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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF K- CORP.

DATE: NOV. 23, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a Florida corporation claiming to engage in “general manager consulting services,” seeks to extend the Beneficiary’s classification as an L-1A nonimmigrant intracompany transferee. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner, established in [REDACTED] is a subsidiary of [REDACTED] located in Venezuela. It seeks to extend the employment of the Beneficiary as its General Manager for a period of two years.

The Director denied the petition concluding that the Petitioner did not establish that the Beneficiary has been and will be employed in a qualifying 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 our office for review. On appeal, the Petitioner asserts that the Beneficiary will be employed in an executive capacity in the United States.

#### 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 ISSUE ON APPEAL

The sole issue addressed by the Director is whether the Petitioner established that the Beneficiary has been and will be employed in a qualifying managerial or executive capacity in the United States.

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

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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.

#### A. Facts

The Petitioner filed the Form I-129 on July 22, 2014. Where asked the type of business it operates, the Petitioner stated "general manager consulting services." The Petitioner also indicated that it has 17 current employees in the United States and a gross annual income of \$632,287.65. On the L Classification Supplement to Form I-129, where asked to describe the Beneficiary's proposed duties in the United States, the Petitioner stated as follows:

As the General Manager, [the Beneficiary] exercise full authority over all the management of [the Petitioner], within a wide spectrum of limits for the decision-making process, requiring only a very general supervision from the Board of Directors. She is responsible for directing, controlling, and supervising all the company's commercial activities, having the authority to hire and to dismiss employees at any level of the division, as well as to select, hire, contract, and dismiss contractors, sub-contractors, and business partners working under our direct responsibility. She has the authority to grant powers of attorney on behalf of the company, in any matter directly related to the company, as well as to delegate any of her authorities to managers and supervisors of the company.

In its letter of support, dated July 8, 2014,<sup>1</sup> the Petitioner described its current business as follows:

In terms of business consulting, we are helping our clients with marketing strategies and policies, marketing services, promotion and advertising, pricing strategies, and customer care services. As well as dry cleaning we have the opportunity to work with big companies and different kind of sector that allows us to

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<sup>1</sup> We note that the Petitioner's letterhead reads [REDACTED]

offer and get to more clients with different needs. Moreover, we are offering support on the identification of business improvements, marketing, and sales planning, return-on-investment analysis, profit-loss projections, selection of suppliers and products, and agreements and contracts. . . . With our services in dry cleaning we have clients in the sector of health, education, government, business companies, and regular clients.

In the same letter of support, the Petitioner described its organizational structure and the Beneficiary's duties in the United States as follows:

To successfully manage our own services, our organization was structured on three divisions, under the direction of the General Manager. The Commercial Division offering services on marketing, development, sales and customer care. The Operation/Production Division offering training and personnel development, quality control, management, contact with suppliers and production of the company. The Financial Services Division offering financial advice, investment advice, taking care of the company's accounts with contractors and suppliers.

The General Manager is the top executive of the company. The position is subordinated to the Board of Directors and it requires a very general supervision from that board. It has full authority over the management, within a wide specter of limits for the decision-making process. The General Manager is directly responsible for directing the division directors, which are directing the department managers. The department managers, under the authority of the respective division directors, are managing the supervisors and/or all employees and contract employees of the company as well as the third-party employees and contract employees working with us or with our clients under our responsibility. Additionally, the General Manager has full authority to hire and fire employees at any level, being directly or indirectly responsible for all the employees and contract employees.

[D]uring the extension, she shall continue to be responsible for the definition and accomplishment of the goals, objectives, and policies of the organization, and for planning, organizing, directing, and controlling the corporation, exercising full authority delegated by the Board of Directors, under its general supervision.

