U.S. Department of Homeland Security
U. S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 16 2013 Office: VERMONT SERVICE CENTER FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. 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 qualify 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 Texas corporation established in 2008, states it is engaged in the retail gas/convenience store and tobacco businesses. It claims to be wholly owned subsidiary of located in India. The beneficiary was previously approved as an L-1A nonimmigrant intracompany transferee as the President and Chief Executive Officer (CEO) of the petitioner from December 3, 2008 to December 2, 2009, and further extended in the same position from December 3, 2009 through December 2, 2011. The petitioner now seeks to extend the beneficiary in the same position for two additional years.

The director denied the petition, concluding that the record did not establish that the beneficiary was, or would be, employed in a managerial or executive capacity. The director noted the petitioner's failure to provide all employee paystubs as requested by the director and a lack of sufficient evidence to show that the beneficiary primarily performed executive or managerial duties. The director also found that the petitioner had failed to establish a qualifying relationship between the petitioner and the foreign employer, reasoning that the petitioner had not submitted sufficient supporting documentation to show that the foreign employer wholly owned the petitioner.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that a qualifying relationship does indeed exist between the petitioner and foreign employer and that the foreign employer wholly owns the petitioner. Further, counsel contends that the beneficiary has been acting as a personnel manager consistent with the regulations, indicating that he supervises other supervisory, managerial and professional employees that run the petitioner's day-to-day operations thereby alleviating the beneficiary from performing non-qualifying duties. Additionally, counsel maintains that the beneficiary acts as a function manager as defined by the Act. Counsel resubmits documentation previously submitted.

I. The Law

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.

(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.

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.

II. The Issues on Appeal:

A. Qualifying Relationship

As noted, the director found that the petitioner had not established that a qualifying relationship existed between the petitioner and the foreign employer as required by 8 C.F.R. § 214.2(l)(3)(i).

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[.]

* * *

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

* * *

(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.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). The regulation 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 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the 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.

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 Medical Systems, Inc., supra*.

The director concluded that the petitioner had not established that the foreign employer wholly owned the petitioner. The director reasoned that the petitioner had not submitted evidence beyond a stock certificate issued to the foreign employer indicated that it owned all 1000 shares in the petitioner. The director also noted a material discrepancy related to the foreign employer ownership in the petitioner in a submitted 2011 IRS Form 1120 U.S. Corporation Income Tax Return. Specifically, Schedule K of this IRS Form 1120 requires the disclosure of any foreign corporations or partnerships directly owning more than 20% of the

entity's stock. However, the petitioner left the aforementioned section of Schedule K blank and did not disclose the foreign employer's 100% ownership interest. Additionally, the AAO notes that the petitioner failed to disclose the foreign employer's 100% ownership of petitioner stock in its Form 1120's for 2009 and 2010 as well. In sum, the director concluded that the aforementioned material discrepancy in the petitioner's IRS Form 1120, along with limited evidence of the foreign employer's ownership of the petitioner on the record, led to a conclusion that the petitioner had not meet the burden of establishing that the petitioner was wholly owned by the foreign employer.

The AAO concurs with the director's decision, despite an error on the part of the director. The director stated that the petitioner had only submitted a stock certificate to support that the foreign employer wholly owned the petitioner. However, the petitioner also submitted minutes of a petitioner organizational meeting held on July 7, 2008, which indicates the issuance of 1000 shares (or 100% of authorized petitioner stock) to the foreign employer. Regardless, on appeal, the petitioner has not sufficiently addressed the aforementioned material discrepancies on the record; namely, the petitioner's failure to disclose foreign employer ownership in three separate IRS Form 1120 U.S. Corporation Income Tax Returns. 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. 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, 591-92 (BIA 1988). Further, the petitioner has offered no additional evidence to overcome the doubt cast on the foreign employer's ownership in the petitioner, such as stock ledger, proof that consideration was paid for the stock issued or other supporting documentation establishing the foreign employer's ownership interest in the petitioner. As such, the petitioner has not provided sufficient evidence to establish a qualifying relationship between the petitioner and the foreign employer. For this reason, the appeal must be dismissed.

B. Employment with the petitioner in a managerial or executive capacity:

The director also denied the petition, concluding that the petitioner failed to establish that the beneficiary was, or would be, primarily employed in a managerial or executive capacity as defined by the Act. Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will primarily perform executive or managerial duties for the petitioner.

