U.S. Citizenship and Immigration Services

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

MATTER OF [redacted]

DATE: APR. 28, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a shipping and freight forwarding services provider, seeks to temporarily employ the Beneficiary as its general 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 of the Vermont Service Center denied the petition concluding that the Petitioner did not submit sufficient evidence to establish, as required, that the Beneficiary was employed abroad and would be employed in the United States in a managerial or executive capacity.

The matter is now before us on appeal. In its appeal, the Petitioner objects to the Director's reliance on the Petitioner's size and contends that the Beneficiary would direct and control the Petitioner's key functions and work through other employees to achieve the company's goals. The Petitioner also asserts that the Director erred by determining that the position description provided for the Beneficiary's foreign employment was too broad to establish her eligibility as a manager.

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 position involving specialized knowledge, 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 evidentiary requirements for filing an L-1 classification petition are located at 8 C.F.R. § 214.2(l)(3).

The term "managerial capacity" is defined 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.

Section 101(a)(44)(A) of the Act. Further, "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." *Id.*

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.

## II. EMPLOYMENT IN A MANAGERIAL CAPACITY

The two issues we will address in this proceeding are whether the Petitioner provided sufficient evidence to establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial capacity. The Petitioner does not claim that the Beneficiary has been or will be employed in an executive capacity. Therefore, we restrict our analysis to whether the Beneficiary has been and will be employed in a managerial capacity.

### A. U.S. Employment

The first issue to be addressed in this proceeding is whether the Petitioner provided sufficient evidence to establish that it would employ the Beneficiary in a managerial capacity. Namely, the Director found that the Petitioner does not employ sufficient personnel to relieve the Beneficiary from having to primarily perform non-managerial job duties. On appeal, the Petitioner contends that it is "a well[-]established Florida Corporation with two (2) full[-]time employees."

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 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. On the other hand, 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.

1. Staffing

When examining a beneficiary's claimed managerial capacity, we review the beneficiary's job duties within the context of the totality of the record, 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 Petitioner filed the petition claiming two employees and a gross annual income of $204,394. Namely, initial evidence included paystubs showing that the Petitioner employed [redacted] (sales manager) and [redacted] (assistant manager) at the time of filing. The Petitioner provided a cover letter stating that it will serve individuals and companies in [redacted] Florida and throughout Central and South America with the goal of becoming a "primary international shipping and freight services agency." The Petitioner stated that the Beneficiary will be responsible for expanding the company's staff as well as firing employees and evaluating their performance.

The Petitioner also provided a "business plan for a start-up entity," indicating that while the Petitioner has been operating since 2013, it "kept a low level of financial activities" until it decided to expand its business in 2015.[1] The business plan includes the Petitioner's revenue forecast and a management summary, followed by a personnel plan, which shows hiring projections for the first three years of operation. The plan indicates that the Petitioner would hire a general manager, an operations manager, a sales manager, a warehouse chief, and an assistant manager during its first year of operation, adding a warehouse assistant and a customer service employee to its staffing structure during the second year of operation, and a sales assistant in its third year. As the Petitioner claimed only two employees at the time of filing - a sales manager and an assistant sales manager - it appears that the other positions were not filled and therefore could not have been part of the Petitioner's organizational hierarchy when the petition was filed. Although the business plan states that the Beneficiary "has assisted the new company with export details, including warehouse management, cargo shipping and customs logistics," the Petitioner did not specifically describe the Beneficiary's level of involvement in any of these daily operational functions or explain who would assist the Beneficiary and relieve her from having to allocate her time primarily to these non-managerial functions.

[1] Despite submitting a business plan for a start-up business, the Petitioner acknowledged that it has been doing business since 2013 and did not claim to be a "new office," as defined at 8 C.F.R. § 214.2(l)(1)(ii)(F), when filing this petition. Therefore, the Director did not apply the evidentiary requirements for new office petitions located at 8 C.F.R. § 214.2(l)(3)(v).

In addition, the Petitioner provided an organizational chart depicting a slightly different projected staffing structure. The chart shows the Beneficiary in the top tier as general manager, a sales manager and an operation manager at the second tier, and five lower-level positions including two assistant sales managers, a customer service employee, a warehouse assistant, and a warehouse chief. Later, in response to a request for evidence (RFE), the Petitioner provided evidence that it continued to have a staff of two employees, the sales manager and assistant manager, as of August 2016.

