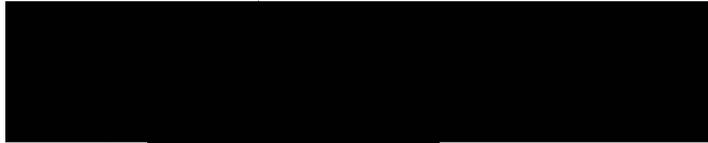


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Office: CALIFORNIA SERVICE CENTER

Date: **OCT 04 2006**

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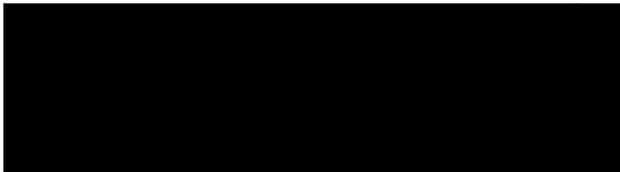
Petitioner:

Beneficiary:



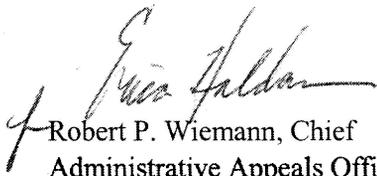
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw in part the director's decision and affirm the remainder of the decision. The appeal will be dismissed.

The petitioner filed the instant immigrant visa petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of California that is engaged in the sale of wire products. The petitioner seeks to employ the beneficiary as its general manager.

The director denied the petition concluding that the petitioner had not demonstrated that: (1) a qualifying relationship existed between the foreign and United States entities at the time of filing; or (2) the beneficiary would be employed by the United States company in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner challenges the director's findings, claiming that the petitioner demonstrated the beneficiary's eligibility for the requested immigrant classification. Counsel submits a brief and documentary evidence in support of the appeal.

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 who 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 to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. 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 a statement must clearly describe the duties to be performed by the alien.

The first issue in this proceeding is whether at the time of filing a qualifying relationship existed between the foreign and United States entities.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

*Affiliate* means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

\* \* \*

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The petitioner filed the instant immigrant petition on August 9, 2004. In an appended letter, dated July 21, 2004, counsel for the petitioner identified a parent-subsidiary relationship between the foreign and United States entities, stating that the foreign company is the sole shareholder of the petitioner. Counsel further addressed the foreign entity's ownership, stating that it furnished a cumulative amount of \$85,806.70 in exchange for 85,000 shares of the petitioner's issued stock. Counsel explained that the funds were transferred from a Hong Kong-based buyer of the foreign entity, [REDACTED], as payment for three shipments of goods furnished by the foreign organization. Counsel stated that the monies transferred to the petitioner from [REDACTED] constituted the foreign company's entire investment and sole ownership in the petitioning entity. Counsel referenced the minutes from the petitioner's organizational meeting as confirmation that [REDACTED] transferred the funds to the petitioner on behalf of and in exchange for the foreign entity's stock ownership in the petitioning entity.

As documentation of the parent-subsidiary relationship, counsel submitted: (1) stock certificate number one, dated May 6, 2002, naming the foreign entity the owner of 85,000 shares of the petitioner's stock; (2) the petitioner's stock transfer ledger identifying the foreign entity's ownership of 85,000 shares of stock in exchange for \$85,000 furnished on May 6, 2002; (3) the above-referenced minutes from a May 6, 2002 **organizational meeting, in which the board of directors addressed the buyer-seller relationship between the foreign entity and [REDACTED], as well as the transfer of funds from [REDACTED] on behalf of the foreign entity, and the petitioner's receipt and acceptance of the transferred monies on April 18, 2002 as consideration from the foreign entity for the 85,000 shares of issued stock;** (4) a copy of the petitioner's completed May 6, 2002 Notice of Transaction Pursuant to Corporations Code section 25102(f) noting its issuance of stock in exchange for \$85,000; (5) an April 9, 2002 letter from the foreign company to [REDACTED] instructing [REDACTED] Tat to forward to the petitioner the cumulative amount of \$85,806.70 due to the foreign entity for goods delivered to [REDACTED] under three separate invoices in January and February 2002; (6) three purchase and sales contracts, invoices, packing lists and bills of lading evidencing the above-referenced goods sold by the foreign entity to [REDACTED] in January and February 2002; (7) a copy of the "Customer Advice" documenting the transfer of \$85,806.70 from [REDACTED] to an account held by the petitioner with instructions that the monies were to be designated as the foreign entity's capital investment in the United States company; (8) a

