

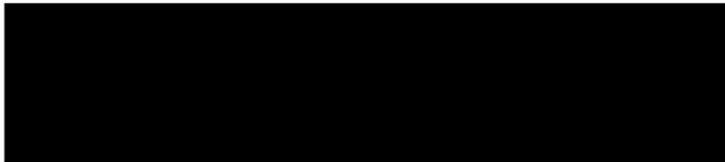
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE:

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LIN 07 251 54846

Office: NEBRASKA SERVICE CENTER

Date: **JAN 14 2010**

IN RE:

Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of Florida that claims to be in the business of providing consulting services to construction developers. It seeks to employ the beneficiary as its operation manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition, concluding that the petitioner had not established that the beneficiary was employed by the foreign entity, or will be employed by the United States entity, in a primarily 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 contends that the director's decision is in error. Counsel submits a brief and additional evidence on appeal.

Section 203(b) of the Act states in pertinent part:

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

- (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in

a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

The first issue in the present matter is whether the beneficiary would be employed in a primarily managerial or executive capacity in the United States.

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.

In a letter dated July 26, 2007 submitted with the Form I-140, Immigrant Petition for Alien Worker, the petitioner provided the following description of the beneficiary's responsibilities as the U.S. company's operations manager:

[The beneficiary] has coordinated services with contractors providing equipment rentals, construction laborers, concrete providers, lumber providers/installers, electrical engineers, plumbers, general engineers, among others. [The beneficiary] has overseen all pending projects and has been a key actor in the closing of two new large development projects [for] which contracts were signed earlier this year. All contractors and/or engineering personnel must report to [the beneficiary] as he oversees all aspects of decision making for construction/development projects. [The beneficiary] functions autonomously as he is responsible for managing and directing all development activities of [the U.S. company] as they pertain to construction projects.

On July 30, 2008, the director issued a request for further evidence (RFE). With respect to the beneficiary's U.S. position, the director requested a more detailed description of the beneficiary's duties, including a description of what actual day-to-day tasks are involved in the completion of each duty, and an estimate of the percentage of time the beneficiary will spend performing each duty. The director also noted that the beneficiary appears to be the sole employee of the U.S. company and that he "coordinates services" with contractors. The petitioner is asked to explain the beneficiary's role with respect to the services offered by the company and to describe the work performed by any contract workers employed by the company. The director also requested copies of any IRS Forms 1099-MISC issued to any contract workers in 2007 and the petitioner's most recent federal tax return, with all schedules and attachments.

In a letter dated September 9, 2008 responding to the RFE, counsel stated the following in connection with the beneficiary's U.S. job responsibilities:

Beneficiary is the person responsible for locating the independent contractors who work the company's projects. He oversees all workers and projects from start to completion. Beneficiary works closely with the independent contractors in order to complete projects and is responsible for the overall completion of projects for clientele. As such, Beneficiary is crucial to the sustenance and growth of the company.

The petitioner did not submit a detailed description of the beneficiary's day-to-day tasks, or an estimate of time spent per duty, as requested. With respect to independent contractors, the petitioner submitted a document entitled "List of Staff and Their Functions" stating the names, tax identification numbers, social security numbers, positions, and "functions" of thirty-one individuals or organizations that perform work or supply materials for the U.S. company. The petitioner also

submitted IRS Forms 1099-MISC for the year 2007 for 27 individuals or organizations on the list; list of the company's current pending projects in Florida; the petitioner's 2006 and 2007 tax returns; and a copy of the beneficiary's 2007 tax return and IRS Form W-2, Wage and Tax Statement.

On November 25, 2008, the director denied the petition, concluding that the petitioner had not established that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity. Specifically, the director noted that the petitioner failed to submit the more detailed description of job duties and the percentage of time spent on each duty that was requested. The director further noted that the total of payments to contractors based on the Forms 1099-MISC for 2007 exceeded the company's total revenues as listed on the petitioner's 2007 tax return. The director acknowledged that the beneficiary is apparently responsible for supervising the work done by various contract staff; however, based on the client contracts that the petitioner had submitted, the company has a number of responsibilities that are not carried out by contract staff, such as preparing bids and estimates, obtaining permits, and arranging insurance, and without the requested information regarding the beneficiary's duties, it cannot be determined whether the beneficiary himself is carrying out these duties and, if so, how much of his time is spent on them. The director concluded that the petitioner has failed to establish that a majority of the beneficiary's time would be spent on qualifying tasks.

