

(b)(6)



**U.S. Citizenship
and Immigration
Services**



DATE:

MAY 08 2015

PETITION RECEIPT #: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the 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 Delaware corporation established in [REDACTED] states that it operates an industrial wire harness and electrical component manufacturing business. It claims to be the parent company of [REDACTED], the beneficiary's employer in Mexico. The petitioner seeks to employ the beneficiary as its Business Process Project Manager for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish: 1) that the beneficiary has been employed in a managerial capacity abroad; and 2) that the beneficiary will be employed in a managerial 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 us for review. On appeal, the petitioner asserts that the evidence is sufficient to establish that the beneficiary has been and will be employed as a function manager.

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, 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.

II. Managerial Capacity Abroad

The first issue addressed by the director is whether the petitioner established that the beneficiary has been employed in a managerial capacity abroad. The petitioner does not claim that the beneficiary has been or will be employed in an executive capacity as defined at section 101(a)(44)(B) of the Act.

A. Facts

The petitioner filed the Form I-129 on November 12, 2013. The petitioner indicated that it operates a wire harness and electrical component manufacturing business and has 11,000 employees worldwide. The petitioner indicated that it has a gross annual income of \$46 million globally.

The petitioner stated that the beneficiary has been employed by the foreign entity as Business Analysis Manager since 2005. The petitioner stated that the beneficiary's current duties include: direct and oversee the business analyst team towards the fulfillment of the company's overall business strategy; oversee cost savings and improvement projects implemented among the supply

chains in different departments and plants; exercise managerial authority to present new tools and strategies to the company with a focus on providing the ability to process data in a timely and efficient matter and ensuring accuracy across the entire supply chain; and responsibility for optimizing business processes and solutions, as well as workflow and supply chain operations.

The petitioner explained that prior to her employment as Business Analysis Manager, the beneficiary was employed as an Applications Analyst Team Leader from 1999 until 2004 and as a Purchasing Agent from 1996 to 1998. The petitioner stated that in her previous positions, the beneficiary oversaw cost saving projects, established control systems, directed projects, and led the IT Team in a project that involved transferring the U.S. plants to Mexico.

The director issued a Request for Evidence ("RFE") instructing the petitioner to submit additional evidence that the beneficiary has been employed abroad in a managerial capacity. Specifically, the director requested, among other evidence, the following: 1) a description of the beneficiary's managerial duties with the percentage of time she spends performing each duty; 2) a description of how the beneficiary manages the organization, or a department, subdivision, function, or component of the organization; 3) an explanation of how the beneficiary functions at a senior level within the organization or with respect to the managed function; 4) an explanation of how the beneficiary makes decisions on daily operations of the activity or function under her authority; 5) copies of the beneficiary's training, pay, or other personnel records showing her employment in a managerial position abroad; and 6) an organization chart or diagram showing the foreign entity's organizational structure and staffing levels to include the name, job title, education level, salary, and a summary of duties for all employees in the beneficiary's immediate division, department, or team.

In response to the RFE, the petitioner stated that it uses a global system to control its sales, planning, manufacturing, and financial information and that the beneficiary provides direction, training, and managerial support for global users on how to establish, maintain, and optimize the use of information from that system. The petitioner indicated that the oversight and improvement of its business processes, systems, and methods is essential to the company.

In addition to the initial duties provided, the petitioner emphasized that the beneficiary liaises directly with members of the executive team and that she drives and coordinates systems and business analysis for all operations globally.

The petitioner submitted an organization chart for the IT Department, which includes a total of 44 employees based in the United States, Mexico, Europe, and Asia. The chart depicts the organization structure of the proposed U.S. position and does not depict the beneficiary's position in Mexico. The petitioner also submitted untranslated pay documents for the beneficiary. The most recent pay document indicates that the beneficiary began working for the company in July 1996 and currently works in the systems department. The pay documents identify [REDACTED] as the beneficiary's supervisor, but his name does not appear on the submitted organizational chart.

