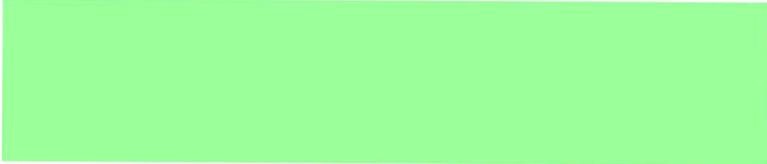


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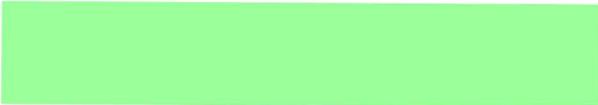
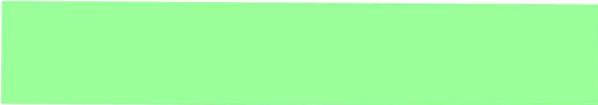
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **MAY 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:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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 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 Delaware corporation, is self-described as a manufacturer of industrial gases and chemicals. The petitioner states that it is an affiliate of [REDACTED] Ltd., both of which are wholly owned subsidiaries of the company's parent in the United States, [REDACTED], Inc. The petitioner seeks to employ the beneficiary in the capacity of logistics manager for a period of three years.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary was employed abroad, or would 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. On appeal, counsel states that the director misconstrued the facts and evidence and arrived at an erroneous conclusion. Counsel contends that the beneficiary manages an essential function and, as such, the director placed undue emphasis on whether she supervises subordinate managerial, supervisory or professional personnel.

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(1)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, 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 (1)(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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. The Issues on Appeal

A. Managerial Capacity (Foreign Entity)

The first to be addressed is whether the petitioner established that the beneficiary has been employed in a managerial capacity with the foreign entity. The petitioner does not claim that the foreign entity employs the beneficiary in an executive capacity.

1. Facts

The petitioner states that the foreign entity is a wholly owned subsidiary of [REDACTED] Inc. a multinational corporation engaged in a variety of industries around the world including aviation, automotive, chemical, glass, paper and petroleum. The petitioner indicated that it operates as "a total-solution provider," offering a diverse range of offerings to help customers increase productivity, reduce costs, and improve product quality. Specifically, the petitioner explained that the foreign entity and the petitioner provide "Third Party Logistics and Vendor Managed Inventory (VMI) services surrounding consumable spare parts, repair parts, and engineered components for process tools utilized by semiconductor companies." The petitioner explained that worldwide annual sales of the company are approximately \$11 billion and that it has over 27,000 employees worldwide.

The petitioner stated that the beneficiary has been employed in the role of VMI site manager with the foreign entity since October 2009, indicating that "she leads an on-site team in the implementation of a VMI program for our key client [REDACTED]." The petitioner noted that the beneficiary "led the design and implementation of an essential program methodology" specifically created for [REDACTED] and that the beneficiary "executed the program through inventory planning, sourcing, replenishing, and invoicing in a timely matter." The petitioner indicated that the program contributed approximately \$6 in revenue and \$370,000 in savings. The petitioner explained that the beneficiary's current duties include: (1) managing invoicing, replenishments, and bill of material inventory, (2) ensuring customs clearance, e-book registration, and reuse parts inspection, (3) making business strategy decisions and establishing financial goals, (4) directing the sourcing of parts and working with the sourcing department to find the best sources of supply, (5) driving monthly sales forecasting, (6) taking the lead on part transitions to avoid tool downs and excess inventory, (7) leading customer relationships and resolving technical and quality issues, (8) meeting with new suppliers and establishing expectations, and (9) managing stocking levels related to the customer bill of inventory, or specifically, establishing appropriate stocking levels based on supplier lead time, unit cost, and usage forecast.

The director issued a request for evidence (RFE) instructing the petitioner to submit additional evidence related to the beneficiary's current position with the foreign entity. The director requested that the petitioner submit: (1) copies of the beneficiary's training, pay, or other personnel records; (2) an organizational chart listing all employees in the beneficiary's immediate division, and their names, job titles, a summary of their duties, education levels and salaries; and (3) a letter from the foreign entity describing the beneficiary's typical managerial decisions and including the percentage of time she spends on each duty.

