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

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

MATTER OF I-V- C.A.

DATE: SEPT. 28, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an entity organized in Venezuela, states that its subsidiary, [REDACTED], a Florida corporation established in [REDACTED] seeks to classify the Beneficiary 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.

On the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner states that it operates an “import / export / wholesale printing solution and miscellaneous” business. It seeks to employ the Beneficiary as the General Manager of its new office in the United States.

The Director denied the petition on two alternate grounds, concluding that the Petitioner did not establish that (1) the Beneficiary has been employed in a qualifying managerial or executive capacity abroad; and (2) the Beneficiary 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 has been employed abroad and will be employed in the United States in a primarily managerial capacity. The Petitioner submits a brief in support of the appeal.

I. THE LAW

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

The regulation at 8 C.F.R. § 214.2(1)(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.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term “managerial capacity” as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor’s supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term “executive capacity” as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

II. THE ISSUES ON APPEAL

A. Employment Abroad in a Managerial or Executive Capacity

The first issue addressed by the Director is whether the Petitioner has established that the Beneficiary was employed by the foreign entity in a qualifying managerial or executive capacity, as required by 8 C.F.R. § 214.2(I)(3)(v)(B).

1. Facts

The Petitioner filed the Form I-129 on September 24, 2014. On the Form I-129, where asked to describe the Beneficiary's duties abroad for the three years preceding the filing of the petition, the Petitioner stated the following:

She receives our clients requests [*sic*] for items to purchase, mostly printing products but other products needed for the office adn compayu [*sic*] functioning. She researches vendors in the U.S. that can give her the best quotes to our needs. She makes purchase orders and arranges for freight service to Venezuela. She hires personnel, trains them and is responsible to fire them if necessary. She establishes the budget for each area of our company as well as company's policies and goals and ensures they are met satisfactorily. She is in charge of promoting personnel when they have achieved company's expectations. She ensures the company meets city safety requirements. She has full capacity to establics [*sic*] marketing campaigns for the company.

In its letter of support, dated September 12, 2014, the Petitioner described the Beneficiary's position abroad as follows:

[The Beneficiary] has been and is responsible for the coordination, management and supervision of our business.

[The Beneficiary] has been with this company since 2005. She is the General Manager and is responsible for the operations and management. In this capacity she directs and coordinates the activities that are performed by each of our employees. She also plans and develops organization policies and goals. [The Beneficiary] is uniquely qualified to establish and manage our United States operations. In this capacity, [the Beneficiary], has authority to hire and fire personnel and to plan. [The Beneficiary] is also responsible for the budget proposal for each area of our project.

The Petitioner submitted the foreign entity's organizational chart depicting the Beneficiary at the top tier of the hierarchy as General Manager. The General Manager directly supervises an Assistant General Manager, an Operations Supervisor, an Administrative Supervisor, and a Graphic Arts and Social Media Supervisor. The Assistant General Manager directly supervises one Sales Executive, and the Operations Supervisor directly supervises two Operations personnel.

The Petitioner submitted a list of duties for the Beneficiary's position as General Manager at the foreign entity as follows:

- Legal representation of the company towards: entities, agencies, organizations, institutions, companies of all nature public, private or mixed.
- Appoint or hire the managerial positions in different areas of the company.

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- Determine social and financial goals of the company.
- Planning the participation of the company in events and exhibitions for the development and projecting the image of the company
- Development of marketing strategies and sales
- Make contacts with suppliers both in Venezuela and abroad
- Management of purchases in national territory and abroad
- Evaluate the management of all areas of the company

The Petitioner also submitted a list of duties for the Beneficiary's subordinates abroad: Assistant General Manager, Sales Executive, Operations Supervisor, Operator, Administrative Air [*sic*] Supervisor, and Supervisor of Design and Social Media.

The Petitioner submitted a statement from [REDACTED] Public Accountant, dated July 24, 2014, stating the following about the Beneficiary's position abroad:

[The foreign entity] . . . which now currently has 8 employees, has [the Beneficiary] as [its] General Manager since the date of its constitution¹ . . . and who also acts as a legal representative of the company to public or private entities; who coordinates and organizes activities where the company is present such as: registries, patents, open bank accounts, participate in charity events and exhibitions among others; determines the functions of each employee of each area of the company, makes decisions about major stocks in regards to the objectives and goals of the company.

The Petitioner submitted the Beneficiary's paystubs for her work at the foreign entity from August 2013 to July 2014.

