

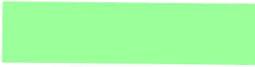
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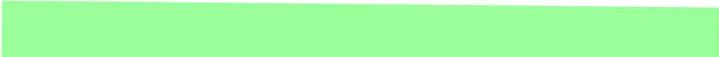
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **MAY 28 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:

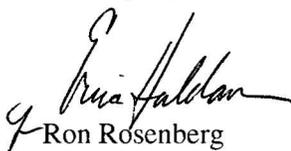


INSTRUCTIONS:

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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to 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 Delaware corporation, states that it is a solar energy company. It claims to be a subsidiary of [REDACTED], located in Switzerland. The petitioner is seeks to employ the beneficiary in L-1A status for a period of three years as its Business Development Manager, Latin America.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary is employed abroad, or will be employed in the United States, in a qualifying 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 for the petitioner asserts that the evidence of record establishes that the beneficiary will be employed in a position that is managerial in nature. Counsel submits a brief and additional evidence in support of the appeal.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended

services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

II. The Issue on Appeal

A. Employment in a Managerial or Executive Capacity in the United States

The first issue addressed by the director is whether the petitioner established that the beneficiary will be employed in the United States in a qualifying executive or managerial capacity.

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

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

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 15, 2012. The petitioner indicated that it operates a solar energy company with 57 employees and a gross annual income of \$10.248 million.

In a letter dated October 12, 2012 the petitioner provided a position description for the "Business Development Manager, Latin America." The petitioner described the position as overseeing the "development and management of all aspects of [the petitioner's] launch strategy" for the Latin American market. The petitioner stated that the beneficiary's specific duties would include implementing the market penetration; growing the company's market share to become the leading photovoltaic module supplier in Latin America; developing and managing all partnerships and accounts until key milestones are met at which point he would then hand off the accounts to local sales teams; and building channel partnerships and reaching sales goals within these channels.

The petitioner further explained that the beneficiary's responsibilities as a functional manager would include the following:

Developing and managing [the petitioner's] customer relationships, penetrating general contractors' accounts and renewal energy developers, IPPs, IPC and consulting engineers and industry manufacturers in the territory. He will develop and implement a marketing strategy that mirrors the overall corporate image to achieve penetration goals using his knowledge of [the petitioner's] products and photovoltaic systems to position [the petitioner] as a leader in the market. He will produce proposals and develop strategies, update and maintain customer and pipeline information, prepare sales forecasts and gather and report key market intelligence.

The petitioner submitted an organizational chart showing the beneficiary reporting to the VP America Sales and Marketing. No subordinates were shown reporting to the beneficiary. The petitioner stated that as its new Latin America division grows, the beneficiary "may be tasked with hiring and retention of employees and his direct reports would be business analysts with at least bachelor's degrees in business or a related field."

The director issued a request for additional evidence ("RFE") on October 25, 2012 in which he instructed the petitioner to submit, *inter alia*, the following: (1) a more detailed description of the beneficiary's duties including percentage of time spent performing each duty; and (2) an organizational chart for the United States entity showing the beneficiary's immediate hierarchy, associates, and subordinates including title, duties, educational level, and salary.

In a letter dated November 30, 2012, the petitioner stated the beneficiary will be a functional manager responsible for the Latin American market. The petitioner detailed its anticipated market revenue and explained that the beneficiary is charged with ensuring that the petitioner is the leading photovoltaic module supplier in Latin America. The beneficiary, according to the petitioner, will receive little direct supervision and will make major decisions regarding target segments. The beneficiary will also be responsible for negotiating multi-million dollar contracts with customers. Specifically, the petitioner stated that the beneficiary's duties and percentage of time spent performing each will be as follows: (1) develop and implement a sales strategy, 30%; (2) initiate and develop customer relationship by making contact with

potential customers and meeting with high-level executives, 40%; (3) negotiate multi-million dollar contracts, 20%; (4) recommend hiring decisions to upper management to manage long-term projects, 5%; (5) hire overseas sales team and open overseas offices as needed, 5%.

The petitioner provided the same organizational charts as submitted with the initial petition. Counsel for the petitioner stated that the beneficiary will be the only employee in his department. Counsel further stated that the beneficiary will be managing an essential function as he "independently works to penetrate the Latin American Market." According to counsel, the beneficiary has been given "a vast amount of authority," will function at a senior level, and will receive little direct supervision from management. The petitioner submitted a market study excerpt to illustrate the financial potential in the Latin American market. The petitioner reiterated that the beneficiary's department is expected to grow over time as contracts are signed in the targeted market.

The director denied the petition on December 31, 2012 concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity. The director determined that the duties provided for the beneficiary are indicative of an employee who primarily performs the tasks necessary to produce a product or provide a service. Furthermore, the director observed that the beneficiary will not supervise any employees and it appears that he will be assisting with the day-to-day non-supervisory duties of the business. Similarly, the director found that the petitioner failed to show that the beneficiary would be managing a function as without additional staff to directly or indirectly support him, the beneficiary would be performing the duties related to the function instead of managing the function.

