U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D7

FILE: LIN 01 209 52598 Office: NEBRASKA SERVICE CENTER Date: JUN 01 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Director
Administrative Appeals Office

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DISCUSSION: The Director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is a new U.S. office providing diamond cutting, shaping, and finishing services to jewelry stores and the public. It seeks to temporarily employ the beneficiary as a general manager, and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee. The director denied the petition concluding: (1) that the petitioner failed to demonstrate control of the U.S. entity, and therefore did not establish a qualifying relationship; (2) that the beneficiary was not employed abroad in a primarily managerial or executive capacity; and, (3) the beneficiary would not be employed in the United States in a primarily managerial or executive capacity.

On appeal, counsel contends that the director "wrongfully denied" the petition. Counsel asserts that the record establishes control of the petitioning organization by the 50% shareholder of the U.S. entity. Additionally, counsel states that "consider[ing] the reality of the business world . . . the beneficiary is indeed the executive of the U.S. entity." Furthermore, counsel states that the "inexcusabl[e] and inordinate[e]" delay of Citizenship and Immigrations Services' (CIS) in rendering a decision resulted in harm to the beneficiary. Although counsel requests ninety days from the date of filing the appeal, November 18, 2002, to submit a brief, a review of the record reveals no subsequent submission.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) states if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation;

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:

a. The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

b. The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

c. The organizational structure of the foreign entity.

The first issue in this proceeding is whether a qualifying relationship exists between the foreign and U.S. entities.

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *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.

(L) *Affiliate* means

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

(2) 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.

The petitioner stated on the petition and in an appended letter that the petitioning organization is a subsidiary of the beneficiary's foreign employer. The petitioner submitted the U.S. company's Articles of Incorporation, which indicated that the petitioner would issue 100 of its 1000 authorized shares of stock in consideration for $1,000.00. The petitioner also provided two stock certificates for the U.S. company identifying the stockholders -- Babken Ghazaryan and Andranik Martirosyan -- as equal owners of the 100 shares of issued stock.

On July 30, 2001, the director issued a request for evidence, asking that the petitioner provide evidence of the ownership of the foreign entity. In response, the petitioner stated that the foreign entity "is 100% owned and operated by Mr. Babken Ghazaryan." The petitioner submitted statements from both Mr. Ghazaryan and the Municipality of Nor-Hadjin, the Armenian local authority responsible for business registration, as evidence of the foreign company's ownership.

In her decision, the director determined that the U.S. and foreign entities do not have common ownership and control. The director noted that Mr. Martirosyan, the second shareholder who has no interest in the foreign corporation, controls the U.S. entity, because he will serve as the petitioner's president, and signed agreements on behalf of the U.S. organization. The director therefore determined that a qualifying relationship did not exist between the two entities.

On appeal, counsel asserts that the evidence "clearly showed that the foreign entity has significant control," as it chose the name of the U.S. company, and is providing the petitioner with its technology, equipment, and products. Counsel also contends that "[t]he documentation clearly establishes that all major decisions are subject to the approval of the foreign entity." Counsel states that a qualifying relationship therefore exists as a result of the foreign entity's control of the U.S. corporation.

On review, counsel's assertions are not persuasive. The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. at 293.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens*, 19 I&N Dec. at 365. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

In the present matter, the U.S. entity is owned equally by two shareholders, one of which is the sole owner of the foreign organization. The petitioner has failed to establish that the owner of the foreign company, Mr. Ghazaryan, controls the U.S. corporation as to establish a qualifying relationship between the two entities. As noted above, in order to establish "de facto" control by Mr. Ghazaryan, the petitioner must provide agreements relating to the voting of shares, the distribution of profit, and the management and direction of the subsidiary. The record does not contain the necessary documentation. Also, counsel's assertion on appeal that the foreign entity supplied the petitioner's equipment, technology, and products is not sufficient.[1] Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Based on the evidence submitted, it is concluded that the petitioner has not established that a qualifying relationship exists between the U.S. and foreign organizations.

