



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 09 2015 Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 a Form I-129, Petition for a Nonimmigrant Worker, seeking to extend the beneficiary's status 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 California limited liability company, is engaged in information technology infrastructure management services. The petitioner claims to be a subsidiary of [REDACTED] located in India. The petitioner seeks to extend the beneficiary's employment in the position of senior technology manager for an additional three years.¹

The director denied the petition concluding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial capacity, or that he is employed in the United States in a qualifying managerial 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, the petitioner contends that it has demonstrated with sufficient evidence that the beneficiary qualifies as a personnel manager based upon his supervision of other managers and professionals. Likewise, the petitioner asserts that the beneficiary acted in the same qualifying capacity in his former position abroad. The petitioner submits a brief and additional evidence on 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, Petition for a Nonimmigrant Worker (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.

¹ 8 C.F.R. § 214.2(l)(15)(ii) provides that an extension of stay may be authorized in increments of up to two years.

- (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.

II. THE ISSUES ON APPEAL

A. Employment in a Managerial Capacity in the United States

The first issue addressed by the director is whether the petitioner established that the beneficiary will be employed in a managerial capacity in the United States. The petitioner has consistently claimed that the beneficiary will be employed in a managerial capacity in his role as senior technology manager of the petitioning company.

1. Facts and Procedural History

The petitioner filed the Form I-129 on November 7, 2013. The petitioner stated that it is "an infrastructure management services provider," providing "data center consulting, and management services, messaging and collaboration services, network and communication and security services, security management

services, [and] technical management services." The petitioner indicated that it has fifty employees in the United States and that it earned \$3.3 million in revenue during its last fiscal year.

In its letter of support, the petitioner explained that the beneficiary has been and will continue to be its senior manager of technology assigned to the company's [REDACTED] account, and that due to the confidential and complex nature of the client's systems, the beneficiary was required to be assigned to their onsite location in California. The petitioner included a list of job duties allocating percentages of time he devotes to clusters of duties, such as personnel management (20%), business communication/client management (30%), service delivery (20%), technology (20%), and quality and process (10%). The petitioner provided a list of tasks under each cluster of duties ranging from four tasks under quality and process to 14 tasks under service delivery. The petitioner also indicated that the beneficiary manages a team of information technology professionals, five "senior administrators – messaging," who are "responsible for providing structured processes for initiating, planning, executing and closing the project," including developing a methodology to "help define the project objectives, create comprehensive project plans and establish the processes required to monitor and control the projects effectively." The petitioner included a list of job duties for each of the five subordinates, all with the same title, ranging from three to seven duties, most of which are identical, for each individual.

The petitioner submitted its organizational chart indicating that five named individuals clustered as a "messaging team" in India report to the beneficiary in the United States and the beneficiary, in turn, reports directly to the director of operations at [REDACTED]. The chart did not reflect that the beneficiary had any direct or indirect subordinates based in the United States.

The petitioner submitted copies of certificates and transcripts for each of the beneficiary's overseas subordinates, who all hold bachelor's level degrees from Indian universities. The petitioner also submitted copies of each of the subordinates' appointment letters and performance reviews completed by the beneficiary in his capacity of "manager" on March 31, 2013.

The petitioner further submitted a Master Services Agreement dated January 29, 2011 and a supporting statement of work setting forth the specific services to be provided by the petitioner to the client, [REDACTED]. The statement of work reflected the need for an onsite "technical lead" provided by the petitioner who would "guide/provide technology clarity to the [REDACTED] operations team," "coordinate with the technical specialists," and "create standard operating guidelines."

The director issued a request for evidence (RFE), on March 27, 2014, advising the petitioner that the evidence submitted was insufficient to establish that the beneficiary is employed in a qualifying managerial capacity. The director emphasized that the petitioner was required to show that the beneficiary manages an organization, department, subdivision, function or component of the organization and noted that the submitted evidence showed that the beneficiary's supervisory responsibilities would be as a first-line manager. The director stated that there was insufficient evidence in the record to demonstrate that the beneficiary is vested with authority to make determinations regarding his subordinates. As such, the director requested that the petitioner submit a letter describing the beneficiary's expected managerial decisions and articulating whether the beneficiary will have the authority to hire and fire his subordinates. The director also advised that if the beneficiary was to be a first line supervisor, the petitioner must also provide evidence to demonstrate that his subordinates are professionals as defined by law.

