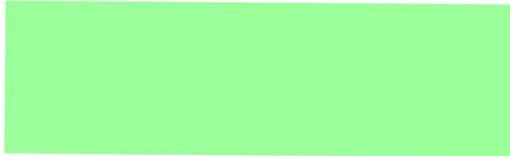




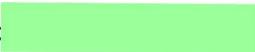
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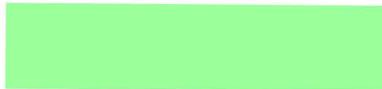
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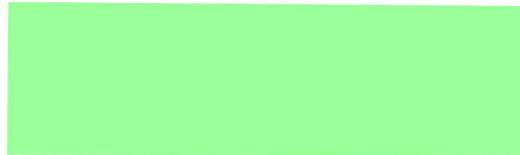
Petitioner:

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 appeal will be dismissed.

The petitioner filed this Form I-129, Petition for a Nonimmigrant Worker, 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 New York corporation established in June 2002, claims to be a subsidiary of [REDACTED] located in Pakistan. The petitioner states that it engages in the import and export of watches, socks, and raw wood. It seeks to employ the beneficiary in the position of president for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been and will be employed in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that "the beneficiary is only performing executive level job duties." Counsel submits a brief 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 ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary has been and will be employed in a qualifying managerial or executive capacity.

The petitioner filed the Form I-129 on October 28, 2013. The petitioner indicated on the Form I-129 that it engages in the import and export of watches, socks, and raw wood with six current employees and a gross annual income of \$1,373,494.00.

On the Form I-129, where asked to describe the beneficiary's duties abroad for the three years preceding the filing of the petition, the petitioner stated the following:

Directed and oversaw the import & export operations of [the foreign entity], Pakistan until September 8, 2005. Since 8, 2005 [sic] the beneficiary has been working with the petitioner in the United States.

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

As a President, [the beneficiary] has complete authority over the activities of [the petitioner] including wide discretionary authority in all financial matters. Further, [the beneficiary] is also overseeing the establishment of new branch offices at Houston, TX. [The beneficiary] has been performing the following job duties: direct, and oversee the operations of [the petitioner], New York in the United States and coordinate the same with our parent, [the foreign entity] in Pakistan; review and reestablish the long term objectives of the [petitioner's] business organization in the United States; direct the Vice President who oversee the functions of administrative manager and import & sales sr. manager to implement business objectives, review and modify organizational policies; review reports of [the petitioner] to determine the progress and position in attaining objectives and revises objectives and plans in accordance with current marketing conditions; exercise complete discretionary power on all financial matters including granting line of credit to the customers; oversee and establish new branch office at Houston, TX to expand our operations to target South American exporters; execute financial agreements on behalf of the company.

In support of the petition, the petitioner submitted a letter describing the beneficiary's proposed position in the U.S. exactly as described on the Form I-129. In reference to the beneficiary's position abroad, the petitioner stated the following:

As a President, [the beneficiary] demonstrated excellent skills in executing the proposed job duties with [the petitioner] since September 2005. Previously, [the beneficiary] was employed in similar level position with the parent organization, [the foreign entity] Pakistan until September 2005, where he performed similar job duties that are associated with the proposed position.

The petitioner submitted its organizational chart, depicting the beneficiary at the highest tier as president, directly supervising a vice president, [REDACTED]. The vice president directly supervises an "admin manager," [REDACTED], who supervises an unnamed office assistant, a brokerage firm, [REDACTED], a logistics company, [REDACTED] and an accounting and bookkeeping company, [REDACTED]. The vice president also directly supervises an "import & sales sr. manager," [REDACTED].

█ who supervises an import manager, █ who in turn supervises five unnamed contracted warehouse keepers, and a sales manager, █, who in turn supervises four named independently contracted sales personnel. The petitioner also submitted its July 2013 pay stubs for the beneficiary, █

The petitioner's 2012 IRS Form 1120, U.S. Corporation Income Tax Return, shows that the petitioner paid \$129,000 in salaries and wages, and \$0 in costs of labor.

The director issued a request for additional evidence ("RFE") on November 7, 2013, advising the petitioner that the submitted evidence is insufficient to establish that the beneficiary has been and will be employed in a qualifying managerial or executive capacity, or as a function manager. The director specifically instructed the petitioner to submit, in part: (1) copies of its invoices for the years of 2002 to the present; (2) the names of the U.S. subordinate/supervisory personnel who will be managed by the beneficiary, their position descriptions, educational requirements, and copies of their educational credentials; and (3) the names of the foreign subordinate/supervisory personnel who are managed by the beneficiary, their position descriptions, educational requirements, and copies of their educational credentials.

In response to the RFE, the petitioner submitted a letter, dated January 29, 2014, signed by the beneficiary, describing his duties at the U.S. company exactly as described on the Form I-129. The petitioner also provided very brief descriptions of job duties for the beneficiary's subordinates: vice president, administrative manager, accounting including daily bookkeeping, brokerage, logistics, office assistant, import and sales sr. manager, import manager, sales manager, and sales personnel. In reference to the beneficiary's position abroad, the petitioner stated the following:

Please note that the beneficiary was employed in similar position with [the foreign entity] of Pakistan and performed similar job duties that are associated with the position before he was transferred to the U.S. subsidiary and the job duties of his subordinate employees of were [sic] similar to that of the similar position as detailed above.

