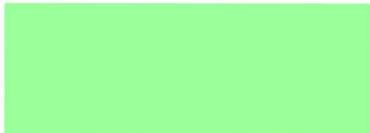




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 27 2014** 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner is a Delaware corporation that operates as an information technology services provider. It seeks to employ the beneficiary as its chief business development executive for a period of three years. Accordingly, the petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

### 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.

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 record shows that the petition was filed on November 6, 2013. The petition indicates that the petitioner was established in 1999 and claimed one employee at the time of filing. The petitioner provided supporting evidence pertaining to the beneficiary's foreign and U.S. employers. With regard to the foreign entity, the petitioner submitted corporate and financial documents, a letter stating that the beneficiary was employed abroad from August 1999 until July 2008 as the foreign entity's managing director and head of operations, and two purchase order receipts, dated June 30, 2006 and September 1, 2009, respectively. The record was also supplemented with the petitioner's corporate and financial documents; two service agreements, dated November 1, 2005 and June 6, 2008, respectively; five service invoices with dates ranging from February 2010 to October 2013; and one purchase invoice, dated September 15, 2013.

On November 18, 2013, the director issued a request for evidence (RFE). The director addressed, in part, the beneficiary's respective positions with the foreign and U.S. entities, instructing the petitioner to provide supplemental job descriptions pertaining to each position. The petitioner was asked to list the beneficiary's job duties and indicate what percentage of time the beneficiary allocated to each of his job duties abroad and how much time he would allocate to each of his assigned job duties in his proposed position with the U.S.

entity. The petitioner was also asked to provide organizational charts illustrating the respective organizational hierarchies of the beneficiary's former and proposed employers.

The petitioner's response contained two separate statements, one describing the beneficiary's proposed position in the United States, and another describing the beneficiary's former employment with the foreign entity.

Upon reviewing the evidence provided in response to the RFE, the director determined that the petitioner failed to establish that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial or an executive capacity. With regard to the beneficiary's proposed position, the director pointed to the petitioner's limited staffing structure, which consisted of a single employee, and determined that a number of the job duties that would be assigned to the beneficiary did not fit the statutory criteria of managerial or executive capacity. In his discussion of the beneficiary's former employment with the entity abroad, the director determined that the petitioner provided an insufficient job description that was overly broad and failed to state what job duties the beneficiary carried out on a daily basis.

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.

Upon review, and for the reasons stated below, we find that the petitioner has failed to establish that the beneficiary will be employed in a primarily managerial or an executive capacity.

### **III. The Issues on Appeal**

As indicated above, the key issues that will be addressed in this proceeding pertain to the beneficiary's employment abroad and his proposed employment with the petitioning entity. Specifically, we will review the record, including any supplemental evidence provided on appeal, in order to determine whether the petitioner established that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial or executive capacity.

#### **A. Qualifying Employment in the United States**

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the beneficiary's job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The description of job duties must clearly describe the beneficiary's job duties and indicate whether such duties are in either an executive or a managerial capacity. *Id.* 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). 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 presence of other employees and the duties they perform, the nature of the petitioner's business, and any other factors that may contribute to a comprehensive understanding of a beneficiary's actual duties and role in a business.

In order to determine the petitioner's statutory eligibility, we consider the beneficiary's proposed employment under the statutory definitions of managerial and executive capacity. The definitions have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary owns or 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").

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).

Although the beneficiary is not required to supervise personnel, if the petitioner claims that the beneficiary's duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* Section 101(a)(44)(A)(ii) of the Act. Alternatively, if the beneficiary is to be employed in the role of a function manager, the petitioner must furnish a written job offer that clearly describes the duties to be performed, 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. 8 C.F.R. § 214.2(l)(3)(ii). 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 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Here, the petitioner has not established that the beneficiary would be employed in a managerial capacity. In reviewing the job description that the petitioner originally submitted, we cannot overlook the petitioner's references to the integral roles of a financial director and sales and marketing manager, both of which were vacant positions at the time the petition was filed, thus indicating that the beneficiary's job description was intended to describe job duties that the beneficiary would eventually perform once the petitioner was actually able to fill the vacant positions. Moreover, in light of the petitioner's claim that the beneficiary would be the one to hire employees to fill the vacant positions, it is clear that the organizational hierarchy discussed in the beneficiary's job description was not in place at the time of filing and thus the beneficiary would not be able to primarily perform the described job duties until sometime in the future. However, a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of*

*Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Rather, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition.

