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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **FEB 13 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:
[Redacted]

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 limited liability company established in [REDACTED] states that it operates a restaurant. The petitioner claims to be an affiliate of [REDACTED]. The petitioner seeks to employ the beneficiary as its executive chef for a period of three years.

The director denied the petition on three alternate grounds, concluding that the petitioner failed to establish that (1) it has a qualifying relationship with the foreign entity, (2) the beneficiary was primarily employed in a managerial or executive capacity at the foreign entity, and (3) the beneficiary will be employed primarily in a managerial or executive capacity in the United States.

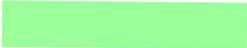
The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner contends that the U.S. company is an affiliate of the foreign entity based on the similar ownership of each company and that the beneficiary has been and will be employed in a managerial capacity. The petitioner submits a brief and additional evidence in support of the appeal.

I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.



- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

II. THE ISSUES ON APPEAL

A. Qualifying Relationship

The first issue addressed by the director is whether the petitioner established that the beneficiary's foreign employer and the U.S. company are qualifying organizations. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." See generally section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
 - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
 - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power

over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

1. Facts

The petitioner filed the Form I-129 on June 20, 2013. On the L Classification Supplement to Form I-129, the petitioner identified the beneficiary's last foreign employer as [REDACTED] and stated that the foreign and U.S. companies have an affiliate relationship based on the following description of the stock ownership and control of each company: [REDACTED] (Petitioner) – 30% owned by [REDACTED] and 30% by [REDACTED] (Foreign company) – 33.5% owned by [REDACTED] and 33.5% by [REDACTED]

The petitioner submitted its share transfer ledger indicating that, on a unknown date between 10:45 a.m. and 10:55 a.m., it issued 30 shares to [REDACTED] on certificate number one, 30 shares to [REDACTED] on certificate number two, five shares to [REDACTED] on certificate number three, five shares to [REDACTED] on certificate number four, and 30 shares to [REDACTED] on certificate number five. The petitioner submitted a copy of certificate number one issuing 30 shares to [REDACTED] on April 14, 2010 and certificate number two issued 30 shares to [REDACTED] on April 14, 2010. The petitioner did not submit the remaining three share certificates issued, as indicated on the share transfer ledger.

The petitioner submitted a document titled, "Request of Attestation" from Lawyer [REDACTED] dated December 10, 2010, indicating that the foreign entity issued 335 shares to [REDACTED] 335 shares to [REDACTED] and 330 shares to [REDACTED] on January 30, 2010.

The director issued a request for additional evidence ("RFE") on November 13, 2013, advising the petitioner that the evidence submitted was insufficient to establish who exercises voting control over the foreign entity. The director instructed the petitioner to submit evidence of a qualifying affiliate relationship between the U.S. company and the foreign entity.

In response to the RFE, the petitioner submitted a letter stating that voting control over the foreign entity is the same as its ownership as there are no special classes of ownership and each share equals one vote. The petitioner did not submit any additional evidence in support of its qualifying relationship with the foreign entity.

The director denied the petition on April 11, 2014 concluding, in part, that the petitioner failed to establish that the evidence of record does not establish that the controlling shareholders of the foreign entity and the controlling shareholders of the U.S. entity are the same group of individuals. The director noted that, in addition to the additional two shareholders of its U.S. company, [REDACTED] owns approximately 33% of the foreign entity but does not have any ownership or control over its U.S. company and [REDACTED] owns 30 shares of its U.S. company but does not have any ownership or control over the foreign entity.

On appeal, the petitioner focuses on the fact that [REDACTED] and [REDACTED] each own approximately 30% of the U.S. company and approximately 33.5% of the foreign entity, which satisfies the "same shares or proportions rule." The petitioner does not provide any additional evidence nor does it address the same or similar group of individuals portion of the requirement.

2. Analysis

Upon review, the petitioner has not established that it has a qualifying affiliate relationship with the foreign entity.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

While the evidence suggests that both companies are partly owned by the same two individuals, [REDACTED] and [REDACTED] the petitioner has not established that the companies are owned and controlled by the same individuals, with each individual owning and controlling approximately the same share or proportion of each entity. Rather, the evidence indicates that three individuals own the foreign entity. The record further indicates that five individuals own the petitioning company in the United States. Accordingly, the two entities are not "owned and controlled by the *same group of individuals*, each individual owning controlling approximately the same share or proportion of each entity" 8 C.F.R. § 214.2(l)(1)(ii)(L)(2)(emphasis added). In addition, there is no parent entity with ownership and control of both companies that would qualify the two as affiliates. The petitioner has not established that the two entities qualify as affiliates as that term is defined at 8 C.F.R. § 214.2(l)(1)(ii)(L).