The petitioner submitted a current organizational chart for the foreign entity, dated 2013<sup>1</sup>, that does not list the beneficiary as an employee of the foreign entity. The petitioner also submitted the same organizational chart previously submitted for the U.S. company.

The director denied the petition on February 19, 2014, concluding that the petitioner failed to establish that the beneficiary has been and will be employed in a managerial or executive capacity. In denying the petition, the director noted that the petitioner failed to submit specifically requested evidence, such as the educational requirements and educational credentials for the beneficiary's subordinates in the United States and the names, position descriptions, educational requirements, or educational credentials for the beneficiary's subordinates at the foreign entity. The director found that the petitioner failed to establish that the beneficiary was or will be managing any subordinate supervisory, professional, or managerial employees. The director further found that the size and scope of the proposed business activity does not support any executive or

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<sup>1</sup> In its letter responding to the director's RFE, the petitioner states that it has enclosed an organizational chart of the foreign entity "at the time of transfer of the beneficiary." However, the only organizational chart contained in the record clearly states 2013 and does not include the beneficiary's name under any position title.

managerial level position as the petitioner has not described any major components or functions of the business which would require separate management.

On appeal, counsel for the petitioner contends that the beneficiary "has been working as a President and will continue to hold the executive level position and performs the duties that are associated with executive level position." Counsel states that the beneficiary has been working in an executive capacity since 2002 at the foreign entity and will be employed in a similar position in the United States. Counsel describes the beneficiary's proposed duties exactly as described on the Form I-129 and subsequent supporting documents submitted by the petitioner, and submits the exact same description of job duties for the beneficiary's subordinates in the United States.

Counsel also discusses the evidence submitted in response to the RFE and states that the petitioner has requested the academic credentials of all its employees, but the employees have advised that they are awaiting copies of their academic certificates from their respective countries. Counsel further states that the foreign entity is also compiling the education credential information from its employees, but it is a very delicate situation to demand the certificates since they have been working for the foreign entity for quite some time.

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary has been and will be employed in a qualifying managerial or executive capacity, or as a function manager.

When examining the executive or managerial capacity of the beneficiary, U.S. Citizenship and Immigration Services (USCIS) looks 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 an understanding of the 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 characterized the beneficiary's role as president of the foreign entity and petitioning U.S. company and provided a very vague description of the beneficiary's position that does not establish that he has been or will be primarily an executive or a manager at either entity. The petitioner indicated that the beneficiary's duties abroad and continued duties in the U.S. are to direct and oversee the operations; review

and reestablish the long term objectives of the petitioner's organization in the United States; direct the vice president who oversees the administrative manager and import and sales senior manager; review reports to determine progress in reaching objectives; revise objectives and plans in accordance with current marketing conditions; exercise complete discretionary power on all financial matters; oversee and establish a new branch office in Houston, Texas to expand operations; and execute financial agreements on behalf of the company, but failed to provide an accurate picture of what he does on a daily basis. The petitioner did not include any additional details or specific tasks related to the beneficiary's briefly listed responsibilities, nor did the petitioner indicate how such duties qualify as managerial or executive in nature. The petitioner's description of 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 response to the RFE, and again on appeal, the petitioner submitted the exact same single paragraph describing the beneficiary's proposed duties in the United States and simply stated that he held a similar position performing similar duties at the foreign entity since 2002. The petitioner also submitted the same brief description of job duties for the beneficiary's subordinates in the United States and simply stated that the duties of his subordinate abroad were similar to the duties listed for similar positions in the United States. These general statements fail to offer any clarification as to the beneficiary's actual duties abroad and proposed duties in the United States, and fall considerably short of satisfying the director's request for the "names, titles, position descriptions, educational requirements, and educational credentials" of the beneficiary's subordinates abroad and proposed subordinates in the U.S. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. Although afforded a second opportunity to provide the deficient information, the petitioner failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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 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 submitted its organizational chart illustrating the managerial hierarchy within the U.S. company. The petitioner also submitted brief position descriptions for the beneficiary's proposed subordinates in the U.S. Although it appears that some of the positions list vague supervisory duties, the beneficiary has not been shown to *primarily* supervise and control the work of other supervisory, professional, or managerial employees. The fact that one of his subordinates may manage a particular function and supervise lower-level employees is not sufficient to elevate the beneficiary to a position that is managerial in nature. The petitioner has failed to demonstrate that the beneficiary's duties will primarily focus on the management of the organization and the supervision of qualifying managerial, professional, or supervisory employees, rather than on producing a product or providing a service of the petitioner. As noted above, the petitioner failed to submit a detailed description of the beneficiary's position to establish that his daily routine will consist of primarily managerial duties.

The petitioner's evidence must substantiate that the duties of the beneficiary and his proposed subordinates correspond to their placement in the organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position. While the petitioner has submitted its organizational chart depicting the beneficiary as the "president" directly supervising the "vice president," the petitioner has not provided credible evidence of an organizational structure that would be sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees.

The petitioner has not established, in the alternative, that the beneficiary has been and will be 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, or proposed duties at the U.S. company, 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 managed an essential function of the foreign entity, or will manage an essential function at the U.S. company.

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 vague description of the beneficiary's duties abroad and proposed duties with the petitioner 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, although the petitioner references the beneficiary's positions as "executive level," the petitioner failed to demonstrate that the beneficiary's duties abroad, and proposed duties in the U.S., primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations. The vague description of the beneficiary's position abroad and proposed position with the petitioner 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 has been or will be employed in a qualifying managerial or executive capacity, or as a function manager. 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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.