



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

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

MATTER OF E-G-S- CO.

DATE: AUG. 1, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an oil and petrochemical company, seeks to extend the Beneficiary's temporary employment as its "sales application design lead" under the L-1A nonimmigrant classification for intracompany transferees. See Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in an executive or managerial capacity.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not established that: (1) the Beneficiary was employed abroad in a managerial, executive, or specialized knowledge capacity; and (2) the Beneficiary will be employed in a managerial or executive capacity under the extended petition.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the evidence of record demonstrates that the Beneficiary qualifies for an extension of her employment in L-1 classification.

Upon *de novo* review, we will dismiss the appeal.

#### I. LEGAL FRAMEWORK

To establish eligibility for the L-1 nonimmigrant visa classification, a qualifying organization must have employed the Beneficiary in a 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. Section 101(a)(15)(L) of the Act. 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. *Id.*

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

## II. EMPLOYMENT IN A MANAGERIAL, EXECUTIVE, OR SPECIALIZED KNOWLEDGE CAPACITY

The Director denied the petition based on a finding that the evidence of record did not establish: (1) that the Beneficiary was employed abroad in a managerial, executive, or specialized knowledge capacity; and (2) that the Beneficiary will be employed in a managerial or executive capacity under the extended petition.

The Petitioner does not claim that the Beneficiary has been or will be employed in an executive capacity. Therefore we will restrict our analysis to a discussion of whether the Beneficiary was employed abroad and will be employed in the United States in a managerial capacity. The Petitioner asserts on appeal that the Beneficiary's foreign employment was also in a specialized knowledge capacity.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

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- (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.

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, U.S. Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

#### A. Foreign Employment in a Managerial or Specialized Knowledge Capacity

##### 1. Evidence of Record

The Petitioner filed the Form I-129 on September 24, 2015. On the Form I-129, the Petitioner indicated that its parent company has over 75,000 employees and \$420.8 billion in gross annual income.<sup>1</sup> The Petitioner identified the Beneficiary's foreign employer as [REDACTED] its affiliate located in Singapore.<sup>2</sup>

<sup>1</sup> The Petitioner submitted documentation to support the L-1A petition, including evidence regarding the proffered position and general information regarding the global enterprises business operations. While we may not discuss every

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In the letter submitted in support of the petition, the Petitioner stated that the Beneficiary had been continuously employed within the worldwide operations for [REDACTED] since September 2002. The Petitioner stated further that from June 2012 to her transfer to the United States in May 2013, the Beneficiary served as "SAP CRM Supervisor" with its affiliate in Singapore. The Petitioner noted that from June 2009 to May 2012, the Beneficiary served as "SAP CRM Process Design Lead." The Petitioner described the Beneficiary's duties abroad in the position of SAP CRM Supervisor as follows (paraphrased and bullet points added for clarity):

- Supervised and led a global virtual team responsible for providing global support to the Chemical and Downstream business lines;
- Reviewed and assessed the technical skills and the performance of her team members and was responsible for and developed customized training plans for each team member;
- Directly supervised 11 CRM Analysts, with the authority to hire and fire them, to make recommendations regarding their salaries and ranking, and to plan their productivity goals;
- Oversaw the workload of her team members and allocated resources accordingly;
- Handled customer complaints and issues;
- Aligned operational processes with the company's process, control, and safety principles;
- Ensured ticket queues were managed according to Center of Expertise Guidelines;
- Monitored small work items led by her team and ensured timeliness and completion;
- Communicated with the Functional Manager regarding progress reports, current activities, planned activities, potential issues, concerns, and team needs;
- Provided a more timely and cost efficient process; and
- Managed the day-to-day activities of her team members.

The Petitioner stated that the Beneficiary's duties in her capacity as SAP CRM Process Design Lead included the following duties (paraphrased and bullet points added for clarity):

- Led a team of approximately 30 analysts to implement the eCommerce solution on SAP CRM;
- Implemented sales and marketing functionalities on the SAP CRM system for the Chemical businesses;

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document submitted, we have reviewed and considered each one.

<sup>2</sup> The record here does not include any information on the nature of [REDACTED] business activities. In a large conglomerate with many diverse divisions, a brief statement regarding the nature of the foreign entity assists us in assessing the Beneficiary's role within the organization. An Internet search reveals that the Beneficiary's foreign employer owns and operates a large refinery and chemical plant, operates numerous service stations, and serves commercial markets with industrial, aviation, and marine fuels.