In denying the petition, the Director noted that the Petitioner currently does not have the subordinate staff to relieve the Beneficiary from having to perform non-qualifying job duties. The Director also took into account the Petitioner's reasonable needs and its stage of development and concluded that the Petitioner would not be able to support the Beneficiary in a position where she would allocate her time primarily to managerial or executive tasks, but rather that the Beneficiary's job duties would be primarily operational.

On appeal, the Petitioner states that it "is a well[-]established" organization with two full-time employees. The Petitioner contends that the Director focused entirely on its size and overlooked the Beneficiary's responsibility to "direct and control the company's major functions." The Petitioner further asserts that the Beneficiary would "work through other employees to achieve the corporation's goals."

We find that the record does not contain sufficient evidence to substantiate the Petitioner's claims. The Petitioner correctly states that it had two employees at the time of filing, but it has not established that a two-person staff would be sufficient to relieve the Beneficiary from having to spend her time primarily on the performance of operational and administrative job duties. Based on the personnel projections the Petitioner provided in its business plan, it appears that the Petitioner plans to expand its staff to eight employees during the course of a three-year time period. However, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Here, the Petitioner does not establish how the sales manager and assistant manager would relieve the Beneficiary from having to perform the Petitioner's operational and administrative tasks. The Petitioner correctly observes that a company's size alone may not be the determining factor in denying a visa petition for classification as a multinational manager or executive without taking into account the reasonable needs of the organization. *See* section 101(a)(44)(C) of the Act. However, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as the absence of employees who would perform the non-managerial or non-executive operations of the company or a "shell company" that does not conduct business in a regular and continuous manner. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The Petitioner's claim that its two-person support staff is sufficient to support the Beneficiary in a position where her duties would be primarily managerial in nature is not sufficient without supporting evidence showing who would perform the Petitioner's operational and administrative tasks associated with its shipping and

logistics business, thereby relieving the Beneficiary from having to allocate her time to primarily non-managerial functions. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Further, the record does not establish that the Beneficiary would qualify as a personnel manager, as the evidence submitted shows that the Petitioner's entire organization at the time of filing was comprised of two employees only one of whom – the sales manager – would serve as the Beneficiary's direct subordinate. Such evidence is not sufficient to show that the Beneficiary would allocate her time primarily to supervising and controlling the work of other supervisory, professional, or managerial employees. Section 101(a)(44)(A)(ii) of the Act.

On appeal, the Petitioner claims that the Beneficiary would "direct and control the company's major functions," thereby suggesting that the Beneficiary would assume the role of a function manager, rather than a personnel manager. In order to establish that the Beneficiary would assume the role of a function manager, the Petitioner must clearly describe the Beneficiary's job duties by identifying the function with specificity, articulating the essential nature of the function, and establishing the proportion of a beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). The Beneficiary's job description must also demonstrate that the Beneficiary will manage the function rather than perform the duties related to the function. *See Matter of Z-A-, Inc.*, Adopted Decision 2016-02 (AAO Apr. 14, 2016).

Here, the Petitioner's function manager claim rests on the broad assertion that the Beneficiary would "direct and control the company's major functions." The Petitioner has not specifically identified an essential function that the Beneficiary would manage or provided evidence to show who would perform the underlying duties of that function. Without this critical information, we cannot rule out the likelihood that in an organization with a limited support staff, the Beneficiary would be required to allocate the primary portion of her time to carrying out the Petitioner's operational tasks in order to meet its daily needs and ensure that it continues to function. Therefore, in light of the deficiencies discussed above, the Petitioner has not established that the Beneficiary would either assume the role of a personnel manager or that she would manage an essential function within the organization.

2. Duties

When examining the managerial capacity of the Beneficiary, we also look to the Petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii).

Based on the statutory definition of managerial capacity, the Petitioner must first 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 duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc.*, 469 F.3d at 1316; *Champion World*, 940 F.2d 1533.