Further, in reviewing the additional job description counsel provided in response to the RFE, we note that counsel did not provide a list of the beneficiary's specific daily tasks. Instead, he provided vague statements that failed to convey a meaningful understanding of the specific managerial or executive tasks the beneficiary would carry out on a daily basis. It is reasonable to assume that any individual, when placed at the top of a company's organizational hierarchy, would be responsible for directing company employees and setting the company's business strategies. This information does not, however, help us to understand the nature of the beneficiary's specific job duties; nor does the information lead to the conclusion that the beneficiary would primarily perform tasks in a qualifying managerial capacity, particularly when the beneficiary solely comprises the organizational hierarchy of the U.S. employer. It stands to reason that the beneficiary would be called upon to carry out a variety of job duties, both qualifying and non-qualifying, in order to ensure that the petitioner is able to maintain its daily business operation. While we acknowledge that no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to the proposed position. As previously stated, 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 International*, 19 I&N Dec. at 604.

In determining whether the beneficiary's proposed position meets the statutory definition of the term "executive capacity," we focus on a person's elevated position within an 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.* While the definition of "executive capacity" does not require the petitioner to establish that the beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the petitioner's burden to establish that someone other than the beneficiary carries out the day-to-day, non-executive functions of the organization.

In the present matter, the evidence does not establish that the beneficiary would be employed in a primarily managerial or executive capacity.

Initially, the petitioner provided a description of the beneficiary's proposed employment, stating that the beneficiary would be expected to make executive decisions with regard to the following: finalizing the petitioner's business model and geographic areas where the petitioner would launch new services, hire a team to support new business development, and hire a public relations firm to launch the petitioner's website and

branding. The petitioner also provided the following percentage breakdown of the beneficiary's proposed executive job duties:

- 20% on new business strategy and launch[.]
- 15% on market research and analysis[.]
- 15% on business presentation and proposal development[.]
- 15% on financial management and planning[.]
- 10% on client and prospect meetings and networking[.]
- 15% on PR strategy, branding activities and relaunch [*sic*] of corporate website[.]
- 10% on team development in the U[.]S[.] and India[.]

In addition, the petitioner included the following components in describing the beneficiary's role in managing the organization:

#### Business Development

- Formulate plans and make decisions about sales/marketing strategy, service offerings and new initiatives[.]
- Conduct market research and acquire new clients[.]
- Prepare and deliver presentations to prospective clients and partners[.]
- Identify new partners and execute agreements in technology[.]
- [C]omplementary services and sales/marketing[.]
- Launch new business services and oversee implementation[.]
- Lead account management including reports and metrics[.]

#### Branding & Networking

- Identify and attend relevant trade shows and networking events[.]
- Work with PR professionals and designers in development new corporate brochures and marketing materials[.]
- Re-launch corporate website with details on new services[.]

#### Team Building

- Build and oversee a high-performing team and associates[.]
- Communicate sales, client and project goals to the new hires. Discuss their roles and responsibilities and finalize their quarterly and monthly plans.
- Provide support to new hires and evaluate performance against goals.

#### Financial Management

- Develop pricing structure including margins, terms of payment and discounts[.]
- Assume P&L responsibility for new services portfolio[.]
- Develop annual account plans to achieve strategic goals with a focus on improving revenues and margins[.]
- Work with leadership team and board on future financing strategy [.]