[The Beneficiary] shall continue to have, as basic duties, as the General Manager, activities such as to perform reviews of activities of all the areas of the organization, to evaluate their performance, approve expenditures, enforce rules, change individual procedures, and make decisions related to the management procedures; conduct general evaluation meetings, where the matters of general interest of the organization are discussed; confer with the managers to oversee their activities related to clients of the organization; review documents, statements, reports and performance data to measure productivity and goal achievement and to determine

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areas needing changes or improvement; and to perform full reviews of ongoing projects, to make decisions to change their courses, if needed, or to keep track of them to ensure their successful development.

The offer we have made for [the Beneficiary] is for the continuation of her temporary transfer, for a limited period, for her to continue on the position as the organization's General Manager, directly subordinated to the Board of Directors. On this position, she shall continue to work Monday thru Friday, from 9:00 am to 5:00 pm, totaling forty hours per week. . . .

The Petitioner submitted the Beneficiary's resume, which states the following pertaining to her position with the petitioning U.S. company:

[Petitioner] – USA 2010-Current

▪ General Manager

Direct the division managers; Perform full reviews of the divisions of the organization. Evaluate performance, approve disbursements, enforce rules, and make decisions related to management procedures, making changes to individual procedures as needed. Review documents, statements, reports, and performance data to measure productivity and goal achievements, in order to determine areas that need change or improvement. Perform full reviews of several ongoing projects, to keep track of them, or to change their courses if needed.

The Petitioner submitted its lease agreement, dated June 10, 2010, specifically stating the following at Sections 33 and 34:

33. USE OF THE LEASED PREMISE. It is understood that the Premises are not to be used for any purpose except Dry Cleaning and Dry Cleaning Services. . . .

34. USE AND RESTRICTION. During the term of this lease and any renewals thereof, Landlord warrants that he will not use or permit any other tenant or party to use, any other portion of the property, or any property owned by landlord adjacent or contiguous to the property, for the purpose of providing the following Dry Cleaning and Dry Cleaning Services.

(Emphasis in original.)

The Petitioner submitted its organizational chart, dated December 2013, identifying its Board of Directors as [REDACTED] President, [REDACTED] Secretary, and the Beneficiary as Treasurer. The chart goes on to list the Beneficiary as General Manager & Chief Executive Officer, reporting to the Board of Directors. As the General Manager, the Beneficiary supervises three Divisions: Commercial Division, [REDACTED] Operations/Production, [REDACTED] and Financial Services Division, [REDACTED] According to the chart, the Commercial Division

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employs a Development position, [REDACTED] a Marketing Manager, [REDACTED] a Sales Manager, [REDACTED] and a Sales Assistant, [REDACTED]. The Operations/Production Division employs a Floor Manager, [REDACTED] a Production Manager, [REDACTED] a Floor Maintenance position, [REDACTED] a Supplies/Purchase position, [REDACTED] and two<sup>2</sup> Floor Production positions, [REDACTED] and [REDACTED]. Finally, the Financial Services Division employs an Accounts Manager, [REDACTED] an Accounts Pay/Receivable position, [REDACTED] a Financial Consulting position, [REDACTED] an Accounting Contractor, [REDACTED] and an Investment Manager, [REDACTED].

The Petitioner submitted a document listing the Beneficiary's duties as General Manager and allocating percentages of time she devotes to each duty as follows:

Directs and plans the new projects of the organization.	(20%)
Supervises and control the performance of the employees of the company from supervisors, professional, or managerial employees, and some independent contractors.	(15%)
Coordinates activities of business or departments concerned with production, pricing, sales, or distribution of products.	(15%)
Analyzes operations to evaluate performance of the company. Determines areas of potential cost reduction, program improvement, or policy change.	(10%)
Review reports submitted by staff members to recommend approval or to suggest changes[.]	(10%)
Negotiates or approves contracts and agreements with suppliers, distributors, federal and state agencies, and other organizational entities.	(10%)
Directs and coordinates the company's financial and budget activities to fund operations, maximize investments, and increase efficiency.	(5%)
Confers with board members and staff members to discuss issues, coordinates activities, and resolve problems.	(5%)
Approves budgets, including those for funding and implementation of programs.	(5%)
Creates report to the Organization's Board of Directors monthly.	(5%)