On appeal, counsel claims that as the beneficiary was the first hired to establish the company's presence in the Latin American market, therefore his duties are considered managerial. Counsel for the petitioner further contends that the beneficiary will supervise and control the work of other supervisory, professional, or managerial employees as the beneficiary will be hiring and supervising project managers, administrators, sales teams, and business analysts.

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial 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 a beneficiary manages a business or a department 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").

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(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. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir., 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)). In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function.

The petitioner's initial description of the beneficiary's job duties shows him performing many, if not all, of the day to day duties associated with the Latin America business development function. Specifically, tasks such as developing and implementing a marketing strategy, producing proposals and developing strategies, updating and maintaining customer and pipeline information, preparing sales forecasts, and gathering and reporting key market intelligence are duties necessary to produce a product or to provide services.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial. The beneficiary's duties submitted in response to the RFE do not show that the beneficiary is spending a majority of his time on managerial duties. The petitioner shows that the beneficiary will be spending time on non-qualifying duties as follows: develop and implement a sales strategy, 30% and initiate and develop customer relationships, 40%. Therefore, a total of 70% of the beneficiary's time will be performing non-qualifying duties.

Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

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 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). Therefore, although the beneficiary is not required to supervise personnel, if it is claimed that his 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 petitioner stated that the beneficiary will be responsible for personnel decisions. Specifically, in response to the RFE, the petitioner states that the beneficiary will spend 5% of his time recommending hiring decisions to upper management, and another 5% of his time hiring overseas sales teams and opening overseas offices as needed. The AAO agrees with counsel's assertion that such duty is indicative of the beneficiary's managerial authority. The petitioner, however, states that the beneficiary will spend no more than 10% of his time on personnel actions. The record fails to establish that the beneficiary will spend a majority of his time on managerial duties. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must establish by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Finally, in response to the RFE the petitioner states that the beneficiary will be responsible for a subordinate staff of managers, business analysts, and a sales team "once contracts have been signed." The beneficiary, however, failed to evidence that any employees were under the beneficiary's supervision as of the date of the filing of the petition. These future hires, therefore, will not be taken into consideration for the purposes of this petition. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

The AAO does not doubt that the beneficiary will exercise decision-making authority with respect to the development of the Latin American market. However, the petitioner has failed to establish that his actual duties would be primarily managerial in nature. Rather, based on the evidence submitted, the position would initially involve non-qualifying research, analysis, sales, and marketing tasks and may eventually evolve into one involving management of a function and subordinate staff. Again, a visa petition may not be approved based on speculation of future eligibility. 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). The beneficiary will not be deemed to be "managing" the function simply because he will initially be the only employee assigned to perform duties related to that function.

The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. See section 101(a)(44)(A)(ii) of the Act. The petitioner has not established that it employs a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial or executive duties. Regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will manage a function. Based on the evidence furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. Accordingly, the appeal will be dismissed.

B. Employment in a Managerial or Executive Capacity Abroad

The second issue addressed by the director is whether the petitioner established that the beneficiary was employed abroad in a primarily executive or managerial capacity.

In the petitioner's letter provided in support of the initial petition, the petitioner stated that the beneficiary has served as a functional manager in the position of Business Analyst reporting to the Vice President of Sales & Marketing. The petitioner stated that the beneficiary "develops strategy proposals after customer meetings and analysis of industry data." Specifically, the beneficiary is responsible for the following:

Consolidating country, segment, product and customer sales records to create a database for the main European photovoltaic markets from which to provide market share and size analysis. He proposes actions using the data collected to support day-to-day business decisions. [The beneficiary] attends customer meetings to gain insight into future market developments and opportunities, reports findings to Sales management and helps with business planning and reporting. [The beneficiary] creates the sales product, performance and price positioning strategy and development and optimization. He also conducts ASP reporting and analyses of European ASP development while also analyzing, monitoring and reporting on European FIT and government support mechanisms. Finally, he develops strategy proposals to align the business to optimally benefit from prevailing or announced changes to the market based on competitor activity, government support mechanisms and other legislative changes.

The foreign employer also provided a letter dated September 10, 2012, confirming that the beneficiary has been in its employ since October 1, 2010, and began in the position of Business Development Analyst in January of 2011. As of January 1, 2012, the beneficiary's job title changed to Business Analyst and he began reporting to the Vice President of Sales & Marketing. The employer stated that the beneficiary's duties were the same as those reported by the petitioner. The foreign entity also submitted a "Roles & Responsibilities" document for the Business Analyst position which outlines its responsibilities, key skills, experience requirements and language requirements. According to this document, the "job level" of the position is "senior specialist" with no subordinate staff.

The petitioner included an organizational chart for the foreign employer showing the beneficiary reporting to the Vice President of Sales & Marketing. The beneficiary does not have any subordinate employees and is the only business analyst in his division.