bank receipt identifying a credit to the petitioner's account on April 18, 2002 in the amount of \$85,794.70 as a result of the receipt of a wire transfer that originated with [REDACTED]; and (9) the petitioner's April 2002 bank statement confirming its receipt of \$85,794.70 on April 18, 2002. The AAO notes that the petitioner's federal tax returns for the years 2002 through 2004 reflect common stock in the amount of \$85,000, and identify the foreign entity as the sole stockholder of the organization.

On March 16, 2005, the director issued a request for evidence noting an insufficiency in the evidence previously provided by the petitioner with respect to the existence of a qualifying relationship between the foreign and United States entities. The director asked that the petitioner explain why the transferred monies originated with someone other than the foreign entity, and provide the names of the involved transferors and account holders, as well as documentation corroborating the petitioner's receipt of the funds.

Counsel for the petitioner responded in a letter dated May 26, 2005, and again referenced and submitted the above-outlined documentary evidence. Counsel stated that the documentation proves that "the [p]arent [c]ompany has requested one of its customer[s] in Hong Kong to make payment for shipments direct[ly] to its U.S. [s]ubsidiary." Counsel further stated that "[t]his fund for capital investment was originally from the [p]arent [c]ompany to the U.S. [s]ubsidiary to [e]xchange 100% [o]wnership of [the petitioning entity]."

In a January 26, 2006 decision, the director concluded that the petitioner had not established the existence of the purported parent-subsidary relationship between the foreign and United States entities. The director, noting that the transferred monies had not originated with the foreign organization, stated that "[t]he petitioner was unable to establish the domestic stock had actually been purchased by the parent company." The director noted that the petitioner's April 2002 bank statement identified the company's address as that of the beneficiary's personal residence, and concluded that the petitioner had not resolved this discrepancy. The director further noted that the foreign company's brochure does not reference the United States organization as a related company, nor does the petitioner's website or corporate literature note a relationship with the foreign company. The director stated "[t]his lack of direction or assistance from the headquarters office indicate at best a very passive role by the parent company, but more likely, a lack of real connection to the U.S. entity." Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on February 24, 2006. In a subsequently submitted letter, dated April 28, 2006, counsel challenges the director's finding, stating "[t]he money for the stock purchase of the petitioner (the U.S. subsidiary) did originate from the parent company for it's the parent company entitled to the money transferred by the third party to the U.S. company, since the third party has purchased valued merchandise belonging to the parent company." Counsel references the above-stated documentary evidence, as well as the petitioner's federal income tax returns as proof of the parent-subsidary relationship between the foreign and United States entities.

With respect to the address portrayed on the petitioner's bank statement, counsel explains that prior to receiving the transferred monies, the petitioner was in its "initial set-up stage," and its business "[was] temporarily set in the residential address." Counsel states that following the receipt of the wired funds, the petitioner leased office and warehouse space, which counsel documented with copies of two lease agreements signed by the petitioner on April 25, 2002 and December 24, 2002. Counsel stated "the 'address inconsistency' indicated by [the director] simply refers to two development stages of the petitioning company, which as a newly arrived foreign entity, it required some adaptive period to set up a comp[li]ete business operation and the preliminary preparations took a great deal of work."