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- Responsible for streamlining and improvement processes, aligning designs to standards, and providing technical expertise;
- Relied upon to develop user and support documentation for enhancements made to the CRM design; and
- Provided application support for the Chemical company business line and provided consultations regarding the technical feasibility of proposed enhancements.

The Director, in a request for evidence (RFE), instructed the Petitioner to submit evidence establishing that the Beneficiary was employed at the foreign entity, such as her pay, personnel, and training records, and evidence that the Beneficiary's position abroad was in a managerial, executive, or specialized knowledge capacity.

In response to the RFE, the Petitioner submitted a letter from the foreign entity which included the same information regarding the Beneficiary's duties as SAP CRM Supervisor and SAP CRM Process Design Lead, as provided by the Petitioner. The foreign entity added that in the Beneficiary's role as SAP CRM Supervisor she spent 60 percent of her time on supervision and resource planning and 40 percent of her time on customized training, incident management, project management and engagement, and technical guidance. The foreign entity did not submit an allocation of the Beneficiary's time spent on tasks as SAP CRM Design Lead.

Upon review of the evidence in the record, the Director determined that the Petitioner had not established that the Beneficiary had been employed at the foreign entity for one of the three years prior to her entry into the United States. The Director further determined that the Petitioner had not submitted sufficient information regarding the Beneficiary's duties for the foreign entity to establish that she had been employed in a managerial, executive, or specialized knowledge capacity.

On appeal, the Petitioner asserts that all CRM analyst positions with the petitioning organization require a college degree and thus these workers are professional employees. The Petitioner submits a copy of a printout from [REDACTED] listing individuals who have worked in a CRM analyst position at the Petitioner's family of companies. The Petitioner also submits the Beneficiary's pay slips from the foreign entity, beginning May 29, 2012, through May 31, 2013. The Beneficiary's May 29, 2012, pay slip identifies her position as "Analyst Advanced IS," and the remaining pay slips identify her position as "Supervisor Customer Relationship." The Petitioner concludes that the Beneficiary was a manager in her position abroad and that if USCIS does not reach this same conclusion, the Beneficiary's "employment abroad easily meets the definition of a specialized knowledge capacity."

## 2. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has not established that the Beneficiary was employed in a managerial, executive, or specialized knowledge capacity abroad for the requisite one-year time period in the three years preceding her admission to the United States.

When examining the managerial or executive capacity of the Beneficiary, we 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 performed by the Beneficiary and indicate whether such duties are in either a managerial or executive capacity. *Id.*

The definitions of managerial and executive capacity each have two parts. First, the Petitioner must show that the Beneficiary performed certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary has been *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the foreign entity's other employees. See *Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

Here, the Petitioner claims that the Beneficiary was employed in a supervisory capacity abroad for at most 11 months and two days, or June 2012 to May 2, 2013, the date she entered the United States. The Petitioner acknowledges and the Beneficiary's pay slips confirm that she was not employed in a supervisory capacity in May 2012. The Beneficiary's duties for her position as SAP CRM Supervisor generally reflect the duties of a supervisor. Upon review of the record, it is evident that the Beneficiary performed primarily supervisory duties from June 2012 to May 2, 2013, a time period of less than one continuous year, and that prior to that time she was employed in a SAP CRM Process Design Lead position.

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. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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)(4). If a petitioner claims that a beneficiary directly supervises other employees, those subordinate employees must be supervisory, professional, or managerial, and the beneficiary must have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. Sections 101(a)(44)(A)(ii)-(iii) of the Act; 8 C.F.R. §§ 214.2(l)(1)(ii)(B)(2)-(3).

To determine whether the Beneficiary supervises professional employees, we must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. *Cf.* 8 C.F.R. § 204.5(k)(2) (defining "profession" to mean "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation"). 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."

As noted above, the Petitioner's general description of the Beneficiary's duties for 11 months shows that the Beneficiary performed primarily supervisory duties. Upon review of the record and the subordinate positions the Beneficiary supervised for 11 months, we find sufficient evidence to

determine that the subordinate positions were professional positions. Thus, the Petitioner has established that the Beneficiary supervised and controlled the work of professional employees for 11 months prior to her entry into the United States. Further, the record shows that the Beneficiary had the authority to hire and fire staff during this time. Accordingly, we find the record sufficient to establish that the Beneficiary was employed in a managerial capacity as a personnel manager for approximately 11 months during the three years preceding her admission to the United States.