Accordingly, the appeal will be dismissed.

B. Employment in a Managerial or Executive Capacity Abroad and in the United States

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

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.

1. Facts

The petitioner indicated on the Form I-129 that it operates a restaurant with 23 current employees in the United States and gross annual receipts of \$1,358,773.00. The petitioner stated that the beneficiary will be employed as the executive chef of its restaurant in the United States.

In its letter of support, the petitioner described the beneficiary's duties abroad for the three years preceding the filing of the petition as follows:

As [REDACTED] Executive Chef, the Beneficiary oversees seven kitchen staff out of the 33-person restaurant staff including, three Assistant Chefs and four Sous Chefs. . . . As Executive Chef, the Beneficiary is responsible for:

- Developing updated menus to incorporate the unique Aleppo cuisine to traditional Lebanese/Armenian cuisine, paying special attention to seasonal availability of ingredients.
- Managing kitchen operations including staff, cooking, serving and obtaining provisions, supplies and kitchen budget;
- Hiring and terminating kitchen staff.
- Overseeing kitchen staff disciplinary procedures and the handling of grievances,
- Coordinating with Restaurant Manager to ensure VIPs are immediately identified, and any special arrangements and dietary restrictions are accurately communicated to the kitchen staff.
- Overseeing compliance with safety and hygiene requirements.
- Supervising kitchen staff's training to effect good portion control, food quality and pleasing presentation of dishes.
- Leading daily meetings with Assistant Chefs and Sous Chefs to ensure smooth running of all kitchen operations.
- Performing on-the-job, "shoulder-to-shoulder training" of kitchen staff with respect to cooking techniques and procedures.
- Developing low season training programs to maintain the interest of the kitchen staff and improve their knowledge and productivity.
- Directly supervising the cooking and preparation of plats du jour (or specials of the day) items.
- Coordinating the schedules and job functions of the kitchen staff to ensure high standards of quality.
- Tracking and reducing overall overhead cost within the kitchen including, food, materials and employment.

In the same letter of support, the petitioner described the beneficiary's proposed duties in the United States as follows:

As Executive Chef, [the beneficiary] will be responsible for managing the [REDACTED] kitchen operations, all food production including developing seasonal menus and plats du jour (specials of the day) and food purchase specifications, developing and monitoring food and labor budget for the kitchen and ensuring that the highest professional food quality and sanitation standards are maintained. The Beneficiary will be a key member of the management team. The proposed specific job functions for the Beneficiary are:

- Establish controls to minimize food and supply waste and theft.
- Hire and terminate kitchen staff.

- Schedule, supervise and coordinate the work of the Assistant Chef, Pastry Cook, Assistant Pastry Cook, Preparation Cook and other kitchen employees to assure that food preparation is economical and technically correct and within budgeted labor cost goals.
- Ensure that high standards of sanitation, cleanliness and safety are maintained throughout all kitchen areas at all times.
- Approve the requisition of products and other necessary food supplies.
- Develop seasonal and plats du jour (specials of the day) recipes and techniques for food preparation and presentation which help to assure consistently high quality and to minimize food costs.
- Exercise portion control for all items served.
- Safeguard food preparation procedures by implementing training to increase the kitchen staff's knowledge about safety, sanitation and accident prevention principles.
- Prepare necessary data for applicable parts of the kitchen budget; projects annual food, labor and other costs and monitors actual financial results; takes corrective action as necessary to help assure that financial goals are met.
- Cook and/or directly supervise the cooking of items that require skillful preparation, e.g., seasonal menus and plats du jour (specials of the day).
- Ensure proper staffing of the kitchen for maximum productivity and high standards of quality; controls food costs to achieve maximum profitability.
- Evaluate food products to assure that quality standards are consistently attained.
- Coordinate with Quality Assurance Manager to assure that food production consistently exceeds the expectations of guests.
- Establish and maintains a regular cleaning and maintenance schedule for all kitchen areas and equipment.
- Provide training and professional development opportunities for all kitchen staff.

The petitioner submitted its organizational chart showing the beneficiary as the executive chef, reporting to the general manager. As the executive chef, the beneficiary will directly supervise an "assistant chef (trainer)," who supervises a "preparation cook." The "preparation cook" supervises a "kitchen helper" and dishwasher. None of the positions listed in the organizational chart, other than the beneficiary, has a named person who is employed in the position and fulfilling its duties.

The petitioner also submitted the foreign entity's organizational chart showing the beneficiary as the executive chef, reporting to the "asst. restaurant manager." As the executive chef, the beneficiary directly supervises three "assistant chefs," who supervise four "sous chefs." There also appears to be some relation between the executive chef and the "restaurant captains," but it is unclear what that relationship is in the provided organizational chart.