Counsel also provided an April 20, 2006 letter from the foreign entity, in which the company explained its decision to exclude the petitioner from its corporate and promotional material in order to maintain agreeable working relationships with its four third-party United States agents. Counsel also states in his April 28, 2006 letter that the exclusion was "intentional and is in accordance with the [foreign] company's marketing strategy[,] [yet] does not mean that the company has kept this information from legal and governmental authorities." Counsel explains "the foreign company does not wish to unduly damage the market for the third-party agents by the presence of its direct office in the United States," and therefore, omitted the petitioner from its marketing material.

Upon review, the petitioner has demonstrated the existence of a parent-subsidary relationship between the foreign and United States entities. The record contains comprehensive and sufficient documentation demonstrating that the foreign entity furnished consideration in exchange for its ownership of 85,000 shares of the petitioner's issued common stock.

When establishing a qualifying relationship in situations involving a third-party as the originator of funds transferred on behalf of a beneficiary's foreign employer, the AAO emphasizes the importance of demonstrating the relationship between the foreign entity and the third-party transferor. Here, the petitioner documented the buyer-seller relationship between the foreign entity and [REDACTED] the third-party transferor, with purchase and sales contracts, invoices, packing lists and bills of lading. The petitioner's organizational minutes confirms its acknowledgement of the three sales transactions between the foreign organization and [REDACTED] resulting in an outstanding balance of \$85,806.70. The minutes also document the petitioner's receipt of funds from [REDACTED], which represent the payment due to the foreign entity for goods received by [REDACTED], and confirm the petitioner's acceptance of the funds as consideration from the foreign entity in exchange for the petitioner's stock issuance. These facts are essential to establishing the existence of the parent-subsidary relationship between the foreign and United States entities.

Moreover, the petitioner presented the relevant wire transfer receipt and the petitioner's bank statements, both of which confirm that the funds transferred from [REDACTED] were deposited into an account held by the petitioner. The AAO notes that the use of a residential address on the petitioner's bank account statement is not material to this issue. The corresponding bank statements identify the owner of the bank account as the petitioning entity and not an individual, such as the beneficiary himself. It is evident from the documentation provided by the petitioner that the United States company itself received the \$85,794.70 transferred from Wang Tat. As the petitioner has demonstrated the existence of a qualifying relationship between the foreign and United States organizations, the director's decision with respect to this issue only will be withdrawn.

The AAO will next address the issue of whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

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

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

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

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) Directs the management of the organization or a major component or function of the organization;
- (ii) Establishes the goals and policies of the organization, component, or function;
- (iii) Exercises wide latitude in discretionary decision-making; and
- (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In his July 21, 2004 letter, counsel for the petitioner noted that the beneficiary would occupy the position of general manager in the United States company, during which he would supervise seven employees and would perform the following managerial job duties:

- Manage [c]ompany market research activities.
- Manage [c]ompany e-commerce activities. Manage [c]ompany purchasing activities. Manage and supervise the operation and performance of the [c]ompany.
- Ensure execution of all employees' duties to guarantee quality work environment.
- Discuss with the management regarding required changes in business goals in accordance with the current conditions.
- Direct the implementation of the business expansion plan and operations policies.
- Meet with local business leaders to build up the network for the company.
- Has the authority to hire, terminate, evaluate, and promote the managerial personnel based on their job performance, qualification and contributions.

Besides plan[ning], develop[ing] and establish[ing] policies and objectives of the company in accordance with the Board directives, [the beneficiary] has final decision-making authorities

toward business, accounting, personnel and future expansion plans. He also supervises and directs the work of three business related professional employees and one operation supervisor, these direct and indirect subordinate staffs release hi[m] from doing non-managerial related daily work.

Counsel submitted an organizational chart of the petitioning entity, identifying the following six positions as being subordinate to the beneficiary: web developer/administrator, operation supervisor, production coordinator, market research analyst, sales specialist, and warehouse employee. Counsel attached a statement describing each of the positions, including the above-outlined description of the job duties performed by the beneficiary.