In response to the RFE, the petitioner submitted a second letter of support from its director of operations, who states he is "responsible for all aspects of [the petitioner's] operations for its client [REDACTED]". The director of operations simply paraphrased the beneficiary's tasks within each of the same clustered duties. He indicated that the beneficiary manages a team of 19 professionals "located in the USA and abroad" and that five of his 19 subordinates are managers supervising their own subordinates, including two "sharepoint leads," two "project lead professionals," and a service performance expert – incident, who indicated manages a team of 14 professionals. He also included a brief list of job duties for the two sharepoint leads, two project lead professionals, and the service performance expert – incident. He further emphasized that the beneficiary "has the authority to recommend for hire, fire, or promotion individuals currently under his authority," and indicated that he assigns their workloads, reviews their work product before submissions, sets project goals and approves their timesheets and leave requests.

The petitioner submitted a new organizational chart, dated March 31, 2014, depicting the beneficiary as senior technology manager, supervising two sharepoint leads as "onsite support," a "consultant process" and "consultant incident" as "digitalOPS support," and an "SPE – Incident," who appears to supervise "L2 & L3 messaging support" offshore with six subordinates, "helpdesk & monitoring" with five subordinates, and an "SPE lead" with three subordinates. The petitioner provided evidence of academic credentials indicating that the direct subordinates identified on the chart, and several of those reporting to the beneficiary's subordinates, hold Bachelor's level degrees from Indian universities. The petitioner also submitted 2014 performance reviews completed by the beneficiary.

The director denied the petition on May 20, 2014, concluding, in part, that the petitioner failed to establish that the beneficiary is employed in a primarily managerial capacity in the United States. In denying the petition, the director noted that the petitioner had failed to reflect the offshore team managed by the beneficiary in the overall organizational structure. The director stated that the beneficiary's oversight of an offshore team managing a client engagement did not represent the management of an essential function of the organization and concluded that this component of the organization was not part of the petitioner's organizational structure. The director pointed to the fact that the petitioner had completely changed the beneficiary's subordinates in response to the RFE and provided a chart only reflecting the flow of work within the organization, but not its organizational structure. Therefore, the director found that the evidence was not sufficient to demonstrate who the beneficiary manages on a day-to-day basis or where he sits within the company's organizational structure.

On appeal, the petitioner contends that the beneficiary qualifies as a personnel manager through his supervision of the managers and professionals, as reflected in the submitted organizational chart. The petitioner asserts that the differences in the beneficiary's subordinates from that submitted in support of the petition to the RFE response was due to changes made to the organizational structure during this period. The petitioner states that the most recent organizational chart does not represent a "flow chart" of work, but the beneficiary's actual department and subordinates.

Further, the petitioner provides an additional support letter from the petitioner's director of operations within which he states that the beneficiary "is responsible for the overall [REDACTED] division," that he focuses on "enabling our Client to improve the way its employees perform their work," and that he manages a team of nineteen professionals. The director of operations indicates that the beneficiary takes part in

weekly, monthly, and quarterly reviews in which they "review the overall health of the division and the achievement of goals and objectives." He emphasizes that "if any of these functions default or do not perform to the expectations of [the beneficiary], he has the right to replace them and hire replacement resources at any time." He also indicates that the apparent changes in the beneficiary's subordinates were due to a restructuring in January 2014 between the filing of the petition and the petitioner's response to the RFE and provides a detailed explanation as to why this restructuring took place, noting that it "helped us align to client expectations." In support of this assertion, the petitioner provides an email, dated May 28, 2014, reflecting the dissemination of an updated organizational chart in which the sender, the head of operations, states to a colleague "please initiate transfer of people in [redacted] project reporting to you, as part of re-org they should be reporting to [the beneficiary] effective today."

