



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

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

MATTER OF H-M-, INC.

DATE: JAN. 4, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a biotechnologies company, seeks to employ the Beneficiary as an intercompany transferee under the L-1A classification. *See* section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The Director, California Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner is a California corporation that claims to be an affiliate of [REDACTED] in Mexico. The Petitioner seeks to employ the Beneficiary as the "Senior Manager, Supply Chain" for a period of three years.

The Director denied the petition concluding that the Petitioner did not establish (1) that the Beneficiary will be employed in the United States in a qualifying managerial or executive capacity and (2) that the Beneficiary was employed abroad in a qualifying managerial, executive, or specialty knowledge capacity. On appeal, the Petitioner asserts that the Director's basis for denial was erroneous and contends that it satisfied all evidentiary requirements.

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.

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- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

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

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.

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II. ISSUES ON APPEAL

The main issues to be addressed are whether the Petitioner established that the Beneficiary will be employed in the United States in a qualifying managerial or executive capacity and that the Beneficiary was employed abroad in a qualifying managerial, executive, or specialty knowledge capacity.

A. Managerial or Executive Capacity in the United States

1. Facts

The Petitioner filed the Form I-129 on December 12, 2014. The Petitioner stated on the petition that it is a biotechnologies business established in 1971. According to the documents submitted, the Petitioner wishes to employ the Beneficiary in the position of "Senior Manager, Supply Chain Management."

In the support letter, the Petitioner describes the Beneficiary's current and proffered position, explaining that the Beneficiary will continue to perform the duties of her current position abroad when she is transferred to the United States. The Petitioner states that the Beneficiary will continue to act as:

Sr. Manager Supply Chain to manage end-to-end product life-cycle by controlling the efficient flow of goods, services, and information from their points of origin through production planning to meet business requirements. In addition, she will ensure that the execution and continuous improvement of standard logistics processes such as replenishment system, data interchange systems, demand management and electronic data systems administration are followed according to Standard Operating Procedures (SOP's).

In this role, [the Beneficiary] . . . will continue to report to and receive only general supervision from the Director of Manufacturing Operations, []. While in the U.S., she will act as a personnel manager with supervisory responsibilities for 13 employees located in [redacted] and 6 employees located at [the Petitioner's] [redacted] CA office. As part of her personnel management duties, she will be responsible for all personnel actions for the professional employees she manages which includes hire, fire, and promotional authority. She will also be tasked with interviewing, training and the development of employees she manages as well as planning, assigning and directing subordinates' work, appraising performance, and rewarding and disciplining employees as needed.

She will also oversee the distribution specialists in their task of improving short and long-term results and will play a key managerial role for overseeing and ensuring that the supply chain processes utilized by her subordinates are in compliance with company-wide policy and procedures. Since [the Beneficiary] will

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remain responsible for her job duties at the [REDACTED] California and [REDACTED] Mexico offices, she will be required to travel frequently on an intermittent basis to perform these duties at both locations.

As Senior Manager, Supply Chain, [the Beneficiary's] daily duties and responsibilities include the following for the U.S. and in [REDACTED]

- Develop inventory strategies and improvement opportunities (internally and externally) within the materials group (production control/purchasing) and materials flow (stockroom, shipping/receiving) while overseeing improved customer service;
- Coordinate production planning/scheduling functions with sales, purchasing and production areas;
- Implement sales/inventory/operations/planning (SIOP) targets to meet customer shipment requirements, profit objectives and quality goals;
- Develop and continually enhance accurate and consistent inventory reporting structures;
- Direct material movement – planning/scheduling, shipping/receiving and inventory stocking functions as well as inventory adjustments (quantity price variance analysis) – in plant and with suppliers to support sales targets;
- Direct supplier relationships and development in support of overall company business objectives;
- Ensure that production plan and scheduling operations (in plant and with suppliers) are developed and directed, in conjunction with capacity planning, in a cost effective manner to achieve company objectives;
- Initiate and manage Business Agreement negotiations for new and current vendors inclusive of competitive product pricing, payment terms, production scheduling and forecast demand;
- Maintain key metrics including inventory utilization, schedule reliability, throughput and cost variances;
- Ensure that quality policies are adhered to in manufacturing and inventory maintenance; and
- Carry out supervisory responsibilities including interviewing, training and developing employees as well as planning, assigning and directing work, appraising performance, rewarding and disciplining employees and addressing complaints or problems.