In his March 16, 2005 request for evidence, the director asked that the petitioner submit the following evidence demonstrating that the beneficiary would be employed in a primarily managerial or executive capacity: (1) a chart of the petitioner's managerial hierarchy and staffing levels at the time of filing the petition, clearly identifying the beneficiary's position and all workers employed in a position subordinate to the beneficiary, as well as the job duties and positions held by the beneficiary's subordinates; (2) a "detailed description" of the job duties that the beneficiary would perform during a "typical day" as the petitioner's general manager; and (3) copies of the quarterly tax reports filed by the petitioner for the last five quarters.

In his May 26, 2005 response to the director's request for evidence, counsel corrected his original claim, and stated that at the time of filing, the petitioner employed a staff of six workers, including the beneficiary who supervises the five subordinate employees. Counsel stated that the beneficiary's five subordinates, of which counsel claimed three are professional employees, "assist him in daily operations and . . . relieve him from performing daily 'non-managerial' duties on business operations." Counsel submitted the following April 13, 2005 letter from the petitioner outlining the beneficiary's job responsibilities as general manager:

*Manage [c]ompany market research activities. (15%)*

Supervise the daily performance of [the] [m]arket [r]eserach [a]nalyst, evaluate his research and analysis progress, direct his research towards a more productive and efficient approach, direct his theoretical findings towards a practical application. Provide instructions when aware of the research/analyze [sic] course off track.

*Manage [c]ompany e-commerce activities. (15%)*

Supervise the daily performance of [w]eb [d]eveloper/[a]dministrator. Monitor the customer response level and web-visiting frequencies to evaluate the effectiveness of the company 'electronic store.' Understand that while the professional pays more attentions [sic] to the process (building up and administer), the [g]eneral [m]anager has to closely monitor the end result. Provide timely instructions to the professional when ongoing activities [are] not as favorable as planned; direct him [in] seeking alternative approaches towards more productive directions.

*Manage [c]ompany production activities. (15%)*

Supervise the daily performance of the [p]roduction [c]oordinator [and] evaluate his management of company production. Provide instructions for course of action whenever necessary.

*Manage and supervise the operation and performance of the [c]ompany. Ensure execution of all employees' duties to guarantee quality work environment. (20%)*

Conduct regular meetings with company professional staffs and [o]peration [s]upervisor. Receive reports from the [o]peration [s]upervisor and each professional personnel, and discuss newly arisen issues in company operations. Give direction and issue assignments to all professional staffs. Oversee market research progress, the coordination of trade and production, and accounting affairs. Evaluate information on new product line proposals. Direct the planning, organizing and constituting trade show affairs. Review and evaluate reports and information from subordinate employees and business associates.

*Discuss business goals with management and make changes according to current conditions. Direct the implementation of the business expansion plan and operation policies. (20%)*

Receive reports and consult with individual professional employees. Analyze the information received; devise business expansion plans. Over the course of implementing procedures, interact with subordinate employees on practicability, risks, budgets, timetable, and adjustment of business expansion plans and operation policies.

*Meet with local business leaders to build up the network for the company. (10%)*

Attend local chamber of commerce, build up business network in the trade circle. Through government authorities or private connections to locate supporting financial institutions, investors and establish stable relationship and meetings with them periodically.

*Has the authority to hire, terminate, evaluate, and promote the subordinate employees based on their job performance, qualification and contributions. (5%)*

Recruit qualified applicants through interview and set up their job duties, evaluate each subordinate staff's job performance, exercise authority in hiring, firing or promoting professional staff of the company, has authority to determine each employee's benefit package, bonus, sick leave or vacation terms.