2. Analysis

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

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, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to understanding 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 petitioner first characterized the beneficiary's role as senior technology manager and described his duties in very broad terms allocating percentages of time the beneficiary would spend on clusters of duties. The petitioner indicates that the beneficiary will devote 20% of his time to personnel management, 30% of his time to business communication and client management, 20% of his time to service delivery, 20% of his time to technology, and 10% of his time to quality and process, carrying out duties such as "plan, design, and conceptualize the management of services provided by our data center personnel for the [redacted] account," developing strategies and tactics to achieve the planned yearly goals for the [redacted] account, be accountable for all aspects of service delivery in conceptualization, planning, design, automation, transition, and delivery of managed services, establish a baseline for performance and capacity management for specific technology programs, and six sigma green belt project completion, execution, and participation. In response to the RFE, the petitioner provided the same duties for the beneficiary's position in the U.S and simply paraphrased the tasks under each cluster for some and plainly reiterated the bulleted tasks for others. The

petitioner did not include additional details related to each task or duty, nor did the petitioner indicate how such duties qualify as managerial in nature. 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).

Further, the petitioner's breakdown of the beneficiary's duties assigned percentages to only broad categories of duties, which precludes a determination regarding how much time he actually allocates to non-managerial duties within each category or cluster of duties. For example, the petitioner indicated that the beneficiary allocates 30 percent of his time to "Business Communication (Client Management)," but this area of responsibility includes both higher level duties such as developing strategies, as well as non-qualifying duties such as identifying defect areas, proactively carrying out correcting actions, carrying out improvement measures to increase customer satisfaction, handling customer interactions, and exploring new business opportunities with the client.

Similarly, the beneficiary's responsibilities within the areas of "Service Delivery" and "Technology," accounting for another 40 percent of his time, includes non-qualifying duties such as working on technical aspects of the client's business continuity plan, establishing a baseline for the performance and capacity management of the client's messaging systems and related technologies, managing the mail gateway and introducing new technology, as well as being accountable for all aspects of service delivery, maintaining the technical SOP, understanding operational definitions and critical data points, attending review meetings, and providing feedback for billing services. The petitioner has not established that these duties qualify as managerial in nature. Rather these duties indicate that the beneficiary is involved in the direct provision of services to the client under the terms of the petitioner's master services agreement and statement of work, as well as performing administrative functions associated with project delivery.

In the instant matter, the petitioner has not provided sufficient information to established that the beneficiary's duties, as of the date of filing, are primarily managerial in nature. 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 Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988). Based on the current record, we are unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

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."² Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Here, the petitioner indicated that the beneficiary will specifically devote 20% of his time to personnel management, which includes conducting performance reviews, making recommendations for hiring, firing, and authorizing leave requests, ensuring high quality performance, ensuring "profitability of the execution of projects," identifying training opportunities and setting "KRAs," and identifying areas of improvement for team members. Throughout the record, the petitioner has specifically stated that the beneficiary will have authority to hire and fire subordinates under his supervision, and that the beneficiary's subordinates are professionals. While there is sufficient evidence to establish that the beneficiary's team of five subordinates in India who make up the "messaging team" are professionals, the record does not support a finding that supervision of this staff is his primary duty. Rather, as the onsite technology manager at the client site, with no direct or indirect subordinates in the United States, the record reflects that the beneficiary, as of the date of filing, would be performing a number of technical, operational, customer service and administrative duties that are not delegated to his overseas team.

The petitioner later stated in response to the RFE that the beneficiary's role was subsequently expanded to include oversight of 19 subordinates in the United States and abroad. Further, on appeal, the petitioner now states that the beneficiary manages the entire [REDACTED] division of the company" as opposed to five employees on a specific [REDACTED] project in accordance with the submitted Statement of Work and as stated in the petitioner's initial letter. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence or submitting an appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Id.*

The beneficiary's claimed level of responsibility has evolved with each new submission made by the petitioner. As the petitioner has made significant changes to the original request for an extension of the beneficiary's stay, it would be more appropriate for the petitioner to file a new petition, rather than seek an

² In evaluating whether the beneficiary manages professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

approval of a petition that is not supported by the facts in the record at the time of filing. Accordingly, our analysis of whether the beneficiary qualifies as a personnel manager is based on the organizational structure that existed at the time of filing. For the reasons discussed above, the petitioner has not established that the beneficiary qualifies as a personnel manager based on his oversight of the five-person messaging team based in India.