The Petitioner also submitted similar lists of duties with percentages of time devoted to each duty for the Beneficiary's subordinate employees, including the positions of: Commercial Manager, Development, Marketing Manager, Sales Manager, Sales Assistant, Operations/Production Division Manager, Floor Manager, Production Manager, Floor Maintenance, Supplies/Purchase, Floor Plan, Services Division Manager [*sic*], Accounts Manager, Accounts Pay/Receivable, and Financial Consulting.

<sup>2</sup> We note that the Petitioner's organizational chart states that there are additional "temporary" employees in the Floor Production position.

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The Petitioner further submitted a document titled “Daily Duties” for the General Manager, outlining the Beneficiary’s schedule for one week. The document summarizes her duties into four categories: “control, organize, direct, and plan.” In addition, it lists tasks such as general evaluation meeting, work meeting with Commercial Manager, Operations/Production Manager, and Financial Services Manager, meetings with suppliers and business partners, problem solving and pending matters with management, meeting with Administrative Manager, and preparing reports and analysis.

The Petitioner submitted a letter, dated November 15, 2011 and signed by [REDACTED], stating that the Beneficiary spends 100% of her time functioning in an executive/managerial capacity at the Petitioner, and “is responsible for the organization’s consistent achievement of its vision, mission, goals/guiding principles, and financial objectives.” The letter goes on to list 22 duties for the Beneficiary’s position within three clusters: leadership and advocacy, communications, and budget and finance.

The Petitioner submitted a proposal, dated March 18, 2014, with the [REDACTED] for dry cleaning/laundry services for their employees and hotel guests. The Petitioner submitted another proposal, dated May 10, 2013, with the [REDACTED] for dry cleaning/laundry services for their employees, along with invoices dated January 9, 2014, February 14, 2014, March 7, 2014, and March 20, 2014. The Petitioner submitted a third proposal, dated May 8, 2013, with [REDACTED] for dry cleaning/laundry services for their employees. The Petitioner also submitted a fourth proposal, dated August 9, 2012, with [REDACTED] for dry cleaning/laundry services for their employees and patients’ families. Finally, the Petitioner submitted a contract, dated July 30, 2012, with the [REDACTED] for dry cleaning/laundry services for their employees and hotel guests, along with invoices dated November 20, 2012, December 3, 2012, January 3, 2013, February 1, 2013, and March 1, 2013.

The Petitioner submitted a series of emails between the Beneficiary and [REDACTED] of [REDACTED]. In the email message, dated November 2, 2012, the Beneficiary acknowledges a meeting the previous day and provides pricing information for alterations, as well as hours of operation for its dry cleaning services. In the email message, dated November 16, 2012, the Beneficiary advises [REDACTED] that she will be by to drop off “materials” currently at the store and can pick up any new “materials” that are ready. In the same email message provided, [REDACTED] replies advising that they have two bags ready to be picked up. The Petitioner also submitted invoices for [REDACTED] dated December 7, 2012, November 19, 2012, January 8, 2013, February 6, 2013, February 20, 2013, March 22, 2013, April 23, 2013, January 9, 2014, February 17, 2014, and March 7, 2014.

The Petitioner submitted a letter, dated December 18, 2013, to the [REDACTED] welcoming them to its express service. The letter includes pricing, pick up and drop off times, and a reference to existing customers: [REDACTED] and [REDACTED]. The Petitioner submitted a single invoice for [REDACTED] dated March 13, 2014.

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The Petitioner submitted copies of numerous advertisements for its dry cleaning and laundry business. The Petitioner also submitted photos of its premises showing a typical dry cleaning/laundry service business, along with two photos of two unidentified individuals at a desk with two computers.

