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

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

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DATE: JUNE 15, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a branch office of an airline carrier located in New York, seeks to extend the Beneficiary's temporary employment as its manager of cargo operations 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 a managerial or executive capacity.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner did not establish that the Beneficiary has been or will be employed in a managerial 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 Director erred because the Beneficiary is an executive manager in charge of all cargo operations in [REDACTED]

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(l)(3) states that an individual petition filed on Form I-129, Petition for a Nonimmigrant Worker, shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

II. U.S. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The Director denied the petition based on a finding that the Petitioner did not establish that the Beneficiary has been or will be employed in a managerial capacity.¹ The Petitioner, however, classifies the Beneficiary's position as that of an "executive manager," thereby leaving the intended classification of the Beneficiary unclear. As a result, and despite the Director's restriction of her analysis solely to managerial capacity, we will evaluate the Beneficiary's position under the criteria for both managerial and executive 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;

¹ Although the Director's decision specifically found that the Beneficiary has not been employed in a managerial capacity, the Director did not analyze the Beneficiary's position or job duties at the foreign entity. Our analysis will focus on whether the Beneficiary will be employed in a managerial or executive capacity in the United States.

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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.

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.

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.

A. Evidence of Record

The Petitioner filed the Form I-129 on July 21, 2015. On the Form I-129, the Petitioner indicated that it has 35 current employees in the United States and a gross annual income of \$300 million. On the L Classification Supplement to Form I-129, where asked to describe the Beneficiary's proposed duties in the United States, the Petitioner stated that the Beneficiary "directs all baggage and cargo operations[:]; co-ordinat4ss [sic] with TSA and security services[:]; hires an[d] fires own staff[:]; and directs operations of contractors. Sets policy in co-ordination with home office[.]"

In support of the petition, the Petitioner submitted a letter from [REDACTED] Regional General Manager for America and Canada, dated August 87, 2013 [sic], describing the Beneficiary's position in the United States as follows:

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In the U.S. he will be directing all cargo operations and directing our contractors working within the cargo operations. The import and export staff and contractors will be reporting to him.

He will be responsible for directing all cargo handling and all liaison with customers and especially operations in the cargo field.

Although the Petitioner submitted three copies of an illegible organizational chart, it did not submit any additional information pertaining to the Beneficiary's proposed position in the United States or its organizational structure.

The Director issued a request for evidence (RFE), advising the Petitioner that the letter of support submitted with the petition was written nearly two years prior to the Beneficiary being granted L-1A status and provided very few details related to the duties to be performed by the Beneficiary. The Director specifically stated that the Beneficiary's duties to be performed on behalf of the U.S. company remained unclear. The Director instructed the Petitioner to submit evidence that the Beneficiary will be employed in a managerial or executive capacity in the United States.

In response to the RFE, the Petitioner submitted a letter from [REDACTED] General Manager America, dated September 24, 2015, describing the Beneficiary's proposed position in the United States as follows:

This is to certify that [the Beneficiary] directs the baggage and cargo functions of [the Petitioner] at [REDACTED]. He co-ordinates with TSA AND DHS Zto [sic] ensure the safety of our passengers and the security of passengers and cargo.

[The Beneficiary] sets policies of local operations and directs the work of the managers of our local contracts. He reports to the chief of [the Petitioner's] cargo operations in Cairo as well as coordinating with the General Manager of [the Petitioner] for North America.

The Petitioner also submitted a letter from the foreign entity's Economical Affairs Sector Director, which stated that the Beneficiary "is a key person in the Airline as he is responsible for passenger and cargo safety and securing a major revenue source for the airline."

The Director denied the petition on October 13, 2015, concluding that the Petitioner did not establish that the Beneficiary has been and will be employed in a managerial capacity under the extended petition. In denying the petition, the Director noted that the Petitioner's letters, submitted in response to the RFE, were not accompanied by any of the requested supporting evidence. The Director found that the descriptions of the Beneficiary's duties, as set forth in the various letters submitted by the Petitioner in support of the petition and in response to the RFE, did not provide

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sufficient detail, noting that, although requested in the RFE, the Petitioner did not submit any independent supporting evidence to demonstrate the Beneficiary's actual duties in the United States. The Director found that the Petitioner did not show that the Beneficiary functions at a senior level within the organizational hierarchy, other than in position title. 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 him from performing the services of the corporation.

