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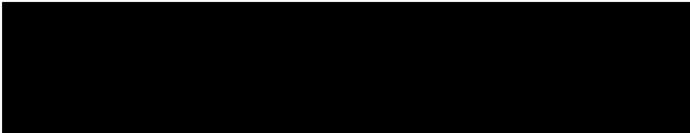


File: WAC 04 022 52706 Office: CALIFORNIA SERVICE CENTER Date: JUL 05 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

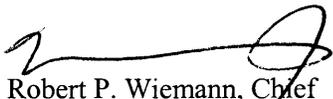
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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, California 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 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, a California corporation, states that it intends to import books and handicrafts from Nepal. The petitioner claims that it is the subsidiary of Global Books Center, located in Kathmandu, Nepal. The petitioner seeks to employ the beneficiary as the import/marketing manager of its new office in the United States for a two-year period.¹

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the beneficiary has been employed by the foreign entity in a managerial or executive capacity.

The petitioner subsequently filed an appeal. 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 has been and would be employed in a qualifying managerial capacity and is therefore eligible for the requested classification. Counsel submits a brief and additional documentary evidence in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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) 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.

¹ Pursuant to the regulation at 8 C.F.R. § 214.2(l)(7)(i)(A)(3), if the beneficiary is coming to the United States to open or be employed in a new office, the petition may be approved for a period not to exceed one year.

- (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.

If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to 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; and
- (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 (1)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) 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
 - (3) The organizational structure of the foreign entity.

The first issue addressed by the director is whether the petitioner established that the beneficiary will 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), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;

- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. 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), defines the term "executive capacity" as 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.

Pursuant to the regulations at 8 C.F.R. §§ 214.2(l)(3)(v)(B) and (C), the petitioner must establish that the beneficiary's proposed position will involve executive or managerial authority over the new operation, and that the new U.S. company will support an executive or managerial position within one year.

The nonimmigrant petition was filed on October 31, 2003. The petitioner indicated on Form I-129 that the beneficiary would serve as "import cum marketing manager" and perform "some clerical work." On the L Classification Supplement, the petitioner further described the beneficiary's duties as:

Will help to set up the business in a tourist [sic] area, buy books, meet distributors (agents) in U.S., send items saleable in [N]epal and export to Nepal plus train one or more individuals to be serviceable to the new company[.]

The director determined that there was insufficient evidence in the record to demonstrate eligibility and issued a request for evidence on December 19, 2003. The director instructed the petitioner to submit: (1) a detailed description of the beneficiary's proposed duties in the United States, including the percentage of time the

beneficiary would devote to each duty; (2) the proposed number of employees for the U.S. company and an organizational chart depicting the job titles, job duties, educational levels, and salaries/wages for all proposed employees; and, (3) an explanation as to how the new U.S. company will support a managerial or executive capacity within one year. The director further requested evidence related to the new office requirements set forth at 8 C.F.R. § 214.2(l)(3)(v)(C), including a detailed description of the type of business to be operated, and a detailed hiring plan for the U.S. company's first twelve months of operation.

In a response dated March 10, 2004, counsel for the petitioner stated:

At this time the beneficiary is training the US investor and director of the local company and has one employee. As the business activity picks up, the firm will need at least three more employees, a total of four plus the beneficiary.

Counsel stated that the petitioner is engaged in wholesale and retail sales of imported Nepalese books, magazines, jewelry, metal sculptures, hand woven shawls, sweaters, paintings, homemade rice paper and gift items. Neither counsel nor the petitioner further addressed the beneficiary's proposed duties, the petitioner's hiring plan, or the proposed organizational structure of the company.

The director denied the petition on April 8, 2004, concluding that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity. The director noted that the petitioner had described the beneficiary's duties in only broad and general terms and had provided insufficient detail regarding the beneficiary's actual duties and the percentage of time he would devote to managerial duties. The director observed that based on the limited evidence submitted, it appeared the preponderance of the beneficiary's duties would be directly providing the services of the petitioner's store.