The Director issued a request for evidence (RFE) on October 1, 2014, advising the Petitioner that the specific nature of its business was unclear and it had not submitted evidence to assist in establishing the specific nature of its business aside from running a dry cleaning service. The Director instructed the Petitioner to submit evidence that the Beneficiary was a manager or executive at its U.S. company.

In response to the RFE, the Petitioner submitted a letter, dated December 17, 2014, discussing the specific nature of its business as follows:

[B]y the end of this year or the first couple of months of the next one, [the Beneficiary] is already getting everything ready to open a second operation, space in the city of [REDACTED]

With this new location, we will be able to reach new markets and continue to offer the services that we offer. As we mentioned on this petition, [the Petitioner] offers consulting business for other companies, it has the service of dry cleaning that had allow [*sic*] the company to approach different kind of customers and needs that they have, through this service [the Beneficiary] and her team have the opportunity to provide the clients not just the dry cleaning service but consulting business because they had help them to expand [*sic*] their business using [the Petitioner] as the bridge to get access to other companies, our clients, are Hospital, schools, airline companies, public service company, small business and regular people that need the guidelines and the knowledge in the market that [the Petitioner] and the team has. As a natural growing we are getting [*sic*] involved with dry-cleaning business, it means more employment and business.

In its letter, the Petitioner further described the Beneficiary's role at its U.S. company as follows:

[The Beneficiary] as our executive is been [*sic*] responsible for complete management of the American subsidiary and it's been under her direction that the company is set up in a growing and strong position in the market in United States. The board of directors delegated on her complete control over the company . . . .

[I]n [o]rder for her to had a organized [*sic*] and control over the company and the employees, she with the guidelines from the Law of the State and the [U.S.] government applied for the company and employees the policies of the company in a Handbook . . . the goal with this for her is to make the employees understand and

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accomplish the rules and the goals that the company has as well to clarify all the benefices [*sic*] that they have current employees of the company [*sic*].

Her position in the company as the general manager put her on top of the entire department manager, they are under her supervision and the subordinates that are directly under the each department manager supervision are as well under the general manager control. Even when [the Beneficiary] had delegate to each manager their respective duties and responsibilities, every week she meets with each of them to discuss the results and the planned activities or projects that they will be doing. During this meeting [the Beneficiary] gather all the information necessary for her to analyze the performance and the accomplishment of the goals that are plan for each department and all together for the company.

The managers are under her supervision and she will ensure that everything that is been done is done [*sic*] under the quality standards of the company and accomplishing the policies as well.

The Petitioner resubmitted a copy of the November 15, 2011 letter from [REDACTED] stating that the Beneficiary spends 100% of her time functioning in an executive/managerial capacity at the Petitioner.

The Petitioner submitted bank statements and copies of the same invoices for dry cleaning/laundry services previously submitted, along with new invoices for the same services, dated between October 13, 2014, and December 8, 2014.

The Director denied the petition on April 3, 2015, concluding that the Petitioner did not establish that the Beneficiary has been or will be employed in a qualifying managerial or executive capacity in the United States. In denying the petition, the Director found that, although the Petitioner reports that its business offers consulting services in business and marketing for other companies, it did not establish that it operates anything more than a discount dry cleaning business, for which the Beneficiary functions as a general office manager performing customer service functions. The Director found that the submitted evidence does not demonstrate that management and marketing consulting is the Petitioner's core business activity or that the Beneficiary is an integral part of its claimed consulting operations. The Director further found that while the Beneficiary supervises several subordinate executives/managers, the Petitioner did not present the actual scope of their activities ort how they relieve the Beneficiary from performing non-qualifying functions essential to the corporation's operations.

On appeal, the Petitioner submits a letter, dated May 18, 2015, asserting that the Beneficiary's position at its U.S. company is executive and that she is the U.S. company's representative in all financial matters and in its current projects and purchase of real estate.