On appeal, the Petitioner submits a letter, dated November 3, 2015, describing the Beneficiary's proposed position in the United States as follows:

The Executive/Manager is in charge of the function, sets policy and has final authority regarding operation. In this instance, [the Beneficiary] is in charge of Cargo Operations. He oversees the activity of [redacted] in the sale of cargo services for the Airline. He has final authority on the acceptance of cargo subject to the TSA and Airline security requirements and policies. In addition, he directs the work of consolidated Airline services in preparing cargo for loading and export from the United States and for receipt and distribution from overseas. He is responsible for all loss and damage claims which he has investigated before forwarding same to the head office to be resolved by the Cargo Insurer.

The Petitioner also submits a letter from the General Manager in America, dated October 23, 2015, expanding on the Beneficiary's proposed position and describing his duties as follows:

[The Beneficiary] is [the Petitioner's] Cargo Manager in USA and is the empowered representative of the company in the US. He is responsible for [the Petitioner's] Cargo business in USA especially cargo travelling through [redacted] [redacted] He directs cargo preferred sales agents, handlers and service providers in USA. [The Petitioner] operates daily to/from [redacted] He sets policies for cargo travelling through [redacted] and has the final authority on all [the Petitioner's] cargo to/from [redacted]

....

[The Beneficiary] is in charge of [the Petitioner's] entire cargo operation. He is stationed in [redacted] but also in charge of our posts at the US airports that has affiliated [] partners. Marketing and customer service. He coordinates with the US government agencies at [redacted] He recommends hiring, firing and promotion of the contracting staff. He is responsible for generating about \$3.6 million in revenues for the airline from the United States. All of the managers and supervisors he directs have high quality training and suitable degrees.

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The Petitioner's letter goes on to describe its organizational structure and the Beneficiary's subordinate employees as follows:

[The Beneficiary] is supervising and managing [redacted] (around 8 personnel). [redacted] . . . is responsible for our cargo marketing operation throughout the US and makes contracts with various agencies around the country handling marketing for the US. All marketing is done within a budget that [redacted] prepares in coordination with . . . [the Beneficiary], [the Petitioner's] US Cargo Manager. [redacted] is in charge of the work of the contractors that actually handle the cargo and handle [the] marketing and customer service in the USA. [redacted] makes the cargo reservations under the supervision and management of [the Beneficiary] [redacted] reports also to [the Beneficiary], the monthly sales report . . . required by [redacted]

[The Beneficiary] is also supervising and managing [the Petitioner's] [redacted] handler "[redacted] (around 5 personnel). [redacted] is the Ground Handling Company for [the Petitioner] at [redacted] [redacted] also reports directly to [the Beneficiary] who is the cargo manager for [redacted] prepares the monthly flight tonnage report and the monthly ULD (Unit Load Device) report.

The Petitioner submits a letter from the Assistant General Manager of [redacted] [redacted] briefly describing the work they perform for the Petitioner exactly the same as in the Petitioner's letter, and specifically stating that "[redacted] reports directly to [the Beneficiary] who is the cargo manager for [the Petitioner's] [redacted]"

The Petitioner then submits a letter from the Vice President of Sales and Airline Relations, Head of [redacted] [redacted] briefly describing the work they perform for the Petitioner and the Beneficiary's role as follows:

[W]e are obligated to share in the expenses for the airline to have a [Petitioner's] Cargo Manager on site in [redacted] to oversee and manage the operational and headquarters related functions. Since May of 2015, [the Beneficiary] has been performing this role for [the Petitioner].

[The Beneficiary's] routine activities include overseeing the cargo ground operational support provided by [redacted] . . . [The Beneficiary] provides a vital and necessary function as the Cargo Manager of [the Petitioner's] Cargo that we as its agent are not able to legally provide. One such example of what I am speaking to is [the Beneficiary's] responsibilities vis-à-vis the TSA and [the Petitioner's] [redacted]

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[The Beneficiary] furthermore provides [REDACTED] with valuable language translation skills with the Corporate Office, as well as providing on a day-to-day basis, assistance with routine cargo bookings; management of the airline's online cargo reservation system, and assistance with commercial support activities such as pricing and capacity management, when required.

The Petitioner submits a new organizational chart for its U.S. company, showing that the Cargo Manager reports directly to the General Manager America. The chart shows that the Cargo Manager supervises a Handling Agent, who supervises a Handling Manager and Handling Staff, and a Sales Agent, who supervises Cargo Sales Managers and Customer Service Staff. The chart does not list the names of the individuals in any position, nor does it indicate how many subordinate staff the Handling Agent and the Sales Agent have.