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a managerial position as marketing manager/importer "to oversee the management of the U.S. Company." Counsel asserts that the beneficiary would have "managerial authority over essential subdivisions of the petitioner's vast U.S. organization, which consists of major division [sic] and several subdivisions within this division." Counsel further describes the beneficiary's proposed duties as follows:

[The beneficiary] will plan and develop investment in the United States. [The beneficiary] will also hire and supervise assistant staff. [The beneficiary] would be responsible for managing and directing the entire U.S. marketing. [The beneficiary] would analyze market trends and economic conditions to forecast potential purchases and sales. [The beneficiary] would be responsible for overall U.S. sales and marketing operations, manage the planning and implementation of the overall strategies for marketing and promotional activities nationwide. [The beneficiary] would explore U.S. Market for Nepalese goods like Books, Magazines, handicrafts and Pashmina shawls. [The beneficiary] will study the market trend and explore that which goods are profitable for exporting to Nepal. After finalizing negotiations with American sellers and buyers, he will coordinate for shipment of goods with Parent company in Nepal. Other duties would

include analyzing market, setting strategic planning goals, setting sales quotas and expenses, developing advertising and promoting products in U.S.A.

In support of the appeal, the petitioner submits an organizational chart for the U.S. company depicting the beneficiary as president and marketing manager. The chart indicates that the beneficiary will supervise a marketing assistant, a senior salesman and an accountant, and depicts three salesmen under the supervision of the senior salesman. The petitioner also attaches brief position descriptions for each employee.

Upon review, counsel'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(1)(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.*

Preliminarily, the AAO notes that the petitioner has substantially altered the description of the beneficiary's duties from one of initially setting up operations for a retail store, to one of analyzing market trends, developing market strategies, coordinating shipments of goods to and from Nepal, and a manage a "vast U.S. organization." The petitioner also indicated in its March 2004 response to the request for evidence that the petitioner has one employee and anticipated a maximum staff of four, and now claims on appeal to employ seven people as of May 2004.

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). In this case the descriptions offered by the petitioner are inconsistent, and make no reference to the types of duties initially listed, nor has the petitioner submitted documentation corroborating either description. This fact, coupled with the lack of supporting evidence that the petitioner actually hired the six claimed employees or has a "vast U.S. organization," leads the AAO to conclude that the evidence offered on appeal is not probative.

Further, the director specifically requested evidence of the beneficiary's proposed duties and the proposed organizational structure of the U.S. business in the request for evidence. As noted above, the petitioner made only a cursory attempt to respond to the director's request, and failed to submit much of the requested evidence. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the beneficiary's job description and evidence regarding the petitioner's staffing levels in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

Upon review, the petitioner has not established that the U.S. company would employ the beneficiary in a primarily managerial or executive capacity within one year. The petitioner indicates that the beneficiary's duties will include buying books, meeting distributors, purchasing and exporting items to Nepal, and "some clerical duties." Based on this description, the beneficiary will be responsible for providing the purchasing, sales and trading services of the U.S. company. 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).

While it appears that the beneficiary will have the authority to hire and train employees for the U.S. company, the petitioner failed to provide the requested hiring plan, a business plan, or any other information regarding the number of employees to be hired within the first year of operations and their proposed job duties. The petitioner indicated that the beneficiary "is training the US investor and director of the local company and has one employee." The petitioner did not indicate to whom it was referring, as the petitioner did not otherwise provide evidence related to a U.S. investor or director. 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)). The petitioner suggested that a total of five employees, including the beneficiary, would eventually be hired, but provided no timetable for hiring these employees or any explanation regarding their proposed positions. Any 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).

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.

The fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). The record does not establish that the petitioner, at the end of the first year of operations, will have sufficient staff to relieve the beneficiary from non-managerial tasks associated with petitioner's business. Considered in conjunction with the petitioner's failure to provide the requested comprehensive description of the beneficiary job duties and a meaningful account of how his time will be allocated, the totality of the record does not support the petitioner's claim that the beneficiary will be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The second issue in this proceeding is whether the petitioner established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

The petitioner described the beneficiary's duties as follows on the L Classification supplement to Form I-129:

[I]ncharge-in-chief [sic] selection, buying Imported and indigenous books set up distribution centers, visit schools/colleges established a small scale manufacture [sic] of handicrafts on premises weaving and dyeing and finishing of shawls.

