



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

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

MATTER OF R-F-P-US INC.

DATE: MAY 2, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a producer of newsprint, commercial printing papers, market pulp, and wood products, seeks to extend the Beneficiary's temporary employment as a regional sales manager 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, initially approved the petition for a nonimmigrant visa. Subsequent to information obtained during a randomly conducted site visit by an immigration office, the Director determined that the Petitioner was not eligible for the benefit sought. Accordingly, the Director properly served the Petitioner with a notice of her intention to revoke (NOIR) the approval of the petition, and her reasons therefore. The Director ultimately revoked the approval of the petition based on the conclusion that the Petitioner did not establish that the Beneficiary is employed in a qualifying managerial capacity.

The matter is now before us on appeal. In its appeal, the Petitioner submits an appellate brief asserting that the Director's conclusion was incorrect and further contending that the Beneficiary is and would continue to be employed in a managerial capacity by assuming the role of a function manager. The Petitioner contends that the Director "overlooked the importance of the essential function managed" and the job duties describing the Beneficiary's position with the U.S. entity.

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

I. LEGAL FRAMEWORK

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, 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.

Further, with regard to the Director's decision to revoke a previously approved petition, under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. *See* 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, the Director must issue a NOIR that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. *See* 8 C.F.R. § 214.2(l)(9)(iii)(B).

In the present matter, the Director provided a detailed statement of the ground for the revocation. The Director reviewed the Petitioner's rebuttal evidence and concluded that the Petitioner had not established that the Beneficiary is and would be employed in the United States in a qualifying managerial capacity. Therefore, the Director revoked the approval under 8 C.F.R. § 214.2(l)(9)(iii)(A), noting that the Beneficiary is not eligible for the benefit requested under section 101(a)(15)(L) of the Act.

II. U.S. EMPLOYMENT IN A QUALIFYING CAPACITY

The Director revoked the petition based on a finding that the Beneficiary was not employed in a managerial capacity. The Petitioner does not claim that the Beneficiary is employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary will be/has been employed in a managerial 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;
- (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, 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. Record of Proceeding

The Petitioner filed the Form I-129 on April 8, 2014. On the Form I-129, the Petitioner indicated that it had 2,800 current employees in the United States. It declined to state its gross annual income in the section provided on the Form I-129.

In support of the petition, the Petitioner provided a cover letter along with evidence of the Beneficiary’s wages in the United States, the Petitioner’s corporate documents, and an informational corporate packet showing the Petitioner’s financial status, business performance, and executive structure. The cover letter included the following list of the Beneficiary’s job duties in his position as regional sales manager:

- Overseeing all aspects of sales negotiations with [the Petitioner’s] clients in the U[.]S[.] and Latin America;
- Creating and implementing the sales strategies for [the Petitioner’s i]nternational sales division in Latin America;
- Managing sales negotiations and generating sales with potential clients;

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- Building upon relationships with [the Petitioner's] major clients in the U[.]S[.], Central America, Mexico[.] and Spain;
- Providing direction to Sales Agents within [the petitioning] organization's customer service division related to sales development and strategy;
- Coordinating sales strategies with Sales Agents in each Region;
- Managing the monthly update of production needs associated with sales forecast and budgets;
- Having executive authority to determine price schedules, discount rates, and negotiate contractual terms with client management teams;
- Overseeing payments and receivables with major client accounts;
- Having executive authority to enter into quarterly pricing arrangements with [the Petitioner's] clients that are \$8 to \$12 million in value;
- Participating in the hiring and firing of employees, agents, distributors and other subordinates;
- Overseeing all aspects of Logistics and Transport negotiation within the Sales Division;
- Managing and being responsible for employees, agents and distributors who are involved in the day-to-day business to ensure [the Petitioner's] products are sold and delivered to [its] customers while maintaining all legal compliance from pricing to customs documentations; and
- Conducting ongoing performance reviews to ensure highest standard of performance by [the] team.

The Petitioner further stated that the Beneficiary will be responsible for a \$30 million budget in the Central American region and that he would "provide his services to [the Petitioner at the] [REDACTED] located at [REDACTED] South Carolina [REDACTED]"

On September 15, 2014, following a USCIS site visit to the above address, which the Petitioner disclosed as the location where the Beneficiary would carry out his job duties, and after conducting a comprehensive review of the information in the Petitioner's record of proceeding, the Director issued an NOIR. The Director questioned why the Petitioner indicated that the Beneficiary would be employed at the above business address if, in fact, he works in Florida at a remote off-site location. The Director summarized the Beneficiary's responses to questions posed in a phone interview, which took place on August 13, 2014, during which the Beneficiary stated that his job duties include dealing directly with customers, forecasting customer needs, dealing with quality control issues, overseeing sales agents in Guatemala, and traveling for business. In light of the job description provided by the Beneficiary, the Director determined that the U.S. position does not appear to be in a qualifying capacity and suggested that the Petitioner provide additional evidence to overcome this proposed basis for revocation. The suggested list of additional documents included the following: (1) a list of the Beneficiary's job duties with an approximate percentage of time indicating how much time is allocated to each assigned duty; (2) an organizational chart identifying all employees, including the Beneficiary, within the Beneficiary's division, department, or team, by name, job title, and job description and depicting the Petitioner's current organizational structure and staffing levels;