The petitioner submitted a document titled Job Descriptions for both the foreign and U.S. entities briefly listing job duties for each of the positions listed on each organizational chart. The beneficiary's listed duties on these documents are identical to those provided in the petitioner's letter of support.

In the RFE, the director advised 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. The director advised the petitioner that it failed to articulate the beneficiary's anticipated daily responsibilities, including the percentage of time allocated to each duty, to establish that the beneficiary has been and will be primarily engaged in managerial capacity duties abroad and in the United States. The director noted that although the petitioner stated that the beneficiary will have oversight over 23 subordinates, it did not provide validating evidence to establish the scope of its workforce in the United States. The director further noted that although the evidence indicated that the beneficiary managed a kitchen workforce of 33 individuals at the foreign entity, the petitioner failed to provide evidence to validate the number of individuals under his supervision, the positions of each individual, or the job duties associated with their respective positions.

In response to the RFE, the petitioner provided a letter, dated February 5, 2014, signed by [REDACTED] Managing Member of the petitioner, referring the director to previously submitted evidence to demonstrate that the beneficiary has been employed in a managerial capacity at the foreign entity. In the same letter, the petitioner also listed the same exact duties for the beneficiary's proposed position in the United States as previously submitted in its initial letter of support, and added the following:

The beneficiary oversees 7 subordinates including an assistant chef and a pastry chef.

* * *

It is impossible to assign and percentage or breakdown of the duties since, by the nature of this job, it varies each week. The beneficiary is not a first-line supervisor. He has a floor manager on his level. As Executive/Head Chef, the Pastry Cook, Assistant Chef (trainer), Preparation Cook, Assistant Pastry Cook, a Kitchen Helper and Dish Washer all subordinate to the beneficiary.

The petitioner submitted a salary sheet from the foreign entity indicating that it paid a salary to the beneficiary from April 2010 through December 2013 and includes the beneficiary's signature for each month therein as evidence that he received such salary.

The petitioner also submitted a new organizational chart for its U.S. restaurant showing the beneficiary as the "head chef (trainer)," reporting to the "quality assurance manager" who reports to the "general manager." As the "head chef (trainer)," the beneficiary directly supervises an "assistant chef (trainer)" and a "pastry cook." The "assistant chef (trainer)" supervises a "preparation cook" who supervises a "kitchen helper" and a "dishwasher." The "pastry cook" supervises an "assistant pastry cook." None of the positions listed in the new organizational chart, other than the beneficiary, has a named person who is employed in the position and fulfilling its duties.

The director denied the petition on concluding, in part, that the petitioner failed to establish that the beneficiary has been and will be primarily employed in a qualifying managerial or executive capacity. In denying the petition, the director found that many of the duties listed for the beneficiary's position abroad demonstrate that he was engaged in non-qualifying duties and, although requested by the director, the petitioner failed to quantify the amount of time spent on each of the duties assigned to the beneficiary on a

regular basis. As such, the director was unable to conclude that the beneficiary was primarily engaged in managerial duties at the foreign entity without supporting evidence to show that the majority of his time was spent in a managerial capacity. The director further found that many of the duties listed for the beneficiary's proposed position in the United States demonstrate that he will be performing rather than managing the duties and, although requested by the director, the petitioner also failed to quantify the amount of time he will spend on each of the regularly assigned duties. Again, the director was unable to conclude that the beneficiary will be primarily engaged in managerial duties without supporting evidence to show that the majority of his duties will be spent managing restaurant kitchen operations. The director also found that the beneficiary will not be involved in the supervision and control of the work of other supervisory, professional, or managerial employees to relieve him from performing the services of running a restaurant kitchen in the United States and that the petitioner failed to provide any evidence to verify the employment of the U.S. staff listed on its organizational chart.

On appeal, the petitioner submits an affidavit, dated May 8, 2014 and signed by [REDACTED] its general manager, explaining that the beneficiary is a second-tier manager, not a first-line manager. The letter states that the beneficiary manages, directly or indirectly, 14 individuals, including one assistant head chef (first line manager) and 13 other individuals involved with food preparation. The letter further states that the beneficiary also directly supervises a "purchasing officer" who keeps track of inventory, stock (food, beverage, and perishable/non-perishable items), assists the chef in creating and revising recipes, order supplies and prepares the payroll for outside service. In a separate letter on appeal, the purchasing officer is described as being a managerial administrative position.

