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FILE: SRC 05 252 53162 Office: TEXAS SERVICE CENTER Date: JAN 08 2007

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:



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, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a limited liability company organized under the laws of the State of Florida and is engaged in the shoe business. The petitioner claims that it is the subsidiary of ██████ Ltd., located in Israel. The petitioner seeks to employ the beneficiary in the position of import manager for a one-year period.

The director denied the petition concluding that there is insufficient evidence to demonstrate: (1) that the beneficiary will serve in a primarily managerial or executive capacity in the United States; or (2) that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal on November 4, 2005. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary will in fact hold a managerial position as the beneficiary will supervise all import operations for the U.S. entity. Counsel further states that the director's decision contains a misstatement of fact with respect to the number of employees supervised by the beneficiary while employed by the foreign entity. Counsel submits a brief in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's

prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity by the U.S. entity.

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) 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.

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.

The nonimmigrant petition was filed on September 16, 2005. The Form I-129 indicates that the beneficiary will be employed in the position of import manager. In a document titled "Exhibit 'B' to I 129 L," the beneficiary's proposed duties in the United States are described as the following:

As a manager of [the U.S. entity], [the beneficiary] will be responsible for fully implementing our business plan. She will begin her functions by establishing market penetration through the development of existing contacts in the United States and abroad. She will work to establish channels of import, supplies and distributions and through our Florida offices. She will recommend hiring personnel to help her with the import division, production sales and distribution and establish overall goals and policies for their performance of her duties. She will be responsible for all aspects of import, export as well as establishing banking relations and lines of credit with the financial institutions with regard to her import, export duties. She will seek our [sic] increase our production from the supplier abroad, and look to establish new relationship with new supplier through attending multinational trade shows all over the work in order to maximize our market share, negotiating leases, arranging for inventory and coordinating the functions of all subordinate personnel. To supervise broker relationships, and oversee the customs instrument.

In addition, the petitioner submitted a job agreement dated August 18, 2005, that further described the duties to be performed by the beneficiary as the following:

1. Supervise all aspects of our company's imports.
2. Supervise all supplier bank transfers including currency exchange rates.
3. Manage all supplier shipments.
4. Supervise broker relationships.
5. Oversee the customs instruments.

The petitioner stated on Form I-129 that the company had four employees as of the date of filing. The record contains the petitioner's Florida Form UCT-6, Employer's Quarterly Wage Report, which confirms the employment of the employees later identified as the bookkeeper, internal sales, and sales manager, and one other individual during the second quarter of 2005.

On September 26, 2005, the director requested additional evidence to establish that the beneficiary will be performing the duties of a manager or executive with the U.S. company. Specifically, the director requested that the petitioner submit evidence to establish that the beneficiary qualifies under the criteria stated for managerial capacity. In addition, the director requested an organizational chart of the U.S. entity including the names, job titles and a detailed job description for each employee.

In its response dated September 28, 2005, the petitioner submitted an affidavit from the Chief Financial Officer of the U.S. entity confirming that the U.S. entity offered the position of Supervisor of Imports to the beneficiary. The petitioner also submitted a "master employee job description 2005" for all of the employees currently employed by the U.S. entity. In this master list, the petitioner repeated the same job description for the beneficiary's proposed position as was previously submitted with the original petition.

In addition, the petitioner submitted an organizational chart for the U.S. entity. The chart indicates that the chief financial officer will supervise the beneficiary as the supervisor of imports. The chart further shows that the beneficiary will supervise an executive assistant, a bookkeeper, and the company liaison of the foreign company. The chart does not provide the name of the employee who fills the position of company liaison, nor does it explain the job duties of that position. According to the brief job descriptions provided for the executive assistant and the bookkeeper, it appears that these positions will oversee the administrative tasks and bookkeeping functions respectively. The organizational chart identified a total of 18 positions within the U.S. company.

The director denied the petition on October 5, 2005 asserting that the petitioner did not submit sufficient evidence to establish that the beneficiary will be employed in a primarily executive or managerial capacity. The director further suggested that the petitioner did not provide evidence of subordinate employees who would relieve the beneficiary from performing the tasks necessary to produce a product or to provide services.

On appeal, counsel for the petitioner states that the beneficiary is a key employee who is crucial for the success of the U.S. entity. Specifically, counsel for the petitioner states the following:

Please take notice that the main purpose of [the beneficiary's] job is to supervise for the share holders in Israel, the operation of in [sic] the U.S.A.

As of today the main share holder of the U.S. Corporation is the Israeli company that up to now didn't send any supervisors or representative.

Now for the first time they send an experience [sic] manager from Israel (who has worked in Israel as a manager for over twelve months) to their U.S. Corporation to do what she did in Israel to supervise the import (all the business activity in the U.S.A. based on import of goods) there is not manufacturing in the U.S.A. Thus the beneficiary is a crucial employee and the most important a trusted one.

More over the main reason for her being send [sic] to the U.S.A. is to be the eyes, ears, and hands of the main share holder (51%) which is the Israeli company ([the foreign company]). [The beneficiary] will have full power to recommend to the main share holder and controller of the corporation to hire and fire employees including the CFO and the President of the U.S.A. Corporation.

