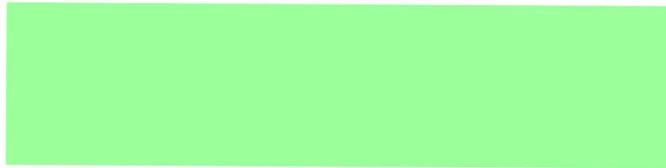
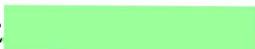


(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: DEC 02 2014 OFFICE: VERMONT SERVICE CENTER FILE 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:


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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida limited liability company established in February 2000, states that it engages in the sale, distribution, and maintenance of generators. The petitioner claims to be a subsidiary of [REDACTED] located in Italy. The petitioner seeks to employ the beneficiary as managing member for a period of three years.

The director denied the petition on two alternate grounds, concluding that the petitioner failed to establish that (1) the beneficiary has been employed full-time at least one continuous year by a qualifying organization abroad in a qualifying managerial or executive capacity, and (2) the beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner contends that the beneficiary held a managerial position at the foreign entity and that he will be employed in a managerial capacity in the United States. The petitioner submits 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.

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 ISSUES ON APPEAL

A. Employment in a Managerial or Executive Capacity at the Foreign Entity

The first issue addressed by the director is whether the petitioner has established that the beneficiary was employed full time by a qualifying foreign entity for one continuous year in a qualifying managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(v)(B).

On the Form I-129, Petition for a Nonimmigrant Worker, L Classification Supplement, the petitioner listed the beneficiary's foreign employer as himself and failed to indicate his dates of employment. Where asked to describe the beneficiary's duties abroad for the three years preceding the filing of the petition, the petitioner stated the following:

[The beneficiary] is an industrial engineer with more than 25 years of experience in mechanical design, international sales and distribution with world wide experience.

The petitioner submitted a letter, dated September 30, 2013, from the foreign entity describing the beneficiary's position abroad as follows:

[The beneficiary] was hired by [the foreign entity] January 10, 2012 with the duties of commercial manager and is still in force with the employment contract under Italian law full time and permanent. [The beneficiary] holds since August 2013, with our satisfaction, the role of General Manager and Sales Manager of [the petitioner].

[The beneficiary], within this period, he acquired a number of specific knowledge and confidential information about our trade policies and our projects, so it is our goal to entrust the commercial development of our project in America . . .

The petitioner submitted the beneficiary's resume stating that he has been employed by the foreign entity since 2011 in the position of sales manager. The beneficiary's resume lists his main activities and responsibilities in this position as follows:

I carry out the activities that have as their purpose the implementation of commercial policies. My function is to create policies particularly targeted, both commercial and marketing to push the market the goods produced [*sic*]. These policies are aimed at making the product visible and available to those who can buy it, claiming the minimum cost necessary to transfer it from the producer to the consumer.

I was assigned with developing, maintaining my defined territory while communicating the company's strategies and business opportunities. I was responsible for the provision and management of business growth and marketing opportunities for my customers.

Key Responsibilities:

- listening to customer requirements and presenting appropriately to make a sale;
- maintaining and developing relationships with existing customers in person and via telephone calls and emails;
- cold calling to arrange meetings with potential customers to prospect for new business;
- responding to incoming email and phone enquiries;
- acting as a contact between a company and its existing and potential markets;
- negotiating the terms of an agreement and closing sales;
- gathering market and customer information;
- representing our company at trade exhibitions, events and demonstrations;

negotiating on price, costs, delivery and specifications with buyers and managers;
challenging any objections with a view to getting the customer to buy;
advising on forthcoming product developments and discussing special promotions;
creating detailed proposal documents, often as part of a formal bidding process which is largely dictated by the prospective customer;
liaising with suppliers to check the progress of existing orders;
recording sales and order information and sending copies to the sales office, or entering figures into a computer system;
reviewing your own sales performance, aiming to meet or exceed targets;
gaining a clear understanding of customers' businesses and requirements;
making accurate, rapid cost calculations and providing customers with quotations;
feeding future buying trends back to employers;
attending team meeting and sharing best practice with colleagues

The petitioner did not submit any additional information about the beneficiary's position abroad or the organizational structure of the foreign entity.