The Petitioner provided two organizational charts, one showing the Beneficiary's subordinates and one showing the Beneficiary's position in the corporate hierarchy. According to the organizational charts, the Beneficiary reports to the Director Manufacturing Operations [REDACTED] who in turn reports to the Senior Director Manufacturing Operations [REDACTED]

[REDACTED] The charts also indicate that the Beneficiary supervises a Senior Warehouse Supervisor in [REDACTED] who manages 10 additional subordinates and that the Beneficiary supervises an additional

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10 direct reports in [REDACTED] one of whom, the Warehouse Supervisor, also supervises 17 additional subordinates.

After reviewing the submitted documentation, the Director issued an RFE, advising the Petitioner that the initial evidence did not establish that the Beneficiary had been or would be employed in a qualifying managerial or executive capacity. The Director requested additional information regarding the Beneficiary's current and proposed duties, such as a letter from the Petitioner describing her current and expected managerial or executive duties and the percentage of time she allocates to each duty.

In response, the Petitioner submitted a letter asserting that the Beneficiary qualifies as both a personnel and function manager and reiterating the previously described duties for the current and proffered position. The Petitioner also added the following duties to the description of the position:

- Develops and creates training plans to maximize workforce capability;
- Conducts employee performance reviews and provides regular feedback;
- [M]aximize cost reduction in supply chain, optimizing inventory management and drive cash flow improvements by accelerating projects implementation;
- Responsible for coordination, execution profitability and customer satisfaction related to maintaining or expanding current business with strategic medical device OEM customers;
- Responsible for leading multi-functional teams to achieve project transfers, customer demand, objectives and deliverables;
- Ensure compliance to deliverables as [REDACTED] & FDA requirements;
- Develop methods and procedures for scheduling of raw materials from suppliers to support manufacturing in achieving customer demand and minimizing cost impacts for the company; and
- Controls inventory levels by managing the cycle counting, physical counts, annual physical inventory, reconciling with inventory systems.

The Petitioner further asserted that the Beneficiary's tasks "encompass largely managerial responsibilities by at least 70% of her time in both personnel management and in the functional management of overseeing the supply chain for FDA regulated [REDACTED] banking solutions." However, the Petitioner did not respond to the request for the percentage of time spent on each named duty.

With the RFE response, the Petitioner also states that the Beneficiary is expected to spend 70% of her time in [REDACTED] and 30% of her time in [REDACTED] and claims that the Beneficiary will continue to manage seven professional level employees in the [REDACTED] Office and one professional level employee in [REDACTED] who also supervises other professional positions. The Petitioner submitted additional information on the Beneficiary's subordinates' positions, including job duties, salaries, and education levels for the employees. The Petition further submitted a copy of the 2014 Form W-2 for the Beneficiary's direct report in the United States, along with an incomplete copy of its State of California Employment Development Department Quarterly Contribution Return and Report on

Wages for the third and fourth quarters of 2014, and copies of an ADP Wage and Tax Register report for the third and fourth quarters of 2014.

The Director denied the petition, concluding that the Petitioner did not establish that the beneficiary has been or will be employed in a qualifying managerial or executive capacity.

2. Analysis

The Petitioner does not assert that the Beneficiary will be performing in an executive capacity; therefore, we restrict our analysis to whether or not the Beneficiary will be performing in a managerial capacity. Upon review, and for the reasons discussed herein, the Petitioner has not established that the beneficiary would be employed in a qualifying managerial capacity.

When examining the 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 definitions of executive and managerial capacity 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 prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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 Petitioner initially provided a list of the Beneficiary's job duties such as "[d]irect material movement – planning/scheduling, shipping/receiving and inventory stocking functions as well as inventory adjustments (quantity price variance analysis) – in plant and with suppliers to support sales targets and promotional campaigns;" and "[c]ontrols inventory levels by managing the cycle counting, physical counts, annual physical inventory, reconciling with inventory systems." Based on this description, it appears that the Beneficiary will spend at least some of her time involved in performing non-qualifying inventory control and material movement activities. The Petitioner's statements reflect that the Beneficiary would perform these duties herself, rather than assigning them to the company's employees. Although the Director specifically requested that the Petitioner quantify how much time the Beneficiary will devote to each responsibility, the petitioner did not provide this information. Without such information, we cannot determine what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See*

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Republic of Transkei v. INS, 923 F.2d 175, 177 (D.C. Cir. 1991). Although the Petitioner states that the Beneficiary spends 70% of her time in managerial responsibilities, the Petitioner does not indicate which duties it views as managerial and nor does the Petitioner explain how it calculated this figure.