In order to qualify for the benefit sought, the Petitioner must establish that the Beneficiary held a qualifying managerial or specialized knowledge position for one full year during the three years preceding her entry to the United States. Therefore, we must also examine the Beneficiary's prior position abroad as an SAP CRM Process Design Lead.

The evidence of record does not establish that the Beneficiary exercised the same supervisory duties in her SAP CRM Process Design Lead position as she did as an SAP CRM Supervisor. While the Petitioner stated that the Beneficiary was responsible for "leading a team" of analysts, her job description for this position does not convey that she acted primarily in a supervisory role with authority to make or recommend personnel decisions, nor is there evidence that her role as an SAP CRM Process Design Lead required her to supervise and control other supervisory, managerial, or professional employees.

Moreover, the job description does not reflect that her duties were primarily managerial in this role, as it indicates that the Beneficiary was directly involved in implementing sales and marketing functionalities on the company's SAP CRM system, providing technical expertise, developing user and support documentation, providing applications support, and providing consultations regarding technical feasibility. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, based on the limited job description provided, the Beneficiary's duties in the SAP CRM Process Design Lead role included primarily high-level technical tasks, rather than primarily managerial or supervisory duties.

The Petitioner has not established, in the alternative, that the Beneficiary was 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. The term "essential function" is not defined by statute or regulation. If a petitioner claims that a beneficiary managed an essential function, a petitioner must clearly describe the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary's daily duties dedicated to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, a petitioner's description of a beneficiary's daily duties must demonstrate that the beneficiary managed the function rather than performing the duties related to the function.

Significantly, the Petitioner does not articulate any specific function the Beneficiary managed while employed at the foreign entity. As noted, the record shows that she implemented sales and marketing functionalities, was responsible for streamlining and improving processes, developing user and support documentation, providing application support and providing technical expertise, among other duties. The duties as described for this position show the Beneficiary performing the technical duties not managing them. As noted above, the Petitioner must establish that the Beneficiary has been primarily engaged in managerial duties and not in the ordinary operational duties alongside the foreign entity's other employees in order to establish eligibility. The record does not establish that the Beneficiary, in this position, managed a specific function.

We have also considered the Petitioner's assertion on appeal that the Beneficiary's employment abroad was in a specialized knowledge capacity. The statutory definition of specialized knowledge at section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." See also 8 C.F.R. § 214.2(l)(1)(ii)(D). A petitioner may establish a given beneficiary's specialized knowledge by submitting evidence that the beneficiary satisfied either prong of the definition.

Once a petitioner articulates the nature of the claimed specialized knowledge, it is the weight and type of evidence which establishes whether or not the beneficiary actually possesses specialized knowledge. USCIS cannot make a factual determination regarding a beneficiary's specialized knowledge if the petitioner does not, at a minimum, articulate with specificity the nature of its products and services or processes and procedures, the nature of the specific industry or field involved, and the nature of the beneficiary's knowledge. The petitioner should also describe how such knowledge is typically gained within its organization, and explain how and when a given beneficiary gained such knowledge.

As both "special" and "advanced" are relative terms, determining whether a given beneficiary's knowledge is "special" or "advanced" inherently requires a comparison of the beneficiary's knowledge against that of others. With respect to either special or advanced knowledge, the petitioner ordinarily must demonstrate that the beneficiary's knowledge is not commonly held throughout the particular industry and cannot be easily imparted from one person to another. The ultimate question is whether the petitioner has met its burden of demonstrating by a preponderance of the evidence that the beneficiary's knowledge or expertise is advanced or special, and that the beneficiary's position required such knowledge.

The concept of "special knowledge" concerns knowledge of the petitioning organization's products or services and its application in international markets. To demonstrate that the Beneficiary's knowledge is special, the Petitioner may meet its burden through evidence that the Beneficiary has knowledge that is distinct or uncommon in comparison to the knowledge of other similarly employed workers in the particular industry. The concept of "advanced knowledge" concerns

knowledge of an organization's processes and procedures that is greater than that of the company's other employees. Thus, the Petitioner may meet its burden through evidence that the Beneficiary has knowledge of or expertise in its processes and procedures that is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in its operations. Such advanced knowledge must be supported by evidence setting that knowledge apart from the elementary or basic knowledge possessed by others.