In response, the petitioner submitted a letter from the foreign entity with additional duties for the beneficiary. The letter emphasized that the beneficiary: "made important decisions on the pricing of parts," "negotiated with customers and suppliers on disposition efforts that have greatly impacted our customer relationships," "has the authority to make decisions on improving the Working Capital results of our customer programs, "makes decisions that impact our Inventory levels, Accounts Receivables, and Accounts payable results," "makes decisions on which suppliers to choose," and makes business strategy decisions and establishes financial goals. Additionally, the petitioner provided the following general duty categories for the beneficiary, including the percentage of time she spends on each:

- Directs Essential Program Methodology Design and Improvement- 15% of her daily duties
- Manages Financial Affairs- 15% of her daily duties
- Manages Safety and Compliance Control- 10% of her daily duties
- Manages VMI Program Implementation- 35% of her daily duties
- Manages Suppliers- 15% of her daily duties
- Manages Customer Relationships- 10% of her daily duties

Within each area of responsibility above, the beneficiary also provided additional information regarding the duties that comprise the categories. For instance, the petitioner states that the beneficiary leads the design and implementation of the VMI program methodology and noted that "the inventory management methodology of the VMI was designed by [the beneficiary] based on her professional knowledge of procurement, sourcing, and planning." The petitioner also indicated that the beneficiary "defines the site's Bill of Material inventory list and adjusts planning factors accordingly" and that she "establishes quality standards and inspection procedures. The duties also noted that the beneficiary delivers training on safety and compliance control and that she "works with the China Customs and the China Commodity Inspection Bureau to ensure Customers clearance, ebook registration, and reuse parts inspection are handled appropriately." The petitioner further explained that the daily operations under her management included "spare parts sourcing, purchasing, delivery, customs clearance, and invoicing," and that the beneficiary "leads customer service." Again, the petitioner noted that the beneficiary "meets with new suppliers" for the customer and that she "is the representative [for the petitioner] at the customer site." Finally, the petitioner indicated that the beneficiary "has increased her expertise in logistics and has the expertise necessary to manage logistics for a major client relationship."

The petitioner indicated that as part of her responsibility for VMI program implementation, she leads an on-site team and prioritizes tasks under her management. The petitioner submitted an organizational chart for the foreign entity which identifies the beneficiary as "VMI Logistics Manager" reporting to a General Manager, Logistics. The chart depicts three employees subordinate to the beneficiary - two VMI Site Specialists ([REDACTED]) and a "Breadman Coordinator" [REDACTED]. The petitioner attached position descriptions for each of these roles.

The petitioner also provided personnel information for the beneficiary and other employees maintained in the company's "GEMS HR System." This documentation shows that the beneficiary's role profile is "Logistics Associate III" and her "business card title" is "Site Supervisor." According to the HR system, [REDACTED] is a "Logistics Associate II" with a business card title of "Site Specialist," and [REDACTED] is a "Logistics Associate I" with a business card title of "Site Specialist." The petitioner did not provide personnel records for [REDACTED]

The director denied the petition on September 9, 2013, concluding that the petitioner failed to establish that the beneficiary has been employed in a qualifying managerial or executive capacity with the foreign entity. In denying the petition, the director noted that the evidence suggested that the beneficiary was primarily assisting in the performance of non-qualifying operational duties rather than qualifying executive or managerial duties. The director also found that the beneficiary's place in the organizational hierarchy did not demonstrate that she was employed in a position higher than that of a first-line supervisor of non-professional employees.

On appeal, counsel contends that the director misplaced her analysis on whether the beneficiary has professional subordinates. Counsel states that the director failed to consider the petitioner's assertion that the beneficiary qualifies as a function manager through her direction and management of a "critical function" of the foreign entity. Counsel emphasizes that the beneficiary's management of this function contributes to \$6 million in annual revenue. Counsel also contends that the director did not consider the totality of the evidence, including the beneficiary's detailed duty description and the financial impact of the beneficiary's management of the claimed essential function.

2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity.

As noted, the petitioner contends that the beneficiary qualifies 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 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 primarily 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 *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

When examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). Further, it should be noted that the definitions of executive and managerial capacity 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 prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In the present matter, the position description provided does not demonstrate that the beneficiary primarily performs managerial duties. The evidence demonstrates that the beneficiary is primarily providing services to a major client rather than primarily performing qualifying duties required of a function manager. For instance, the petitioner states that the beneficiary leads the design and implementation of the VMI program methodology, and notes that "the inventory management methodology of the VMI was designed by [the beneficiary] based on her professional knowledge of procurement, sourcing, and planning." As such, the beneficiary's duties indicate that she performs a number of functions consistent with the direct provision of

