



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

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

MATTER OF G-, INC.

DATE: OCT. 8, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of digital entertainment solutions, seeks to permanently employ the Beneficiary as a Quality Assurance Manager under the multinational manager or executive immigrant classification. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(C), 8 U.S.C. 1153(b)(1)(C). The Director, Nebraska Service Center, denied the petition. We summarily dismissed the Petitioner's subsequent appeal. The matter is now before us on a combined motion to reopen and reconsider. The motion to reopen is granted, but we affirm our decision to dismiss the appeal.

The Director concluded that the Petitioner did not establish that the Beneficiary had been employed abroad or would be employed in the United States in a qualifying managerial capacity. We summarily dismissed the Petitioner's subsequent appeal without reaching the merits of the case after determining that the Petitioner had not submitted a brief or otherwise identified any erroneous conclusion of law or statement of fact as a basis for the appeal. *See* 8 C.F.R. § 103.3(a)(1)(v).

On motion, the Petitioner provides evidence that it timely submitted a brief in support of its appeal. Accordingly, we will reopen the matter in order to consider the merits of the Petitioner's appeal.

I. LAW

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

.....

(C) *Certain multinational executives and managers.* An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to

render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision only to those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file Form I-140 to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The regulation at 8 C.F.R. § 204.5(j)(5) states:

No labor certification is required for this classification; however, the prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such letter must clearly describe the duties to be performed by the alien.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

(A) The term “managerial capacity” means 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.

Finally, 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

(b)(6)

*Matter of G-, Inc.*

into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

## II. EMPLOYMENT ABROAD IN A MANAGERIAL CAPACITY

The first issue to be addressed is whether the Petitioner established that the Beneficiary was employed abroad in a qualifying managerial or executive capacity.

### A. Facts

The Petitioner provided a letter, dated May 6, 2013, from its vice president of human resources offering a brief and general description of the Beneficiary's duties while employed by [REDACTED] the Petitioner's subsidiary in [REDACTED] Germany. According to the letter, the Beneficiary served as quality assurance team lead from July 2011 until January 2013 and had day-to-day management responsibility over two quality assurance engineers. The Petitioner stated that the Beneficiary's authority included personnel actions and hiring and firing decisions.

The Petitioner provided an organizational chart titled "[REDACTED] QA Org Chart" depicting the Beneficiary as [REDACTED] QA Lead and the sole subordinate reporting directly to the Senior Director QA, [REDACTED]. In turn, two QA engineers, [REDACTED] and [REDACTED], reported directly to the Beneficiary. The Petitioner provided resumes for [REDACTED] and [REDACTED]. According to [REDACTED] resume, he worked for the foreign entity from July 2010 until December 2011.

The Director issued a request for evidence (RFE) on April 14, 2014, advising the Petitioner to provide additional evidence to establish that the Beneficiary was employed abroad in a managerial capacity. Specifically, the Director requested that the Petitioner clarify the Beneficiary's employment dates and provide additional detail regarding the Beneficiary's duties including a percentage of time the Beneficiary allocated to specific duties.

In response to the RFE, the Petitioner provided a letter, dated April 28, 2014, from [REDACTED] Senior Director of Finance for the foreign entity. [REDACTED] who provided the following description of the Beneficiary's duties as Quality Assurance Team Lead:

Duty	Tasks	Percentage
Direct Test Planning	Analyze requirements for new projects and establishing scope of work. Plan resource allocation and availability (e. g., people, software and hardware). Analyze and mitigate project risk. Discuss test planning and project risk with project management team and other projects' stakeholders.	10%
Direct the execution of Functional, Test Acceptance, Load, Stress, and Performance	Review newly created test cases and existing regression test cases, test procedures, and tools availability. Assure availability of test	5%