B. 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 or executive capacity under the extended petition.

As noted previously, we note that the Petitioner does not clarify whether the Beneficiary will be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. Therefore, we will review the evidence of record to determine whether the Beneficiary's position meets the requirements of one or the other capacity.

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). 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.*

The definitions of managerial and executive capacity each have two parts. First, the Petitioner must show that the Beneficiary will perform 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 will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d 1533.

The Petitioner characterized the Beneficiary's role as the Manager of Cargo Operations of its U.S. company and provided a generic description of his proposed position, indicating that he will direct various operations and personnel. Specifically, the Petitioner noted, in part, that the Beneficiary will direct all cargo operations; direct contractors working within the cargo operations; manage import and export staff and contractors; direct all cargo handling; and direct all liaison with customers. The Petitioner did not provide any additional information about the Beneficiary's duties, such as his level

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of involvement in each of these duties or the amount of time he will devote to each duty. Based on the current record, we are unable to determine whether the few claimed qualifying duties would constitute the majority of the Beneficiary's duties.

In response to the RFE, the Petitioner provided a similar description of the Beneficiary's duties to that originally submitted in support of the petition, indicating once again that he will be involved in the direction of various operations, such as directing the baggage and cargo functions of the Petitioner at [REDACTED] coordinating with TSA and DHS to ensure passenger and cargo safety and security; and setting policies of local operations and directing the work of the managers of local contracts. The Petitioner also stated that the Beneficiary will report to the chief of cargo operations in [REDACTED] as well as coordinate with the General Manager for North America. However, the Petitioner did not include any additional details or indicate how such duties qualify as managerial or executive. The Petitioner did not provide any clarification as to how the Beneficiary will spend his day and who will perform the tasks associated with the day-to-day operations of the business or the actual handling the cargo. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

On appeal, the Petitioner provides a new description of the Beneficiary's duties, stating that he will be in charge of the cargo function by setting policy and having final authority regarding the operation. The Petitioner also stated that the Beneficiary will supervise and manage [REDACTED] (around 8 personnel) and [REDACTED] (around 5 personnel). The Petitioner clarified that [REDACTED] handles the sale of cargo services for the Petitioner at [REDACTED] and [REDACTED] is the ground handling company for the Petitioner at [REDACTED]. While the Petitioner expanded on the Beneficiary's duties at the U.S. company, it did not provide sufficient information to establish that he will primarily focus on managerial or executive duties. The Petitioner consistently states that the Beneficiary will be in charge of all cargo operations and provides numerous tasks that are related to the cargo operations of an airline. The Petitioner states that the Beneficiary will supervise the work of contractors, investigate loss and damage claims, and set policies for the cargo travelling through [REDACTED]. However, again, the Petitioner does not indicate how such duties qualify as managerial or executive or whether the Beneficiary will primarily perform the few stated managerial duties. Based on the current record, we are unable to determine whether the claimed managerial duties constitute the majority of the Beneficiary's duties, or whether the Beneficiary primarily performs non-qualifying administrative or operational duties. The Petitioner's description of the Beneficiary's job duties does not establish what proportion of the duties is managerial in nature, and what proportion is actually 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 serve in a managerial or executive capacity.

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Further on appeal, one of the Petitioner's contractors also describes the Beneficiary's duties in the United States and states that his routine activities include overseeing cargo ground operational support, providing [REDACTED] with language translation skills with the Corporate Office, and on a day-to-day basis, providing assistance with routine cargo bookings, management of the airline's online cargo reservation system, and assistance with commercial support activities, such as pricing and capacity management. These duties clearly indicate that the Beneficiary himself performs routine non-managerial and non-executive operational duties. The contractor's statement directly contradicts the Petitioner's assertions of the Beneficiary's position and job duties and raise concerns as to the validity of the Petitioner's claim. Doubt cast on any aspect of a petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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 also*, sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Here, the Petitioner repeatedly emphasizes that the Beneficiary will oversee all of the Petitioner's U.S. cargo operations, including cargo handling. The Petitioner also indicates that the Beneficiary will be in charge of the oversight and supervision of cargo sales through [REDACTED] and ground handling through [REDACTED]. As noted by the Director, the Petitioner provided no additional supporting documentation, aside from the various letters of support, to demonstrate what is required of the Beneficiary on a daily basis in the oversight of the entire cargo operation. Moreover, no additional information was provided to describe the Beneficiary's level of involvement in the Petitioner's cargo operations. 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 his 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 (2d. Cir. 1990).