The director ultimately denied the petition concluding that the petitioner failed to establish that the beneficiary has been employed in a managerial capacity abroad. The director specifically stated that

the petitioner failed to show the beneficiary functions at a senior level within the organization's hierarchy or that she is involved in the supervision of other supervisory, managerial, or professional employees, who would relieve her from performing non-qualifying duties.

On appeal, the petitioner asserts that the beneficiary functions at a senior level within the organizational hierarchy and is responsible for providing reports to the company's executives. The petitioner states that the beneficiary advises and consults with executive personnel and develops the system analysis needed for global manufacturing and business operations. The petitioner asserts that non-managerial personnel do not typically interface directly with the senior executives on a regular basis.

The petitioner states that the beneficiary is one of only two managers who originally designed and configured software modules necessary for the setup of manufacturing processes and financial processes. The petitioner stresses that the beneficiary is charged with the oversight and operation of the systems and software and that she provides strategic guidance for optimal use of the software in plants around the world.

The petitioner provides the following description of the beneficiary's duties:

Manages an essential function within the organization, or a department or a subdivision of the organization:

- Implemented the [redacted] global system of [the petitioner], known as [redacted] software, in all of [the petitioner's] Mexico plants, and continues to oversee the operation of the software
- Provides strategic guidance for optimal use of the software in plants around the world
- Established the configuration within [redacted] software or created programs to supplement the base system
- Continues to direct and oversee the [redacted] configurations and programs, and provides strategic guidance for the software
- Provides direction, training, and strategic guidance for the global users on how to establish and maintain information in that system

Functions at a senior level within the organizational hierarchy:

- Develops a margin analysis report at part level for the CEO and CFO.
- Provides direct analytical and systems analysis support to the Executive Vice President of Global Business Process, Vice President of Purchasing, Operational Controller, the Director of Information Systems, and all of the commercial departments at the US headquarters.
- Provides systems business analysis for all operations globally.
- Oversees the [redacted] software for cost savings and improvements implemented among the supply chain.

- Oversees and directs new strategies to the company focused on providing the ability to process data in a timely and efficient matter, with absolute accuracy across the entire supply chain.
- Responsible for optimizing business processes and solutions and supply chain operations.
- Oversees cost savings and improvements that are implemented among the supply chain in different department and plants.
- Directs the optimizing of our business processes and solutions, as well as workflow and supply chain operations.

The petitioner stated that the beneficiary designed the process flow and transaction impact flow for the China and Poland subsidiaries utilizing the corporate-wide system that is hosted from the U.S. headquarters. The petitioner states that the beneficiary established the configuration with the [redacted] or created programs to supplement the base system and that she continues to oversee and direct the configurations and programs and provide strategic guidance for the software.

The petitioner reasserts that the beneficiary has been employed as a function manager and is not required to supervise or control the work of other employees.

B. Analysis

Upon review of the totality of the record, the evidence is insufficient to establish that the beneficiary has been employed in a managerial capacity abroad.

When examining the executive or managerial capacity of the beneficiary, we 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.* 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).

Here, the petitioner described the beneficiary's duties in vague language that fails to convey her daily activities. For example, the petitioner states that the beneficiary directs and oversees the business analyst team; oversees cost savings and improvement projects; oversees [redacted] software for cost savings and improvements; oversees and directs new strategies to the company; directs the optimizing of business processes and solutions; drives and coordinates systems and business analysis; directs and oversees [redacted] configurations and software; and exercises managerial authority to present new tools and strategies. The broadly described duties suggest the beneficiary's level of authority; however, they fail to provide the specifics necessary to understand how the beneficiary actually spends her time on a daily basis. The regulations require the petitioner to describe the beneficiary's duties with the level of detail necessary to determine whether each duty meets the

statutory definitions of managerial or executive capacity. 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, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The position description also indicates that the beneficiary's duties include implementing the [redacted] global system; establishing the configuration within the [redacted] software; creating programs to supplement the base system; developing reports; providing systems analysis; and training global users on the system. These duties suggest the beneficiary's involvement in operational activities that do not typically qualify as managerial duties. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