Counsel submitted an organizational chart bearing the date of the instant filing, and identifying the beneficiary and five subordinate employees. The AAO notes that the job positions named on the organizational chart are the same as those initially identified by the petitioner, with the exception of the warehouse employee, who was excluded from the chart submitted in response to the director's request for evidence. The AAO also notes that the employees identified as occupying the positions of market research analyst and sales specialist are different from those named on the original organizational chart. Counsel again submitted the requested job descriptions of each position occupied in the petitioning entity. As the petitioner's statement describing each position is already part of the record, it will not be repeated herein.

Counsel also submitted copies of the quarterly tax reports filed by the petitioner for the past five quarters. Counsel explained in his accompanying letter that the petitioner's accountant incorrectly reported on the petitioner's 2004 quarterly tax returns the amounts paid for payroll and payroll taxes, and thus, explained that the petitioner had filed amendments to its submitted federal Form 941 and state Form DE-6. Counsel provided confirmed copies of the quarterly reports filed with the California Employment Development Department, which, for the quarter ending September 30, 2004, identified four employees, including the

beneficiary.<sup>1</sup> Counsel noted, however, that the copies do not reflect the corrections made by the petitioner subsequent to the filings, which, according to counsel, would include an additional two workers employed by the petitioner at the time of filing.<sup>2</sup> Counsel stated that a conversation with a state employee at the Employment Development Department confirmed that the amended report was not yet available for release and could not be submitted for review. Counsel referenced copies of cancelled checks paid by the petitioner to the Employment Development Department, the United States Treasury, and Bank of America as evidence that the petitioner paid payroll taxes for six employees during the third quarter of 2004.

In his January 26, 2006 decision, the director concluded that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director noted inconsistencies in the petitioner's staffing levels at the date of filing. The director also noted that the petitioner identified only one worker who was employed in a non-supervisory or non-professional position, and stated that "[i]t is not reasonable for a corporation with a single salesperson to need a chief executive and three other professionals with the duties described by the petitioner." The director concluded that the beneficiary's subordinates likely assisted the salesperson in performing the petitioner's sales functions and daily activities. Consequently, the director denied the petition.

In his April 28, 2006 letter submitted on appeal, counsel contends that the beneficiary would be employed by the petitioning entity in a primarily managerial capacity. With respect to the director's reference to inconsistencies in the petitioner's staffing levels, counsel explains:

[T]he [United States] company originally operated without an in-house sales staff. During the first three years of the U.S. [c]ompany's operations, the foreign parent company provided the sales functions as a way to build a strong foundation for the company, which has been working our with the U.S. side [o]peration [s]upervisor's daily involvement. This function has directly provided income to the petitioning company.

Besides the supervisory position the [o]perations [s]upervisor assumes, the petitioning company employs three professional staffs, which includes a [p]roduction [c]oordinator, [w]eb developer/[a]dministrator, and [m]arket [r]esearch [a]nalyst. There have been a few changes in personnel during the operation of the company, but otherwise the personnel profile has remained generally the same. It needs to be stressed that the professional employees are responsible for specific professional tasks in the company (It was a misunderstanding in the denial decision issued by [Citizenship and Immigration Services (CIS) which stated 'the professionals who in turn manage (sales person)'].

The above mentioned three professional staff (not including the [o]perations [s]upervisor) are neither responsible for the management of the non-professionals (Sales Specialists), nor directly involved in providing income to the company.

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<sup>1</sup> Based on the organizational chart, the four employees identified on the quarterly report occupied the positions of general manager, web developer/administrator, production coordinator, and operation supervisor.

<sup>2</sup> Counsel represented the additional two workers as holding the positions of market research analyst and sales specialist.

Because the beneficiary's duties within the petitioning company is to manage three *professional staff [members]* and one *[o]perations [s]upervisor* will be in charge of the company sales activities – either by working with the parent company's sales team in the beginning stage, as the U.S. entity develops, he will lead and manage the in-house sales team.