On appeal, counsel reiterates that the beneficiary "manages all independent contractors in the completion of construction projects." Counsel also claims that, as the operations manager, the beneficiary "is responsible for all decision making including the retention and hiring of independent contractors, overseeing the services provided by same, managing the client contracts, selecting proposals and projects and determining the objective for the U.S. entity." Counsel maintains that "[i]t is difficult to understand how any of the duties listed could be construed as anything other than managerial in nature." Counsel contends that the fact that payments to contractors exceed the company's total revenues in 2007 is not an indication of whether or not the company is employing the beneficiary in a managerial capacity.<sup>1</sup> Counsel stated that as the company has had minimum profits, it has not hired any additional employees.

Upon review, the AAO concurs with the director's conclusion that the petitioner has failed to establish that the beneficiary would be employed in a primarily executive or managerial capacity in the United States.

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<sup>1</sup> In determining the petitioner's ability to pay the proffered wage, USCIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner submitted the beneficiary's IRS Form W-2 for 2007, showing that the beneficiary received wages from the U.S. company in the amount of \$42,822.54. This amount exceeds the beneficiary's proffered annual wages of \$41,000, as stated in the petitioner's July 2007 letter submitted with the initial petition. Accordingly, the AAO finds that the petitioner has satisfactorily established its ability to pay the beneficiary's proffered wages at the time the petition was filed. See 8 C.F.R. § 204.5(g)(2).

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The 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.* Beyond the required description of the job duties, the U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

Further, it is noted that the definitions of executive and managerial capacity each 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). Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that the beneficiary's duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

The AAO agrees with the director's observation that the petitioner has 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, in the initial petition, the petitioner stated that the beneficiary "has coordinated services with contractors," "oversees all aspects of decision making for construction/development projects," and "is responsible for managing and directing all development activities of [the U.S. company] as they pertain to construction projects." Even though the director requested a more detailed job description, counsel for the petitioner responded by restating the same generalities. 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). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.*

Further, in addition to failing to provide a more detailed description of the beneficiary's day-to-day tasks, the petitioner also failed to provide a breakdown by percentage of time spent per duty, as requested in the RFE. 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).

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).

The record indicates that the beneficiary is the sole employee of the U.S. company. The petitioner and counsel claim that, although the beneficiary does not supervise any subordinate employees, he manages all of the company's independent contractors "in the completion of construction projects." The AAO acknowledges that the petitioner has submitted a number of IRS Forms 999 as evidence of the company's use of independent contractors. However, based on the very brief description of the "functions" of these individuals or companies, it appears that these contractors perform work relating to the construction projects and carry out no duties related to the operations of the U.S. company itself. For example, the functions of the contractors are characterized as "design & permit," "legal advice regarding contracts," "project completion," "accounting & purchases," in addition to various categories of construction, garden design, and maintenance and repair. It is unclear who, other than the beneficiary, would be performing the U.S. company's daily administrative work, procuring and negotiating the construction contracts, or as the director noted, preparing bids and estimates. The "List of Staff" provided by the petitioner does include the president of the company, whose function is stated as "administrative manager." However, there is no evidence of her employment by the company, or any description of her duties. Thus, the record lacks evidence that there are other employees to perform such non-qualifying work, nor did the petitioner explain how the services of the contractors obviate the need for the beneficiary to primarily conduct these aspects of the petitioner's business. If the beneficiary actually performs these non-qualifying tasks himself rather than directs or manages them, he is performing tasks necessary to provide a service or product, and as such, time spent on such tasks will not be considered time spent functioning in a managerial or executive capacity. 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).

Federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9 Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel

size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. However, to establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not explained how the reasonable needs of the U.S. company, particularly its non-managerial, day-to-day functions, are met through a single employee. 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).

Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his time on non-qualifying duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity. As discussed above, the petitioner has not established this essential element of eligibility.

In light of the foregoing, the AAO concurs with the director's conclusion that the petitioner has failed to establish that the beneficiary would be employed in the United States in a primarily executive or managerial capacity. For that reason, the petition will be denied.

The second issue in this matter is whether the beneficiary was employed abroad in a primarily executive or managerial capacity.

In the July 26, 2007 letter, the petitioner stated the following with respect to the beneficiary's overseas employment:

[The beneficiary's] career with our parent corporation . . . began in 2002 in the position of General Manager. His employment with our parent corporation was continuous as of that year through his transfer to our location in Florida in 2006. [The foreign company] is dedicated to activities related to construction and other residential/commercial development projects. [The beneficiary] led the development of many large construction developments for [the foreign company] during his term as General Manager of our parent corporation located in Colombia. [The beneficiary's] special knowledge in Engineering and work experience in construction enabled him to coordinate all the necessary activities to bring to fruition many construction development projects in Colombia. [The beneficiary] oversaw execution

of contractor agreements and completion of services requested, obtained the necessary building permits and purchase of land for projects along with the design and development of construction projects during his term as General Manager of [the foreign entity].

In the RFE, the director requested a more detailed description of the beneficiary's duties abroad, including a description of what actual day-to-day tasks were involved in the completion of each duty, and an estimate of the percentage of time the beneficiary spent performing each duty. The director also requested a detailed organizational chart for the foreign entity that corresponds with the beneficiary's qualifying employment abroad and includes the names of all departments and teams, and the names and a detailed description of the job duties of the beneficiary's immediate supervisor and subordinates. The petitioner was also asked to provide a description of any contractors used by the company and the amount of control the beneficiary held over their work.

In response to the RFE, counsel stated the following with respect to the beneficiary's job duties overseas:

The Beneficiary completed duties at [the foreign entity] similar to those he is responsible for with [the U.S. company]. During his term with [the foreign entity] he oversaw all upper management personnel, managed the company's budget, payroll and supervised projects from initiation to completion. The main difference is that at [the foreign entity] he had professional management personnel to assist him with the company projects; [the U.S. company] has not been able to hire additional professional staff but intends to do so when possible. Therefore, at this time he supervises 100% of all activities of all aspects of the company's projects while before, at [the foreign entity], he had other professionals that he supervised in completing their assigned tasks. At this time, the main objective is to complete their pending contracts and locate new potential projects to secure continued growth and prosperity.

The petitioner also described the beneficiary's job duties with the foreign entity as follows:

1. Manage and supervise the business activities of the company: company's objective is the contract and execute the construction of construction projects [sic]
2. Approve proposals of estimates and execution of projects
3. Managed all client contracts
4. Managed all independent contractors contracts for services [sic]
5. Manage payroll
6. Manage the budget and deal with company banking
7. Manage and coordinate strategies to locate new clients
8. Coordinate, manage and supervise the completion of construction projects
9. Manage/control security
10. Control quality control program ISO 9001
11. Create company projects
12. Manage and control the company workshops

13. Manage control of all equipment, heavy machinery, and tools owned by the company.

The petitioner submitted an organizational chart for the foreign entity, which shows the beneficiary as general manager, directly supervising a project director, an admin director, and an employee involved in "quality system." There are four employees listed under the project director, in "civil work", "architecture", "structure" and "machinery". Under the admin director are two employees listed as "accounting" and "accounting assistant." The petitioner provided a brief one-line job description for each of the employees listed. In addition, the petitioner submitted a list of the company's contractors and suppliers. However, no information was provided regarding the dates the contractors provided services for the company, or any detail regarding the work they performed.