All of the capacity of as a manager [sic] will be done through "[redacted] Ltd. company Liaison" (Israeli company owns 51%) in her function and position as main trusted executive will be to supervise the smooth operations of all of the U.S.A. corporation job and the management as of who to hire and fire.

* * *

She will be the highest hearsay in the U.S.A. Company regarding in whom to hire or fire from the U.S.A. Corporation. All that will be through her being the main manager for the

main shore [sic] holder in order for her to be fully busy she was assigned in the interim to do what she did in Israel to be the import and export manager in the U.S.A. Corporation.

However the main goal for the main share holder of the U.S.A. Corporation is to have their employee [the beneficiary] the head of the U.S.A. Corporation.

* * *

Moreover [the beneficiary's] first task in the U.S.A. is two [sic] hire two employees to help her manage her tasks and her job as supervisor of the imports and supervision of the U.S. operation for the main share holder ([the foreign company]). She will train these two employee to the best standard of the work that she was trained to do in Israel and they will be the ones to do the most of "Non-Managerial operations of the company".

* * *

[The beneficiary's] job title doesn't do justice with her actual function as the main manager trustee of the biggest share holder in Israel. She will function as the lead director with regard to final say (after consulting with the Israeli company in her Liaison meeting) with regard to the operation of the U.S.A. Company.

In addition, the petitioner submits an affidavit from the chief financial officer of the U.S. company describing the duties the beneficiary would perform in the United States. The chief financial officer states that the beneficiary will supervise and manage the import division and the U.S. company and is authorized to "hire two more employees to be underneath her to perform the day by day duties of this division." In addition, he asserts that the beneficiary will have the "highest power in our U.S. Company because of her ability to hire or fire (after she gets an approval from the main share holder in Israel) any employee in the U.S. including the CFO and President of the company."

Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a 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. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The definitions of executive and managerial capacity 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).

The beneficiary's position description is too general and broad to establish that the preponderance of her duties is managerial or executive in nature. The beneficiary's job description includes vague duties such as the beneficiary will "supervise all aspects of our company's imports"; "oversee the customs instruments"; be "responsible for fully implementing our business plan"; "establishing market penetration through the

development of existing contacts in the United States and abroad”; and “will work to establish channels of import, supplies and distribution and through our Florida offices.” 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 provide any detail or explanation of the beneficiary's activities in the course of his daily routine. 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).

The description also includes several non-qualifying duties such as the beneficiary will “be responsible for all aspects of import, export as well as establishing banking relations and lines of credit with the financial institutions with regard to her import, export duties,” and the beneficiary will “look to establish new relationship with new supplier through attending multinational trade shows all over the work in order to maximize our market share, negotiating leases, arranging for inventory and coordinating the functions of all subordinate personnel,” and “supervise broker relationships, and oversee the customs instrument.” Without further explanation, these duties suggest that the beneficiary would be directly involved in the company’s finance functions, marketing, inventory, and import activities rather than supervising others who perform non-managerial duties related to these functions. An employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int’l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Furthermore, the director specifically requested that the petitioner provide a detailed job description and convincing evidence that the beneficiary will be employed in a managerial capacity. The petitioner did not submit the requested job description and did not submit additional evidence that the beneficiary will hold a position of managerial or executive capacity, as requested by the director. Instead, the petitioner reiterated the job duties described in the original job description. 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). The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. For this reason alone, the appeal will be dismissed.

In addition, the Form I-129 states that the beneficiary will fill the position of Import Manager. However, the petitioner later submitted an affidavit from the Chief Financial Officer of the U.S. entity stating that the beneficiary will fill the position of Supervisor of Imports. 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).

Furthermore, on appeal, counsel for the petitioner states that the beneficiary will hire two individuals upon the beneficiary’s entry into the United States and “they will be the ones to do the most of ‘Non-Managerial operations of the company.’” 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).

On appeal, counsel for the petitioner further asserts that the beneficiary's "job title doesn't do justice with her actual function as the main manager" and notes that it is the intent of the foreign entity for the beneficiary to be "the head of the U.S.A. Corporation," and exercise "the highest power of any employee in the U.S." The AAO noted that the position descriptions submitted in support of the petition and in response to the request for evidence, as well as the petitioner's organizational chart, clearly show that the scope of the beneficiary's responsibilities is limited to import functions. 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).

On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The record shows that as of the date of filing, the petitioner stated that the beneficiary will control and direct subordinate managerial staff. According to the organizational chart, the beneficiary will supervise an executive assistant, one bookkeeper and a "company liaison." According to the most recent Employer's Quarterly Report for Florida, Form UCT-6, submitted by the petitioner, the employee who is in the position of bookkeeper is not listed on the quarterly report for the period ended in July 2005. The petitioner has not explained why this employee is not listed on the Employer's Quarterly Report submitted by the petitioner. 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).

Furthermore, the petitioner did not submit the name or job description of the employee who fills the position of "company liaison." 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)). Thus, the executive assistant is the only position subordinate to the beneficiary that can be confirmed as employed by the company at the time of filing.