The Director issued a request for evidence (RFE) on October 3, 2014, advising the Petitioner that the information provided, pertaining to the Beneficiary's position abroad, was insufficient. The Director instructed the Petitioner to submit evidence that the Beneficiary's position abroad was in a managerial or executive capacity.

In response to the RFE, the Petitioner submitted the same organizational chart previously submitted for the foreign entity, along with the same lists of duties for the Beneficiary's position abroad and those of her subordinates. The Petitioner also submitted an undated letter from the foreign entity, describing the Beneficiary's position abroad as follows:

[The Beneficiary] works in our headquarters in Venezuela as our General Manager[.] She has been with our company since 2005 and has been in charge of the production operations in general. [The Beneficiary] is the person responsible for carrying the progress and success of this company. She signs all important

¹ [REDACTED] indicates that the foreign entity was formed on [REDACTED]

documentation and makes sure everything is done with due diligence. Among her duties are:

- Managing the departments and hold weekly huddles.
- Planning and developing organization policies.
- Hiring, training and firing personnel as necessary.
- Formulating budgets for each department.
- Performing quality work within deadlines with or without direct supervision.
- Following company requirements as outlined in the Accounting Manual.
- Analyze the Variance report and Operating statements making changes and recommendations to the client.
- Conducting manager reviews, coaching sessions and disciplinary actions[.]
- Respond to all comments and complaints from clients and suppliers.
- Adhere to all State regulations.
- Maintain company standards and follow guidelines to all programs.

The Petitioner also submitted documents issued and signed by the Beneficiary on behalf of the foreign entity, such as purchase of company vehicle, insurance for the company vehicle, a reference letter for one employee, and a sample of the invoices issued to clients bearing her signature.

The Director denied the petition on December 5, 2014, concluding, in part, that the Petitioner did not establish that the Beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity. In denying the petition, the Director found that many of the job descriptions provided for each position appear to overlap and many are clerical in nature, including shipping, receiving, and packaging orders. The Director noted that while the Petitioner indicates several managerial titles, there do not appear to be any personnel managed by the managers. The Director further found that the statements concerning the Beneficiary's duties identify general managerial functions and do not specify exactly what the Beneficiary has been doing which are bona fide as executive or managerial in the context of its current staffing arrangement.

On appeal, the Petitioner submits a letter stating that the Beneficiary is not a first-line supervisor, but supervises professional employees, which she has molded to the company's standards. The Petitioner does not specifically address the Beneficiary's duties abroad, but vaguely discusses the nature of her position and then states that her "position is completely executive and is not just listed as a position." The Petitioner then states that she has input in its company demands and accomplishes the hiring and training of personnel involved in the import-export field and activities. The Petitioner points out that it did not know it was a requirement to submit the diplomas of its employees, but assures that "most of [their] employees are professional and they were not hired part time."

2. Analysis

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

When examining the executive or managerial capacity of the beneficiary, U.S. Citizenship and Immigration Services (USCIS) will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company'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 company's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary owns or manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

The Petitioner first characterized the Beneficiary's role abroad as General Manager and described her duties in vague and very broad terms, noting, in part, that she receives client requests for items to purchase, researches vendors in the U.S., makes purchase orders, arranges for freight service to Venezuela, and directs and coordinates the activities that are performed by each employee. These general statements do not offer any indication as to the Beneficiary's actual duties at the foreign entity, and fall considerably short of demonstrating that that the Beneficiary primarily manages the organization and supervises and controls the work of other supervisory, professional, or managerial employees. 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. *See 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). Absent a detailed description of the Beneficiary's actual managerial duties, and evidence to show that her subordinates will relieve her from performing non-qualifying operational and administrative duties, the record does not establish that the Beneficiary has been employed in a qualifying managerial capacity at the foreign entity.

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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. See 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See section 101(a)(44)(A)(ii) of the Act.

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

Here, the foreign entity’s organizational chart shows that the Beneficiary directly supervises four subordinates, each with a managerial or supervisory title. The Petitioner submitted a brief list of job duties for each and, on appeal, stated that most of them are professionals. However, if the Beneficiary supervises the listed subordinate staff, the Petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See section 101(a)(44)(A)(ii) of the Act. As the record does not include probative information regarding the specific duties and education of the subordinate employees, or an overview of the educational prerequisites for these subordinate positions, we cannot ascertain that these individuals hold managerial, supervisory or professional positions.