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.

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 her duties are "primarily" managerial. Here, the petitioner's breakdown of the beneficiary's duties submitted at the time of filing did not establish that he was performing primarily managerial duties, nor did the petitioner articulate a claim that he would be a function manager based on his role on the [REDACTED] project described in the record or on his oversight of the India-based messaging team. The petitioner did not establish that the beneficiary is employed as a function manager.

Here, the petitioner claims on appeal that the beneficiary manages a division of its strategic business unit of the [REDACTED] customer group. The petitioner explains the divisions within the group and the processes and goals for the division. However, the petitioner provides the same clustered breakdown of the job duties for the beneficiary's position and fails to demonstrate that the beneficiary will allocate at least 51% of his time to managing the division of the U.S. company, rather than performing the tasks required to carry out the operations of the division. Further, the petitioner makes this claim for the first time on appeal, which raises doubts as to the veracity of this newly defined structure. As addressed, on appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978).

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.* The petitioner has not claimed that the beneficiary is employed in an executive capacity and the record does not support a finding that his duties will focus primarily on the broad goals and policies of the organization rather than day-to-day operations. In fact, the structure described at the time of filing suggested that the beneficiary would perform various non-qualifying duties that could not be delegated to his overseas subordinates.

Based on the foregoing, the petitioner has not established that the beneficiary will be employed in a primarily managerial or primarily executive capacity or as a function manager. Accordingly, the appeal will be dismissed.

B. Employment Abroad in a Managerial Capacity

The second issue addressed by the director is whether the petitioner established that the beneficiary was employed in a qualifying managerial or executive capacity abroad prior to his transfer to the United States in February 2011.

1. Facts and Procedural History

In its letter of support, the petitioner stated that the beneficiary joined the foreign entity in July 2005 and was promoted to the "technology manager" position in July 2008. The petitioner indicated that the beneficiary was "responsible for service delivery, client management/business communication, personnel management, technology management and QA management" and supervised a team of five senior administrators employed in professional capacities. The petitioner stated that the beneficiary completed annual performance appraisals for his five subordinates and "promoted and hired IT professional[s] for the team and trained them to handle operations." The petitioner explained that the beneficiary was responsible for "speeding up incident resolutions," reviewing operational performance, reporting to higher management on a periodic basis, and providing training to his team members. The petitioner provided a list of job duties for the beneficiary's position abroad that was almost identical to his position in the United States, allocating percentages of time he devotes to clusters of duties, such as people management (20%), business communication/client management (25%), service delivery (25%), technology (20%), and quality and process (10%). The petitioner provided a list of tasks under each cluster of duties, almost identical to those for his duties in the U.S., ranging from three tasks under quality and process to 15 tasks under service delivery. The petitioner also indicated that the beneficiary managed a team of five professional "senior administrators" and included a general list of seven job duties for senior administrators, identical to that provided for the beneficiary's subordinates in the United States.

The petitioner submitted pay slips indicating that the beneficiary was employed by the foreign entity as manager technology/technology manager from August 2010 to December 2010 and as associate technology

manager" from January 2010 to July 2010. The petitioner also submitted a letter, dated July 1, 2008, reflecting the beneficiary's promotion to technology manager effective on that date.

In the RFE, the director advised the petitioner that it failed to submit evidence to corroborate its assertion that the beneficiary was employed in a managerial capacity abroad overseeing five professionals. The director requested that the petitioner submit a letter from the foreign entity describing the beneficiary's positions abroad, his duties, and employment dates, along with supporting training, pay or personnel records.

In response to the RFE, the petitioner submitted a letter of support from the foreign entity's general manager of operations who had overseen the [REDACTED] account in India in 2008. He indicated that the beneficiary was employed as a technology manager and was responsible for driving the technology initiative and service delivery. He provided the same clustered list of job duties for the beneficiary's position abroad, including the same percentages; however, he paraphrased the individual tasks under the service delivery and personnel management clusters and restated the same bulleted tasks for the other three clusters. He further listed the five professionals subordinate to the beneficiary abroad, a team leader – email, a team leader – mobility, a change management leader, a team leader – folders, and an application support monitoring administrator. He included a brief description of duties for each of the five subordinates and asserted that the "if there was a problem with one of the employees, the [beneficiary] would deal with the problem in terms of management," including recommending the hiring, firing, and/or promotion of his subordinates.