Although the beneficiary is not required to supervise personnel, if it is claimed that her 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).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the administrative work of the executive assistant, who is the beneficiary's subordinate employee. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

Although the beneficiary will supervise an executive assistant, it appears that the beneficiary will be performing a majority of the import operations such as market research, financial development, and several operational tasks inherent in operating a company on a daily basis, such as acquiring new business, maintaining inventory, handling export and import of products, negotiating contracts, and human resources functions. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm. 1988). Based on the foregoing discussion, there is insufficient evidence to establish that the beneficiary would be employed by the petitioner in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner indicates that the beneficiary is a "main manager" and a "crucial employee" of the U.S. company. 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. § 214.2(l)(3)(ii). 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 employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

As discussed above, the beneficiary's job description included primarily non-qualifying duties associated with the petitioner's day-to-day functions, and the petitioner has not identified any other employees within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to operating the business. The fact that the beneficiary has been given

a managerial job title and general oversight authority over the business is insufficient to elevate her position to that of a "function manager" as contemplated by the governing statute and regulations.

In the instant matter, the petitioner has not established that it will employ the beneficiary in a predominantly managerial or executive position after one year of operation. Accordingly, the appeal will be dismissed.

The second issue to be addressed is whether the beneficiary has been employed in a primarily managerial or executive capacity for the foreign entity.

The nonimmigrant petition was filed on September 16, 2005. In a support letter, the petitioner indicated that the beneficiary was employed by the foreign company in the position of Supervisor of Imports since August 2004. The petitioner described the duties performed by the beneficiary in this position as the following:

1. Supervise all aspects of our company's imports.
2. Supervise all supplier bank transfers including currency exchange rates.
3. Manage all supplier shipments.
4. Supervise broker relationships.
5. Oversee the customs instruments.

The petitioner also submitted the organizational chart of the foreign company that indicated the beneficiary as the import manager who supervised two employees with the title of "import."

On September 26, 2005, the director issued a notice requesting additional information of the beneficiary's employment abroad with the parent company. Specifically, the director requested the petitioner to submit convincing evidence that the beneficiary was employed in a managerial or executive capacity with the foreign company. In addition, the director requested information as to the employees supervised by the beneficiary, including their job titles and their specific job duties.

In the response, the petitioner submitted an affidavit from a manager of the foreign company stating that the beneficiary served the foreign company as an import manager. The affidavit stated that the beneficiary supervised two employees. The petitioner did not provide the job titles of the beneficiary's subordinates but did provide a brief job description. One employee's duties were described as "direct contact with all of overseas suppliers; open line of credits to suppliers; and direct contact with custom brokers." The second employee's duties were described as "control all oversea shipments; booking shipments with the steamship line; and bonded (warehouse) control."

The petitioner did not submit evidence that the beneficiary was employed in a managerial or executive capacity with the foreign entity as requested by the director. In addition, the petitioner provided a very vague explanation of the duties performed by the beneficiary's two subordinates. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). 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).

The director denied the petition and stated that the petitioner has not established that the beneficiary was employed in a managerial or executive capacity with the foreign company. The petitioner also noted that the beneficiary had only one subordinate with the title of "store employee."

On appeal, counsel for the petitioner states, "in the attachment the services claim that the beneficiary 'was over one person with the foreign entity.' This position is called 'store employee' on the chart. However, this is wrongly quoted from the chart, the chart shows clearly that [the beneficiary] is 'import manager' and she is in charge on two employees and not one."

Counsel's general objections, without specifically identifying any errors on the part of the director or providing new evidence to support that the beneficiary was employed by the foreign entity in a position of managerial or executive capacity, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence submitted by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I & N Dec. at 165. 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 Obaighena*, 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).

On review, the petitioner's assertions are not persuasive. 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. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed and indicate whether such duties are in a managerial or executive capacity. *Id.*

The definitions of executive and managerial capacity 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).

The petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states vague duties such as "supervise all aspects of our company's imports," "manage all supplier shipments," "supervise broker relationships," and "oversee the customs instruments." 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 provide any detail or explanation of the beneficiary's activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The petitioner's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature.

The job description also includes non-qualifying duties such as the beneficiary "supervise[d] all supplier bank transfers including currency exchange rates." It appears that the beneficiary has been providing the services of the business rather than directing such activities through subordinate employees. An

employee who "primarily" performs the tasks necessary to produce a product or provide a service 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. 1988).

In the instant matter, the petitioner did not submit a detailed job description of the duties performed by the beneficiary at the foreign company and thus AAO cannot determine if the beneficiary was employed by the foreign entity in a managerial or executive capacity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In addition, although the beneficiary is not required to supervise personnel, if it is claimed that her 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. The petitioner claims that the beneficiary supervises two employees in "import." 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).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the administrative functions of the subordinates supervised by the beneficiary.

Based upon the lack of a comprehensive job description, and the lack of evidence of the company's staffing levels, particularly with respect to the beneficiary's subordinates, it cannot be concluded that the beneficiary has been employed by the foreign entity in a managerial or executive capacity. For this additional reason, the appeal will be dismissed.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 appeal will be dismissed.

ORDER: The appeal is dismissed.