In its support letter, the Petitioner stated that the Beneficiary would be employed in a managerial capacity where she would direct and oversee the company. The Petitioner indicated that the Beneficiary's responsibilities would be to "plan, manage, direct, supervise and coordinate the organization" with the goal of attaining "optimum efficiency and economy [*sic*] operations and maximize profits." The Petitioner further stated that the Beneficiary would develop the organization's goals and policies, "analyze the marketing potential of new clients," and plan and direct "service programs to develop new markets and to develop [*sic*] competitive position of [*sic*] within the industry." The Petitioner indicated that the Beneficiary would have the authority to hire and fire employees as well as assess their respective performances.

In addition, the Petitioner provided an hourly breakdown listing the following job duties that would comprise the Beneficiary's proposed position with the U.S. entity:

- 2 Hrs. Prepare and present the annually [*sic*] projection and global strategies of the company[.]
- 4 Hrs. Analyze, develop and execute new alliances to increase the international business opportunities and profitability for the company.
- 2 Hrs. Evaluate monthly reports in order [to] determine requirements for increasing profits.
- 4 Hrs. Periodic review of financial statements and data related to the incomes and expenses in order to take financial decisions.
- 2 Hrs. Implement innovating techniques to ensure and improve the company goals.
- 4 Hrs. Evaluate financial risk and business opportunities.
- 4 Hrs. Monitor general operations executed in order to align procedures to the plan projects.
- 2 Hrs. Execute strategic plan by implementing short and long-term goals that align with the scope of service, mission and values of the company.
- 4 Hrs. Initiates action plans as necessary, as to employ new personnel, put into operation new regulations, and arrange new investments, [*sic*] between others.
- 2 Hrs. Direct, formulate and continuously update the company policies and procedures in favor of the financial improvement.
- 2 Hrs. Direct and coordinate the mayor [*sic*] company activities including hire, supervise and evaluate the professional performance of the managers.
- 3 Hrs. Design and apply the incentives and promotions plan of the employees and planning the training required.
- 3 Hrs. Provide positive and constructive feedback to the personnel by coaching, mentoring, counseling or corrective guidance and action, as appropriate.
- 2 Hrs. Ensure a safe work environment for employees by enforcing the execution of all safety programs and makes recommendations for changes as necessary.

In the RFE, the Director observed that the Beneficiary's job description consisted of broadly-cast business objectives that did not reveal what actual tasks the Beneficiary would perform in her proposed position. The Director offered the Petitioner an opportunity to resolve this evidentiary deficiency by submitting, in part, a statement containing a more detailed list of the Beneficiary's job duties, the percentage of time she would allocate to each job duty, and an explanation of how the Beneficiary would meet each prong of the four-prong definition of managerial capacity.

In response, the Petitioner provided a letter containing another hourly breakdown of the Beneficiary's job duties. The new job description was similar to, but not entirely consistent with the one provided in the original supporting statement in that certain job duties, which were common to both job descriptions, had different time allocations. Namely, both job descriptions indicate that the Beneficiary would evaluate financial risk and business opportunities, execute a strategic plan by implementing long- and short-term goals, and coach, mentor, determine incentives and promotions for employees, and provide feedback to personnel. However, the original job description allocated 4, 2, 3, and 3 hours to these job duties, respectively, while the new job description indicated that the Beneficiary would allocate 2, 4, 2, and 2 hours, respectively, to the same set of job duties. The Petitioner has neither acknowledged nor resolved these inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Also, given our prior discussion regarding the Petitioner's lack of employees to support the Beneficiary's proposed position, it does not appear that the Petitioner had a subordinate staff for the Beneficiary to oversee and evaluate at the time the petition was filed. While the Petitioner's business plan projects the hiring of additional staff, the record does not show that such a staff existed at the time of filing and therefore any of the Beneficiary's job duties that involve overseeing subordinates would be inaccurate for the purpose of describing the Beneficiary's proposed position at the time the petition was filed.

Further, rather than providing more detailed information about the original job duties, the new list simply restates a number of the previously listed job duties and replaces other duties with different ones without explaining how to interpret the new information within the context of the original job description. For example, the latter job description indicates that the Beneficiary would spend a total of 6 hours of her time establishing and controlling the company's budget and promoting an investment plan to ensure company growth. The original job description, however, is silent as to the Beneficiary's role, if any, in developing and implementing a budget and includes only a general statement about the Beneficiary being responsible for "arrang[ing] new investments."