The above breakdown of job duties, particularly when considered in light of the petitioner's one-person staff, strongly indicates that the beneficiary would allocate his time primarily to performing the petitioner's

operational tasks in order to continue the petitioner's operations and advance the petitioner beyond its current initial stage of development. As pointed out in the above job description, one of the beneficiary's key responsibilities upon commencing work with the petitioning entity would be hiring a team of associate employees. Given that the petitioner did not have any employees at the time of filing, it is reasonable to conclude that the beneficiary would be required to perform all tasks necessary, both qualifying and non-qualifying, in order to maintain the petitioner's operational status. While the petitioner claimed in its initial supporting statement that its Indian subsidiary "will continue to operate in India and offer and extend back-end services to the parent company in the United States," the petitioner provided no evidence to substantiate these claims. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Despite the petitioner's parent-subsidary relationship with the foreign entity, these are still two separate organizations, whose staffing and funds the petitioner cannot commingle simply by virtue of its ownership of the foreign entity. The petitioner may not include the foreign entity's staff as part of its own organization in an effort to bolster its organizational complexity; nor can the petitioner claim to use the services of the foreign entity's employees without evidence showing how the petitioner compensates the foreign employees for their services. Furthermore, while it may be reasonable to expect the beneficiary to assume a large portion of the petitioner's non-qualifying tasks during its initial stage of operation, the petitioner's reasonable needs cannot serve to override its legal burden of having to establish that the beneficiary would primarily perform duties of a qualifying managerial or executive nature.

At the time of filing, the petitioner claimed only one employee – the petitioner's founding owner – and thus did not have a subordinate staff of employees available to carry out the necessary operational tasks that are deemed to be outside the scope of managerial or executive capacity. Tasks such as conducting market research, preparing and delivering presentations to prospective clients, attending trade shows, and launching the petitioner's website are all operational tasks and thus are not tasks that the beneficiary would perform within a qualifying capacity; while other duties, such as overseeing "a high-performing team and associates," launching new business services, leading account management, developing annual account plans to achieve larger profits, and working with a team on a future financing strategy, are all projected job duties that the beneficiary would be unable to perform until a proper subordinate staff is in place to assume the underlying operational job duties. It is clear, based on the facts presented in this proceeding, that the petitioner was not ready and able to support the beneficiary in his proposed position at the time of filing and that the beneficiary would likely be required to continue to assist the petitioner's owner in primarily performing all necessary tasks until a proper team of employees is in place to support the beneficiary in a role that is comprised primarily of managerial- or executive-level tasks within a qualifying capacity.

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. As discussed above, the petitioner was not able to support the beneficiary in a primarily managerial or executive capacity at the time the petition was filed due to the petitioner's continued staffing needs. While no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, the petitioner maintains the burden of establishing that the non-qualifying tasks the beneficiary would perform are only incidental to the proposed position. Again, we emphasize the statutory requirement that 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 International*, 19 I&N Dec. at 604. In the present matter, the record indicates that the beneficiary's tasks at the time of filing would primarily have been of a non-qualifying nature and that the petitioner would therefore be unable to employ the beneficiary in a primarily managerial or executive capacity. On the basis of this initial adverse determination, the instant petition cannot be approved.

#### B. Qualifying Employment Abroad

The next issue to be addressed in this proceeding is the beneficiary's managerial or executive capacity during his employment with the petitioner's subsidiary in India.

In a supporting statement, the petitioner explained that the beneficiary commenced his employment with the foreign entity in 1999 and continued such employment until 2008, when the foreign entity was forced to downsize. The petitioner further stated that the beneficiary rejoined the foreign entity's organization in April 2011 and that the purpose of the beneficiary's rehire was "to lead rebuilding efforts." More specifically, the beneficiary was asked to "restructure the operations of the Indian company and to support [a] new business strategy of the U[.]S[.] parent company."

In a statement, dated November 25, 2013, the foreign entity's vice president of human resources provided the following percentage breakdown of the beneficiary's executive responsibilities:

- 50% on formulation of new business strategy, market research, and analysis[.]
- 25% on restructuring the India operations[.]
- 15% on business presentation[s] and meetings[.]
- 10% on team focus and training[.]