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(3) a description of the decisions made by the Beneficiary regarding the function managed; (4) evidence of wages paid to employees while the Beneficiary has worked within a qualifying managerial capacity; (5) evidence of managerial decisions made by the Beneficiary, such as signed contracts or other legal documents; (6) copies of official correspondence as proof of the Beneficiary's authority and discretion; (7) samples of work the Beneficiary reviewed and approved; and (8) evidence of any prior evaluations of the Beneficiary's work.

In response, the Petitioner provided the Beneficiary's wage documents and a copy of the current lease for an office in Florida out of which the Beneficiary currently operates. The Petitioner also provided a statement claiming that the Beneficiary "is responsible for managing and coordinating multimillion dollar accounts and deal[ing] with owners and senior executives of private and publically traded companies" The Petitioner claimed that the Beneficiary "functions at a senior level with respect to the function managed" and regularly exercises discretionary authority in determining pricing, customers, distributors, paper quality, and mode of transportation for product distribution.

In addition, the Petitioner indicated that 80% of the Beneficiary's time would be allocated to senior-level managerial duties, while the remaining 20% of his time would be allocated to sales-related duties. The Petitioner provided the following list of the Beneficiary's managerial duties:

- Functions at a senior level within [the Petitioner]'s organizational hierarchy with respect to the sales divisions;
- Possesses the authority to participate in hiring and firing of employees, agents, distributors and other subordinates;
- Possesses executive authority to determine price schedules, discount rates, and negotiate contractual terms with client management teams;
- Enters into quarterly pricing arrangements with [the Petitioner's] clients that are \$8 to \$12 million in value;
- Exercises discretion over day[-]to[-]day sales operations for U[.]S[.] and Latin America;
- Responsible for UFS (Uncoated Free Sheet) sales in Latin America which involves overseeing a sales team;
- Managing sales strategies with Sales Agents and distributors in Central America and U[.]S[.];
- Managing [REDACTED];
- Managing [the] customer service division as it related to sales to [*sic*] the region;
- Managing the monthly update of production needs associated with sales forecast and budgets;
- Overseeing payments and receivables with major client accounts;
- Overseeing all aspects of Logistics and Transport negotiation within the Sales Division;
- Providing direction to Sales Agents within [the Petitioner]'s customer service division related to sales development and strategy;

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- Supervising and controlling the sales functions and sales agents within the sales division for U[.]S[.] and Latin America;
- Managing and being responsible for employees, agents and distributors who are involved in the day-to-day business to ensure [the Petitioner's] products are sold and delivered to [its] customers while maintaining all legal compliance from pricing to customs documentations.

The Petitioner provided the following list of the Beneficiary's sales duties:

- Creating and implementing the sales strategies for [the Petitioner's] sales division in Latin America and Spain;
- Managing sales negotiations and generating sales with potential clients;
- Building upon relationships with [the Petitioner's] major clients . . . ;
- Creating and implementing the sales strategies for [the Petitioner's] sales division in Latin America;
- Coordinating sales strategies with Sales Agents in each Region;
- Managing the monthly update of production needs associated with sales forecast and budgets;
- Overseeing payments and receivables with major client accounts; and
- Ensuring [the Petitioner's] products are sold and delivered to [its] customers while maintaining all legal compliance from pricing to customs documentations.

The Petitioner added that the Beneficiary was the driving force behind the development of [REDACTED] which it claims the Beneficiary would lead in his position with the U.S. entity.

The Petitioner also provided several organizational charts depicting the executive team hierarchy and the hierarchy of the international sales division. These charts show that the Beneficiary (along with two sales vice presidents and four other regional sales managers) is directly subordinate to the vice president of international sales, who is directly subordinate to the senior vice president of sales and marketing. The latter individual (along with six senior vice presidents and three vice presidents) is directly subordinate to the company CEO, who assumes the top-most position within the hierarchy. This hierarchy shows that there are three executive tiers above the Beneficiary.¹

After reviewing the Petitioner's response, the Director determined that the evidence submitted did not establish that the Beneficiary is currently working in a qualifying managerial capacity. The Director found that the evidence of record indicates that the Beneficiary's primary focus is on the performance of "sales activities for high dollar clients," thus indicating that the Beneficiary would be providing a service, rather than operating in a managerial capacity. The Director further determined that the Petitioner did not offer sufficient evidence to establish that the Beneficiary would either

¹ Although the Director found that the Petitioner's organizational charts depicts "at least four levels of authority above the beneficiary," the combined charts show that the Beneficiary's position is situated at the fourth tier below the top-most tier of the company CEO, thus indicating that there are three levels of authority above the Beneficiary.

manage an essential function or oversee the work of supervisory, professional, or managerial subordinates who would relieve the Beneficiary from having to primarily perform non-qualifying job duties.