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). In support of the I-129 Petition for a Nonimmigrant Worker, the petitioner submitted the following job duty description for the beneficiary:

> At the petitioner and affiliates, the transferee holds the position of President and CEO. In that capacity, the transferee has overall executive responsibility for developing, organizing, and establishing the purchase, sale and marketing of merchandise for sale in the U.S. market. His other duties include: (i) identifying, recruiting, and building a management team and staff with background and experience in the U.S. retail market; (ii) negotiating and supervising the drafting of purchase agreements; (iii) marketing products to consumers according to the parent company's guidelines; (iv) overseeing the legal and

financial due diligence process and resolving and related issues: (v) developing trade and consumer market strategies based on guidelines formulated by the parent; (vi) developing and implementing plans to ensure the petitioner's profitable operation,; and (vii) negotiating prices and sale terms, developing pricing policies and advertising techniques.

The petitioner further broke down the beneficiary's duties into the following general categories by percentage of time spent on each: (1) management decisions- 40%; (2) company representation- 15%; (3) financial decisions- 10%; (4) supervision of day-to-day company functions- 10%; (5) business negotiations- 15%; (6) organizational development of the company-10%.

In the RFE, the director requested that the petitioner provide: (1) additional evidence to establish that the beneficiary would be employed in a managerial or executive capacity, and (2) a breakdown of the number of hours devoted by the beneficiary to proposed job duties on weekly basis. In response, the petitioner provided no further specifics related to the beneficiary's duties, but stressed that the beneficiary supervised other professional and managerial employees and that the beneficiary acted as an important liaison between the foreign employer and the petitioner. The petitioner did not provide a breakdown of the beneficiary's job duties on a weekly basis with hours spent on each task as requested by the director. On appeal, the petitioner offers little additional detail regarding the beneficiary's duties, but simply reiterates the previously submitted duties for the beneficiary previously. The AAO notes that 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).

Further, 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 provided no specifics as to how the beneficiary will carry out the general tasks and goals listed above as a part of his daily duties. For instance, the petitioner did not provide specifics, examples, or supporting documentation regarding purchase agreements negotiated; marketing strategies implemented; parent company guidelines implemented; or profit plans developed and implemented, to give the referenced job duties more credibility or probative value. Indeed, there is little in the duties to distinguish them from the duties of any executive or manager with any company, and it is not possible to discern from the duty description, due to the lack of specifics, the industry within which the beneficiary will operate. Further, the duties are largely repetitive of the statutory language. As such, the total lack of specificity or examples in the provided foreign duties casts doubt on their credibility. Further, a major duty of the beneficiary is listed as building a management team; however, the petitioner alternatively asserts on the record that a management team is already in place. Additionally, on appeal, the petitioner notes that the beneficiary will be responsible for supervising and directing the work of the President, or himself, casting further doubt on the credibility of the provided duties. 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. 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, 591-92 (BIA 1988). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). 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.).

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).

Various material discrepancies on the record cast serious doubt on whether the petitioner has a group of managers and supervisors to whom he delegates non-qualifying day-to-day operational duties. For instance, the petitioner has submitted three completely conflicting organizational charts on the record. In support of the Form I-129 Petition for a Nonimmigrant Worker, the petitioner submitted an organizational chart including the following subordinate positions: Vice President/General Manager; Sales Manager; Retail Manager; Accountant; Assistant Manager; Shift Manager; and two cashiers. Subsequently, in response to the RFE, the petitioner stated that the petitioner employed four cashiers as opposed to two, and no Shift Manager as originally asserted. Further, the organizational chart submitted in response to the RFE includes employee names that are not reflected in the petitioner's Tennessee Wage Report documentation for the third quarter of 2012. Specifically, Tennessee Wage Report documentation for the third quarter of 2012 denotes wages paid to and only one of the aforementioned employees is listed in the petitioner's organization chart provided in response to the RFE. Lastly, on appeal, the petitioner submits a listing of employees that includes five sales clerks and no Accountant, Assistant Manager or Shift Manager, in contradiction to the originally submitted organizational chart. Also, five individuals listed in the organizational chart submitted on appeal, approximately four months later, are different from those submitted in response to the RFE. Certainly, it possible that employees can turnover in an organization, but the petitioner has offered no explanation as to why half of the organizations employees are now different only four months later on appeal. Again, 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. 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). *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, on appeal, the petitioner notes that the beneficiary and his subordinate managers Vice President/General Manager, Sales Manager; and Retail Manager) work at the petitioner's stated corporate location in Texas, as further evidenced by Texas Unemployment Tax documentation submitted for third quarter of 2012. However, the same Texas wage documentation lists no subordinate employees, such as cashiers and sales clerks, that would presumably be necessary to operate the petitioner's claimed Texas retail locations, the located in In fact, the organizational chart submitted on appeal only includes operational employees working