Lastly, while both job descriptions indicate that the Beneficiary would monitor the Petitioner's operations for the purpose of planning projects, the Petitioner did not explain what specific tasks are required to "monitor operations," nor did the Petitioner identify any specific projects that the Beneficiary would plan. 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). Here, the Petitioner did not provide sufficient details about the Beneficiary's proposed daily tasks and instead submitted two sets of job

duties that are somewhat inconsistent and lack the necessary degree of detail to convey the actual tasks the Beneficiary would carry out within the context of the Petitioner's shipping and freight forwarding business.

In denying the petition, the Director found that the Petitioner did not provide sufficient evidence to establish that the Beneficiary would be primarily engaged in managerial tasks, as opposed to those of an operational nature. Given the deficient job descriptions and lack of evidence showing an organizational structure capable of supporting the Beneficiary in a managerial capacity, we agree with the Director's conclusion.

The fact that the Beneficiary will manage or direct a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. By statute, eligibility for this classification requires that the duties of a position be "primarily" executive or managerial in nature. Sections 101(A)(44)(A) and (B) of the Act. While the Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making, the position descriptions alone are insufficient to establish that her actual duties, as of the date of filing, would be primarily managerial in nature.

On appeal, the Petitioner contends that the Director "overlooked" the Beneficiary's direction and control over the company's major functions. The record does not support the contention that the denial of this petition was the result of the Director's oversight. Rather, we find that the record does not contain sufficient evidence demonstrating the Petitioner's eligibility. The Petitioner has provided vague job descriptions that not only lack sufficient information as to the Beneficiary's actual daily tasks, but also imply the existence of a developed organizational hierarchy and staffing structure that the Petitioner did not have at the time it filed this petition.

In light of the above, we find that the record does not establish that the Beneficiary would be employed in a position where she would either manage an essential function of the organization or oversee a staff comprised of supervisory, professional, or managerial employees.

B. Foreign Employment

The remaining issue we will address in this proceeding is whether the Petitioner established that the Beneficiary was employed abroad in a managerial capacity.

1. Staffing

In its supporting statement the Petitioner stated that the Beneficiary's foreign employer breeds goats, and engages in the farming and breeding of livestock for meat and milk. In addition the Petitioner further explained that the foreign entity is involved in (note: errors in the original text have not been changed): "national and international marketing of . . . livestock and its derived birds different lines of agricultural production planting of import and export of machinery equipment."

The Petitioner also provided a statement from the foreign entity indicating that the Beneficiary's employment abroad involves overseeing "managers and top executives." The statement listed four managerial employees who are claimed to be the Beneficiary's direct subordinates. The Petitioner also provided the foreign entity's organizational chart depicting the Beneficiary at the top of the organizational hierarchy supervising a services and supplies manager, a commercial and marketing manager, an operation manager, and an "Administrative & RRHH Manager" as her direct subordinates, each of whom is depicted as having at least one subordinate of their own.

In addition, the Petitioner provided a separate percentage breakdown briefly stating the job duties of the Beneficiary's four subordinates. The job description of the services and supplies manager indicates that this individual primarily manages, trains, and evaluates subordinate employees. However, the information in the foreign entity's organizational chart indicates that the subordinates of the services and supplies manager are a supervisor, a veterinarian, and two foremen. As the operational tasks of these subordinate employees were not included among the supporting evidence, it is unclear what duties the supervisor performs. It is also unclear that the services and supplies manager, whose educational credentials indicate that he is an attorney, possesses the qualifications to oversee, train, and evaluate the work performed by two foremen and a veterinarian. Although the commercial and marketing manager possesses a managerial position title and is depicted as overseeing the work of a "manager," the only suggestion of managerial duties in his job description is a reference to a "sales force" whom he is responsible for rewarding, motivating, and guiding. However, neither the organizational chart nor other evidence in the record indicates that the foreign entity has a "sales force" for the commercial and marketing manager to oversee. The job description also does not explain the commercial and marketing manager's relationship to the "manager" whom the chart depicts as his subordinate and the record contains no information as to the operational job duties the "manager" performs within the scheme of the foreign entity's livestock business.