In the present case, the Petitioner does not articulate what products, services, processes, or procedures are specific to it and its industry. We note that while the Petitioner has described a supervisory position, and a SAP CRM Process Design Lead position, the descriptions of the Beneficiary's duties and her actual role within the overall organization is not clear. The Petitioner has not submitted sufficient detailed evidence of the nature of the Beneficiary's positions within the organization abroad to demonstrate that her knowledge is special or advanced.

The Beneficiary's knowledge of SAP CRM software, and her application of this knowledge in the customer relationship realm, appears to be knowledge that would be widely available within many industries. The Petitioner has not established that the Beneficiary's knowledge regarding any of its products, services, processes, or procedures is distinct or uncommon in comparison to other experienced SAP CRM analysts or supervisors. Likewise, the Petitioner has not submitted evidence corroborating that the Beneficiary's expertise in its processes and procedures is greatly developed or further along in progress, complexity, and understanding in comparison to other workers in its operations. Here, the Petitioner notes that its parent company has over 75,000 employees. It has not been established that the Beneficiary's knowledge is apart from the elementary or basic knowledge possessed by other CRM analysts or supervisors within the petitioning organization's family of companies. Finally, the Petitioner has not offered evidence demonstrating that it would be difficult to impart the Beneficiary's knowledge to others.

As the Petitioner emphasized on appeal, it must prove by a preponderance of evidence that it and the Beneficiary are fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The Petitioner has not submitted sufficient probative evidence establishing that the Beneficiary was employed abroad for one continuous year in a managerial or specialized knowledge capacity.

## B. U.S. Employment in a Managerial or Executive Capacity

### 1. Evidence of Record

In a letter submitted in support of the petition, the Petitioner described itself as a company that "designs, delivers and supports corporate-wide information systems, as well as the procurement of goods and services, material management and processing of accounts payable." The Petitioner noted that it is also involved in "acquisition development divestment of interests in real property and facility management and operation and maintenance" and that it "provides guidance to the corporate

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Business Support Center organization.” The Petitioner stated that it is “comprised of several divisions, including Information Technology, Procurement, Global Real Estate and Facilities, and Environmental Services.”

The Petitioner noted that the Beneficiary serves as its sales application design lead and that she will continue to be responsible for the following duties (paraphrased and bullet points added for clarity):

- Grows technical depth of the IT organization, developing a strategic sales and marketing application roadmap, evaluating and influencing application design, and providing guidance to resolution of critical application problems;
- Leads efforts to maintain IT documentation of processes, strategies, technologies, and application roadmaps;
- Partners with the [REDACTED] Organizations to develop technology roadmaps and evaluate new technologies;
- Builds effective networks with business project strategies and makes decisions along with end-of-life assessments;
- Provides input, when required, on portfolio management activities and assesses alternate solutions for non-strategic systems;
- Increases technical depth of application members and mentors technical anchors through training sessions and communication;
- Provides technical leadership in analysis and defines system designs while delivering positive user experience;
- Collaborates on the early stages of system changes and assists with maximizing business value;
- Engages with strategic vendors to maximize value of assets and limits custom solutions for the advantage of business results;
- Assesses the impact of environmental changes, such as infrastructure and middleware, and plans for application alternatives;
- Identifies and drives continuous improvement, standardization opportunities, and efficiencies that can optimize current technologies;
- Promotes core concepts that follow best practices for secure applications lifecycle management and minimizes total cost of ownership; and
- Helps resolve critical problems, maintains an active role in promoting Skill Family processes, mentors individuals with technical potential, and builds strong work relationships to increase work related productivity.

Upon review of the record, the Director issued an RFE requesting additional evidence to establish that the Beneficiary would perform primarily managerial duties for the U.S. entity. In a response, dated November 19, 2015, the Petitioner reiterated the above list of duties and claimed that the Beneficiary “spends 100% of her time managing this essential function.” The Petitioner also provided a breakdown of the Beneficiary’s duties as sales application design lead as follows:

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- 30%: Ensuring essential knowledge is in place to maintain technical expertise.
- 30%: Providing strategic technology input and application roadmaps aligned with corporate technology and business strategies.
- 30%: Defining and implementing system design solutions consistent with reference architectures, frameworks and best practices[.]
- 10%: Providing technical guidance in application reliability, operational problem resolutions and change management.