*Matter of G-, Inc.*

Test of websites, SDKs, APIs and back-end systems	environments, including hardware, software and other teams support.	
Oversee the development of fault and inspection procedures as well as the development of the test automation framework	Propose new procedures for fault reporting. Create new guidelines for incidents reports. Propose new types of inspections and code reviews. Analyze new requirements for test automation (scope and prioritization). Create guidelines for which tools should be used for test automation. Review code for newly automated tests. Check test automation reports. Discuss with upper management automation improvements and new proposals.	20%
Define test implementation proposals by analyzing user and business requirements	Analyze user and business requirements. Participate in project planning meetings. Review requirements from QA perspective. Negotiate requirements with various stakeholders. Define test approach.	15%
Define test efforts, test resources, test environments, test techniques, and scope of testing for new projects	Analyze project requirements. Create test execution schedule and test execution approach. Ensure all tools and environments (software and hardware) are available for test team during test execution.	20%
Schedule the workload within the team	Assure the current scope of work in the projects does not exceed available resources (people and hardware availability).	10%
Define the prioritization of tasks from various projects	Analyze scope of test execution within given timeframe. Review test cases planned for execution. Prioritize new test cases and regression testing for execution if timeframe does not allow for all needed test activities.	5%
Ensure the delivery of the team's work on time	Analyze progress in test execution. Analyze incident reports raised during test execution. Escalate risk and problems occurring during test execution. Mitigate project risk by prioritizing test execution.	15%

██████████ reiterated that the Beneficiary was responsible for the day-to-day management of two QA Engineers, specifically ██████████ and ██████████ who performed the following duties:

- Executed manual tests and develop automated tests in ██████████ for Electronic Program Guides, Audio & Video Content Recognition Systems and other Media Meta Data Systems;
- Tested customer phasing websites;
- Performed quality assurance of Oracle, MySQL, and MSSQL database procedures, ingestion, and export processes;

*Matter of G-, Inc.*

- Produced test deliverables by executing test plans and test cases and contributing to QA reports for product releases;
- Liaise dwith [*sic*] offshore Test team and collaborate with their throughput to meet project team goals;
- Executed all aspects of the development cycle, including requirements, technical specifications, system level and API level designs, implementation, release, and customer deployment;
- Liaised with engineering teams to understand designs and implementations and identifying project test requirements;
- Liaised with Professional Services team and identify business use cases for [REDACTED] products; and
- Liaised with Product team to understand requirements and specifications.

Further, [REDACTED] stated that the Beneficiary and his team of two QA engineers worked on several projects with the Beneficiary responsible for goal-setting, policy-making, and discretionary decision-making for his team. In addition, the letter identified two of the QA team projects and listed the respective duties for the Beneficiary and his subordinates related to those projects. These duties were broadly defined but not inconsistent with the previously listed duties.

Finally, [REDACTED] stated that the Beneficiary was originally hired by [REDACTED] as a Senior QA Engineer in July 2011, and was promoted to the position of QA Team Lead in December 2011. The Petitioner resubmitted the same organizational chart already submitted with the initial petition along with the resumes previously submitted for his two subordinates.

The Petitioner's supporting evidence included pay statements from the foreign entity identifying the Beneficiary and [REDACTED] as Senior Quality Assurance engineers. The pay statement for [REDACTED] indicates that he was hired by the foreign entity in September 2010 and it includes a notation indicating he no longer worked for the foreign entity as of April 1, 2011.

The Director concluded that the Petitioner did not establish that the Beneficiary was employed by the foreign entity in a managerial capacity. The Director found that the Beneficiary's duty description indicated that he would be primarily performing non-qualifying duties. The Director also noted inconsistencies regarding the staffing of the Beneficiary's department during his tenure with the German entity.

On appeal, the Petitioner asserts that the Director erred in fact and incorrectly applied case law in reaching a conclusion that the Beneficiary was not employed in a qualifying capacity as a personnel manager. Specifically, the Petitioner acknowledges that the initial petition indicated that the Beneficiary had two subordinate engineers on his team whereas, in response to the RFE, the evidence indicated that the Beneficiary had only one engineer on his team. The Petitioner states that the differences between the submissions "constitute merely an innocent error" by the Petitioner's human resources department and was "not an attempt to mislead." The Petitioner asserts that it simply provided the wrong termination date for one of the Beneficiary's subordinates. The Petitioner further asserts that the Beneficiary can qualify as a personnel manager even if he

supervised a single employee. Finally, the Petitioner asserts that the Director erred in concluding that the Beneficiary lacked managerial authority over his subordinate employees and performed primarily non-managerial duties.

## 2. Analysis

Upon review, the Petitioner has not established that the Beneficiary was employed abroad in a qualifying managerial capacity.