On appeal, the Petitioner contests the Director's findings, asserting that the Beneficiary assumes the role of a function manager, whose primary focus is to manage the sales function through "the development and implementation of a key sales growth strategy for a new product that is vital to the success of a 100 million dollar investment"² The Petitioner contends that the Director erred in concluding that the Beneficiary acts as a sales representative, asserting that the Beneficiary manages an essential function and oversees employees in the United States and South America. The Petitioner provides additional organizational charts to further illustrate the Beneficiary's position with respect to other employees in the Petitioner's organization.

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 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(1)(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.

First, looking to the job description in the present matter, we find that the percentage breakdown that the Petitioner provided in its NOIR response statement contains insufficient information about the Beneficiary's daily job duties and the actual amount of time the Beneficiary allocates to specific tasks. For instance, the Petitioner stated that the Beneficiary's job duties include functioning "at a senior level within [the Petitioner's] organizational hierarchy with respect to the sales divisions[.]" While this claim addresses one of the four statutory criteria for managerial capacity, it is not an actual job duty, as it does not disclose any specific act that the Beneficiary performs in his role as regional sales manager. Furthermore, this claim is not consistent with the various organizational charts that the Petitioner provided with the NOIR response, where the Petitioner revealed two other positions – that of senior vice president of pulp and paper sales and marketing and that of

² Appeal brief, p. 3.

international vice president of paper sales – both of which were expressly depicted as senior to the Beneficiary’s position with respect to the sales function.

Similarly, while possessing the authority to hire and fire employees and/or contractors may be another characteristic of the Beneficiary’s position, it is not reflective of a job duty or task, as there is no evidence to suggest that hiring and firing employees and/or contractors is an action the Beneficiary performs on a regular basis as part of his daily or weekly 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) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm’r 1972)). Here, the information provided in the organizational charts that were submitted with the NOIR response did not depict any subordinate employees or contractors within the Beneficiary’s specific purview. While the Petitioner provided updated organizational charts on appeal, where the Beneficiary is depicted as overseeing distributors, regional managers, and various service providers in the areas of customer service and logistics, this information conflicts considerably with the previously provided organizational charts and with the Beneficiary’s own account of his job duties, which he provided during his phone conversation with an immigration officer to whom the Beneficiary told that his only direct report is a Guatemala sales agent, a position that was only included in the recently submitted “Cross Functional Chart of [the Beneficiary’s] Direct & Indirect Reports for Central America.” The Petitioner has not resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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. In the present matter, the Petitioner’s claim on appeal indicates that the Beneficiary assumes the role of a function manager, such that his primary focus is on the management of an essential function. We note that 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 is managing 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 attributed 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 manages the function rather than performs the duties related to the function. In this matter, the Petitioner has not provided sufficient reliable and consistent evidence to

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establish that the Beneficiary primarily manages, rather than provides the underlying tasks of, the essential function of product sales.

The Beneficiary's job description indicates that the Beneficiary has discretion over daily sales operations. However, the Petitioner did not specify the components of its daily "sales operations" such that it would convey a meaningful understanding of the Beneficiary's role within the scope of the Petitioner's daily activities. The Petitioner was similarly vague in stating that the Beneficiary manages and oversees sales strategies, [REDACTED] customer service, monthly updates of production needs, payments and receivables of major client accounts, all aspects of logistics and transportation, and all agents, employees, and distributors that partake in daily business. The Petitioner did not explain how the Beneficiary manages or oversees these components or individuals; nor did the Petitioner clarify the specific activities the Beneficiary actually performs in meeting his managerial and oversight responsibilities. Indicating that the Beneficiary's role is limited to managing or overseeing indicates that someone other than the Beneficiary actually performs an underlying task of a particular job component, such as [REDACTED] customer service, or payables or receivables. However, the record does not establish that someone other than the Beneficiary actually conducts the seminars at the U.S. affiliate, provides customer service to the Petitioner's clients, and carries out the tasks of paying the Petitioner's invoices or insuring that its purchase invoices get paid. In fact, with regard to the [REDACTED], the Petitioner's NOIR response statement specifically states that the Beneficiary "is uniquely qualifying to lead these [REDACTED] [REDACTED] thus indicating that the Beneficiary's role is not limited to managing the seminars, but rather involves the Beneficiary actually conducting the seminars within a certain geographic area.