The Petitioner also included a narrative description paraphrasing the duties previously described and inserting the description under each of the above headings. The Petitioner maintained that it required the Beneficiary's services "to ensure that essential knowledge is in place to maintain technical expertise" and that her "leadership skills in providing strategic technology input and application roadmaps are critical to our global services, as are her system design solutions and implementation."

In a separate letter, dated December 16, 2015, the Petitioner, through counsel, asserted that the Beneficiary "spends 100% of her time on duties relating to various aspects of technical growth for the IT organization." The Petitioner indicated that the Beneficiary's leadership is cross-functional as it encompasses sales and marketing applications, [REDACTED] and global services. The Petitioner also reiterated that it provides guidance to the corporate Business Support Center organization, and is comprised of several divisions, and that the Beneficiary "identifies and drives continuous improvement, standardization opportunities, and efficiencies to optimize current technologies." The Petitioner asserted that the Beneficiary will not perform any non-qualifying duties "as all of her job duties are specifically tied to her position as Sales Application Design Lead," that she functions at a senior level within the company, and that her salary of \$117,364 per year is indicative of a high level managerial position within the company.

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 under the extended petition. In denying the petition, the Director found that the Petitioner had not provided sufficient insight or explanations demonstrating that the proffered position is a managerial position. The Director noted that the Petitioner had not submitted any documentation showing the Beneficiary's placement in the organization's hierarchy, had not provided information regarding the Beneficiary's subordinates, and had not shown how she would exercise discretion and authority over staff and operations. The Director concluded that the Petitioner had not established that the Beneficiary will manage the organization, a department, a subdivision, a function, or a component of the organization.

On appeal, the Petitioner asserts that the Beneficiary's work in "growing technical depth of the IT organization, developing a strategic Sales and Marketing application roadmap, evaluating and influencing application design, and providing guidance to the resolution of critical application problems" requires that she manage an essential function for the company. The Petitioner maintains

that it has proven by a preponderance of the evidence that the Beneficiary is well qualified to continue the management position of Sales Application Design Lead.

## 2. Analysis

Upon review of the petition and the evidence of record, including materials submitted in support of the appeal, we conclude that the Petitioner has not established that the Beneficiary will be employed in a managerial capacity under an extended petition.

As noted above, when examining the managerial or executive 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). Again, 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 a managerial or executive capacity. *Id.* To reiterate, the Petitioner must show that the Beneficiary will perform certain high-level responsibilities and the Petitioner must prove that the Beneficiary will be primarily engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees.

The Petitioner here has submitted a lengthy but vague overview of the Beneficiary's duties. Upon review of the descriptions submitted, the Petitioner does not include detail regarding the Beneficiary's duties in the context of the Petitioner's provision of guidance to the corporate Business Support Center. For example, the Petitioner emphasizes that the Beneficiary will grow the technical depth of the IT organization, develop a strategic sales and marketing application roadmap, evaluate and influence application design and provide guidance in resolving critical application problems. However, the Petitioner did not provide any examples of the Beneficiary's work, nor did it explain the current state of its IT organization or explain what duties or tasks will engage the Beneficiary on a daily basis in carrying out these duties. Similarly, the Petitioner stated that the Beneficiary will collaborate on the early stages of system changes and assist with maximizing business value. The Petitioner does not explain the Beneficiary's daily tasks in carrying out these broadly-cast business objectives. Upon review, the Petitioner's statements are presented in a vacuum with little of the actual circumstances of the Beneficiary's department or division identified, or any indication of whom she engages with on a daily basis.

The Petitioner also indicated that the Beneficiary will enhance the technical depth of application members and mentor technical anchors through training as well as mentor individuals with technical potential. The Petitioner does not explain if the Beneficiary's duties involve actually training employees or others, or reporting her observations regarding individuals with technical potential to the Petitioner's human resources department. The Petitioner does not identify the number or positions of the individuals to be assessed and trained, and does not include an actual description of the Beneficiary's position in relation to these individuals. The generic description lacks context and does not convey an understanding of what these duties actually entail.