Therefore, we find that in this case, the description of the Beneficiary's proposed position is insufficient to show that the beneficiary will primarily perform qualifying duties at the U.S. company. The Petitioner did not demonstrate what proportion of the beneficiary's duties would consist of managerial duties and what proportion would consist of non-managerial duties. Reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The Petitioner's description of the proposed duties does not provide any detail or explanation of the Beneficiary's claimed managerial 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2nd Cir. 1990). In response to the RFE, the Petitioner reiterated the previously provided duties but did not provide the additional specificity requested by the Director. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.* at 1108. Absent a clear and credible breakdown of the time spent by the beneficiary performing her/his duties, we cannot determine what proportion of those duties would be managerial or executive, nor can we deduce whether the beneficiary is primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Therefore, the Petitioner has not shown how the beneficiary's duties would be primarily managerial in nature.

Furthermore, 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.

In evaluating whether the Beneficiary manages professional employees, we must 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."

In this case, the record contains material inconsistencies when discussing the Beneficiary's subordinates. Regarding the employees located in the United States, the Petitioner states in the initial submission, "[w]hile in the U.S., [the Beneficiary] will act as a personnel manager with supervisory responsibilities for . . . 6 employees located at [the Petitioner's] [REDACTED] CA office." However, in the RFE response, the Petitioner states that "[w]hile in the U.S., [the Beneficiary] will act as direct personnel manager with supervisory responsibilities for . . . 1 employee located in [the Petitioner's] [REDACTED] CA office and as indirect manager for 5 other employees," and the organizational chart shows that the Beneficiary will supervise one employee directly who in turn has

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10 direct reports. Regarding the employees located in [REDACTED] the Petitioner states in the initial submission, “[w]hile in the U.S., [the Beneficiary] will act as a personnel manager with supervisory responsibilities for 13 employees located in [REDACTED]” but the RFE response states that “[w]hile in the U.S., [the Beneficiary] will act as direct personnel manager with supervisory responsibilities for 7 employees located in [REDACTED] and indirect manager for 5 others in [REDACTED]” Additionally, the organizational chart shows that in [REDACTED] the Beneficiary has eight direct reports in the positions of “Material Buyers/Planner” or “Buyer,” along with an “Import/Export Supervisor” and a “Warehouse Supervisor” who appears to supervise an additional 17 people.

Furthermore, in total, the organizational chart shows that the Beneficiary supervises 38 people, while a letter from the foreign affiliate states that the Beneficiary will provide “indirect and direct leadership for over 40 individuals in both locations and will manage other professionals and supervisory personnel.” It is therefore unclear from the record how many and what positions the Beneficiary will actually supervise. 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).

Notwithstanding the inconsistencies present regarding the exact number and position titles of the Beneficiary’s claimed subordinates, we have examined the Petitioner’s assertion that the Beneficiary supervises both professionals and supervisory employees and should therefore not be considered a first-line supervisor of non-professional employees. The Petitioner appears to assert that the positions of “Material Buyers/Planners” and “Buyer” are professional positions. In support of this assertion, the Petitioner provided job descriptions for these positions, including the educational requirements, and resumes for the individuals filling these roles. According to the documents submitted, the Petitioner requires a bachelor’s degree for these positions. However, we are not persuaded that these positions are professional in nature. We must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor’s degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor’s degree is actually necessary, for example, to perform the inventory control, purchasing, and scheduling work of the Materials Buyers/Planners and Buyers, who are among the Beneficiary’s subordinates.

The Petitioner also asserts that the position of Senior Warehouse Supervisor is professional and supervisory. Here again, although the Petitioner claims to require a bachelor’s degree for this position, the record does not contain evidence that a bachelor’s degree is actually necessary, for example, to perform the duties of oversight of shipping, receiving, inventory and personnel within the warehouse, that are characteristic of this position.