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The Petitioner submits a second letter, dated April 27, 2015, describing the Beneficiary's position as follows:

[R]ight now she is representing the company in from of [REDACTED] the construction group that's is developing [*sic*] some commercial projects where [the Petitioner] will be locating the drop boxes, she needs them to approve and select the points where she can have in the projects to locate the drop boxes as part of the new project that she developed to help the company to expand and help the company to approach new markets. She has been the executive that represent the company and takes the decisions in behave of the well being of the company [*sic*]. . . .

. . . .

[The Beneficiary's] duties as the General Manager of [the Petitioner] are but not limited to:

Executive Skills:

- Business Management:
  - “Executive capacity”:
    - Will direct the management of the U.S. Company;
    - Will ensure to accomplish the goals and policies of the U.S. Company;
    - Will Exercise wide latitude in discretionary decision-making;
    - Will continue to receive only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.
    - Will continuo [*sic*] to complete the staff of the company by hiring the new employees;
    - Will have the select or dismiss employees of the company.

The letter goes on to state that the following skills are required to perform the duties of the U.S. position: active listening, leadership, speaking, critical thinking, monitoring, coordination, social perceptiveness, active learning, complex problem solving, and judgment and decision making. The letter then lists the following technical skills required to perform the duties of the U.S. position: commercial awareness, financial know-how, planning technique, negotiation method, and marketing proficiency. The Petitioner further included a single paragraph describing the Beneficiary's duties, which was previously submitted in its initial letter of support dated July 8, 2014.

On appeal, the Petitioner submits financial documentation, documentation in reference to the purchase of real estate and the establishment of a second storefront in [REDACTED], Florida, and copies of numerous advertisements for its dry cleaning and laundry business.

B. Analysis

Upon review, and for the reasons stated herein, the Petitioner has not established that the Beneficiary has been and will continue to be employed in a qualifying managerial or executive capacity under the extended petition.

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). 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").

As a preliminary matter, we must discuss the Petitioner's claimed business activities. In its initial letter of support, the Petitioner described the nature of its business in very unclear terms, stating that it helps clients with marketing strategies, policies, marketing services, promotion and advertising, pricing strategies, and customer care services, as well as operating as a dry cleaning and laundry service. The Petitioner alluded to using its dry cleaning business to find clients for its consulting services, but was not clear in explaining how this process works. The Petitioner was also not clear on how it performs the tasks and functions associated with running a consulting business on the listed types of consulting services. In response to the RFE, the Petitioner provided a similarly elusive description of its business activities and claimed that it uses its dry cleaning business to approach different customers and provide the clients with consulting services as well as dry cleaning services. The Petitioner then listed some existing clients, such as a hospital, schools, airline companies, public service companies, and small businesses.

The Petitioner submitted copies of business proposals and contracts with the listed businesses, demonstrating that the Petitioner provides dry cleaning and laundry services to employees, hotel guests, and/or patient families. Each of the invoices presented from the Petitioner to these companies are specifically for dry cleaning, laundry, or garment alteration services, not for consulting services. The photos of the premises presented by the Petitioner also show a typical dry cleaning/laundry service business and the two photos of two unidentified individuals at a desk is not sufficient to demonstrate that it also provides consulting services. The Petitioner has not established that it operates a "general manager consulting services" business as claimed on the Form I-129, nor

has it established that its expansion plans relate to consulting services. In fact, the evidence indicates that the expansion plans presented by the Petitioner are solely related to its dry cleaning and laundry services, as is demonstrated by its drop box and second dry cleaning location expansion documents. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Although the Petitioner is claiming that it uses its dry cleaning business to approach customers for consulting services, it has not provided any evidence that such consulting services are actually being provided or that it operates anything other than a dry cleaning and laundry services business. The fact that the Petitioner is in the process of purchasing, or has purchased, the building in which it is currently located, is not relevant to these proceedings, and does not establish that it is performing tasks or functions associated with its claimed consulting service business activities. The Petitioner's descriptions of the Beneficiary's position at its U.S. company, and those of her subordinates, are not commensurate with its actual business operations and daily business of running a dry cleaning and laundry service operation.