The director issued a request for additional evidence ("RFE") on October 31, 2013, advising the petitioner that it failed to submit evidence of the beneficiary's employment at the qualifying foreign entity. The director further advised the petitioner that the beneficiary spent a significant amount of time in the United States during his year of employment at the qualifying foreign entity and the petitioner's description of his position was insufficient. The director instructed the petitioner to submit evidence that the beneficiary was employed full time at the qualifying foreign entity for at least one year within the three years preceding the petition filing and that the position abroad was in a managerial or executive capacity.

In response to the RFE, the petitioner submitted a new Form I-129 L Classification Supplement listing the beneficiary's foreign employer as [REDACTED], located in Italy, and his dates of employment from January 10, 2012 to the present.

On the new Form, where asked to describe the beneficiary's duties abroad for the three years preceding the filing of the petition, the petitioner stated the following:

[The beneficiary] has worked at [the foreign entity] as a Commercial Manager. He assisted in the development of the company's international commercial policies. As an Industrial and Mechanical Engineer he worked to market the goods that were produced and develop strategies to transfer the goods from producer to consumer at minimal cost.

The petitioner submitted a copy of the same letter from the foreign entity, dated September 30, 2013, and the same resume previously submitted for the beneficiary. Although specifically requested by the director in the RFE, the petitioner did not submit any evidence of the beneficiary's actual employment at the foreign entity or any additional information about the beneficiary's position and duties abroad or the organizational structure of the foreign entity.

The director denied the petition on February 6, 2014 concluding, in part, that the petitioner failed to establish that the beneficiary was employed full time by a qualifying foreign entity for one year within the three years preceding the filing of the petition in a qualifying managerial or executive position. In denying the petition, the director found that the record does not establish the specific duties of the position of the beneficiary abroad as his resume, by itself, is insufficient to establish the job duties performed. The director further found that the record does not contain documentary evidence of the beneficiary's actual employment at the foreign entity since January 10, 2012.

On appeal, the petitioner submits a brief and references the beneficiary's position at the foreign entity as follows:

The Beneficiary worked as a Commercial Manager for [the foreign entity] from January of 2012 to August of 2013. In August of 2013 the Beneficiary was given the title of General Sales Manager of [the petitioner].

While working for [the foreign entity] in Italy, the Beneficiary held a managerial position. The Beneficiary developed sales contacts with potential new clients, researched current international markets and supervised other employees of [the foreign entity].

The Beneficiary was working for [the foreign entity] for over a year before being promoted to General Sales Manager for [the petitioner].

The petitioner submitted untranslated copies of the beneficiary's pay stubs from the foreign entity from January 2012 to February 2014.

Upon review, and for the reasons stated herein, the petitioner failed to establish that the beneficiary was employed full time by a qualifying foreign entity for one year within the three years preceding the filing of the petition in a qualifying managerial or executive position.

In the RFE, the director specifically advised the petitioner that it must provide evidence of the beneficiary's actual employment at the qualifying foreign entity during the period specified. Specifically, the director requested copies of the beneficiary's pay records, personnel records, or training records, a letter from the beneficiary's supervisor, or a letter from the foreign entity's human resources department. The petitioner failed to submit any of the requested evidence, and upon denial of the petition, provides copies of the beneficiary's pay stubs for the period specified on appeal. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533

(BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, we need not and do not consider the sufficiency of the evidence submitted on appeal.

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.* Beyond the required description of the job duties, 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 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 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 petitioner first characterized the beneficiary's role as commercial manager and provided a very vague description of the beneficiary's position abroad that does not establish that he is primarily an executive or is primarily a manager at the foreign entity. The petitioner failed to provide any description of the beneficiary's duties at the foreign entity and, in response to the RFE, indicated that the beneficiary assisted in the development of the company's international commercial policies, worked to market the goods that were produced, and developed strategies to transfer the goods from producer to consumer at minimal cost. The petitioner did not include any additional details or specific tasks related to his briefly listed duties, nor did the petitioner indicate how such duties qualify as managerial or executive in nature. Furthermore, the petitioner failed to submit an organizational chart or any information relating to his subordinate employees at the foreign entity who would carry out the tasks associated with the day-to-day activities of the company, such as producing a product or providing a service. The petitioner did submit the beneficiary's resume, which lists duties and responsibilities akin to a sales or customer service representative, as detailed above. This is particularly important because most of the briefly listed duties for the beneficiary are not managerial or executive in nature. The petitioner's and the beneficiary's description of the duties fails to provide any detail or explanation of the beneficiary's claimed managerial or executive activities in the course of his daily routine at the foreign entity. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108 *supra*. 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).

