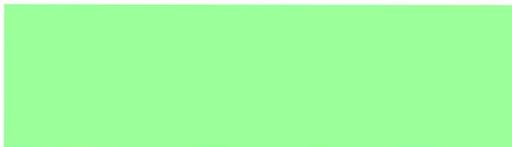




U.S. Citizenship
and Immigration
Services

(b)(6)



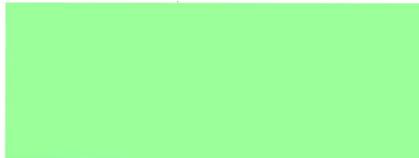
DATE: **DEC 02 2014** OFFICE: TEXAS SERVICE CENTER

FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Texas Service Center Director denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this Form I-140, Immigrant Petition for Alien Worker, 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 petitioner is engaged in retail and claims to be an affiliate of [REDACTED] the beneficiary's former employer, located in India. The petitioner seeks to employ the beneficiary in the position of President/CEO.

On November 13, 2013, the director denied the immigrant petition, finding the petitioner had failed to establish that the beneficiary had been and would be employed within a qualifying 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 us for review. On appeal, counsel submits a brief disputing the director's adverse findings.

I. THE LAW

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 a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

Additionally, the regulations at 8 C.F.R. § 204.5(j)(3)(i) state that the petitioner must provide the following evidence in support of the petition in order to establish eligibility:

- (A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or
- (B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;
- (C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and
- (D) The prospective United States employer has been doing business for at least one year.

II. THE ISSUES ON APPEAL

A. Employment Abroad in a Managerial or Executive Capacity

The first issue to be addressed is whether the petitioner established that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (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.

Finally, 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. Section 101(a)(44)(C) of the Act.

1. Facts

In a letter dated December 10, 2009, the petitioner explained that the beneficiary was the Managing Director and held an executive position with the foreign company and his duties abroad were as follows:

From December 1999 to February 2001, [the beneficiary] worked as a Managing Director for [the foreign entity]. [The beneficiary] was employed at an executive position within the Company. In that role, he spent 30% of time developing, implementing, and consistently applying business-related policies to optimize the quality of the organization and employees; 15% negotiating client contracts and promotes sales of products and services; 15% recruiting, hiring, promotion, discipline, and discharge of the personnel of sales department; 10% developing and implementing marketing strategies using current market information, competitive and economic conditions, and innovative programs; 10% in developing pricing strategies and responding to internal and external customer inquiry; and 20% in meeting with

the appropriate officials to propose transactions, negotiating confidentiality and service agreements, coordinating the due diligence process with in-house counsel and outside auditors, and directing the preparation and completion of sale contracts and other related documents.

On May 9, 2013, the director sent a request for additional evidence. In part, the director requested a detailed job description of the beneficiary's specific tasks on a normal business day including the percentage of time spent on each task when employed by the foreign branch. In addition, the director requested an organizational chart including the names of all employees, employees' titles, a clear description of their job duties, educational level, and whether they worked part-time or full-time. The director also requested a description of the foreign entity's products and services, including the exact production and administrative tasks necessary to produce the product and services, and who performs those tasks, and tasks related to goal-setting, policy-making, and discretionary decision-making.

In a response letter dated July 15, 2013, the foreign entity's director further explained the beneficiary's role abroad as follows:

As a Managing Director, he managed the Human Resources, Production, Marketing and Branding aspects of the company. He worked with both upper- and lower-level management in order to ensure the optimal profitability and efficiency of the company's operations. Furthermore, he was involved in an advisory structure, giving him responsibility to report to, and work with upper management. Based on consumer trends and habits, he researched future investment opportunities while incorporating the values of the company in its long- and short-term goals. Supervising over 8 to 10 employees throughout his appointment, he created new and innovative means of functioning within the competitive India trade market as well as throughout the world.

The petitioner submitted an organizational chart of the foreign entity that indicates that the beneficiary was at the highest level as Partner/Managing Director who in turn supervises the Partner/General Manager, who supervises the following: Director Production and Management; Quality Controller; Store Office Contract; Dispatch Officer Contract; Designer Contract; Chief Accountant; Junior Accountant; Store Manager; Cashier; Peon/Helper; Marketing Director; Sales Manager; Assistant Sales Manager; two Sales Representatives and an Outside Sales. Out of the 18 positions listed on the organizational chart, only eight positions list an employee's name. In addition, as discussed above, the foreign entity stated that the beneficiary supervised eight to ten employees. The positions listed with an employee are the Partner/Managing Director; Partner/General Manager; Store Manager; Cashier; Peon/Helper; two Sales Representatives and one Outside Sales.