Specifically, despite the abundance of evidence establishing that the Petitioner is a dry cleaning business and that the Beneficiary has direct contact with clients to facilitate the provision of these services, the Petitioner characterized the Beneficiary's role as that of General Manager and briefly described her duties in very broad terms. Specifically, in the initial letter of support, the Petitioner claimed that she will direct the department managers; hire and fire employees at any level; be responsible for defining and accomplishing goals, objectives, and policies of the organization; plan, organize, direct, and control the corporation; perform reviews of activities of all the areas of the organization, in order to evaluate performance, approve expenditures, enforce rules, change individual procedures, and make decisions related to management procedures; conduct general evaluation meetings; oversee managers' activities related to clients of the organization; measure productivity and goal achievement; and perform full reviews of ongoing projects.

The Petitioner also submitted a separate document listing the Beneficiary's duties as General Manager, and allocating percentages of time she would devote to those duties, in very broad terms: 20% of her time on directing and planning new projects; 15% of her time on supervising and controlling employee performance; 15% of her time on coordinating the activities of departments concerned with production, pricing, sales, and distribution of products; 10% of her time on analyzing operations to evaluate performance and determines if changes are needed; 10% of her time on reviewing reports submitted by staff; 10% of her time on negotiating or approving contracts and agreements with suppliers, distributors, federal and state agencies, and other organizational entities; 5% of her time on directing and coordinating the company's financial and budget activities; 5% of her time on conferring with board members and staff; 5% of her time on approving budgets; and 5% of her time on creating a monthly report for the Board of Directors.

In response to the RFE, the Petitioner provided an equally vague description of the Beneficiary's position in the United States, similar to that listed above. The Petitioner did not include any additional details or specific tasks related to each duty, nor did it indicate how such duties qualify as managerial or executive 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, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

On appeal, the Petitioner states that the Beneficiary will be an executive and clearly exercises wide latitude in discretionary decision making. The Petitioner states that the Beneficiary is the sole representative of its business in the United States and thus an important asset to its business operations; however, the Petitioner has not provided sufficient information detailing the Beneficiary's proposed duties at its U.S. company to demonstrate that these duties will qualify her as a manager or executive, or as a function manager.

Here, the Beneficiary's position as described by the Petitioner is problematic for two reasons. First, as explained above, the exact nature of the Beneficiary's role in the Petitioner's organization remains unclear, despite the Petitioner's submission of numerous position summaries and descriptions of duties prior to adjudication and again on appeal. 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. The petitioner has not provided any concrete detail or explanation of the Beneficiary's true activities in the course of her daily routine.

Second, the record contains evidence that, contrary to the Petitioner's contentions, its actual business operations involve the provision of dry cleaning services. The record contains documentation including email correspondence between the Beneficiary and clients which indicates that the Beneficiary maintains direct client contact and coordinates dry cleaning services for customers pursuant to the proposals and contracts included in the record. Moreover, the Petitioner's lease agreement specifically restricts the Petitioner from performing any other business activities aside from dry cleaning, thereby raising questions regarding the validity of its claim that the Beneficiary is the general manager of its claimed consulting services business. Finally, the Petitioner provides no information regarding the role of the Beneficiary's subordinates within the dry cleaning operation, thereby suggesting that these services are handled by the Beneficiary. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Therefore, the vague overview of the Beneficiary's duties combined with the contradictory evidence contained in the record with regard to the Petitioner's business operations and the Beneficiary's role therein renders it impossible to determine that the Beneficiary has been and will continue to be employed in a primarily managerial or executive capacity. As discussed above, it appears that the Beneficiary is engaged in the day-to-day operation and oversight of the Petitioner's dry cleaning business, which includes direct contact with clients. While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify a 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 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 statutory definition of “managerial capacity” allows for both “personnel managers” and “function managers.” *See* sections 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. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Here, the evidence does show that the Petitioner has more than 10 employees. However, as discussed above, the ambivalent nature of its actual business operations, dry cleaning and laundry services versus the claimed consulting services, raises doubts as to the listed employees’ actual positions within the company. Contrary to the Director’s findings, the Petitioner did submit position descriptions for the Beneficiary’s claimed subordinates. Although the nature of the Petitioner’s business is in question, the listed duties for those subordinates may be loosely applied to its dry cleaning and laundry services business. In that regard, the Beneficiary does have some subordinate employees with supervisory duties. Although the Beneficiary is shown to have at least one subordinate with vague supervisory duties, she has not been shown to *primarily* supervise and control the work of other supervisory, professional, or managerial employees. The fact that one of her subordinates may supervise lower-level employees is not sufficient to elevate the Beneficiary to a position that is managerial in nature. The Petitioner has not demonstrated that the Beneficiary’s duties will primarily focus on the management of the organization, rather than producing a product or providing a service of the petitioner.