The petitioner submits a new organizational chart (third iteration) showing the beneficiary as the "head chef," reporting to the general manager, [REDACTED]. As the "head chef," the beneficiary directly supervises an "assistant head chef" and a "purchasing officer." The purchasing officer does not have any subordinates listed. The assistant head chef supervises a "hot section," consisting of two line cooks, one grill cook, and three dishwashers, and a "cold section," consisting of two preparation cooks, one kitchen assistant, one pastry cook, and two kitchen cleaners. None of the positions listed in the new organizational chart, other than the beneficiary and the general manager, has a named person who is employed in the position and fulfilling its duties.

The petitioner also submits a document titled "payroll summary" for March 27, 2014. The document indicates that the petitioner had four managers, four servers, six runners, one busser, four hosts/hostesses, six kitchen, and three dishwashers on staff at that time.

2. Analysis

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

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(1)(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").

In the instant matter, although the petitioner references the beneficiary's positions as an executive chef or head chef, the petitioner failed to demonstrate that the beneficiary's duties abroad and proposed duties in the United States primarily focus on managing the organization, or a department, subdivision, function, or component thereof. The petitioner first characterized the beneficiary's role as executive chef of both the foreign entity and the petitioner and provided very vague descriptions of the beneficiary's position that do not establish that he has been or will be primarily employed in a managerial capacity at either entity. The petitioner indicated that the beneficiary's duties abroad and in the U.S. are to "manage kitchen operations," but failed to provide an accurate picture of what he does on a daily basis. The letters submitted by the petitioner simply list 13 duties for his position abroad and 15 duties for his proposed position in the United States that are vague and broadly general of a kitchen manager. Although specifically requested, the petitioner did not provide 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 in nature. The petitioner's description of duties fails to provide any detail or explanation of the beneficiary's claimed 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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. *Id.*

When asked to submit a comprehensive description of the beneficiary's job duties and a percentage of the allocation of time devoted to each listed duty, the petitioner submitted a letter referring the director to its previously submitted list of duties for the beneficiary's position abroad and providing an identical list of duties for his proposed position in the United States. The reiteration of previously made statements failed to offer any clarification as to the beneficiary's actual duties abroad and proposed in the United States, and fell considerably short of satisfying the director's request for a "comprehensive description" of the beneficiary's duties. 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 both his current and proposed 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 vague description of the beneficiary's position abroad and proposed with the petitioner fail to demonstrate that the beneficiary focuses the majority of his time on managerial duties rather than the day-to-day operations of the business.

Additionally, the petitioner lists the beneficiary's duties abroad and in the U.S. as including managerial, administrative, and operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's identified tasks abroad, such as coordinating with restaurant manager to ensure VIPs are immediately identified, and any special arrangements and dietary restrictions are accurately communicated to the kitchen staff, performing on-the-job, "shoulder-to-shoulder training" of kitchen staff with respect to cooking techniques and procedures, and directly supervising the cooking and preparation of specials of the day items do not fall directly under traditional managerial duties as defined in the statute. Additionally, the beneficiary's proposed job duties in the United States, including cooking and/or directly supervising the cooking of items that require skillful preparation, evaluating food products to assure that quality standards are consistently attained, and providing training and professional development opportunities for all kitchen staff also do not fall directly under traditional managerial duties as defined in the statute. 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). Collectively, this brings into question how much of the beneficiary's time can actually be devoted to managerial duties. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. The petitioner bears the burden of documenting what portion of the beneficiary's duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Given the lack of these percentages, the record does not demonstrate that the beneficiary will function primarily as a manager.

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.

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).

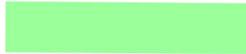
Here, the petitioner submitted one organizational chart for the foreign entity and three different organizational charts for its U.S. restaurant illustrating the managerial hierarchy within the foreign and U.S. entities. The petitioner also submitted thorough lists of job duties for the beneficiary's subordinate employees. It can be reasonably expected that the foreign entity and petitioning U.S. company each have supervisory staff

subordinate to the beneficiary's position. However, although it is shown that the beneficiary may have at least one subordinate with some supervisory duties, he 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 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 positions to establish that his daily routine has consisted and will consist of primarily managerial duties.

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(1)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. Here, the petitioner did not indicate that the beneficiary qualifies as a function manager. The petitioner did not articulate the beneficiary's duties at the foreign entity as a function manager and did not provide a breakdown indicating the amount of time the beneficiary devotes to duties that would clearly demonstrate that he manages an essential function of the foreign entity.

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 beneficiary in this matter has not been shown to be employed in a primarily executive capacity. The petitioner failed to demonstrate that the beneficiary's duties will focus on the broad goals and policies of the organization rather than day-to-day operations. In fact, the petitioner has not established that the beneficiary will have sufficient subordinate employees to relieve him from performing non-qualifying duties.

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



III. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that petitioner has not met that burden.

ORDER: The appeal is dismissed.