services to a client, including managing the implementation of, and designing, the VMI program at the client location; managing invoicing, replenishments, and bill of material inventory; driving monthly sales forecasting; directing the sourcing of parts and working with the sourcing department to find the best sources of supply; taking the lead on part transitions to avoid tool downs and excess inventory; establishing appropriate stocking levels based on supplier lead time, unit cost, and usage forecast; leading customer service; meeting with new suppliers and establishing expectations; and acting as a company representative at the customer site. These aforementioned non-qualifying duties are interspersed among the general duty categories inserted above indicating percentages of time the beneficiary spends on each duty. As such, it is not possible to determine the amount of time the beneficiary devotes to non-qualifying operational functions and qualifying managerial functions. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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 company'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 business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Although the petitioner claims that the beneficiary has subordinates, it is not made clear from the evidence presented whether the beneficiary is primarily engaged in overseeing these employees and the asserted function generally, or whether she is primarily devoted to the direct performance of professional services to a client. The totality of the evidence demonstrates that the beneficiary is engaged in the performance of services for the client. As noted above in the beneficiary's duties, the beneficiary was assigned by the company to manage the customer's inventory and implement a proprietary company solution to bring efficiency to this client inventory management process. The petitioner indicates that the beneficiary "has increased her expertise in logistics and has the expertise necessary to manage logistics for a major client relationship." This language and the duty description generally, support a conclusion that the beneficiary provides professional services, rather than directing or managing an essential function of the foreign entity. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, the petitioner's supporting evidence identifies the beneficiary's job title as "Logistics Associate III" or "site supervisor" rather than her claimed title of "Logistics Manager," which, based on the submitted evidence is a different and higher-level position within the company.¹ It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

¹ The submitted information from the company's GEMS HR System indicates that the beneficiary holds a "level 8" position of Logistics Associate III. The petitioner also submitted GEMS HR information for a U.S.-based employee, whose title is Logistics Manager 1. This position is a "level 9" role with a higher salary.

Due to this unresolved discrepancy, it is difficult to ascertain the beneficiary's actual level of authority or whether her position is in a managerial capacity or that of a lead or senior specialist. Although the petitioner established that the beneficiary performs a valuable role in the petitioner's provision of VMI services to [REDACTED] the petitioner has not sufficiently demonstrated that her actual duties and level of authority qualify her as a manager.

In conclusion, the petitioner has not established that the beneficiary has been employed abroad in a managerial capacity. Accordingly, the appeal will be dismissed.

B. Managerial Capacity (United States)

The next issue addressed by the director is whether the petitioner has established that it will employ the beneficiary in a qualifying managerial capacity.

1. Facts

The petitioner stated that it is an affiliate of the foreign entity engaged in providing services to the semiconductor industry. The petitioner explained that it is transferring the beneficiary from the foreign entity to fulfill the role of logistics manager within the petitioner's logistics business group. The petitioner noted that the beneficiary would "oversee the essential VMI program related to one of our largest customer locations." The petitioner indicated that the client location to be under the beneficiary's management consisted of 2,000 individual parts from over 250 suppliers and that it amounted to an inventory value of over \$1.5 million and annual revenue of over \$6 million.

The petitioner stated that the beneficiary, as logistics manager, will "play a role in understanding, developing, and improving Logistics processes and procedures for this major customer." The petitioner explained that the beneficiary would oversee a team of three professionals, including two logistics site specialists, that she will daily review the work of these subordinates to ensure that they meet client requirements, and that she has the authority to recommend personnel actions with respect to these subordinates. The petitioner further set forth the duties of the position, including but not limited to: (1) establishing procedures for procurement and shipping processes, (2) creating contracts and service level agreements, (3) creating policies and procedures, (4) establishing appropriate stocking levels, (5) avoiding expediting and zero-bin situations as well as overstock excess and obsolescence, (6) establishing policy-making and decision making for our programs, (7) leading Asian implementation programs, specifically, managing Chinese government customs and import regulations for a major client, (8) managing sources of supply, or stocking levels, at the customer location, and (9) managing the delivery of training to U.S. suppliers with little experience working with Chinese customers.

As noted, the director later issued an RFE, in which she requested a letter describing the beneficiary's expected managerial decisions and duties, including the percentage of time she would spend on each of her duties. Further, the director asked that the petitioner submit an organizational chart relevant to the beneficiary's immediate department listing all employees by name and job title, also including their job duties, education levels, and salaries.