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, a 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 is a function manager. The Petitioner did not describe an essential function to be managed by the Beneficiary or provide a breakdown of the Beneficiary's job duties to support such a claim.

Finally, 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. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* While the definition of "executive capacity" does not require the petitioner to establish that the beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the petitioner's burden to establish that someone other than the beneficiary carries out the day-to-day, non-executive functions of the organization.

The Petitioner asserts, on appeal, that the Beneficiary will be an executive; however, the Beneficiary's proposed position has not been shown to be primarily executive in nature, and the Petitioner has not demonstrated that the Beneficiary's duties will primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations. As noted above, the Petitioner did not submit a detailed description of the Beneficiary's position sufficient to establish that the Beneficiary's daily routine will consist of primarily executive duties, rather than on providing the services of the organization. Although the Petitioner states that the Beneficiary has subordinate staff for sales and other routine daily duties, the Petitioner submitted documentation specifically demonstrating that the Beneficiary performs the sales functions of its dry cleaning and laundry services business. In fact, the documentation also demonstrates that the Beneficiary performs the duties of pick up and delivery services for the business. These tasks, shown to be completed by the Beneficiary, are not listed in the lists of duties performed by the Beneficiary, and thus it is unclear how much time the Beneficiary actually devotes to performing the tasks associated with providing a service of the Petitioner. The Petitioner did not discuss the specifics of its dry cleaning and laundry services business sufficient to establish that it has sales and delivery staff to carry out such duties. Although the Petitioner contends that it is a consulting services business, it is

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necessary to demonstrate that someone other than the Beneficiary will carry out the day-to-day routine duties required to operate its dry cleaning and laundry services portion of the business. At this time, the Petitioner has not demonstrated that it has employees to carry out such duties.

As discussed, the Petitioner states that it operates a consulting services business, but does not provide any evidence of actual consultants, or consulting services operations. In fact, the record contains evidence establishing that the Petitioner operates an entirely different type of business, yet it provides no explanation for this inconsistency and submits no evidence establishing that the Beneficiary's role in the business is primarily managerial or executive. As such, the record reflects that, to the extent that the Petitioner has commenced consulting services operations, for which it has not presented any evidence, the Beneficiary must be the employee providing these services on behalf of the Petitioner. Whether the Beneficiary is employed in a qualifying managerial or executive capacity turns in part on whether the Petitioner has sustained its burden of proving that her duties are "primarily" managerial or executive. Here, the Petitioner has not met that burden.

Based on the deficiencies and inconsistencies discussed above, the Petitioner has not established that the Beneficiary has been and will be employed in a qualifying managerial or executive capacity, under the extended petition. Accordingly, the appeal will be dismissed.

### III. CONCLUSION

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

**ORDER:** The appeal is dismissed.

Cite as *Matter of K- Corp.*, ID# 14802 (AAO Nov. 23, 2015)