The second issue in this proceeding is whether the beneficiary was employed in the foreign entity in a primarily managerial of 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-
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> (i) manages the organization, or a department, subdivision, function, or component of the organization;
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> (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;
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> (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
>
> (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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[1] It is noted that the petitioner's assertion that the foreign company supplies the U.S. entity's inventory and equipment is not supported by the record. While the record contains an agreement between the foreign and U.S. corporations indicating "an initial capital investment . . . in the form of uncut diamonds," there is an additional agreement between the petitioner and an unrelated third party evidencing the purchase of equipment valued at approximately $13,000.00. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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

In a letter submitted with the petition dated June 26, 2001, the petitioner explained that the beneficiary's position abroad as head manager of the sales and appraisals department included the following responsibilities: (1) developing policies pertaining to the purchase and sale of diamonds; (2) hiring and firing the department's personnel; and (3) making major decisions as they apply to suppliers and customers. The petitioner stated that the beneficiary's authority is limited only by the general policies of the organization.

In an attached organizational chart of the foreign company, the beneficiary is identified as second in the organizational hierarchy, reporting only to the president. Subordinate to the beneficiary are the accounting/administrative manager, a specialty salesperson, a customer service representative, and five diamond cutters.

In a request for evidence dated July 30, 2001, the director explained that the petitioner's description of the beneficiary's position in the foreign organization is vague. The director outlined the regulatory requirements of "managerial capacity" and "executive capacity," and requested that the petitioner provide a detailed description of the beneficiary's employment establishing that the beneficiary qualifies under either capacity. The director noted that the statement should include the beneficiary's daily job duties, the percentage of time spent performing each job duty, and the job duties of the employees supervised.

In response, the petitioner submitted the same description of the beneficiary's job duties as provided with the petition. The petitioner stated that the beneficiary supervised sales and marketing staff, whose duties included "seek[ing] out jewelry retailers to purchase [the foreign company's] diamonds," conducting market research, and attending jewelry conferences. The petitioner explained that the sales and marketing personnel are required to have formal education in the areas of sales and marketing, professional experience in diamond sales, and a thorough understanding of diamonds and the technology of processing diamonds. The petitioner also noted that the beneficiary supervised "technical personnel," who are responsible for examining, cutting, polishing, and appraising the diamonds. The petitioner stated that these employees should have an educational background in geology or engineering.

In her decision, the director determined that the beneficiary had been working abroad as a first-line supervisor. The director noted that, although the employees subordinate to the beneficiary were referred to as

professionals, the record does not demonstrate "that they are more than skilled workers." The director further concluded that, when considering the size and reasonable needs of the operation, the foreign company "appear[ed] to be [a] venture of minimal size, where it is the norm for individuals in the position of the beneficiary to perform all duties relative to the running of a business . . . ." The director consequently determined that the beneficiary was not employed abroad in a primarily managerial or executive capacity.

Counsel did not address on appeal the beneficiary's position in the foreign entity. Because counsel neglected to provide additional evidence pertaining to the issue, the AAO is compelled to uphold the decision of the director. The record therefore supports a finding that the beneficiary was not employed abroad in a primarily managerial or executive capacity.

The remaining issue in this proceeding is whether the beneficiary will be employed in the United States in a primarily managerial or executive capacity within one year of approval of the petition.

In the letter dated June 26, 2001, the petitioner explained that as general manager of the U.S. entity, the beneficiary would be given broad authority to make decisions, and would perform the following job duties:

> (1) Manage and staff the operation with sales and marketing personnel; (2) Train and supervise all sales, marketing and technical personnel, review their performance, provide feedback and determine salaries upon hire and throughout the employees' tenure and terminate personnel subject to reasonable and lawful personnel policies; (3) Develop and implement a marketing and sales plan based on his findings regarding the American market; (4) Review and authorize sales contracts with customers that were negotiated by salespeople; (5) Train marketing personnel and supervise their work by reviewing marketing and advertising proposals, direct the development of proposals and authorizing implementation of proposals; (6) Use professional judgment to determine allocation of funds based on the broad company policy of financial decisions calculated to result in the maximum profitability without taking undue risks; (7) Develop operating procedures for optimum efficiency of organization; (8) Review the work of the technical personnel and supervise their performance to ensure products are in keeping with the highest standards maintained by [the petitioning organization] and also to maintain optimum marketability of the products according to research concerning the American market and principals of efficiency; (9) Travel to Armenia for managerial meetings and to perform other necessary duties in connection to his continuing responsibilities with [the petitioning organization].

In an attached organizational chart, the beneficiary was identified as the general manager of valuation and sales, subordinate to the president. According to the organization chart, the employees subordinate to the beneficiary included two diamond cutters and two salesmen.

In the request for additional evidence, the director again explained that the duties relating to the beneficiary's position in the foreign organization are vague, and that the petitioner should submit documentation to support the beneficiary's claimed responsibilities. The director asked that the petitioner provide a detailed description of the beneficiary's employment establishing that the beneficiary qualifies under either capacity, including a statement of the beneficiary's daily job duties, the percentage of time spent performing each job duty, and the job duties of the employees supervised.

In response, counsel stated that the beneficiary qualifies as either a manager or an executive. Counsel explained that although the beneficiary's title of general manager denotes a position of managerial capacity, the beneficiary will also be employed as an executive, as "the title is not as indicative of the nature of the position as are the actual duties." Counsel asserted that the beneficiary qualifies as an executive because he will: direct the management of the organization, establish goals and policies of the organization, have wide latitude in decision-making, and receive only general supervision from the owners. Additionally, counsel contended that the beneficiary also qualifies as a manager because "[i]n addition to managing the operation, the alien supervises and controls the work of the sales and technical personnel, has hire and fire authority over the personnel he supervises and he has broad discretion over the day-to-day operations."

In an additional letter from the petitioner, the petitioner provided the same job duties for the beneficiary as listed in a letter submitted with the petition. The petitioner also explained that the beneficiary's job duties in the U.S. are essentially the same as those he performed in the foreign company. The petitioner stated that the beneficiary will supervise sales and marketing personnel, who will perform market research, locate jewelry retailers, and attend jewelry conferences. In addition, the petitioner noted that the diamond cutters would be responsible for examining, cutting, and polishing the diamonds. The petitioner also stated that the qualifications for each position were the same as previously described.

The director concluded that the beneficiary would not be employed primarily in a managerial or executive capacity in the U.S. entity, and would instead be functioning as a first-line supervisor. The director stated that the beneficiary's job duties of contacting customers, negotiating contracts, and training employees are not considered to be typical of a manager or executive. Additionally, the director determined that, although the petitioner referred to the beneficiary's subordinates as professional, the beneficiary would not be supervising supervisory, professional, or managerial employees as required in the regulation defining "managerial capacity." Finally, the director noted that the U.S. entity appeared to be of "minimal size," and concluded that the beneficiary would likely perform the duties relative to running the business as opposed to working in a managerial or executive capacity.

On appeal, counsel requests that CIS "consider the reality of the business world and find that the beneficiary is indeed the executive of the U.S. entity."

On review, neither the director nor counsel addressed the proper issue in this proceeding. Because the petitioner is a new office, the appropriate analysis is whether the U.S. entity, within one year of approval of the petition, would support the beneficiary in a primarily managerial or executive capacity. It does not appear that the director considered the applicable regulation, 8 C.F.R. § 214.2(l)(3)(v). Therefore, the director's decision on this issue will be withdrawn, and the AAO will consider whether the beneficiary will be employed in the United States as a manager or executive within one year of approval of the petition.

Based on the evidence presented, within one year of approval of the petition, the U.S. entity will not support the beneficiary in a primarily managerial or executive capacity.