When examining the executive or managerial capacity of the Beneficiary, we look first to the Petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The definitions of executive and managerial capacity each have two parts. First, the Petitioner must show that the Beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the Petitioner must prove that the Beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In this matter, although the Petitioner allocated 100% of the Beneficiary's time into eight categories of duties, it did not similarly assign a percentage of time to tasks listed within each of those areas of responsibility. The lack of specific percentages is especially relevant because individual tasks assigned to the Beneficiary included a number of non-qualifying duties. For example, the Petitioner stated that the Beneficiary analyzed requirements for new projects, reviewed new and existing test cases and procedures, ensured the availability of the test environment, analyzed user and business requirements, reviewed project requirements, reviewed code for newly automated tests, analyzing scope of test execution, and analyzed progress in test execution. The Petitioner did not explain how these types of duties qualify as managerial quality assurance functions. Because the Petitioner assigned percentages to groups of duties, we cannot determine how much of his time was spent on non-qualifying tasks. Overall, the job description provided in response to the RFE suggested that he performed duties at a higher technical level compared to a regular QA Engineer, but did not show that he performed primarily managerial duties.

This conclusion is supported by the Beneficiary's resume, in which describes the duties he performed for the foreign entity in his role of Senior QA Engineer (beginning in 2010) and as a QA Team Lead (as of 2011). Both descriptions include: test planning, preparation and execution of various tests; user and business requirements analysis; fault and inspection management, development of the test automation framework, managing test activities within a team of testers, mentoring junior members of the team, performing reviews of test documentation, and driving triage meetings. The only additional duty the Beneficiary included in the description of his Team Lead position was "interviewing new consultants and employees." The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Here, the record shows that the Beneficiary's duties as a QA Team Lead are essentially the same as those of a Senior QA Engineer. Further, the foreign entity's payroll records show that the Beneficiary's job title was "Senior QA Engineer" as of

(b)(6)

*Matter of G-, Inc.*

December 2012, the same title held by his claimed subordinate, [REDACTED]. While the duties are complex, the Petitioner has not established that they are primarily managerial in nature.

The statutory definition of “managerial capacity” allows for both “personnel managers” and a “function managers.” See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word “manager,” the statute plainly states that a “first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.” Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a Beneficiary directly supervises other employees, the Beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

With respect to the foreign entity’s staffing, the Petitioner has acknowledged that the Beneficiary had only one subordinate during his 12 to 13 months of employment abroad in the QA Team Lead position, rather than two subordinates as initially claimed. In addition, we note that [REDACTED] stated that the Beneficiary’s duties were fully described in the table provided in his letter dated April 28, 2014; however, none of those duties involved specific supervisory tasks indicative of a personnel manager. On appeal, counsel asserts that the foreign entity already discussed the Beneficiary’s managerial duties in its initial letter and that the second letter with the allocation of the Beneficiary’s time is merely a supplement to the initial letter. This explanation is not persuasive and it was not provided by the Petitioner. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the Petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Overall, the Petitioner’s description of the Beneficiary’s duties abroad, and the evidence of the foreign entity’s organizational structure during the Beneficiary’s tenure as QA Team Lead, does not establish that he was primarily responsible for directing and supervising a staff of subordinate professionals. While he may have had the authority to assign tasks to [REDACTED] the record reflects that he was also performing non-managerial duties typical of a senior Quality Assurance engineer.

In the alternative, the Petitioner asserts on appeal that the Beneficiary served as a function manager, managing the quality assurance of products, such as video products, among other duties. The term “function manager” applies generally when a Beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an “essential function” within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term “essential function” is not defined by statute or regulation. If a Petitioner claims that the Beneficiary is managing an essential function, the Petitioner must furnish a written job offer that clearly describes 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 the Beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 204.5(j)(5).

(b)(6)

*Matter of G-, Inc.*

In addition, the Petitioner's description of the Beneficiary's daily duties must demonstrate that the Beneficiary manages the function rather than performs the duties related to the function. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

For the same reasons previously discussed, the Petitioner has not established that the Beneficiary primarily managed the quality assurance function for his assigned products as opposed to actually performing quality assurance and testing activities. Absent a clear and credible breakdown of the time spent by the Beneficiary performing his duties, we cannot determine what proportion of his duties was managerial, nor can we deduce whether the Beneficiary primarily performed 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).