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

2. Analysis

When examining the executive or managerial capacity of the beneficiary, we review the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. *See* 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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). We will then consider this information in light of other relevant factors, including job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the foreign company's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role within the foreign entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has the capability of maintaining its daily operations such that the beneficiary was relieved from having to primarily perform the operational tasks.

In the present matter, upon review of the totality of the record, the evidence does not support a finding that the beneficiary allocated his time primarily to the performance of tasks that are within a qualifying managerial or executive capacity.

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties with the foreign company that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner stated vague duties such as the beneficiary would spend 30 percent of his time "developing, implementing, and consistently applying business-related policies to optimize the quality of the organization and employees." This description provides little insight into what the beneficiary primarily did on a day-to-day basis and did not explain the corporate policies, goals and objectives. 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 job description also includes several non-qualifying duties such as the beneficiary would handle "negotiating client contracts and promotes sales of products and services;" "developing and implementing marketing strategies using current market information, competitive and economic conditions, and innovative programs;" "developing pricing strategies and responding to internal and external customer inquiry;" and; "meeting with the appropriate officials to propose transactions, negotiating confidentiality and service agreements, coordinating the due diligence process with in-house counsel and outside auditors, and directing the preparation and completion of sale contracts and other related documents." Since the foreign organizational chart does not list any employees in the positions of Marketing Director, Sales Manager and Assistant Sales Manager, it is not clear who would handle the market research, and develop the marketing and sales programs. It appears that the

beneficiary provided the services such as market research, marketing, sales and negotiations as it does not appear that the beneficiary oversaw other employees that performed the day-to-day tasks of marketing and sales operations. Thus, it appears that the beneficiary is performing the duties inherent in running all of the charitable projects. An employee who "primarily" performs the tasks necessary to produce a product or provide a service is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I & N Dec. 593, 604 (Comm. 1988).

In addition, the director specifically requested additional information of the beneficiary's subordinate employees such as job descriptions for each employee. Instead, the petitioner submitted an organizational chart and did not provide any evidence of the foreign company's employees except for a few job titles and names. 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). In addition, the petitioner did not explain why some positions did not list an employee, and did not submit evidence that all of the individuals listed in the organizational chart were actually employed with the foreign company.

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary performed abroad.

In light of the foregoing discussion, the petitioner has not established that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

B. U.S. Employment in a Managerial or Executive Capacity

The second issue to be addressed is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity.

1. Facts

The petitioner has offered the beneficiary the position of President/CEO. In the letter of support dated December 10, 2009, the petitioner stated that the beneficiary "will be the key U.S. contact for the shareholders and directors of the parent company," and that he will be "employed at the highest position within the U.S. Company, and supervises employees who run day-to-day operations." The petitioner stated the percentage of time the beneficiary will spend on each duty as follows: Management Decisions (25%); Company Representation (15%); Financial Representation (15%); Supervision of the company day-to-day operations (10%); Business Negotiations (15%); and, Organizational Development (10%).

The petitioner also submitted a business plan that said it is engaged in the "business of retail distribution of food, gasoline, automotive and household items," and it is opened "12 hours a day, 7 days a week" and employs six individuals. The petitioner submitted an organizational chart with the beneficiary as President/CEO who in turn supervises a Vice President and General Manager, who in turn supervises a Sales Manager, a Manager – Retail, an Assistant Manager, Cashiers and an

Accountant. The organizational chart does not indicate the name of any employees. The petitioner also provided a brief job description for each position.

On May 9, 2013, the director sent a request for additional evidence. In part, the director requested a detailed job description of the beneficiary's specific tasks on a normal business day including the percentage of time spent on each task. In addition, the director requested an organizational chart including the names of all employees, employees' titles, a clear description of their job duties, educational level, and whether they worked part-time or full-time. In addition, the director requested "Form W-2s, Wage and Tax Statement, for the relevant years for each employee."

In a letter dated July 1, 2013, the petitioner further explained the duties of the beneficiary as follows:

- Serving as the key U.S. contact for the shareholders and directors of the parent company;
- Planning and developing the U.S. investment;
- Developing, organizing and establishing operations pertaining to the purchase, sale and marketing of merchandise for sale in the U.S. market;
- Identifying, recruiting and building a management team and staff with background and experience in the U.S. retail market;
- Overseeing managers who in turn supervise subordinate employees in running day-to-day operations;
- Executing or recommending personnel actions and establishing a management team to run daily operations;
- Negotiating and supervising the drafting of purchase agreements;
- Ensuring the marketing of products to consumers according to the parent's company's guidelines;
- Overseeing legal and financial due diligence processes and resolving any related issues;
- Supervising all financial aspects of the company;
- Developing organizational policies and objectives;
- Developing trade and consumer market strategies based on guidelines formulated by the parent company;
- Negotiating prices and sales terms and formulating pricing policies and advertising techniques; and
- Developing and implementing plans to ensure the company's profitable operation.