The statutory definition of the term “executive capacity” focuses on a person’s elevated position within an organizational hierarchy, including major components or functions of the organization, and that person’s authority to direct the organization. See section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to “direct the management” and “establish the goals and policies” of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than

the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they “direct” the enterprise as the owner or sole managerial employee. The beneficiary must also exercise “wide latitude in discretionary decision making” and receive only “general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.” *Id.* While the definition of “executive capacity” does not require the petitioner to establish that the beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the petitioner’s burden to establish that someone other than the beneficiary carries out the day-to-day, non-executive functions of the organization.

Here, the Petitioner did not demonstrate that the Beneficiary’s duties abroad are primarily focused on the broad goals and policies of the organization. The Petitioner repeatedly stated that the Beneficiary plans and develops the organization’s policies and goals, but did not define her duties and responsibilities in embodying an executive role. The Petitioner never described the Beneficiary’s duties sufficiently to demonstrate that her routine daily activities are executive in nature. Although the Director specifically advised the Petitioner that the description of the Beneficiary’s duties abroad was insufficient and provided examples of evidence to be submitted in the RFE, the Petitioner did not submit a description of the Beneficiary’s duties at the foreign entity that would demonstrate that she primarily performs executive duties and that she is relieved from involvement in the non-executive, day-to-day operations of the 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 Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm’r 1972)).

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

B. Employment in a Managerial or Executive 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 qualifying managerial or executive capacity in the United States.

1. Facts

On the Form I-129, the Petitioner indicated that it engages in import, export, and operates as a wholesale printing solution and miscellaneous business with zero current employees and a gross annual income of \$0. On the Form I-129, where asked to describe the Beneficiary’s proposed duties in the United States, the Petitioner stated the following:

She will hire the personnel needed for our office, train them and make sure everything is performed to a high quality standard. She will have to fire staff if they are not committed [*sic*] to our plan. She will make the purchases that are requested by

our headquarters and always look for the best vendors that offer the better sales. Be a mediator between our clients in Venezuela when needed. Perform weekly staff meeting to ensure excellent performance and also inquire about the staff's feedback. Coordinate with a trusted freight service to Venezuela they shipping [sic] needs of our company and make sure everything has been shipped properly to offer a reliable ETA to our clients.

In its letter of support, dated September 12, 2014, the Petitioner described the Beneficiary's proposed position in the United States as follows:

We are looking forward to transfer [the Beneficiary] to the U.S. Company to serve as General Manager with authority to hire and fire employees and to develop and expand policies for the company as she finds them necessary. Among his [sic] duties as General Manager, she will be in charge of overseeing the whole operation. She will hire the employees that will be involved in the implementation of our new operations which will be the same as the ones in Venezuela. She will take care of the licensing and the administrative and processing [sic] of proper documentation necessary under the regulations of the State of Florida. Once all the necessary documentation is approved she will implement the selling and marketing techniques to be utilized in the company. She will establish the budget, and direct the departments financially and administratively, having the full and sole authority of the management of the company.

[The Beneficiary] will report to our company in Venezuela once a month for the analysis of operations in the United States entity.

We need to transfer [the Beneficiary] to the U.S. to establish and organize the management of the corporation in order to comply with our future plans of expanding, and other activities that are in our immediate plans.

The Petitioner submitted its business plan outlining its personnel plan for the first three years in business. In the first year, the Petitioner plans to employ five individuals: the Beneficiary as President, two Purchasing Managers, and two Logistics positions. The second and third years include the same employees but show increases in total salaries from \$132,000 the first year, to \$140,000 the second year, and \$160,000 the third year.

The Petitioner did not submit any additional information about the Beneficiary's proposed position or job duties in the United States or the proposed organizational structure of its U.S. company.

In the RFE, the Director advised the Petitioner that the information provided, pertaining to the Beneficiary's proposed position in the United States, was insufficient. The Director instructed the

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Petitioner to submit evidence that the Beneficiary's proposed position in the U.S. will be in a managerial or executive capacity.

In response to the RFE, the Petitioner submitted the same business plan previously submitted for the U.S. company.

The Petitioner also submitted an organizational chart for the U.S. company depicting the Beneficiary at the top tier of the hierarchy as General Manager directly supervising two Purchasing Managers and two Logistics positions, all listed as "to be hired."