In the initial letter dated October 29, 2003, the beneficiary's duties with the foreign entity were described as:

[The beneficiary] has been serving and operating the Nepalese company as its managing director for a number of years [The beneficiary] is/was responsible for imports and overall marketing of parent firm's products in Nepal, including some export to the United States.

The petitioner submitted an organizational chart for the foreign company, which indicates a total of twelve employees, but none of the employees are identified by name. The chart depicts a managing director, a general manager, a personnel manager, a marketing manager, a finance manager, a personnel assistant, a marketing assistant, an accountant assistant, two salesmen, and two driver/helpers.

The director subsequently requested additional evidence regarding the number of employees working for the foreign entity; a copy of the foreign company's organizational chart identifying the employees by name and job title; brief position descriptions for all employees of the foreign entity; and a detailed description of the beneficiary's duties, including the percentage of time he devotes to each job duty.

In response to the director's request, the petitioner stated that the foreign entity is a family business owned by the beneficiary, his spouse, and their three children. Counsel stated that there are no payroll records and that each family member "takes whatever he/she needs and then pays taxes what they took from the operation of the business." Counsel noted that the beneficiary "being the head of the family operated the business with the assistance of other family members, all treated as employees/part owners." Counsel stated that in addition to the family members, the foreign entity employed two full-time employees and 10 to 15 weavers on an as-needed basis.

Counsel further described the beneficiary's duties abroad as follows:

Beneficiary being the head of the family business worked as the general manager paid accordingly and was responsible for the overall success and operation of the business. [Beneficiary] was responsible to contact local, foreign (India, USA, etc.) exporters regarding history, cultural, religious and business related books, import from India hand made artifacts, supervise local weavers on [the foreign entity's] site to weave Pashmina shawls and sweaters, inspect the raw material, the final products, set prices and conditions of sale, lay out of the merchandize [sic] in the company store.

Counsel stated that an organizational chart with a summary of duties and salary for each employee was attached, but such evidence cannot be located in the petitioner's response to the request for evidence.

The director denied the petition concluding that the petitioner had failed to establish that the beneficiary has been employed by the foreign entity in a managerial or executive capacity. The director observed that based on the position descriptions provided, the beneficiary is responsible for supervising low-level employees and performing many aspects of the day-to-day operations of the business. The director noted that the petitioner had failed to provide a comprehensive description of the beneficiary's duties that would establish that he is primarily responsible for managing the organization, or a department, division or function of the organization, or that he manages a subordinate staff of professional, managerial or supervisory personnel who relieve him from performing non-qualifying duties.

On appeal, current counsel of record emphasizes that the beneficiary is the owner and managing director of the foreign entity, not a "mere high level employee." Counsel notes that previous counsel erroneously referred to the beneficiary as "general manager," thus contributing to the denial of the petition. Counsel asserts that the beneficiary performs the following duties in his role as managing director:

[The] beneficiary also manages inventory and purchasing of imported books, magazine, novel, newspaper and other published materials from Asia and European markets like India, Thailand, Singapore and England. Beneficiary negotiates and oversees substantial international purchase contracts with sellers in these foreign countries. As shown in the organizational chart, beneficiary is also responsible for hiring and supervising the General Manager, marketing manager, personnel manager and finance manager. Beneficiary was also responsible for the production and sales of hand made handicrafts, Pashmina shawls and sweaters. He supervised the business from production to whole and established policies and objectives.

The petitioner re-submits the organizational chart submitted with the initial petition, which indicates that the foreign entity employs a total of twelve employees.

Upon review, the petitioner has not established that the beneficiary was employed by the foreign 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. § 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 fact that an individual owns and operates a business and has an executive job title does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). A distinction must be drawn between the plain definition of manager as understood in the ordinary course of the average business, and the regulatory definition of managerial capacity as defined in 8 C.F.R. § 214.2(l)(1)(ii)(B). The latter restricts the beneficiary's duties and prevents the beneficiary from being able to

actually perform the duties that provide the product or service of the company. Thus, the fact that an individual manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity as contemplated by statute and regulation. In this case the record does not contain sufficient evidence to demonstrate the nature of the beneficiary's employment capacity abroad.