Lastly, the job descriptions of the operation manager and the "Administrative & RRHH Manager" show that a number of their duties overlap. Namely, both positions are assigned the following job duties: controlling the company's accounting; "[e]laborat[ing]" on annual accounts, incomes, expenses, and investments; controlling invoices, purchases, and inventory; assuming responsibility for internal and external audits; and declaring and paying taxes to government bodies. The Petitioner did not provide a separate explanation to clarify why these two positions have overlapping job duties if each manager is assigned oversight of his or her own department. Further, despite the operation manager's position in the chart, his assigned job duties do not indicate that he actually supervises two security personnel, as indicated in the foreign entity's organizational chart.

The above described anomalies lead us to question the validity of the information conveyed in the foreign entity's organizational chart and the corresponding job descriptions of the Beneficiary's claimed subordinates.

In the RFE, the Director advised the Petitioner that the job descriptions provided for the Beneficiary's subordinates are overly broad and therefore preclude a determination as to whether the Beneficiary oversees professional, managerial, or supervisory personnel. The Director further noted

that the initial evidence did not establish which employees provide the services of the foreign entity or clarify how the foreign entity operates with the staff depicted in its organizational chart.

In response, the Petitioner provided the foreign entity's organizational chart and percentage breakdowns for each of the Beneficiary's four subordinates. We note that both the chart and job descriptions reiterated the same information that was provided in the original supporting documents. While the new information included educational credentials of the Beneficiary's subordinates, indicating that all four possess degrees that are commensurate with those of professional employees, their respective job descriptions still do not establish that they oversee the work of the individuals whom the foreign entity's organizational chart depicts as their respective subordinates. The Petitioner also offered new evidence in the form of email correspondence between the Beneficiary and two of her subordinates – the services and supplies manager and the operation manager. However, the Petitioner did not address the Director's concerns as to who within the foreign entity's organization provides its operational services. Further, these anomalies regarding the job duties of the Beneficiary's subordinates leave us to question who actually oversees the operational staff of the foreign entity and to what extent the Beneficiary has been involved in such oversight.

In denying the petition, the Director acknowledged that the Beneficiary has discretionary authority and holds the most senior position within the foreign organizational hierarchy. However, he noted that these characteristics alone are not sufficient to establish that the Beneficiary's employment abroad was in a managerial capacity. The Director determined that the record does not establish that the foreign entity has sufficient personnel to relieve the Beneficiary from having to primarily perform non-managerial job duties or that the Beneficiary's subordinates are supervisory, professional, or managerial employees, despite their respective educational credentials. The Director also pointed out that of the foreign entity's 12 employees, only three occupy positions that may be directly related to cattle breeding, thereby giving cause to question whether the foreign entity can reasonably support the Beneficiary in a managerial position.

On appeal, the Petitioner generally disputes the Director's adverse findings. However, it does not provide additional information pertaining to the job duties performed by the Beneficiary's subordinates, or by any of the foreign entity's other employees, to establish that the foreign entity has a sufficient support staff to carry out the services that are directly related to cattle breeding; nor does the Petitioner directly address the Director's concerns regarding the supervisory, professional, or managerial nature of the Beneficiary's subordinates. Further, the Petitioner asserts that the Director overlooked the limited size of the foreign entity's business, which requires the Beneficiary to "wear[] many hats and fulfill[] many positions," some of which are non-managerial. However, this broad assertion does not establish that the Beneficiary's position involves job duties that are primarily of a managerial nature or that the foreign entity has the capacity to support the Beneficiary in such a position.

In light of the deficiencies discussed above, we find that the record does not establish that the Beneficiary has been employed abroad in a position where she primarily oversees a staff of supervisory, professional, or managerial employees.

2. Duties

Finally, in order to provide a comprehensive discussion of the Beneficiary's employment with the foreign entity, we take into account the Beneficiary's job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii).