Description of Duties	Time %
Management/Operational Decisions and Conducting Due Diligence for Acquisitions of outlets.	25% 10 hours spent weekly

More specifically, [the beneficiary's] duties will consist of conducting due diligence and feasibility testing for acquisitions and expansion into other markets; negotiating and supervising the drafting of purchase agreements for additional businesses; serving as the key U.S. contact for the shareholders and

<p>directors of the parent company in the operations of the company by planning and developing U.S. investment. Dealing with attorneys in the acquisition process and coordinating with engineers in environmental testing; [the beneficiary] will achieve these goals by having weekly meetings with the directors and shareholders.</p>	
<p>Combined Company Representation and Business Negotiations [Contract Negotiations and Developing Trade and Marketing Strategies]</p> <p>[The beneficiary] will achieve this goal by overseeing the legal and financial due diligence (via Chief Financial Officer) process and resolving any related issues including purchase contracts; overseeing licensing and dealing with government officials in order to operate a successful enterprise; developing trade and consumer market strategies based on guidelines formulated by Variety Shoes. [The beneficiary] will carry out these goals by engaging professionals such as attorneys, accountants, advertising companies and commercial contractors to provide related services. [The beneficiary] will be providing progress reports and getting direction from the Board of Directors and shareholders of the company.</p> <p>[The beneficiary] will also be working with upper-level managers to secure additional business through promotions and vendor networking.</p>	<p>30% 12 hours spent weekly</p>
<p>Combined Financial Decisions and Business Negotiations [Decision on Expansion, Incurring Expenses, resolving financial related issues, etc.]</p> <p>[The beneficiary] will be responsible for developing a financial plan with the Board of Director's guidelines, planning and implementing the expansion of the U.S. entity; she will also be developing and implementing plans to ensure Petitioner's profitable operation this will be achieved by [the beneficiary] meeting with company managers and directors on a periodic bases for strategic planning and problem solving. [The beneficiary] will get direction from the board of directors of the company.</p> <p>Part of the expansion activities that [the beneficiary] will be involved in will entail the following duties: Managing all planning, expansion and investment activities; creating a plan to secure additional retail locations; coordinating with financial institutions to obtain financing; reviewing financial information pertaining to potential locations to determine feasibility.</p> <p>[The beneficiary] will be supervising all financial aspects of the company by working with a CPA to maintain stable financials and make financial sound, well-supported decisions based on financial records; and preparing and presenting a yearly business plan, including financial statements and budgeting plans, to the directors and shareholders of the company.</p>	<p>30% 12 hours spent weekly</p>

<p>Organizational Development of Company: Putting Management Team into place.</p> <p>[The beneficiary] will be responsible for developing organizational policies and objectives; providing top-down leadership and maintain a rigorous approach to management via metrics throughout the company; evaluating organizational efficiencies for profitable operation; developing the organization to its full potential and keeping personnel motivated and productive; evaluating and improving policies and procedures as necessary. [The beneficiary] will achieve these goals by conducting weekly meetings with the Vice President and General Manager to ensure that the company's performance is on track and that the managers are successfully implementing the goals established [by] the Board of Directors.</p> <p>[The beneficiary] will also have the ability to recommend the hiring and firing of upper management that supervise subordinate managers who in turn supervise lower level employees in running day-to-day operations; she will provide guidance to the managers by executing or recommending personnel action.</p>	<p>15% 6 hours spent weekly</p>
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The petitioner submitted a second organizational chart that indicated the beneficiary as President/CEO who in turn supervises a Vice President and General Manager who in turn supervises a Manager – Sales/Retail. The Manager – Sales/Retail supervises two assistant managers, a bookkeeper/clerk, and two sales/cashiers. The organizational chart lists the names of the individuals who hold each position. According to the Form 941, Employer's Quarterly Tax Return, for the first quarter of 2010, the same quarter this petition was filed, the petitioner employed ten individuals.

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

2. Analysis

When examining the executive or managerial capacity of the beneficiary, we review the totality of the record, starting first with the petitioner's description of the beneficiary's proposed job duties. See 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed 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). We will then consider this information in light of other relevant factors, including job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the petitioner's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role within the petitioning entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has

the capability of maintaining its daily operations such that the beneficiary would be relieved from having to primarily perform the operational tasks.

In the present matter, upon review of the totality of the record, the evidence does not support a finding that the beneficiary would allocate his time primarily to the performance of tasks that are within a qualifying managerial or executive capacity.