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. Section 101(a)(44) of the Act; see also *Brazil Quality Stones, Inc. v. Chertoff*, 531, F.3d 1063, 1069-70 (9th Cir. 2008). The broad language used to describe the beneficiary's duties suggests that she performs both qualifying and non-qualifying duties. Although requested by the director in the RFE, the petitioner failed to provide a breakdown of the percentage of time that the beneficiary spends performing specific duties. Without a more detailed description of the beneficiary's specific tasks and a clear and credible breakdown quantifying the proportion of time she spends performing each task, it cannot be determined from the position description that the beneficiary primarily performs managerial duties.

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining a beneficiary's claimed employment in a managerial or executive capacity, 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 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). In the instant matter, the petitioner claims that the beneficiary is 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 detailed position

description that clearly explains 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. 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.

Here, the petitioner claims that the beneficiary provides direction, training, and managerial support for global users on how to establish, maintain, and optimize the use of the petitioner's global system. However, the evidence fails to establish that the beneficiary primarily performs managerial duties rather than the operational duties required to provide a service. As discussed above, much of the beneficiary's position description is overly broad and fails to communicate how the beneficiary spends her time. The petitioner states that the beneficiary's duties include operational tasks such as implementing software, establishing its configuration, creating programs to supplement the system, and developing analysis reports, but does not provide any information regarding the proportion of time that the beneficiary spends on these duties. Therefore, the petitioner has failed to establish that the beneficiary is primarily engaged in the management duties of the claimed function, rather than providing the establishment, maintenance, and optimization services herself.

Although requested by the director, the petitioner failed to provide an organization chart depicting the beneficiary's current position in Mexico. As such, the record does not support a finding that she is placed at a senior level with respect to the business analysis function or that there are other staff to relieve her from performing non-managerial duties associated with this function. While the petitioner states that the beneficiary directs and oversees a business analyst team, the submitted organization chart, despite being dated July 2013, depicts the beneficiary in her proposed U.S. position with no subordinates. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). While a function manager is not required to have subordinate employees, the petitioner still must establish that someone other than the beneficiary is performing the non-managerial duties associated with the day-to-day operations of the function she manages. Here, the evidence is insufficient to demonstrate that the beneficiary is relieved from performing the non-qualifying duties related to the function, so that she is able to focus on primarily managerial duties.

Overall, the petitioner failed to provide sufficient evidence that the beneficiary manages an essential function of the organization abroad. The petitioner failed to provide sufficient evidence of the beneficiary's job duties and the foreign organization structure to establish that the beneficiary has been employed in a managerial capacity. For the foregoing reason, the appeal will be dismissed.

III. Managerial Capacity in the United States

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

A. Facts

The petitioner described the beneficiary's proposed U.S. duties, as the Business Process Project Manager (IT Department), as follows: oversee the improvement of business processes and solutions deployment; directly support and optimize the petitioner's workflow and supply chains globally; direct new efforts to review and analyze data and performance indicators to locate system problems; drive expansion or modification of systems to correct problems found, serve new purposes, or improve work flow and processes; lend managerial support to other managers and departments to solve supplier related problems, such as system malfunctions and program problems; interface with internal stakeholders; liaise with and mentor supplier managers with any malfunctions and problems with computer systems; devise and coordinate initiatives to link computer systems within the organization to increase compatibility so information can be more easily transferred and shared; managerially responsible for competence development, ensuring professional staff are up-to-date with the company's technology systems; and work with professional staff, other management, and functional leaders to analyze and design better manufacturing and business processes

The petitioner stated that the beneficiary's "additional managerial duties" include:

- Confer with customers and customer service managers to correctly understand and interpret customer requirements regarding the nature of the information processing or computation needs a computer program is to address to improve customer quality standards;
- Confer with other staff members to understand computer related problems, malfunctions, and program problems to help develop a better [redacted] system and [the petitioner's] Manufacturing and Business Processes;
- Motivate and guide the business analyst team, as well as other staff members, towards the company's overall business processes to improve work flow;
- Exercise the authority to determine computer software or hardware needed to set up or alter system to better improve the [petitioner's] Manufacturing and Business Processes;
- Determine how a new computer system should work, and how changes in conditions, operations, and the environment will affect outcomes; and
- Identifying complex problem and reviewing related information to develop and evaluate options and implement solutions.