at the petitioner's located in Tennessee; as evidenced by corresponding Tennessee Wage Report Documentation. As such, it does not appear that the petitioner has employees necessary to run the day-to-day operations of its two claimed businesses in Texas thereby casting doubt on the stated managerial roles of the beneficiary's subordinates and the executive and managerial role of the beneficiary. Additionally, the petitioner makes no previous mention on the record, until appeal, of the retail location, nor submits any supporting documentation related to this business on appeal. Lastly, the petitioner maintains that it has a corporate location at Texas from which its managerial staff operate, but provides no supporting documentation related to this claimed location, such as a valid lease for office space, pictures, or other supporting documentation. Indeed, none of the petitioner's documentation submitted on the record, such as state and federal tax documentation, lists this address as that of the petitioner. In sum, the numerous discrepancies on the record related to the petitioner's employees, organizational chart, and operations cast serious doubt on whether the petitioner is operating as asserted on the record and whether the beneficiary is acting primarily in an executive or managerial capacity.

The petitioner asserts on appeal that the beneficiary acts as a personnel manager as defined by law, stating that he supervises other subordinate managers and supervisors who run daily operations of the company. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(*2*). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(*3*). 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'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

The petitioner has not credibly established that the beneficiary has managers, supervisors, and professionals to whom he delegates day-to-day operational duties. As previously noted, there are many discrepancies on the record regarding the petitioner's claimed operations and organizational structure. As such, the petitioner has not sufficiently established that his claimed managers and supervisors actually perform managerial duties as asserted. For instance, on appeal, the petitioner maintains that it has three subordinate managerial employees, Vice President/General Manager, Sales Manager, and Retail Manager. According to Texas Unemployment Tax documentation submitted for third quarter of 2012, all of the aforementioned managers are offered as working for the petitioner's stated corporate location in Newton, TX and the petitioner affirms this directly on the record. However, the petitioner has not submitted any supporting documentation necessary to confirm that the petitioner employs necessary subordinate employees in the State of Texas to perform day-to-day operational duties for the Smoke Shop in Bridge City and Paradise Liquor located in Newton. As such, it is likely that the claimed managerial or supervisory employees located in Texas are in fact performing non-managerial duties necessary to run these locations and that they do not have subordinates of their own. Therefore, due to the

various discrepancies on the record, the petitioner has not sufficiently established that the beneficiary has subordinate managerial or supervisory employees to qualify him as a personnel manager. The petitioner has also not submitted internal payroll documentation to further confirm the employment of its stated managers, and subordinate employees, despite being directly requested to provide this documentation by the director. Again, 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). Lastly, the petitioner has not submitted any educational information on the claimed managers and supervisors subordinate to the beneficiary; therefore, it cannot be concluded with any certainty that they are professionals as defined by the regulations. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In sum, the totality of the circumstances does not establish that the petitioner employs three managerial or supervisory subordinates as asserted; therefore, the beneficiary has not been established as a personnel manager as defined by the Act.

Counsel also maintains that the beneficiary qualifies as a function manager. 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 "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 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'r 1988)). In this matter, the petitioner has not provided sufficient evidence that the beneficiary manages an essential function. In fact, the petitioner has already offered that the beneficiary has three managerial subordinates to whom he delegates all operational duties. Therefore, counsel's assertion that the beneficiary is also a function manager is questionable, since a function manager does not supervise or control the work of subordinate staff. Further, a function manager manages an essential function *within* an organization, not the whole organization. Lastly, counsel has not articulated with specificity how the beneficiary will be employed as a function manager, or provided sufficient supporting evidence to establish this assertion. As such, the record does not establish that the beneficiary will act as a function manager for the petitioner.

In conclusion, the petitioner has submitted insufficient and inconsistent evidence to establish that the beneficiary is acting primarily as an executive or manager as defined by the Act. For this additional reason, the appeal must be dismissed.

III. Conclusion

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.