Additionally, many of the Beneficiary's duties, as described, suggest that she will be performing technical design duties, not managing them. For example, the Beneficiary as a sales application design lead will define and implement systems, design solutions, provide technical leadership in analysis and definition of system designs, build networks and make end-of-life assessments, work with others developing technology roadmaps, evaluate new technologies, assess the impact of environmental changes and plan for application alternatives, and identify and drive continuous improvements, standardization, and efficiencies that optimize current technologies. The Petitioner does not detail how the Beneficiary's everyday actions in accomplishing these tasks involve the management of others or of a function. We cannot determine from the descriptions provided that these duties are managerial in nature. That is, while the Beneficiary appears qualified to perform these tasks, there is insufficient evidence in the record establishing that the Beneficiary will supervise and control others or will be engaged in managing a specific function.

When examining the totality of the record, beyond the required description of the job duties, we do not find the company's organizational structure, the duties of the Beneficiary's subordinate employees, or the presence of other employees to relieve her from performing operational duties. The record is incomplete in documenting the Beneficiary's position within the Petitioner's overall organization.

As the record does not include evidence that the Beneficiary will manage or supervise subordinates in her position with the U.S. entity, we cannot find that she is a personnel manager. The Petitioner has not established, in the alternative, that the Beneficiary will be employed primarily as a "function manager." As we previously noted, if a petitioner claims that a beneficiary will manage an essential function, a petitioner must clearly describe the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of a beneficiary's daily duties dedicated to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, a petitioner's description of a beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform the duties related to the function.

The Petitioner has not identified the specific function the Beneficiary will manage. We can glean from the record that the Beneficiary will be involved in the technical aspects of the IT organization, but the description of duties does not further convey an understanding of what the Beneficiary will be doing on a daily basis. It is not possible to ascertain from the record what function within the IT organization, if any, the Beneficiary will be managing. The Petitioner references growth, maintaining technical expertise, creating roadmaps, and implementing design solutions, however, the Petitioner does not provide the structure within which the Beneficiary will operate. We understand the Beneficiary is identified as a sales application design lead, and that her duties relate to both sales and marketing applications. However, the Petitioner does not offer information or evidence of the duties the Beneficiary performs relating to these applications. The record does not include evidence of employees who will perform the duties relating to these broad areas within the Petitioner's organization, or more specifically the Beneficiary's department or division. Upon review of the totality of the record, there is insufficient information to conclude that the Beneficiary will be

relieved from performing the operational tasks associated with the technical aspects within the Petitioner's IT organization.

Overall, the Petitioner does not include sufficient context for the Beneficiary's location within its operations and organizational structure. The broadly stated duties and lack of information regarding the Beneficiary's position within a division, department, or hierarchy raise questions regarding the Beneficiary's actual role within the organization. The Beneficiary's salary alone cannot establish that the Beneficiary's position satisfies each element of the definition of "managerial capacity." The Petitioner has not established that the Beneficiary will be employed as a personnel or function manager.

We note that the Petitioner on appeal appears to rely on the Beneficiary's previously approved application for an L-1 visa under its Blanket L petition to establish the Beneficiary's eligibility for this individual petition. It may be for this reason that the Petitioner includes only minimal evidence regarding the Beneficiary's position and an overly broad description of the Beneficiary's duties for both the foreign and U.S. entities.

In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give some deference to a prior determination of eligibility. However, the fact that the Beneficiary was issued an L-1 visa does not create an automatic entitlement to the approval of a subsequent individual petition for extension of that visa. *See, e.g., Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii). Here, the Beneficiary's resume indicates that she was initially transferred to the United States in the position of SAP CRM Supervisor, and not in the U.S. position that is currently offered.

In the present matter, the Director reviewed the record of proceeding and concluded that the Petitioner was ineligible for an extension of the nonimmigrant visa petition's validity because the Petitioner did not submit sufficient probative evidence. In both the RFE and the final denial, the Director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. The Petitioner did not provide an adequate response to the RFE and did not provide sufficient evidence on appeal to overcome the Director's determination

Based on the deficiencies of the record discussed above, the Petitioner has not established that the Beneficiary will be employed in a managerial or executive capacity under the extended petition.

### III. CONCLUSION

The petition will be denied and the appeal dismissed for the above reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of

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proving eligibility for the benefit sought remains with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of E-G-S- Co.*, ID# 18250 (AAO Aug. 1, 2016)