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 a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act. 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 manages 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."

At the time of filing the petition, the Petitioner submitted three copies of an illegible organizational chart, without any explanation or clarification as to what office it pertains to. The Petitioner did not indicate whether the organizational chart referenced the structure of the U.S. company or the foreign entity and did not clearly distinguish the Beneficiary's name among all the text in the chart. On appeal, the Petitioner submits a new organizational chart for its U.S. company showing that the Cargo Manager supervises a Handling Agent and a Sales Agent, but does not provide any evidence that it has hired employees for these positions. As such, if the Beneficiary will supervise the claimed 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 sufficient information regarding the duties of the subordinate employees, or even their existence, we cannot ascertain that these individuals hold managerial, supervisory or professional positions.

Further, the Petitioner claims that the Beneficiary manages contracted personnel and recommends the hiring, firing, and promotion of the contracted staff. However, although the Petitioner briefly describes the roles of the contracted companies, and provides letters from said companies thereby demonstrating that there is a relationship in place, the Petitioner did not submit position descriptions or job duties for the Beneficiary's proposed subordinates in the U.S. The Petitioner also did not submit evidence to establish the existing contracts and the actual personnel managed by the Beneficiary, to establish that he will have sufficient subordinate staff that will relieve him from performing non-qualifying operational and administrative duties, some of which are listed by the Petitioner and its contractors in their letters of support.

The Petitioner has not established, in the alternative, that the Beneficiary will be employed 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 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(1)(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.

Here, although on appeal the Petitioner broadly refers to the "cargo function" managed by the Beneficiary, the Petitioner does not indicate that the Beneficiary qualifies as a function manager. The Petitioner does not articulate the Beneficiary's proposed duties at the U.S. company as a function manager and does not provide a breakdown indicating the amount of time the Beneficiary will devote to duties that would clearly demonstrate that he will manage an essential function of the U.S. company. Absent a detailed description of the Beneficiary's actual managerial duties, and evidence to show that his subordinates will relieve him 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 his daily routine. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (quoting *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

While performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the Beneficiary as long as those tasks are not the majority of the Beneficiary's duties, the Petitioner still has the burden of establishing that the Beneficiary is "primarily" performing managerial or executive duties. *See* section 101(a)(44) of the Act. Whether the Beneficiary is an "activity" or "function" manager turns in part on whether the Petitioner has sustained its burden of proving that her/his duties are "primarily" managerial.

In the present matter, the Petitioner does not document what proportion of the Beneficiary's duties would be managerial functions and what proportion would be non-managerial. The Petitioner identifies the Beneficiary's duties as "executive managerial," but does not quantify the time the Beneficiary spends on them. This lack of documentation is important because several of the Beneficiary's daily tasks, such as "assist with translations, assist with routine cargo bookings, manage the online reservation system, and assist with commercial support services," do not fall directly under traditional managerial duties as defined in the statute. Absent a clear and credible breakdown of the time spent by the Beneficiary performing 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).

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the

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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 a beneficiary to direct and a 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 an owner or sole managerial employee. A 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.*

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 broad description of the Beneficiary’s proposed position with the U.S. company does not demonstrate that the Beneficiary will focus the majority of his time on executive duties rather than the day-to-day operations of the business.

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

III. FOREIGN EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

Beyond the decision of the Director, the Petitioner has not established that the Beneficiary has been employed by the foreign entity in a qualifying managerial or executive capacity or in a position involving specialized knowledge, as required by 8 C.F.R. § 214.2(l)(3)(v)(B).

A. Evidence of Record

On the L Classification Supplement to Form I-129, the Petitioner identified the Beneficiary’s foreign employer as [REDACTED] located in [REDACTED] Egypt. Where asked to describe the Beneficiary’s duties abroad for the three years preceding the Beneficiary’s admission to the United States, the Petitioner stated that the Beneficiary was “in charge [*sic*] of all baggage and cargo operations at [REDACTED] for airline since 1997. In charge of setting policy assuring security[;] directs managers and staff[; and] hires and fires own staff[.]”

The Petitioner submitted an undated letter from [REDACTED] certifying that the Beneficiary joined [REDACTED] on July 12, 1997, as a Cargo Officer.