Furthermore, although the Petitioner asserts that the Senior Warehouse Supervisor supervises between five and 10 employees in the [REDACTED] CA location, the Petitioner has not submitted documentary evidence to establish the actual employment of these individuals. The Director

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requested that the Petitioner submit such evidence as the state quarterly wage reports for the third and fourth quarter of 2014 showing that the Petitioner was actually employing those individuals named on the organizational chart. In response, the Petitioner submitted the one page of its California Quarterly Wage reports that showed wages paid to the Senior Warehouse Supervisor, along with his 2014 IRS Form W-2. The Petitioner did not submit any additional or alternative evidence such as paystubs or employment records to substantiate the claimed employee roster. Therefore, we cannot conclude that the positions supervised by the Beneficiary are in fact supervisory, managerial, or professional positions.

Moreover, the Petitioner must establish that the Petitioner employs sufficient staff so that the Beneficiary's duties will be primarily managerial or executive in nature. However, the record does not contain documentary evidence that the Petitioner employs the other individuals named on the organizational chart located at either the [REDACTED] or [REDACTED] locations. Without such documentation or explanation, we cannot determine the true size of the U.S. entity, nor can we ascertain the entity's organizational structure or the Beneficiary's place in it. While it appears that the Petitioner may be structured in such a way to elevate the Beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees, the fact remains that without documentary evidence to substantiate the employment of the claimed individuals, we cannot conclude that there are sufficient subordinate employees to relieve the Beneficiary from performing non-qualifying operational and administrative duties at the U.S. company. Therefore, the evidence in the record is not sufficient to establish that the Beneficiary will be employed as a personnel manager, as defined by the regulations.

The petitioner has also 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 detailed description of the beneficiary's duties that explains how he manages the function, identifies the function with specificity, articulates the essential nature of the function, and establishes the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 214.2(l)(3)(ii). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

The Petitioner has not provided evidence that the Beneficiary primarily manages an essential function. The Petitioner appears to assert that the Beneficiary's authority to oversee the Petitioner's

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supply chain functions in its manufacturing facilities is tantamount to managing an essential function, but does not establish the amount of time the Beneficiary allocates to managing this function. Rather, as noted above, the record is not clear as to how the Beneficiary divides her time among her requisite duties. Furthermore, as also explained above, the incomplete and inconsistent information in the record regarding the Beneficiary's subordinates prohibits us from determining that the Petitioner has sufficient staff to relieve the Beneficiary from performing the non-qualifying duties associated with the supply chain function. For these reasons, the Petitioner has not established that the Beneficiary will be employed as a function manager.

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 understanding of a beneficiary's actual proposed duties and role in a business. Here, the totality of the evidence does not support the Petitioner's claims that the beneficiary will be employed in a qualifying function manager or personnel manager capacity.

For the foregoing reasons, the Petitioner has not established that the beneficiary will be employed in a qualifying managerial capacity. Accordingly, for this reason, the appeal will be dismissed.

B. Manager or Executive Capacity Abroad

1. Facts

In the Form I-129, the Petitioner stated that the Beneficiary had been working for [REDACTED] since September 9, 2013. The Petitioner stated that the Beneficiary's duties abroad were the same as the duties described for the offered U.S. position and that the organizational charts describing the U.S. position were representative of her position abroad as well, as detailed in the previous section.

After reviewing the submitted documentation, the Director issued an RFE, advising the Petitioner that the initial evidence did not establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. The Director requested additional information regarding the Beneficiary's duties abroad, such as a letter from the Petitioner describing her managerial or executive duties and the percentage of time she allocated to each duty, but the Petitioner did not provide this information.

2. Analysis

Upon review, and for the reasons discussed herein, the Petitioner has not established that the Beneficiary was employed in a qualifying managerial capacity abroad for at least one year in the three years preceding her application for admission. The Petitioner does not assert that the Beneficiary's employment abroad would qualify as executive or specialty knowledge; therefore, we

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will restrict our analysis to whether or not the Beneficiary was employed abroad in a managerial capacity.

The Petitioner states that the Beneficiary's duties abroad are identical to those ascribed to the proffered U.S. position. As noted, we find that the Petitioner has not established that these duties are managerial in nature. Therefore, we incorporate the previous discussion concerning the deficiencies present in the record regarding the description of the Beneficiary's duties. As such, the evidence in the record does not support the Petitioner's assertion that the Beneficiary was employed abroad in a qualifying managerial capacity. For this additional reason, the appeal will be dismissed.

III. CONCLUSION

When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1037 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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

ORDER: The appeal is dismissed.

Cite as *Matter of H-M-, INC.*, ID# 15085 (AAO Jan. 4, 2016)