In general, the vague nature of the job description precludes a comprehensive understanding of the Beneficiary's actual role with regard to certain sales-related components of the Beneficiary's position such that we cannot determine whether the Beneficiary's role is largely participatory with respect to the above-mentioned components or whether the Beneficiary's involvement is truly limited to management and oversight. 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). Furthermore, while specifically asked to assign time allocations to the Beneficiary's individual job duties, the Petitioner grouped multiple broadly-stated job duties into one category – "Senior Level Managerial Duties" – and assigned 80% of the Beneficiary's time to the overall category rather than breaking down the 80% and assigning time allocations to each individual component that comprises the category. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Next, we turn to the Petitioner's organizational hierarchy and the product sales function, which is the essential function the Beneficiary is claimed to be managing. To the extent that the role of a function manager is to manage the essential function, rather than perform the underlying duties of that function, we look for evidence that demonstrates how the Beneficiary is relieved from having to carry out the daily operational tasks associated with product sales. Here, we find that the

Beneficiary's own statements, which he provided in response to questions posed by a USCIS immigration officer during a telephone interview, indicate that the Beneficiary actively participates in the sales of the Petitioner's products. As previously discussed in the NOIR, when asked to describe his job duties, the Beneficiary stated that he deals directly with customers, forecasts customers' needs, addresses quality control issues, oversees a Guatemala sales agent, and travels. Although one of the new organizational charts – titled "Pulp and Paper Sales & Marketing" – which the Petitioner provided on appeal, depicts the Beneficiary as "Regional Director UFS Latin America" overseeing Florida distributors and three regional managers covering South America, the Caribbean, and Mexico and Venezuela, this chart is in direct conflict with the Beneficiary's own account, which did not indicate that he oversees any regional managers in any of the geographical locations stated herein. In fact, the only geographical area that the Beneficiary did mention during his telephone interview – Guatemala – was not listed anywhere in this chart, which lists the Beneficiary's position title as that of Regional Director overseeing three regional managers.

Furthermore, we note that the information provided in the "Pulp and Paper Sales & Marketing" chart is inconsistent with the Beneficiary's position title as cited in the petition, where the Beneficiary was assigned the title of regional sales manager. While the supporting evidence on appeal includes a second organizational chart, where the Beneficiary is identified as the regional manager of the Central America region and is depicted as overseeing a Guatemala agent, mill quality managers at various locations in the United States, Florida distributors, and customer service, logistics, and planning, there is no explanation or instruction for reconciling the apparent inconsistencies between the two organizational charts or the inconsistencies between these charts and the evidence and information that was previously provided both in support of the petition and in response to the Director's NOIR. As previously indicated, the petitioner is expected to resolve any inconsistencies in the record by providing independent objective evidence establishing where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Furthermore, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

In sum, we find that the Petitioner's claim that it "has established that, at a minimum, the beneficiary primarily manages an essential function" remains largely unsubstantiated, as the evidence that the Petitioner has provided on appeal is not entirely consistent with the prior submissions or with the Beneficiary's own statements. Further, as discussed above, while the Petitioner seemingly indicates that the Beneficiary will assume the role of a function manager, it offers supporting statements and documentation in the form of organizational charts that suggest a personnel management role. That said, the Petitioner has not provided evidence, such as pay stubs, wage and tax documents, or other forms of documentation to show that it either employs or contracts the individuals whom the organizational charts show as providers of the underlying services that support the Beneficiary's position and relieve him from having to primarily perform the Petitioner's non-qualifying operational tasks. As previously stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In addition, while instructed to provide a detailed account of the Beneficiary's specific daily tasks and to describe the roles of other individuals, which would explain what the Beneficiary is doing and how the Petitioner would relieve the Beneficiary from having to perform its

daily operational tasks, the Petitioner's NOIR response was limited to a deficient job description, which lacked a detailed account of the Beneficiary's specific daily tasks and corresponding time allocations, and organizational charts that did not explain how the Beneficiary's role would be limited to one of managing or overseeing a function, given that neither the charts nor the other submissions explained how the role of other employees and/or contractors enable the Beneficiary to carry out primarily managerial tasks on a daily basis.

While no beneficiary is required to allocate 100% of his time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to the proposed position. 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 Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm'r 1988).

As fully discussed above, the Petitioner did not provide evidence establishing that it met the statutory and regulatory criteria as of the date of filing. On the basis of the evidentiary deficiencies described above, this petition cannot be approved. We find that the approval of the petition was properly revoked.

III. CONCLUSION

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 R-F-P-US Inc.*, ID#16545 (AAO May 2, 2016)