The petitioner explained that the beneficiary will exercise a wide latitude and discretionary decision-making authority over solutions to maximize the performance of the [redacted] system and petitioner's manufacturing and business processes errors. The petitioner explained that the beneficiary will have managerial authority to "make recommendations on new computer programs and systems that will enhance the [redacted] systems," will receive minimal supervision and will only consult with higher management to make sure there is unified agreement on implementing new system principles.

The petitioner stated that the beneficiary also has specialized knowledge of the petitioner's business processes and business principles in relation to the [redacted] system because she spent time implementing and upgrading the [redacted] system in other the petitioner's other facilities around the world.

The director issued a Request for Evidence ("RFE") instructing the petitioner to submit additional evidence that the beneficiary will be employed in a managerial capacity. Specifically, the director requested, among other evidence, the following: 1) a description of the beneficiary's managerial duties with the percentage of time the she will spend performing each duty; 2) a description of how the beneficiary will manage the organization, or a department, subdivision, function, or component of the organization; 3) an explanation of how the beneficiary will function at a senior level within the organization or with respect to the managed function; 4) an explanation of how the beneficiary will make decisions on daily operations of the activity or function under her authority; 5) an organization chart or diagram showing the petitioner's organizational structure and staffing levels to include the name, job title, education level, salary, and a summary of duties for all employees in the beneficiary's immediate division, department, or team; and 6) evidence of wages paid to all employees who will work under the beneficiary's direction, such as a payroll summary or IRS Forms W-2 or 1099.

In response to the RFE, the petitioner indicated that the beneficiary will oversee training for the petitioner's employees in the United States, Mexico, Canada, Spain, Poland, Morocco, and China; oversee, coordinate, and direct programs, initiatives, and projects to support and optimize the petitioner's workflow, business systems, and supply chains; direct and drive the development of tools, methods, and metrics for the analysis of the petitioner's unique operations; manage all efforts toward data collection, analysis, and review of performance indicators to locate problems in the systems; lead expansion or modification of systems to correct problems, serve new purposes, or improve workflow; manage and drive the constant evaluative efforts and operations of petitioner's business processes and [redacted] systems; collaborate with other managers to identify the strengths and weaknesses of alternative solutions, conclusions, or approaches to problems; consult with lateral management to ensure agreement on the system principles; establish and foster the development of relationships with corporate customers; present new computer systems and how changes in conditions, operations, and the environment will affect outcomes; and make recommendations to higher management on new computer systems that will help enhance the [redacted] systems and the manufacturing and business processes.

The petitioner stated that the beneficiary will manage an essential function as "the primary lead and driver of [the petitioner's] [redacted] system," with managerial responsibility for ensuring that the system functions optimally.

As noted, the petitioner submitted an organization chart for its Global IT Department, which includes 44 positions located in the United States, Mexico, Asia, and Europe. The chart indicates that the beneficiary, as "Business Process Project Manager," reports directly to the "IT Director." The "IT Director" also oversees the following positions: "EDI Manager"; "Global Development Manager"; "U.S. Support Engineer"; "IT Operations Manager"; "IT Manager Asia/Pacific"; "IT Manager Europe"; and two "Analyst" positions. The "Global Development Manager" has a

subordinate "Business Process Improvement Manager," and a subordinate "Business Analyst," as well as a subordinate "BDA Manager" and a subordinate "IT Support Manager." The BDA Manager and IT Support Manager each supervise nine employees. The "EDI Manager" has two subordinate "EDI Analysts"; the "IT Operations Manager" has three subordinates; the "IT Manager Asia/Pacific" has five subordinates; and the "European IT Manager" has one subordinate. The chart also identifies a "Business Process Improvement" employee and an "Analyst" who are on the same tier of the chart as the IT Director. There are no employees placed subordinate to the beneficiary.