On review, the petitioner provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary will do on a day-to-day basis. For example, the petitioner stated vague duties such as the beneficiary would spend 25 percent of his time "conducting due diligence and feasibility testing for acquisitions and expansion into other markets;" "negotiating and supervising the drafting of purchase agreements for additional businesses;" "serving as the key U.S. contact for the shareholders and directors of the parent company in the operations of the company by planning and developing U.S. investment;" "dealing with attorneys in the acquisition process and coordinating with engineers in environmental testing;" and, "[the beneficiary] will achieve these goals by having weekly meetings with the directors and shareholders." It appears that the petitioner will be conducting market research such as the "feasibility testing" rather than supervising a subordinate in charge of marketing and business development. In addition, developing marketing strategies and negotiating deals are both operational duties that cannot be classified as managerial or executive tasks. In addition, the petitioner contends that the beneficiary will work with engineers and attorneys; however, there is no information in the record to indicate that the petitioner has hired an attorney or engineer to assist with the expansion plans.

The petitioner also said that the beneficiary will spend 30 percent of his time in contract negotiations and will work with the Chief Financial Officer; however, the U.S. organizational chart does not indicate a Chief Financial Officer. The beneficiary will "carry out these goals be engaging professionals such as attorneys, accountants, advertising companies and commercial contractors to provide related services." Again, the petitioner did not provide any evidence that it is working with contractors, advertising companies or legal services. 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).

The petitioner also stated that the beneficiary will spend 30 percent of his time "responsible for developing a financial plan with the Board of Director's guidelines," "planning and implementing the expansion of the U.S. entity;" "she [sic] will also be developing and implementing plans to ensure Petitioner's profitable operation;" "managing all planning, expansion and investment activities;" and, "preparing and presenting a yearly business plan, including financial statements and budgeting plans, to the directors and shareholders of the company." Again, it appears that the beneficiary will be preparing the financial statements and budgeting plans, and will be in charge of business development which would include marketing research, negotiations, and financial budgeting, rather than supervising subordinate employees who would be in charge of the day-to-day tasks. In addition, it appears that the majority of the beneficiary's duties will involve the expansion of the company; however, the petitioner did not provide a business plan to indicate an expansion mission,

strategy and goals or an investment plan. 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)).

This description provides little insight into what the beneficiary primarily will do on a day-to-day basis and does not explain the corporate policies, goals and objectives. 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. It appears that the beneficiary will provide the services such as market research, marketing, sales and negotiations as it does not appear that the beneficiary will oversee other employees that will perform the day-to-day tasks of marketing, budgeting and sales operations. An employee who "primarily" performs the tasks necessary to produce a product or provide a service is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I & N Dec. 593, 604 (Comm. 1988).

In addition, the director specifically requested additional information of the beneficiary's subordinate employees such as job descriptions for each employee. Instead, the petitioner submitted an organizational chart with a few job titles and names. It is not clear why the some job titles do not have listed an employee. 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). In addition, the petitioner did not submit evidence that all of the individuals listed in the organizational were actually employed with the petitioner.

Moreover, the petitioner provided very little information about the beneficiary's subordinates. The petitioner submitted an organizational chart; however, the petitioner only provided a brief job description for a few of the employees. The petitioner also stated that the petitioner runs a gas station and convenience store that is open for 12 hours, 7 days a week but it is unclear how the individuals in the organizational chart will cover every shift for the 84 hour week. The petitioner did not provide Forms W-2 for all employees for 2010, the year the current petition was filed, but on appeal submitted Forms W-2 for 2013. Several of the employees in 2013 were paid what appeared to be part-time salaries so it is unclear how the employees listed on the organizational chart could cover the store for the 84 hour work week. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, since the beneficiary is claimed to be the majority owner of both the U.S. and foreign entities, it is unrealistic to claim that he would spend any time at all reporting to the parent company about the petitioner's activities in the United States if the beneficiary is aware of and is in fact the

cause of such activities by virtue of being the head of the U.S. petitioner. The petitioner's claim that a large part of the beneficiary's time will be spent in consultation with the board of directors is unpersuasive, given that no information was provided to establish that anyone other than the beneficiary himself holds a board position. 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).

The petitioner has failed to provide a sufficiently detailed explanation, along with credible and probative supporting documentation, establishing the U.S. entity's overall organizational structure, staffing levels, and the scope of its business activities at the time of filing. The record is unclear as to the beneficiary's actual role will be, and as to the petitioner's actual staffing levels. The petitioner did not provide any job descriptions or explanations regarding any of its other employees. Overall, the record is insufficient to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary will perform.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reason. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.