The Petitioner submitted a letter from [REDACTED] Regional General Manager for America and Canada, dated August 87, 2013 [*sic*], describing the Beneficiary’s employment abroad as follows:

[The Beneficiary] is employed by [the foreign entity] in Egypt as Cargo Officer at the Cargo Complex. There he has a staff and managers reporting to him, including

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crate duty manager, cargo duty manager, export follow-up manager and import follow-up manager.

[The Beneficiary] is in charge of the Cargo Operations and, as such, is responsible for a major part of the revenue structure for the airline. He has been employed by [the foreign entity] since 1997 in cargo operations.

The Petitioner did not submit any additional information pertaining to the Beneficiary's position abroad or the foreign entity's organizational structure, aside from three copies of an illegible organizational chart. As previously discussed, we cannot determine whether the organizational chart pertains to the U.S. company or the foreign entity and we cannot distinguish the Beneficiary's name among all the text in the chart.

In the RFE, the Director advised the Petitioner that the letter submitted in support of the petition indicates that the Beneficiary began employment with the foreign entity in 1997, but gives very few details related to the work that was performed. The Director instructed the Petitioner to submit evidence that the Beneficiary's position abroad was in a managerial or executive capacity, or involved specialized knowledge.

In response to the RFE, the Petitioner submitted a letter from [redacted] Economical Affairs Sector Director of [redacted] dated September 22, 2015, describing the Beneficiary's duties at the foreign entity as follows:

This is to certify that [the Beneficiary] has been employed by the company continuously since January 1997 without any interruption. His duties include being in charge of baggage and cargo operations at [redacted]. He was in charge of all baggage and cargo operations including security to cargo and baggage which are handled in accordance with TSA and other regulations. He hires, fires and recommends promotion to his own staff. He received his BA from [redacted] in 1993 and has been in an executive managerial position for numerous years.

[The Beneficiary] had four managers reporting to him in [redacted] including cargo department manager, export follow-up, import follow-up managers. He is responsible for a major part of the Airline's revenues. He has held a series of positions with the Airline of increasing responsibility. We have daily flights to/from the United States, [redacted]. He sets local policy relating to cargo. He is a key person in the Airline as he is responsible for passenger and cargo safety and securing a major revenue source for the Airline.

B. 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 foreign entity employed the Beneficiary in a qualifying managerial or executive capacity.

The Petitioner did not provide any additional details about the Beneficiary's duties at the foreign entity or how much time he devoted to each of them. The Petitioner's description of the Beneficiary's job duties abroad does not establish what proportion of the Beneficiary's duties at the foreign entity are managerial or executive in nature, if any, and what proportion are non-managerial or non-executive. *See Republic of Transkei v. INS*, 923 F.2d at 177. These general statements do not offer any clarification as to the Beneficiary's actual duties at the foreign entity, and fall considerably short of demonstrating that the Beneficiary primarily served in a managerial or executive capacity. The Petitioner did not submit a detailed description of the Beneficiary's foreign position sufficient to establish that the Beneficiary's daily routine consists of primarily managerial or executive duties, rather than on providing the services or producing the products of the organization. Again, 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 his daily routine while employed abroad. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

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.

Other than an illegible organizational chart and blanket assertions that the Beneficiary has professional and supervisory subordinates, the Petitioner has not submitted evidence that it had staff that relieved him from performing non-qualifying operational and administrative duties at the foreign entity. Although the Petitioner may not be required to demonstrate that the Beneficiary has subordinate employees who assisted him, it is necessary to demonstrate that someone other than the Beneficiary carries out the day-to-day routine duties required to continue operations. At this time, the Petitioner has not sufficiently demonstrated that the Beneficiary had subordinate employees that relieved him from performing non-qualifying duties at the foreign entity.

Based on the deficiencies discussed above, the Petitioner has not established that the Beneficiary has been employed by the foreign entity in a qualifying executive capacity.

IV. PRIOR APPROVALS

In her decision, the Director referenced the Petitioner's previously approved petition for the instant Beneficiary. However, the Director specifically acknowledged, in her decision, that "if the approval of [the] prior petition . . . was based on the submission of [the same] letters, then the approval of that petition may have been issued in error." It must be emphasized that each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). That said, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material error on the part of the Director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. at 597. USCIS is not required to treat acknowledged errors as binding precedent. *Sussex Eng'g. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *See La. Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

V. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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-*, ID# 17294 (AAO June 15, 2016)