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level, and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of

the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

In the present matter, the petitioner has not provided adequate documentation establishing that the U.S. entity will sufficiently support the beneficiary in a managerial or executive position within one year of approval of the petition. The documentation submitted by the petitioner regarding the new U.S. entity includes: the proposed U.S. organizational chart, a sublease agreement for the period of one year, a contract for services with a U.S. retailer, a bill of sale for equipment, an investment agreement with the foreign company, and a notarized letter from a U.S. bank verifying the existence of a bank account for the U.S. company with an approximate value of $16,000 on October 16, 2001. Additionally, in response to the director's request for evidence, the petitioner submitted a statement from the director of the foreign company identifying the goals of the U.S. entity as "to establish a wholesale diamond company," and "[s]ell our fine diamonds to U.S. jewelry retailers."

While the petitioner submitted evidence that the U.S. entity possesses the necessary equipment and premises to begin doing business in the United States, the above-listed documentation does not establish that the beneficiary will be employed in a primarily managerial or executive capacity within one year of approval of the petition. The record does not contain a detailed business plan in which the company's policies, strategies, and financial goals are clearly defined. Nor does the record include any evidence that the organizational hierarchy will expand beyond the five proposed employees. Moreover, although the petitioner indicated on the petition a projected gross annual income of $250,000, the director of the foreign company acknowledged in his response to the request for evidence the possibility that the U.S. entity may not be "profitable enough" to pay the beneficiary's salary after operating for one year. The director noted that the foreign company would therefore continue to pay the beneficiary's salary. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Also, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Additionally, the petitioner is inconsistent in its assertions as to the capacity in which the beneficiary will be employed. The job title given to the beneficiary, general manager, implies employment in a managerial capacity. Likewise, in a letter accompanying the petition, the petitioner identified managerial job responsibilities of the beneficiary, including managing the U.S. operation, supervising sales, marketing, and technical personnel, and reviewing and authorizing sales contracts. In response to the director's request for evidence, however, counsel stated that the beneficiary "qualifies as either an executive or manager," and that the beneficiary's job title is not indicative of the nature of the position. Alternatively, on appeal, counsel asserts that the beneficiary "is indeed the executive of the U.S. entity." 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).

Moreover, a petitioner may not claim to employ the beneficiary as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing the beneficiary as both an executive and a manager. The petitioner has not satisfied this requirement. First, in response to the director's request for evidence, counsel essentially restated each of the regulations defining managerial and executive capacity as evidence of the beneficiary's employment in each capacity. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). In addition, while the petitioner provided with the petition a list of nine job duties to be performed by the beneficiary, it failed to submit a more detailed description of the beneficiary's day-to-day duties, and the percentage of time spent on each, as requested by the director. Instead, the petitioner simply included the same list of job duties as previously provided. The regulation at 8 C.F.R. § 214.2(l)(3)(viii) states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Furthermore, although counsel referred to the beneficiary's subordinates as "professionals," there is no evidence in the record supporting counsel's assertion. While the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." 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). In the present matter, the record does not contain any evidence that the beneficiary's subordinates' possess a baccalaureate degree in the areas of study stipulated by the petitioner: sales, marketing, geology or engineering. Counsel merely asserted in response to the director's request that "[the] personnel are of a professional level nature." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Based on the evidence presented, the AAO cannot conclude that within one year of approval of the petition the beneficiary would be employed in the U.S. entity in a primarily managerial or executive capacity.

For the foregoing reasons, the appeal will be dismissed.

Beyond the decision of the director, it remains to be determined whether the foreign entity is operating in Armenia in the business of cutting and processing diamonds. The petitioner provided three photographs, which it identified as "property in Armenia" owned by the foreign company. The property depicted in the photographs, however, is a gas station. None of the pictures reveal a business sign for the foreign company or provide any indication that the premises are being used as a diamond cutting facility. While it is absurd to

consider that the foreign company is operating its diamond business from a gas station, the petitioner has not provided an additional explanation as to the foreign company's facilities. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). For this additional reason, the appeal will be dismissed.

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.