In response, the petitioner provided an additional support letter stating that the beneficiary would "lead her team in ensuring that the customer programs for which is responsible meet customer expectations and internal requirements." The petitioner stated that the activities she will manage are "essential to the supply and management of inventory and logistics services at this major . . . customer location." Similar to the submitted foreign duties, the petitioner provided the following general areas of responsibility for the beneficiary with projected percentages of time to be spent on each:

- Lead processes improvement activities - 15% of her daily duties
- Supervise the on-site team - 30% of her daily duties
- Manages compliance and policy - 5% of her daily duties
- Lead Asian sourcing affairs - 35% of her daily duties
- Manage suppliers - 15% of her daily duties

Within each of area of responsibility, the petitioner provided additional information regarding the tasks making up these categories. For instance, the petitioner stated that the beneficiary would "work closely with the customer to establish appropriate stocking levels for each part," "report metrics to management regarding team performance," and provide supervision on customer services, and taking a lead on managing problem resolution. Further, the petitioner indicated that the beneficiary would "identify local sourcing opportunities within Asia for cost savings," "oversee the important Chinese government and Customs/Import regulations strict "E-book" registration process," and that she would "manage the delivery of training to U.S. suppliers that have little experience with Chinese customers." Additionally, the petitioner explained that the beneficiary would "meet with new suppliers and establish expectations."

Although the petitioner initially stated that the beneficiary would supervise three employees, in response to the RFE, it stated that she would manage a team consisting of two VMI site specialists, a logistics manager, a logistics associate, and a contracted breadman coordinator. The petitioner specified that the logistics manager would "be responsible for leading multiple logistics activities, such as managing inventory levels, planning factors and replenishment orders, statistics gathering, productivity, training, regulatory compliance, process improvement and safety." The petitioner further indicated that the VMI site specialists would "be responsible for inventory management at customer locations, including virtual cycle counting, resourcing, monthly reconciliations, and invoicing." Additionally, the petitioner explained that the logistics associate would be tasked with "ensuring reliability of supply to customers and enhancing product workflow by executing logistics plans and procedures that affect production, distribution and inventory levels." Lastly, the petitioner noted that the breadman coordinator would be engaged in "analyzing inventory data and invoices, monitoring inventory, building customer relationships, and providing monthly forecasts."

The petitioner also attached an organizational chart depicting the beneficiary's proposed role in the U.S. company. The chart indicates that she will supervise a "Logistics Associate II" based in the United States, and the three employees based in China (the above-referenced VMI Site Specialists and Breadman Coordinator who appear on the foreign entity's organizational chart). The chart also depicts a Logistics Manager I who, like the beneficiary, reports to the General Manager, Logistics. The chart shows a dotted-line between this position and the beneficiary's position, although the provided personnel records show that the Logistics Manager 1 position is a higher-level position within the organization. As noted above, the

company's personnel records indicate that the beneficiary is a "site supervisor" or "logistics associate III" rather than a "logistics manager" as stated in the petitioner's letters. The petitioner provided the GEMS HR System information for the U.S.-based Logistics Associate II, whose "business card title" is "Total Site Manager I." According to these records, he reports to [REDACTED] rather than to the beneficiary. In addition, the personnel records and organizational chart indicate that the Logistics Manager reports to the beneficiary's manager, rather than to the beneficiary.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. In denying the petition, the director noted that the evidence suggested that the beneficiary would be primarily assisting in the performance of non-qualifying operational duties rather than qualifying executive or managerial duties. The director also found that the beneficiary's placement in the organizational hierarchy did not demonstrate that the beneficiary will be employed in a position higher than that of a first-line supervisor of non-professional employees.

On appeal, counsel contends that the director misplaced her analysis on whether the beneficiary will have professional subordinates. Counsel states that the director failed to consider the petitioner's assertion that the beneficiary qualifies as a function manager through her proposed direction and management of a "critical function" for the petitioner. Counsel emphasizes that the beneficiary will manage third party logistics and VMI operations involving 2,000 parts, 250 suppliers, \$1.5 million in inventory value, and \$6 million in revenue. Counsel also contends that the director did not consider the totality of the evidence, including the beneficiary's detailed duty description and the financial impact of the beneficiary's management of the claimed essential function.

2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a qualifying managerial capacity.

As noted, counsel contends that the beneficiary qualifies as a function manager. As stated above, 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).

When examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). Further, it should be noted that the definitions of executive and managerial capacity 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 prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In the present matter, the petitioner's description of the beneficiary's duties is insufficient to establish that her duties will be primarily managerial in nature. The evidence demonstrates that the beneficiary will act in a professional capacity providing inventory management services to the petitioner's unidentified client rather than primarily performing qualifying duties. For instance, the petitioner stated that the beneficiary will "play a role in understanding, developing, and improving Logistics processes and procedures for this major customer." Consistent with this role, the beneficiary's duties indicate that she will perform a number of duties consistent with the direct provision of services to this unidentified "major client," including establishing appropriate stocking levels; avoiding expediting and zero-bin situations as well as overstock excess and obsolescence; managing sources of supply and/or stocking levels at the customer location; managing the delivery of training to U.S. suppliers that have little experience working with Chinese customers; working closely with the customer to establish appropriate stocking levels for each part; reporting metrics to management regarding team performance; taking the lead on managing problem resolution; and meeting with new client suppliers and establish expectations. These non-qualifying duties consistent with the direct provision of services to a customer are included throughout the record, and the beneficiary's duty description with percentages of time provided in response to the director's RFE. As such, it is not possible to determine the amount of time the beneficiary will allocate to non-qualifying operational functions and qualifying managerial functions. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Indeed, the petitioner indicates that the beneficiary will spend 30% of her time on "supervising the on-site team" which includes various non-qualifying duties consistent with the performance of services for clients including managing the customer bill of material, working closely with the customer to establish appropriate stocking levels, reporting metrics to management regarding team performance, and taking the lead on resolving problem resolution. Further, the petitioner provides that 35% of the beneficiary's time will be devoted to "leading Asian sourcing affairs," again including various non-qualifying duties consistent with the direct performance of services for clients such as identifying sourcing opportunities within Asia for cost savings, overseeing important Chinese import and export regulations, and managing the delivery of training to U.S. suppliers. As such, the beneficiary principal duty description suggests that the beneficiary will be primarily devoted to performing non-qualifying duties consistent with the performance of services. Although the beneficiary is stated to have subordinates to who perform various operational duties, the petitioner has not sufficiently articulated how non-qualifying duties will be delegated as necessary to relieve the beneficiary from primarily performing these duties consistent with the provision of services to the client. For example, the petitioner states that the beneficiary will manage the provision of training to clients, but has not identified or provided corroborating evidence to demonstrate that this operational duty will be delegated. In fact, the totality of the evidence supports a finding that the beneficiary will work very

closely with the customer and provide services as deemed necessary without regard to the primary provision of qualifying duties.

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 company'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 business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Although the petitioner indicates that the beneficiary will have subordinates, it is not made clear from the totality of the evidence whether the beneficiary will be primarily engaged in managing employees and the function generally, or whether she will be primarily devoted to the performance of professional services for the petitioner. As noted above, the beneficiary will be assigned to the petitioner's customer to manage inventory and bring efficiency and savings to the client process. The petitioner's stated business model, and the duty description generally, are suggestive of the provision of professional services, rather than the direction or management of an essential function of the organization. Further, the petitioner has submitted little supporting evidence to overcome this conclusion. For instance, the petitioner notes that the beneficiary will be responsible for establishing procedures for procurement and shipping processes, creating contracts and service level agreements, creating policies and procedures and establishing policy-making and decision making for programs. However, given that the record demonstrates that the beneficiary will be assigned to a client site and that she will be directly providing professional services, these typical qualifying duties are not demonstrated as such, since they are being directly provided to a customer as part of a professional services assignment.

Further, although the petitioner initially indicated that the beneficiary will oversee three employees, and later indicated that she would oversee five employees in carrying out her assignment at the client site, the record does not corroborate this claim. Three of the employees identified on the petitioner's organizational chart are located in China and currently work with the beneficiary at the site of a Chinese client. The petitioner's organizational chart for the beneficiary's U.S. position indicates that these three employees will continue to be based in China and the petitioner has not indicated how they would relieve the beneficiary from performing the day-to-day tasks associated with the U.S. client's logistics and inventory functions in Arizona. In response to the RFE, the petitioner stated that the beneficiary would also supervise a Logistics Associate II and a Logistics Manager I. However, as noted above, the organizational chart indicates that the Logistics Manager reports to a different manager and the personnel profile for this employee indicates that her position is senior to the beneficiary's. Further the petitioner submitted evidence that the Logistics Associate II identified on the organizational chart has the job title "Total Site Manager" and there is evidence indicating that he reports to someone other than the beneficiary.

Overall, while the petitioner does not claim that the beneficiary is eligible for the benefit sought based on her supervision of subordinate professionals, it must still establish that she primarily manages the claimed essential function and that someone else is available to perform the day-to-day non-managerial duties associated with the function. The petitioner has not met this burden, as the beneficiary's job duty description includes a number of non-qualifying duties, and there is inconsistent evidence pertaining to the availability of other employees to perform the non-managerial functions at the client site. While we do not

doubt that the beneficiary will perform a critical role in meeting the petitioner's obligations to its client, the petitioner has not sufficiently demonstrated that she will perform primarily manage an essential function.

In conclusion, the petitioner has not demonstrated that it will employ the beneficiary in a qualifying managerial capacity. For this additional reason, the appeal will be dismissed.

III. Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.