The petitioner also stated that the beneficiary managed the overseas organization, led business development and established its goals and policies. As part of his role in the management of the organization the beneficiary did the following:

- Divested underutilized infrastructure[.]
- Streamlined team to focus on key strengths while cutting cost[s.]
- Identified key training areas to develop [the] team's technical skills[.]

With regard to leading the foreign entity's business development, the beneficiary performed the following:

- Oversaw global implications of business strategy to identify growth opportunities.
- Conducted market research for different services, markets, and geographies . . . [.]
- Identified new areas where [the] company can be a strong player. Performed detailed SWOT Analysis<sup>1</sup> for existing and new service offerings.
- Evaluated new tools, trends, technology and apps for better positioning and marketing of our company's brand and service offerings.

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<sup>1</sup> SWOT means strengths, weaknesses, opportunities and threats.

- Prepared quotes and proposals for the new and existing clients.

Lastly, in establishing the foreign entity's goals and policies, the job description indicates that the beneficiary did the following:

- [He] set up the goal to cut operations cost by 40% or more in a year. He worked with the existing team in executing the goals and delivered results in less than a year.
- [He] established goals for [the] business development function to create a profitable service delivery model. He presented the case to the board for restructuring existing services and worked on developing new lines of business in cooperation with the U[.]S[.] parent with only general guidance from the board of directors.

Despite the percentage breakdown and the above list of actions taken by the beneficiary during his recent tenure with the foreign entity, the petitioner has failed to establish that the beneficiary allocated his time primarily to tasks of a managerial or executive nature.

A review of the percentage breakdown shows that the job duties lacked sufficient specificity to determine how much time the beneficiary allocated to qualifying tasks versus the tasks that would be deemed to be non-qualifying. For instance, the petitioner indicated that the beneficiary conducted market research, a task that cannot be readily deemed as qualifying. However, the job description does not indicate specifically how much time the beneficiary spent conducting market research. The petitioner also claimed that the beneficiary spent 15% of his time making business presentations and holding meetings, presumably with the foreign entity's clients for whom the presentations were made. However, this too cannot be deemed as a qualifying managerial- or executive-level task. Furthermore, while the petitioner claimed that another 10% of the beneficiary's time was allocated to "team focus and training," the petitioner did not provide any evidence establishing precisely who the beneficiary's subordinates were, i.e., the team he was claimed to have been working with, the duties the team members performed, or their respective placements in the foreign entity's organizational hierarchy with respect to the beneficiary's own placement. The petitioner also failed to provide evidence to establish that the beneficiary's subordinates were supervisory, professional, or managerial employees. Section 101(a)(44)(A)(ii) of the Act. In addition, while the petitioner stated that the beneficiary was responsible for providing quotes and proposals to new and existing clients, the job description fails to indicate what percentage of time the beneficiary allocated to this non-qualifying task, despite the director's specific request that the petitioner assign a time allocation to each of the beneficiary's job duties.

Further, despite having been instructed to provide the foreign entity's organizational chart depicting the employees who were within the beneficiary's immediate division, department or team, the petitioner neglected to provide this relevant documentation to show who performed the foreign entity's daily operational tasks. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The foreign entity's organizational hierarchy is material to the matter at hand, as it could help establish whether and to what extent the foreign entity was adequately staffed such that it was able to relieve the beneficiary from having to allocate his time primarily to the performance of non-qualifying tasks. Although the petitioner's statement on appeal addresses the issue of the beneficiary's employment abroad, it focuses

primarily on the beneficiary's leadership role and placement at the top of the foreign entity's organizational hierarchy, neither of which the petitioner established with sufficient clarity due to its failure to comply with the director's specific instructions in the RFE.

In light of the evidentiary deficiencies described above, we find that the petitioner has not established that the beneficiary was employed abroad in a primarily managerial or executive capacity and the appeal must be dismissed on the basis of this second adverse conclusion.

#### **IV. Conclusion**

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.