The job descriptions provided for the beneficiary's position as managing director of the foreign entity fall significantly short of establishing that his primary duties have been managerial or executive in nature. The petitioner indicated that the beneficiary selects and buys books, was responsible for imports and "overall marketing," contacting exporters, supervising weavers and inspecting their work, inspecting raw materials used in weaving, and displaying merchandise in the foreign entity's store. Based on the descriptions provided in support of the initial petition and in response to the director's request for evidence, the beneficiary devotes a significant portion of his time to purchasing, importing, exporting, first-line supervisory tasks, and other non-qualifying duties required to operate various aspects of the foreign entity's business.

The definitions of executive and managerial capacity have two separate requirements. 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). Here, while the beneficiary evidently exercised authority over the foreign entity as its owner and managing director, the record does not support a finding that he devoted the majority of his time to managerial or executive tasks. Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. See *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). 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).

Counsel now attempts to further clarify the beneficiary's duties on appeal, noting that the beneficiary "manages inventory and purchasing," is "responsible for the production and sales of hand made handicrafts," "establishes business policies and objectives," "negotiates and oversees substantial international purchase contracts," and manages four managerial employees. Counsel's assertions are unpersuasive. The job description provided on appeal is not sufficiently detailed to establish the beneficiary's employment in a qualifying capacity. 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. at 1108. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the organizational hierarchy. Therefore, when examining the managerial or executive capacity of a beneficiary, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business.

The organizational chart submitted with the initial petition was insufficient to assist in a determination of the beneficiary's employment capacity, as it failed to identify any employees by name and did not clearly indicate that all of the listed positions were actually filled. As noted above, the chart indicated 12 employees, including a managing director, a general manager, three managers responsible for marketing, personnel and finance, an assistant for each manager, two sales people and two drivers.

The director reasonably requested that the petitioner provide a more detailed organizational chart, clearly indicate the number of employees and the positions held, provide job descriptions for all employees and provide payroll documentation. The petitioner failed to submit the requested evidence in response, but did indicate that the beneficiary's spouse and three children all work for the business. The petitioner indicated that the company has two additional full-time employees, and hires 10-15 weavers as needed. The petitioner did not identify the job titles or job duties of the beneficiary's family members or its claimed additional full-time employees, or attempt to reconcile this description of staffing levels with the organizational chart submitted with the initial petition. 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, 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). Based on the petitioner's response to the request for evidence, the foreign entity employs, at most, seven full-time employees including the beneficiary, not twelve as indicated on the organizational chart. Further, the organizational chart did not include any employees engaged in the weaving activities of the foreign entity, or suggest that the foreign entity employs any employees responsible for purchasing, import or export functions. This omission is particularly critical, as the petitioner indicates that the beneficiary himself supervises the weavers and performs many of the purchasing and import/export activities. Finally, the record remains devoid of any evidence documenting the employment of the foreign entity's employees. Counsel's assertion that the family members take money from the business as needed does not assist in documenting the employment of the other claimed employees. 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.

As the AAO cannot determine who is employed by the foreign entity or what duties they perform, it cannot be concluded that the beneficiary supervises a subordinate staff of professional, managers or supervisors. See section 101(a)(44)(A)(i) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i). Further, the record does not establish that

the beneficiary supervises a staff sufficient to relieve him from performing the non-managerial functions of the business. Collectively, the non-qualifying duties included in the beneficiary's job description, considered in light of the lack of evidence of the foreign entity's staffing, further support a conclusion that the beneficiary has not been performing primarily managerial or executive duties.

While the AAO acknowledges that former counsel erroneously referred to the beneficiary as "general manager" rather than as "managing director," it is noted that it is the beneficiary's actual duties, and not his job title, which reveal the true nature of his employment. *See 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). Contrary to current counsel's assertion, there is nothing in the director's decision to suggest that she denied the petition based on the job title erroneously provided by former counsel.

Based on the foregoing discussion, the petitioner has not established that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he or she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

The petition will be denied and the appeal dismissed 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.

ORDER: The appeal is dismissed.