The Director denied the petition concluding, in part, that the Petitioner did not establish that the Beneficiary will be employed in a managerial or executive capacity in the United States. In denying the petition, the Director found that given the company's operations, it is presumed that the Beneficiary will be engaged in non-managerial operations and tasks. The Director further found that the Petitioner did not establish that the Beneficiary will be involved in the supervision and control of the work of other supervisory, professional, or managerial employees who will relieve her from performing the services of the corporation.

On appeal, the Petitioner submits a letter focusing on the Beneficiary's position abroad and simply stating that she will accomplish the same results for the subsidiary company in the United States.

2. Analysis

Upon review, and for the reasons stated herein, the Petitioner has not established that the Beneficiary will be employed in a qualifying managerial or executive capacity, or as a function manager, in the United States.

The one-year "new office" provision is an accommodation for newly established enterprises, provided for by USCIS regulation. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations may be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. The "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of a beneficiary in a qualifying managerial or executive position.

Accordingly, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. *See generally* 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, the petitioner must describe the nature of its business, its proposed

organizational structure, and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

Again, when examining the executive or managerial capacity of the beneficiary, USCIS looks first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are in either an executive or a managerial capacity. *Id.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to an understanding of the beneficiary's actual duties and role in a business.

The Petitioner characterized the Beneficiary's role as General Manager of its U.S. company and provided a very vague description of her proposed position that does not establish that she will be primarily employed in a managerial capacity. The Petitioner noted, in part, that the Beneficiary will make the purchases that are requested by headquarters, look for the best vendors that offer the better sales, be a mediator between clients in Venezuela, perform weekly staff meetings, coordinate with a trusted freight service to Venezuela, and take care of the licensing and administrative processing of proper documentation by regulation. The Petitioner did not provide any additional information about the Beneficiary's duties or how much time she will devote to each duty. Based on the current record, we are unable to determine whether the few claimed managerial duties would constitute the majority of the Beneficiary's duties.

The Petitioner's description of the Beneficiary's job duties does not establish what proportion of the Beneficiary's duties will be managerial in nature, and what proportion will be non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). These general statements do not offer any clarification as to the Beneficiary's actual proposed duties in the United States, and fall considerably short of demonstrating that the Beneficiary will primarily manage the organization and supervise and control the work of other supervisory, professional, or managerial employees. 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 detail or explanation of the Beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

In response to the RFE, the Petitioner provided the same business plan previously provided and an organizational chart for the U.S. company. Absent a detailed description of the Beneficiary's actual managerial duties, and evidence to show that her subordinates will relieve her from performing non-qualifying operational and administrative duties, the record does not establish that the Beneficiary will be employed in a qualifying managerial capacity in the United States. Although

afforded a second opportunity to provide the deficient information, the Petitioner did not provide any detail or explanation of the Beneficiary's activities in the course of her daily routine.

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. See 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

Although the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

Here, the Petitioner stated in its letter of support that the Beneficiary will hire, fire, and promote personnel, including two Purchasing Managers and two Logistics positions. However, the Petitioner did not submit position descriptions or job duties for the Beneficiary's proposed subordinates in the U.S., other than position titles, to establish that she will have sufficient subordinate staff that will relieve her from performing non-qualifying operational and administrative duties, some of which are listed by the Petitioner in its letters of support. As such, if the Beneficiary will supervise the listed subordinate staff, the Petitioner must establish that these subordinate employees are supervisory, professional, or managerial. See section 101(a)(44)(A)(ii) of the Act. As the record does not include probative information regarding the duties of the subordinate employees, we cannot ascertain that these individuals hold managerial, supervisory or professional positions.

The Petitioner has not established in the alternative that the Beneficiary will be employed primarily as a "function manager." The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a position description that describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. Here, the Petitioner did not indicate that the Beneficiary qualifies as a function manager. The Petitioner did not articulate the Beneficiary's proposed duties at the U.S. company as a function manager and did not provide a breakdown indicating the amount of time the

Beneficiary will devote to duties that would clearly demonstrate that she will manage an essential function of the U.S. company.

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. See section 101(a)(44) of the Act. Whether a beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial. As discussed herein, the Petitioner's vague description of the Beneficiary's proposed duties at its U.S. company does not establish that such duties are primarily managerial in nature.

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

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary will be employed in a qualifying managerial or executive capacity, or as a function manager. Accordingly, the appeal will be dismissed.

III. 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, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291

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of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of I-V- C.A.*, ID# 13703 (AAO Sept. 28, 2015)