For the foregoing reasons, the Petitioner has not established that the Beneficiary was employed abroad in a qualifying managerial capacity. Accordingly, the appeal will be dismissed.

### III. MANAGERIAL EMPLOYMENT IN THE UNITED STATES

The remaining issue is whether the Petitioner established that the Beneficiary will be employed in a managerial capacity in the United States. The Petitioner did not claim that the Beneficiary will be employed in an executive capacity.

#### A. Facts

The Petitioner's letter, dated May 6, 2013, stated that the Beneficiary has been offered the position of quality assurance manager responsible for directing and managing all projects for the quality assurance division. In this role, the Beneficiary will directly supervise two senior quality assurance engineers and direct an offshore test team. The Petitioner explained that the Beneficiary directs the day-to-day test activities of his two engineers and the test team and that he has full decision-making authority including the ability to hire and fire employees. The Petitioner provided a brief explanation of the Beneficiary's general responsibilities in establishing the quality control standards for the division and directing quality assurance activities.

The Petitioner provided an organizational chart depicting the Beneficiary reporting directly to Senior Director QA, [REDACTED] and in turn, supervising two Senior QA Engineers, [REDACTED] and [REDACTED]. The chart also shows a number of other quality assurance staff reporting directly to [REDACTED] including a Principal QA Technical Lead, a Lead QA Engineer, a Senior QA Engineer, and two contractor QA Engineers.

On June 7, 2014, the Director issued an RFE advising the Petitioner to provide additional evidence to establish that the Beneficiary would be employed in the United States in a managerial capacity such as

detailed duty descriptions, percentage of time spent on tasks, and information relating to the company structure, its employees, and their duties, education level, and salary, among other evidence.

In a letter dated April 28, 2014, the Petitioner explained that the Beneficiary oversees and directs his subordinates and performs the following duties:

Duty	Tasks	Percentage
Interview and hire new employees for QA Team	Collaborate with HR team. Define job specification. Screen received CVs. Make initial phone interviews. Perform onsite job interviews. Make decisions about new QA hires.	5%
Perform performance and salary reviews for all subordinates.	Review employee goals from previous fiscal year. Review bonus plans. Evaluate employee work performance. Recommend salary updates and bonuses.	5%
Direct subordinates' workload and scope of work.	Analyze project requirements based on outcome establishing scope of work. Ensure subordinates' workload does not exceeds [sic] available resources (i.e., people and hardware availability); and if so, prioritize scope of the work. Delegate work among subordinates.	5%
Proposed and direct new test automation guidelines	Create guidelines for which tools should be used for test automation. Review code for newly automated tests. Check test automation reports. Discuss with upper management test automation results, improvements, and new proposals.	25%
Evaluate new tools used by QA Team	Approve analysis of new test automation requirements. Research which tools should be used for test automation. Plan project pilots for newly selected tools and reviewing results. Recommend whether newly selected tools can be used across QA team for other projects.	5%
Oversee the creation of test plans, test strategies, and new QA processes	Approve analysis of requirements for new projects and establishing scope of work. Approve test approach, test phases and resource allocation and availability (i.e., people, software, and hardware). Analyze and mitigate project risk. Discuss test planning, test approach, and project risk within upper management. Direct the improvement of test processes by analyzing test results from previous projects and analyzing customer defects.	30%
Approve requirements for test activities	Approve analysis of project requirements. Oversee requirements' elicitations and inspections. Provide	15%

(b)(6)

*Matter of G-, Inc.*

	recommendations if requirements meet QA criteria and if testing can be performed based on available requirements. analysis of project requirements.	
Handle project and product escalations to upper management	Mitigate project risk. Participate in project meetings. Discuss current project status, incidents raised during project, and problems with test execution. Negotiate problem resolution with project stakeholders and upper management. Propose QA recommendations for problem resolution.	10%

According to the Petitioner's letter, the Beneficiary's team has three subordinates including [REDACTED] and [REDACTED]. The Petitioner explained that the Beneficiary's subordinates performed the following duties: (1) create manual test scenarios; (2) develop test automation scripts; (3) perform test execution; (4) generate fault and incident reports; and (5) troubleshoot software. The Petitioner described the educational qualifications of the Beneficiary's subordinates.