Counsel again submits a description of the job duties performed by the beneficiary and five subordinate employees.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive 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 job description offered by the petitioner does not address the specific day-to-day managerial or executive tasks to be performed by the beneficiary in his capacity as general manager. While lengthy, the job description, in essence, notes only generally the beneficiary's responsibilities of managing the work of his four subordinate employees and the petitioning company, as well as making personnel decisions. The petitioner mentions in the beneficiary's job description its "business goals," "business expansion plan" and "operation policies," yet does not define each or clarify the managerial or executive role the beneficiary would have with respect to each. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.* at 1108.

Also, as noted by the director, the record contains unresolved inconsistencies with respect to the petitioner's staffing levels at the time of filing. The AAO acknowledges counsel's explanation pertaining to its amended 2004 state quarterly tax reports, and in particular, the quarterly report ending September 30, 2004.<sup>3</sup> Notwithstanding this error, the original organizational chart submitted at the time of filing is different from that subsequently provided by counsel. As each organizational chart purportedly reflects the petitioner's staffing levels on the filing date, the petitioner has failed to provide a clear illustration of the staff supporting the beneficiary at the time of filing. The petitioner initially claimed to employ a warehouse employee, a position that was excluded from the latter organizational chart. Also, both organizational charts identify the employment of a sales specialist, yet counsel claims on appeal that the foreign entity performed the sales functions of the petitioning entity.<sup>4</sup> The AAO notes that neither description for the position of operations

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<sup>3</sup> The cancelled checks and federal quarterly tax report submitted by counsel in his response to the director's request for evidence corroborate counsel's claim that the petitioner in fact employed six employees during the third quarter of 2004 rather than the four employees originally reported by the petitioner.

<sup>4</sup> Counsel specifically states that the foreign entity performed the petitioner's sales functions during the first three years of petitioner's operations. As the petitioning entity was incorporated on December 27, 2001,

supervisor or sales specialist indicates that either person would collaborate with the foreign company's sales force, or mentions that the foreign entity would render sales assistance to either employee. In fact, other than counsel's claim on appeal, there is no discussion in the record of the role of the foreign company's sales personnel in the United States company or with respect to the beneficiary's purported employment as a manager or executive. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record does not establish that the petitioner maintains a staff sufficient to employ the beneficiary in a primarily managerial or executive capacity. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

Based on the record, at the time of filing, the petitioner employed six workers in the positions of general manager, web developer/administrator, operation supervisor, production coordinator, market research analyst, and sales specialist. The AAO notes that counsel claims that the web developer, production coordinator and market research analyst are professionals as each has received a baccalaureate degree. The petitioner, however, did not submit documentary evidence such as a diploma or transcripts confirming each employee's completion of a baccalaureate program. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Regardless, the possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an person is employed in a professional capacity as that term is defined in § 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the operational tasks related to the positions of production coordinator, market research analyst or web developer, who are among the beneficiary's subordinates.

Moreover, it does not appear that the six-person staff employed by the petitioner is sufficient to meet the reasonable needs of the petitioning entity. The record indicates that at the time of filing, the petitioner maintained premises in the United States for use as an office and warehouse, as well as for manufacturing or operating metal products. The AAO notes that the petitioner's staff is deficient in that, at the time of filing, it did not employ someone to perform the company's warehouse functions. Also, while it is unclear to what extent the petitioner would produce its own products, the petitioner does not claim to employ any workers

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based on counsel's claim, the foreign entity was providing these services to the petitioner at the time the instant petition was filed.

who would be engaged in metal manufacturing. As a result of these deficiencies, as well as the discrepancy in the petitioner's sales staff, the record does not establish that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as general manager and his support staff. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Based on the foregoing discussion, the petitioner has failed to demonstrate that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

The AAO recognizes the beneficiary's previously approved L-1A nonimmigrant petitions. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Furthermore, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. *See* 8 C.F.R. § 103.8(d). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. Based on the lack of evidence of eligibility in the current record, the director was justified in departing from the prior nonimmigrant petition approvals and denying the immigrant petition.

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. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.