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. See 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

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.

Here, the petitioner failed to submit an organizational chart or position descriptions for its employees at the foreign entity. Therefore, the petitioner has not shown that the beneficiary has subordinate employees or that they are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The petitioner has not established, in the alternative, that the beneficiary is employed primarily as a "function 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 position description that describes 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 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. Here, the petitioner did not indicate that the beneficiary qualifies as a function manager. The petitioner did not articulate the beneficiary's duties at the foreign entity as a function manager and did not provide a breakdown indicating the amount of time the beneficiary devotes to duties that would clearly demonstrate that he manages an essential function of the foreign entity.

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. See 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. As discussed herein, the petitioner's description of the beneficiary's duties abroad fails to establish that such duties are primarily managerial in nature.

The statutory definition of the term "executive capacity" focuses 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. See 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. Here, the petitioner failed to demonstrate that the beneficiary's duties abroad primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations. The job duties provided for the beneficiary's employment abroad fail to demonstrate that the beneficiary focuses the majority of his time on executive duties rather than the day-to-day operations of the business.

Based on the deficiencies discussed above, the petitioner has not established that the beneficiary was employed full time by a qualifying foreign entity for one year within the three years preceding the filing of the petition in a qualifying managerial or executive position. Accordingly, the appeal will be dismissed.

B. U.S. Employment in a Managerial or Executive Capacity

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

On the Form I-129, where asked to describe the beneficiary's proposed duties in the United States, the petitioner stated the following:

[The beneficiary] replace [sic] the director of the company . . . who resigned for health reasons on 07.31.2013, in the leadership of the company, as well as taking care of the administrative management of commercial development that also [sic].

In the foreign entity's letter, dated September 30, 2013, the beneficiary's proposed position in the United States is described as follows:

. . . it is our goal to entrust the commercial development of our project in America, in which he is responsible for the management and planning of commercial activities of the constant interaction with the headquarters in Italy and continue the commercial development in both North America and in neighboring countries including countries in south America.

The petitioner did not submit any additional information about the beneficiary's proposed position in the United States or the organizational structure of the U.S. company.

In the RFE, the director advised the petitioner that it failed to submit evidence of the beneficiary's duties in the proposed position in the United States. The director instructed the petitioner to submit evidence that the beneficiary's proposed position in the United States will be in a managerial or executive capacity.

In response to the RFE, the petitioner submitted a new Form I-129 L Classification Supplement. On the new Form, where asked to describe the beneficiary's proposed duties in the United States, the petitioner stated the following:

[The beneficiary] will act as General and Sales Manager of [the petitioner]. He will lead the company by taking on all administrative and management duties.

The petitioner also submitted a duplicate copy of the same letter from the foreign entity, dated September 30, 2013. Although specifically requested by the director in the RFE, the petitioner did not submit any additional information about the beneficiary's proposed position in the United States or the organizational structure of the U.S. company.

The director denied the petition concluding, in part, that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity. In denying the petition, the director found that the record does not contain documentary evidence to establish the scope and capacity of the U.S. company. The director observed that it could not determine who the two employees of the U.S. company are or what job duties they perform. The director further found that the record does not sufficiently demonstrate that the beneficiary will be primarily employed in a managerial capacity.

On appeal, the petitioner submits a brief and references the beneficiary's position in the United States as follows:

[The petitioner] employs three individuals: the Beneficiary, Commercial Sales Manager, [redacted] secretary and [redacted] warehouseman and truck driver.

As Commercial Sales Manager of [the petitioner], the Beneficiary would have many responsibilities. He would oversee the individual activities of the other two employees while also focusing on producing and negotiating sales. He would negotiate contracts, meet with industry contacts and be the liaison to [the foreign entity].