Notably, counsel stated in her letter that "the beneficiary has been employed by the overseas entity for over one year and in a managerial capacity for over six months." Neither the petitioner nor the foreign entity provided a description of the beneficiary's former position as a business development analyst.

The director issued a request for additional evidence ("RFE") on October 25, 2012 in which he instructed the petitioner to submit, *inter alia*, the following: (1) a more detailed description of the beneficiary's duties including percentage of time spent performing each duty; and (2) an organizational chart for the foreign employer showing the beneficiary's immediate hierarchy, associates, and subordinates including title, duties, educational level, and salary.

The foreign employer provided a letter dated August 30, 2012 explaining that the beneficiary "is responsible for analyzing the economic and political conditions that would affect sales throughout Europe." The beneficiary then prepares reports to determine how to enter yet-unexplored markets and re-evaluating strategies in countries with changing conditions. The foreign employer claims that the beneficiary is the only employee in the company who "has the expertise to perform this type of analysis." The foreign employer provided an example of how the beneficiary's analysis is used to adjust to regulatory changes. The foreign employer provided a list of duties and percentage of time spent performing each as follows: develop new sales strategies and reports for changed political and economic conditions in European countries, 40%; develop strategies for entering market, 30%; prepare financial analysis for major European projects, 15%; brief sales teams on changed political or economic conditions and advises them on how to proceed based on these changes, 15%.

The petitioner provided the same organizational chart as provided in the initial petition.

The director denied the petition on December 31, 2012 concluding that the petitioner failed to establish that the beneficiary has been employed in a primarily managerial or executive capacity. The director determined that the duties provided for the beneficiary are indicative of an employee who primarily performs the tasks necessary to produce a product. Further, the director noted that the beneficiary does not supervise any employees and concluded that absent additional evidence describing the function managed by the beneficiary, USCIS cannot conclude that the beneficiary manages an essential function.

On appeal, counsel for the petitioner claims that the beneficiary manages "new market development" for the foreign entity. Counsel states that the beneficiary functions at a senior level and exercises discretion over the day-to-day operations of the function. Counsel also asserts that the beneficiary primarily performs managerial responsibilities to include developing new sales strategies, developing strategies for entering new markets, and briefing sales teams on how to adjust sales.

Upon review, and for the reasons stated herein, the petitioner has not established that the foreign entity has employed the beneficiary in a primarily managerial 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 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 term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential

function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(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. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

None of the beneficiary's duties, as described by the petitioner and foreign employer, are qualifying managerial duties. The beneficiary's duties include developing new sales strategies and reports for changed political and economic conditions in European countries; developing strategies for entering markets; preparing financial analysis; and briefing sales teams on his findings. All of these duties are necessary to provide the products of the organization. Further, the beneficiary's resume, which was also submitted for the record, indicates that most of his duties involve performing analysis, rather than managing a function. For example, the beneficiary indicates that he "performed market research analyzing European PV demand and competitors' pricing"; performed research of business models in non-feed in tariff regimes in Europe"; created financial models; performed "scenario analysis" for regulatory changes in Europe; and served as "financial analyst" for large projects. These duties may be highly technical and may require a certain specialized market and financial expertise, but the petitioner has not explained how they fall within the statutory definition of "managerial capacity" at section 101(a)(44)(A) of the Act.

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial. The beneficiary's duties submitted in response to the RFE do not show that the beneficiary is spending a majority of his time on managerial duties. As stated above, the beneficiary will be spending 100% of his time on non-qualifying duties

Beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. The AAO acknowledges that the beneficiary performs in a "senior specialist" role and reports to a vice president within the foreign entity; however, the beneficiary's role as described in the record is that of a specialist advisor rather than that of a qualifying manager.

The petitioner has not demonstrated that the beneficiary has been managing a function of the foreign entity or supervising a subordinate staff of professional, managerial, or supervisory personnel. See section 101(a)(44)(A)(ii) of the Act. The petitioner has not established that the foreign entity employs a staff that relieves the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial or executive duties. Based on the evidence furnished, it cannot be found that the beneficiary has been employed primarily in a qualifying managerial or executive capacity. For this additional reason the appeal will be dismissed.

Furthermore, even if the AAO determined that the beneficiary's current role as a business analyst is within a qualifying managerial capacity, the beneficiary has been employed in this capacity for less than one year. As noted above, counsel stated that the beneficiary has been employed in a managerial capacity for "more than six months." The record of proceeding contains no description of the beneficiary's initial role with the foreign entity as a "business development analyst," but based on the statements in the record, this was a different position than his current "business analyst" role, which appears to have been newly created in December 2011. To establish eligibility, the petitioner must provide evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge. See 8 C.F.R. § 214.2(l)(3)(iv). The petitioner has not met this burden based on its failure to provide a description of the beneficiary's previous position. 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)).

III. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.