In denying the petition, the director concluded that the evidence fails to establish that the beneficiary will manage a department, subdivision, function, or component of the U.S. entity or that the beneficiary will perform in a senior level position with duties and responsibilities higher than those of a typical first line supervisor. The director noted that the beneficiary will be subordinate to the IT Director and that the organization chart failed to show the structure of the complete organization. The director stated that the petitioner failed to establish that the beneficiary would be involved in the supervision and control of other employees, who would relieve the beneficiary from providing the company's services. Finally, the director found that the beneficiary's proposed duties failed to establish her employment in a managerial capacity.

On appeal, the petitioner restates the beneficiary's previously described duties and provides an additional list describing the beneficiary's proposed duties as follows:

Will function at a senior level within the organizational hierarchy:

- Will collaborate with other managers to identify alternative solutions to problems within the [redacted] software
- Will consult with management to ensure agreement on [redacted] system principles
- Will provide strategic guidance to customer service managers to address and improve quality standards of the [redacted] system
- Will coordinate initiatives to link computer systems within the organization to increase compatibility so information can be more easily transferred and shared
- Will work continuously with professional staff, other management, and functional leaders to analyze, direct, and oversee a better design for [the petitioner's] manufacturing and business processes

Will manage a function of the U.S. entity:

- Will be the primary support of [the petitioner's] [redacted] system
- Will be responsible for system training for [the petitioner's] employees in the United States, Mexico, Canada, Spain, Poland, Morocco, and China.
- Will direct the training on the entire business processes flow from order entry to cash receipt

- Will be responsible for the design of new business processes to comply with customers and/or company needs/improvements
- Will provide the core strategic guidance, system training, and daily support of vital business areas in the company, such as Purchasing, Material Procurement, Manufacturing planning, shipping, logistics, and especially all aspects of the financial management process
- Will oversee, coordinate, and direct programs, initiatives, and projects to support and optimize [the petitioner's] workflow, business systems, and supply chains
- Will direct and drive the development of tools, methods, and metrics for the analysis of [the petitioner's] unique operations
- Will oversee all efforts toward data collection, analysis, and review of performance indicators to locate problems in [the petitioner's] systems.

The petitioner states that the beneficiary will manage the day to day operations of the computer system activity, particularly the [redacted] system. The petitioner states that the beneficiary will make senior decisions on the control and correction of key commercial data contained in the petitioner's financial system. The petitioner indicates that the beneficiary will perform margin analysis and analysis on price variance, commercial terms, accounts payable process flow, and general ledger system rules for the global enterprise. The petitioner also states that the beneficiary will manage the core strategic guidance, system training, and daily support of vital business areas in the company and that she will oversee all aspects of the financial process management including general ledgers, accounts payable, accounts receivable, and collections. The petitioner indicates that the beneficiary will manage the system and process support of the 85 individuals located at its headquarters and throughout the United States.

B. Analysis

The petitioner has failed to establish that the beneficiary will be employed in a managerial capacity in the United States.

The petitioner claims that the oversight and improvement of its business processes, systems, and methods is an essential function of the company, and that the beneficiary manages this function. However, as with the beneficiary's foreign position, the petitioner has not provided sufficient detail regarding the beneficiary's job duties or the company's organizational structure to support its claims.

As with the description of the beneficiary's position abroad, the petitioner described the beneficiary's U.S. position in overly broad terms. The petitioner indicated that the beneficiary's duties include: oversee, coordinate, and direct programs, initiatives, and projects; direct and drive development of tools, methods, and metrics; oversee the improvement of business processes; manage all efforts toward data collection, analysis, and review of performance indicators; manage and drive the constant evaluative efforts and system operation; lend managerial support to other managers and departments; coordinate initiatives to link computer systems within the organization, and to be managerially responsible for competence development. Without a more specific description of the