In concluding that the petitioner has failed to demonstrate that the beneficiary was employed abroad in a primarily executive or managerial capacity, the director noted that the petitioner failed to provide the requested estimate of time the beneficiary spent on his duties. The director also found that the petitioner only described the beneficiary's job duties in broad terms rather than providing the detailed descriptions requested. The director found that the petitioner has failed to meet its burden of establishing that the beneficiary "primarily" performed managerial or executive duties in his overseas position.

On appeal, counsel reiterated that in his overseas position, the beneficiary "oversaw the execution of contractor agreements and completion of services requested, obtained the necessary building permits and purchase of land for projects along with the design and development of construction projects" and "managed a team of staff to bring the projects to fruition." Counsel contends that the list of duties provided by the petitioner in response to the RFE was sufficiently detailed and demonstrated that the beneficiary's duties were supervisory in nature. The petitioner submitted no new evidence on appeal.

Upon review, the AAO concurs with the director's finding that the petitioner has failed to establish that the beneficiary was employed abroad in an executive or managerial capacity.

As previously noted, when examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The 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.* Contrary to counsel's claim that the petitioner's response to the RFE was sufficiently detailed, the description of the beneficiary's overseas position suffers from the same vagueness of language previously discussed in connection with the U.S. job description. The petitioner employed such phrases as "managed all client contracts," "managed all independent contractors," "manage payroll," "manage the budget and deal with company banking," "manage and coordinate strategies to locate new clients," and "coordinate, manage and supervise the completion of construction projects," all without elaborating on what tasks were actually performed as part of the "management." Again, the petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine in his position abroad, and the repeated use of the term "manage" provides no

insight into what it was that the beneficiary actually did on a day-to-day basis in his job. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Further, it is noted that the petitioner failed to address the director's request for a complete, detailed description of the day-to-day duties performed by the beneficiary abroad, including the percentage of time spent on each duty. Again, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Without a more detailed explanation of his job duties, the AAO is unable to determine to what portion of the beneficiary's time in his job abroad was actually spent on duties that could be categorized as managerial or executive, and what portion might have been spent performing non-qualifying duties. *See Republic of Transkei v. INS*, 923 F.2d at 177. As previously noted, 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. at 604.

It is noted that the organization chart for the foreign entity indicates that there are two levels of subordinates below the beneficiary. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. Here, the record is insufficient to show that the beneficiary's subordinates overseas indeed were supervisory, professional, or managerial personnel. Although the beneficiary's staff included two individuals with "director" titles that were placed above other personnel in the corporate hierarchy, it is not clear based on the information provided that these employees were "supervisory or managerial." The job description of the project director reads, "Ensures that the works were realise Refine with all the required technical and control of all its sub-contract required control of work Quality and Handling budget [sic]." To the extent that job description could be understood, the position does not appear to involve any supervisory or managerial tasks. Similarly, the job of the admin director appeared to involve "support in accounting payroll and legal support to the manager" rather than any supervision of other employees. Thus, the petitioner has not established that these employees had supervisory or managerial roles, despite their titles, nor has the petitioner provided any evidence to show that any positions under the beneficiary's supervision in the foreign entity required a bachelor's degree, such that the employees in those positions could be classified as "professionals."<sup>2</sup> As such, the record is insufficient to show that the beneficiary's subordinate

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<sup>2</sup> 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.

employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The AAO notes that the petitioner submitted a list of contractors purportedly utilized by the foreign entity. However, the petitioner has neither presented evidence to document the existence of these contractors nor identified the dates or nature of the services they provided. Additionally, the petitioner has not explained how the services of the contractors obviated the need for the beneficiary to primarily conduct the foreign entity's business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In light of these deficiencies in the evidence, the AAO finds that the petitioner has failed to establish that the beneficiary was employed abroad in an executive or managerial capacity as required by section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). For this additional reason, the petition will be denied.

Finally, the AAO acknowledges that USCIS has previously approved an L-1A petition filed by the petitioner on behalf of the instant beneficiary. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103. Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Despite the previously approved petition, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous nonimmigrant petition approval by denying the instant petition.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the

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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 work of any of the beneficiary's subordinates.

benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.