The Petitioner's letter stated that the Beneficiary's team works on several projects and that the Beneficiary is responsible for general goal setting, policymaking, and discretionary decision-making for his team. The Petitioner also provided a list of duties performed by the Beneficiary and his subordinates as they related to each of two projects, [REDACTED] and [REDACTED].

The Petitioner submitted a second organizational chart dated "as of April 23, 2014." The chart depicts the Beneficiary as QA manager with three direct subordinates: (1) Senior QA engineer, [REDACTED] (2) QA Lead Engineer (mobile application), [REDACTED] and (3) Senior Software Test Engineer (QA), [REDACTED]. According to the Petitioner's payroll documents and its explanation of those documents, [REDACTED] began his work in the U.S. on April 1, 2014.

The Director determined that the evidence did not establish that the Beneficiary would be employed in a managerial capacity. The Director determined that the Beneficiary would allocate a majority of his time to non-managerial duties.

On appeal, the Petitioner asserts that the Director incorrectly concluded that the Beneficiary's duties do not indicate that he holds full managerial authority over his subordinates. The Petitioner further asserts that the Director erred by mischaracterizing qualifying duties accounting for 85% of the Beneficiary's time as non-managerial. Finally, the Petitioner asserts that the addition of a third subordinate on the Beneficiary's team is not an attempt to make a material change to the petition in order to ensure that the Beneficiary qualifies for the benefit sought.

## B. Analysis

For the reasons discussed below, we find that the Petitioner has not established that the Beneficiary will be employed in a qualifying managerial capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The definitions of executive and managerial capacity each have two parts. First, the Petitioner must show that the Beneficiary performs the high level responsibilities that are specified in the definitions. Second, the Petitioner must prove that the Beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

A review of the Beneficiary's duties as described in response to the RFE indicates that he will be primarily engaged in day-to-day performance and administration of quality assurance activities, rather than engaged in qualifying managerial duties. While the submitted description, unlike the description provided for his foreign position, does indicate that he allocates 15 percent of his time to personnel matters, the remainder of the description is similar to that provided for his overseas QA Team Lead position and includes a number of non-qualifying duties. For example, the Beneficiary will analyze project requirements, review code for newly automated tests, research tools to be used for test automation, and analyze project risks. Based on this description we are unable to determine the overall percentage of time that Beneficiary will spend on qualifying managerial duties, therefore the Petitioner has not established that the Beneficiary will be primarily performing in a managerial capacity. Whether the Beneficiary is a managerial employee turns on whether the Petitioner has sustained its burden of proving that his duties are "primarily" managerial. *See* sections 101(a)(44)(A) and (B) of the Act.

Regarding the Beneficiary's subordinates, the Petitioner's second version of its organizational chart depicts the Beneficiary with three subordinates instead of the two originally claimed. This addition to the Petitioner's staffing is not necessarily an inconsistency, but the change in position titles depicted on the organizational chart is an unexplained inconsistency. The Petitioner's organizational chart was dated April 23, 2014 and the Petitioner's description of the Beneficiary's subordinates was dated only five days later on April 28, 2014. The Petitioner provided a single description for all of the subordinates in its letter but provided different titles for the subordinates on the organizational chart, specifically a senior software test engineer, QA lead engineer, and senior QA engineer.

Nevertheless, while the Petitioner established that the Beneficiary does allocate time to supervising at least two subordinate professionals, the record does not support a finding that he is primarily acting as a personnel manager. Moreover, the record does not establish that the Beneficiary manages an essential function of the petitioning company, as it has not established that his duties are primarily managerial in nature, or explained how his quality assurance responsibilities fit into the Petitioner's Quality Assurance department as a whole. As noted by the Director, the department includes five other staff with various job titles who also directly report to the Beneficiary's supervisor, making it difficult to determine that the Beneficiary operates at a senior level within the organization's hierarchy or with respect to the quality assurance function.

Overall, while we acknowledge that the Beneficiary appears to have some managerial authority over his subordinates, the Petitioner has not established by a preponderance of the evidence that he will primarily perform qualifying managerial duties. Accordingly, the petition cannot be approved.

*Matter of G-, Inc.*

#### IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner did not meet that burden. Accordingly, while the Petitioner submitted evidence on motion to warrant the reopening of the matter, we affirm our previous decision to dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of G-, Inc.*, ID# 13868 (AAO Oct. 8, 2015)