Purchasing 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 furnish a detailed position description that clearly explains the duties to be performed in managing the essential function, *i.e.* identifies the function with specificity, articulates the essential nature of the function, and establishes 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 this case, the petitioner failed to articulate a specific function that the beneficiary will perform.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

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).

In the instant case, the beneficiary has a sufficient degree of authority over company operations. However, the petitioner has failed to demonstrate that the majority of the beneficiary's time will involve executive-level endeavors. This is largely due to the lack of detail and explanation provided by the petitioner. For example, the petitioner states that the beneficiary will have primary responsibility for corporate planning in the areas of managing, pricing, finance, and that this will consume 5% of her time. Similarly, the beneficiary will spend 10% of her time determining the mid-range and long-term corporate goals of the company. These descriptions contain insufficient detail as they fail to explain what the petitioner will actually be doing on a daily basis. 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. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41

(2d. Cir. 1990). 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 sufficient detail 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).

In addition, many of the duties listed are not executive in nature. For example, the petitioner stated that the beneficiary will spend 20% of her time maintaining contact with major customers, sending the necessary letters to them, checking the major customers' emails, and answering their emails every day. Another 15% of his time will be spent on negotiations and formation of sales contracts. Maintaining inventory will consume 5% of the beneficiary's day. As the petitioner's business is importing and selling its parent company's products, the above-listed tasks are necessary for the petitioner to provide its services. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

On review, 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. For these reasons, the appeal is dismissed.

IV. Conclusion

The petition will be denied and the appeal dismissed due to the petitioner's failure to demonstrate that he will be employed in a primarily managerial or executive capacity. 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.