The petitioner submits a letter, dated March 7, 2014, from the foreign entity, describing the beneficiary's position in the United States as follows:

The office has two employees and their full time employment is dedicated to the sale and maintenance of the generators. A managerial position in [the petitioner] is necessary to oversee the individual activities of these employees while also focusing on producing and negotiating sales. The expected day to day activity of the manager will include: meeting with employees to instruct them and direct their work, meeting with industry contacts to develop and maintain sales relationships, negotiating contracts for the sales and maintenance of the generators and reporting to [the foreign entity]. The manager would be expected to report to [the foreign entity] daily and would report directly to Vice President and be expected to be informed on the status of [the petitioner's] operations, sales and projected sales.

On a daily basis, [the beneficiary's] duties as a commercial sales manager included directly instructing and supervising 2 employees. These employees would then proceed to do the following based on his instructions:

- [redacted] customer service; account payable & account receivable; invoicing; Emails; telephone
- [redacted] technical manager; warranty; warehouseman; replacement parts handling; repairs; forklift driver; truck driver and handling boat shows.

They would also report periodically to [the beneficiary] as a group and individually and consult him directly when they had questions.

[The beneficiary] was also charged with developing the company's international policies and marketing to the American market. He would do this researching current markets and potential new markets, developing sales contacts with potential new clients such as ship builders, home builders, electrical engineers, etc., throughout the world via personal meetings and contact as well as through constant communication with these contacts. He would also negotiate contracts and payments for merchandise. [The beneficiary] was also responsible for reporting to his superior, the Vice President, regarding his activities and the activities of the workers he supervised on a daily bases [sic].

Upon review, and for the reasons stated herein, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity in the United States.

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.* Beyond the required description of the job duties, 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 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 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").

In the instant matter, the petitioner stated on the Form I-129 that the beneficiary will be the managing member; however, the petitioner failed to submit information regarding the actual duties to be performed by the beneficiary in this role. The petitioner briefly stated that the beneficiary will be responsible for the management and planning of commercial activities, the constant interaction with the headquarters office in Italy, and continuing the commercial development in North America and neighboring countries, including countries in South America. While these tasks may be undoubtedly necessary in order to continue operations, the petitioner has not indicated how these duties qualify as managerial or executive in nature. The petitioner failed to provide any description of the beneficiary's proposed duties in the United States and, in response to the RFE, specifically stated that the beneficiary will "act as General and Sales Manager of [the petitioner]. He will lead the company by taking on all administrative and management duties." The petitioner also failed to submit an organizational chart or any information relating to his subordinate employees in the United States who would carry out the tasks associated with the day-to-day activities of the company, such as producing a product or providing a service. This is particularly important because the briefly listed proposed duties for the beneficiary are insufficient to determine whether the proposed position is managerial or executive in nature. The petitioner's description of the duties fails to provide any detail or explanation of the beneficiary's claimed managerial or executive activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108 *supra*. 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).

In the RFE, the director specifically advised the petitioner that it must provide evidence that the beneficiary's proposed position in the United States will be managerial or executive in nature. Specifically, the director requested a detailed description of the beneficiary's proposed duties, including the percentage of time he spends on each, an organizational chart, or evidence of employees and a description of their duties performed in the United States. The petitioner failed to submit any of the requested evidence, and upon denial of the petition, provides a new letter from the foreign entity describing the beneficiary's proposed duties and that of the two other employees in the United States. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, we need not and do not consider the sufficiency of the evidence submitted on appeal.

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." See 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. See 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Here, the petitioner failed to submit a proposed organizational chart, a description of its other employees in the United States, or evidence of their actual employment. Therefore, the petitioner has not shown that the beneficiary will have subordinate employees or that they will be supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The petitioner has not established, in the alternative, that the beneficiary is employed primarily as a "function 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 position description that describes 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 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. Here, the petitioner did not indicate that the beneficiary qualifies as a function manager. The petitioner did not articulate the beneficiary's duties as a function manager and did not provide a breakdown indicating the amount of time the beneficiary would devote to duties that would clearly demonstrate that he would manage an essential function of the U.S. company.

The statutory definition of the term "executive capacity" focuses 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. See 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.* Here, the beneficiary has not been shown to be employed in a primarily executive capacity. The petitioner failed to demonstrate that the beneficiary's duties will primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations.

Based on the deficiencies discussed above, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States. Accordingly, the appeal will be dismissed.

III. CONCLUSION

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 petitioner has not met that burden.

ORDER: The appeal is dismissed.