The petitioner provided an organizational chart for the foreign entity depicting the beneficiary as the technology manager, supervising the subordinates referenced above and reporting to the associate program manager, who in turn, reports to a senior program manager. The petitioner submitted copies of certificates for four of the beneficiary's five subordinates indicating that they each hold a Bachelor's level degree from Indian universities.

The petitioner submitted additional pay slips indicating that the beneficiary was employed by the foreign entity as technology manager from July 2008 to April 2009, as associate technology manager from May 2009 to July 2010, and again as technology manager/manager technology from August 2010 to February 2011.

The director denied the petition concluding, in part, that the petitioner failed to establish that the beneficiary was employed in a managerial capacity or as a function manager at the qualifying foreign entity. In denying the petition, the director found that the evidence reflected that the beneficiary only oversaw one subpart of the foreign entity, but not a department, component, function or subdivision as required by the regulations. The director stated that the beneficiary oversight of a team managing a client engagement did not constitute the management of a function.

On appeal, the petitioner contends that the director erred in concluding that the beneficiary did not oversee a function abroad, and states that he managed the "[REDACTED], technology function." The petitioner submits an additional support letter from the former director of operations with the foreign entity. He largely reiterates the same assertions previously set forth in the record, including restating the beneficiary's duties and professional subordinates. However, he further clarifies the

beneficiary's placement within the foreign entity during his previous employment, indicating that he worked within the "Operations Management Center (OMC)" supporting [REDACTED], which he oversaw. He notes that this center had three subdivisions, the largest being "[REDACTED]" each supervised by a program manager, and that this in turn had various functions, including the technology function overseen by the beneficiary. He indicated that the beneficiary "was required to provide technology support to this subdivision," including supporting [REDACTED] email exchange across "38 data centers" which consisted of 450,000 email boxes across the world. He noted that there are various functions within this department delegated to leads supervised by the beneficiary. He also provided detailed position descriptions for each of the beneficiary's five subordinates at the foreign entity.

2. Analysis

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity.

The fact that the beneficiary manages or directs a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(15)(L) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). While the information provided by the petitioner indicates that the beneficiary may exercise discretion over a particular aspect of its business operations, it has failed to show that the beneficiary's actual duties were primarily managerial in nature. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Here, the petitioner provided a vague description of the beneficiary's job duties abroad and those of his subordinates. Although the petitioner provided a percentage breakdown of how the beneficiary's allocated his time while employed at the foreign entity, it did not provide sufficient information to demonstrate that the beneficiary primarily managed a department, subdivision, function, or component of the foreign entity. Absent a detailed description of the beneficiary's actual managerial duties, and evidence to show that his subordinates relieved him from performing non-qualifying operational duties, the record does not establish that the beneficiary was employed by the foreign entity in a qualifying managerial capacity. Furthermore, the petitioner indicates that the beneficiary's duties abroad were almost identical to his duties in the United States, which, for the reasons discussed above, do not establish that he has been and will be employed in primarily managerial capacity. Again, the position description and job duties provided by the petitioner do not include any details or specificity related to each duty, nor does the petitioner indicate how such duties qualify as managerial or executive in nature.

As with the U.S. position, while it appears that the beneficiary performed some managerial duties and spent a portion of his time overseeing professionals, the job description as a whole did not support a finding that the beneficiary performed primarily managerial duties, or that he primarily managed a function or component of the organization. Further, the petitioner initial explanation of the beneficiary's role and initial evidence did not support its subsequent claim that the beneficiary held a senior role within the "[REDACTED]" or managed a clearly delineated subdivision within this component of the organization. When responding to a request for evidence or submitting an appeal, a petitioner cannot

materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Based on the foregoing, the petitioner has not established that the beneficiary was employed in a qualifying managerial capacity at the foreign entity. Accordingly, the appeal will be dismissed.

III. CONCLUSION

The petition will remain denied and the appeal will be dismissed for the above stated reasons. 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.