In support of the petition, the Petitioner provided a statement from the foreign entity, which included the following percentage breakdown of the Beneficiary's job duties:

- Approve plans for new investments[.] 5%
- Analyze and propose new techniques to implement[.] 10%
- Approve purchases and ensure the quality of procedures[.] 5%
- Ensure the goals align from [*sic*] all departments of the company. 10%
- Build the credibility of the operations team. 10%
- Develop relationships within and outside the company. 10%
- Anticipate problems and perform or authorize the implementation of optimal solutions. 10%
- Communicate the existence of project progress. 10%
- Monitor the managers' performance in each department. 10%
- Provide leadership and direction to the team. 5%
- [P]romote, monitor and ensure the quality of deliverables. 10%
- Create a culture of collaboration and knowledge sharing. 5%

In the RFE, the Director advised the Petitioner that the job description for the Beneficiary was vague and did not include sufficient information about the actual job duties the Beneficiary has performed in the course of her employment with the foreign entity. The Director also pointed to several job duties that she deemed as inherent to performing the foreign entity's general operational tasks.

In response, the Petitioner did not adequately address the Director's concerns. Although the Petitioner provided the Beneficiary's original offer of employment, which contained a description of her position with the foreign entity, the offer contained the same list of job duties as the one provided originally in support of the petition. The Petitioner did not provide additional information to clarify or expand on several of the broadly stated job duties that were part of her job description. Namely, the Petitioner did not clarify the types of "new investments" the Beneficiary approves or what "new techniques and strategies" she proposes to attract new customers.

Likewise, the Petitioner did not explain what the foreign entity imports or what "processes" the Beneficiary checks for quality within the organization's cattle breeding business. Although the job description indicates that the Beneficiary builds the sales team's credibility, the organizational chart does not corroborate this claim, as it does not include any sales employees. The record also lacks clarification as to the specific tasks involved in ensuring the alignment of goals among departments, developing relationships within and outside the organization, and creating a culture of collaboration and shared knowledge. The Petitioner does not explain how these broadly cited business objectives fit within the business model of an entity whose source of revenue stems from the breeding of cattle.

In fact, the claim that the Beneficiary promotes, monitors, and ensures product quality is not entirely clear, as the Petitioner does not clarify who buys the foreign entity's "product" or specify what "product" the foreign entity sells within the scheme of a cattle breeding business.

In denying the petition, the Director focuses on the lack of a detailed job description specifying the actual job duties the Beneficiary has performed. The Petitioner now disputes the Director's conclusion, asserting that the foreign entity is part of "a flexible and changing business environment," which requires the Beneficiary to "perform a wide range of duties which will change from day to day."

The Petitioner's statements on appeal do not overcome the Director's chief complaint, which focuses on the lack of a detailed job description delineating the Beneficiary's specific list of tasks. The Petitioner's claim that the Beneficiary's position is dynamic and consists of a "wide range of duties" does not establish that the Beneficiary has allocated her time primarily to performing job duties of a managerial nature. 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 capacity. *See, e.g*, 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 Int'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988). Merely claiming that the Petitioner cannot provide a list of the Beneficiary's tasks because the list is ever-changing does not properly address the Petitioner's burden of having to establish that the Beneficiary's employment abroad involved primarily managerial tasks. As previously stated, the fact that the Beneficiary managed the foreign organization does not necessarily establish eligibility for classification as an intracompany transferee in a managerial capacity within the meaning of section 101(a)(44)(A) of the Act.

In order to establish that the Beneficiary was employed abroad in a managerial capacity, the Petitioner must provide a detailed description establishing that the Beneficiary's position abroad was primarily comprised of managerial-level tasks. Reciting the Beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient, as the actual duties themselves reveal the true nature of the employment. *Fedin Bros.*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the record lacks this critical information, thereby detracting from a comprehensive and meaningful understanding of the managerial nature of the Beneficiary's employment abroad.

## III. CONCLUSION

For the reasons discussed above, the evidence submitted does not establish that the Beneficiary was employed abroad and would be employed in the United States in a managerial capacity where her duties have and would continue to involve primarily managing an essential function or managing a subordinate staff of supervisory, professional, or managerial employees.

**ORDER:** The appeal is dismissed.

Cite as *Matter of* [redacted] ID# 293111 (AAO Apr. 28, 2017)