daily duties the beneficiary performs to effectuate the oversight, direction, coordination, and management of the petitioner's systems and processes, we cannot determine what percentage of the time the beneficiary spends performing qualifying versus non-qualifying duties. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Furthermore, the petitioner indicates that the beneficiary will provide system training and daily support of vital business areas in the company; provide strategic guidance to address and improve quality standards; manage the day to day operations of the computer system activity; confer with customer service managers to interpret customer requirements to address and improve quality standards; provide customer service managers and other staff with the proper way to assist computer related problems, such as malfunctions and program problems; determine how a new computer system should work; and identify complex problems and review related information to develop, evaluate, and implement solutions. The petitioner states that the beneficiary will be the primary support of the global [redacted] system and will be responsible for the design of new business processes. These duties suggest that the beneficiary produces analysis reports and provides system support services, and system training services and is acting as a technical specialist rather than primarily managing a function of the organization. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

Although the beneficiary is not required to supervise or control subordinate employees as a function manager; the petitioner must establish that the beneficiary is relieved from primarily performing non-qualifying duties related to the function. Here, the petitioner failed to explain who would be performing the non-qualifying duties related to the support, development, optimization and improvement of the petitioner's systems. The organization chart does not depict any positions subordinate to the beneficiary or otherwise demonstrate who performs the non-qualifying duties of the function managed by the beneficiary. The petitioner indicates that the beneficiary will motivate and guide the business analyst team and other staff members, but fails to provide position descriptions or other evidence to demonstrate the division of non-qualifying duties among departmental staff.

Additionally, many positions in the organization chart have titles suggestive of duties similar to those of the beneficiary. Although the director requested a summary of the duties for the position in the beneficiary's department, the petitioner failed to provide position descriptions for any other positions in the organization chart. It is unclear from the position titles how the beneficiary's duties differ from positions such as: "Business Process Development," "Business Process Improvement," "Global Development Manager," "Business Analyst," "Analyst," and "BDA Manager." It is also unclear that the beneficiary manages the "oversight and improvement" function when considering the beneficiary's placement on the organization chart. The organization chart depicts "Analyst" and "Global Development Manager" positions at a parallel level of hierarchy to the beneficiary and

depicts "Business Process Improvement" and "Analyst" positions at a higher level in the organization structure compared to the beneficiary. Without a clear description of how seemingly overlapping duties and responsibilities for global systems, processes and business analysis are divided within the department, it cannot be determined that the beneficiary manages the oversight and improvement function of the petitioner's business processes, systems, and methods or operates at a senior level with respect to a specific IT function. Thus, while we do not doubt that management of the company's business processes and internal IT systems could be considered an essential function, the petitioner provided insufficient evidence to establish that the beneficiary will be primarily managing this function as a business process project manager.

Whether the beneficiary is a managerial employee turns on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial. See sections 101(a)(44)(A) and (B) of the Act. Due to the vague position description, the petitioner's failure to quantify the time the beneficiary will spend performing specific activities, and the lack of evidence of employees to relieve the beneficiary from primarily performing non-qualifying duties; the evidence is insufficient to demonstrate that the beneficiary will be primarily employed as a function manager.

For the first time on appeal, the petitioner describes duties related to the financial function of the company. For example, the petitioner states that the beneficiary will make senior decisions on the control and correction of key commercial data contained in the petitioner's financial system; will perform analysis on price variance, commercial terms, accounts payable process flow, and general ledger system rules; and oversee all aspects of the financial process management including general ledgers, accounts payable, accounts receivable and collections. On appeal, or in response to an RFE, 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). 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).

For the abovementioned reasons, the petitioner has failed to establish that the beneficiary will be employed in a managerial capacity in the United States. For this additional reason, the appeal will be dismissed.

IV. Qualifying Relationship

Beyond the decision of the director, the petitioner has failed to establish a qualifying relationship pursuant to 8 C.F.R. § 214.2(l)(1)(ii)(G). 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(1).

The petitioner claims to be the parent company of the beneficiary's employer in Mexico. However, the petitioner has failed to provide any evidence to establish its ownership or control of the Mexican company. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F.Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

V. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met this burden.

ORDER: The appeal is dismissed.