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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 10 2014 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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 Director, Texas Service Center, denied the immigrant visa petition and 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 engaged in the provision of engineering and professional services in the oil and gas industry. The petitioner states that it is a subsidiary of [redacted] located in Brazil. It seeks to employ the beneficiary as its technical support division 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 on May 13, 2013, concluding that the petitioner failed to establish: (1) that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity for one year within the three years preceding the beneficiary's admission as a nonimmigrant; (2) that it will employ the beneficiary in a qualifying managerial or executive capacity; and (3) that the foreign entity continues to do business abroad.[1] The director denied the petition with a finding of fraud or willful misrepresentation of a material fact. This determination was based on a finding that the petitioner submitted false evidence, specifically with respect to: its statement made on the Form I-140 regarding the petitioner's number of employees; the statement made regarding the beneficiary's employment with the foreign entity, and the statement made regarding the beneficiary's proposed employment with the petitioner.

On appeal, counsel contends that the director erroneously concluded that the petitioner misrepresented material facts or submitted false evidence, and that the director otherwise denied the petition in error. The petitioner submits additional evidence endeavoring to establish: (1) that the beneficiary was employed in a managerial or executive capacity abroad in one of the three years preceding his entry into the United States on nonimmigrant status; (2) that he will be employed in a managerial or executive capacity in the United States; and (3) that the foreign employer is doing business as defined by the regulations.

II. 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

[1] The director initially denied the petition on March 26, 2013 based, in part, on the petitioner's failure to submit a timely response to a Notice of Intent to Deny issued on November 12, 2012. The director reopened the matter in order to consider the petitioner's response to the NOID, which it submitted on March 25, 2013.

> 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.

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 which 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.

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.

II. Facts and Procedural History

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on November 26, 2010. The petitioner stated on the Form I-140 that it has 16 employees and seeks to employ the beneficiary as its "Technical Support Division Manager."

After reviewing the petitioner's initial evidence, the director issued a notice of intent to deny (NOID) on November 27, 2012. The director advised the petitioner of derogatory information obtained from outside the record of proceeding, pursuant to 8 C.F.R. § 103.2(b)(16)(ii), and provided the petitioner with an opportunity to submit rebuttal evidence.

The director advised the petitioner that certain information obtained by USCIS conflicted with claims made by the petitioner and foreign employer and revealed that the beneficiary was not employed by the foreign employer in a managerial or executive capacity. The director acknowledged the petitioner's claim that the beneficiary was employed as the foreign entity's operational support director from May 2, 2006 through November 30, 2008. However, the director informed the petitioner that according to U.S. Department of State records, the beneficiary indicated on a nonimmigrant visa application that he was employed as a chemical engineer with as of July 2008. The director further questioned whether the beneficiary was employed in a managerial or executive capacity with the foreign employer given that he was previously admitted to the United States in December 2008 as an L-1B specialized knowledge nonimmigrant intracompany transferee. Lastly, the director referenced the vague nature of the beneficiary's duties and other discrepancies in the record related to the beneficiary's foreign employment and concluded that the record was not sufficient to establish that he was employed abroad in a qualifying managerial or executive capacity.

The director further stated in the NOID that the petitioner had failed to show that the beneficiary's proposed role in the United States would be in a managerial or executive capacity. The director stated that USCIS had collected information indicating that the beneficiary has been and would be residing and working in Texas, in apparent contradiction to the assertion by the petitioner in the Form I-140 petition that the beneficiary has

been and would be working and living in Florida. The director also concluded that the beneficiary's proposed duties are overly vague and failed to establish that the beneficiary would spend a majority of his time performing executive or managerial duties. Finally, the director found that "it appears that the petitioner had misrepresented relevant facts concerning the beneficiary's proposed employment with its company based upon his current employment as an L-1B non-immigrant worker.

The director further advised the petitioner that it had not established that it had been doing business for one year preceding the filing of the petition, nor had it demonstrated with sufficient evidence that the foreign employer was doing business as defined by the regulations. The director requested that the petitioner submit additional evidence, along with additional evidence of its ability to pay the beneficiary's proffered wage. The director did not specify in the NOID the period of time within which the petitioner was required to respond.

The petitioner submitted a response to the NOID on March 25, 2013. Prior to reviewing this response, the director issued a decision denying the petition on March 26, 2013, citing the same issues set forth in the NOID. On April 25, 2013, the director advised the petitioner that USCIS would reopen the matter on service motion pursuant to 8 C.F.R. § 103.5(a)(5), based upon the director's failure to specify a deadline to respond to the NOID. The director withdrew his previous decision of March 26, 2013 and informed the petitioner of his intent to consider the petitioner's response to the NOID received on March 28, 2013.

After considering the petitioner's response to the NOID, the director issued a decision denying the petition on May 13, 2013. The director concluded that the petitioner failed to establish: (1) that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity for one year within the three years preceding the beneficiary's admission as a nonimmigrant; (2) that it will employ the beneficiary in a qualifying managerial or executive capacity; and (3) that the foreign entity continues to do business abroad. The director denied the petition with a finding of fraud or material misrepresentation based on a determination that the petitioner submitted false evidence, specifically with respect to its statements regarding the beneficiary's employment abroad and its number of employees, and that it misrepresented material facts with respect to the beneficiary's proposed employment.

III. The Issues on Appeal

A. Employment with the petitioner in a managerial or executive capacity

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

1. Facts

In a letter submitted at the time of filing, the petitioner stated that it is a management consulting company engaged in supporting a large petrochemical company, with its offshore petroleum drilling operations, including procuring contractors, providing technical support, project planning and management, procurement services, construction management, and interfacing with sea vessels. The petitioner stated that

it is organized into four divisions under the direction of the chief executive officer (CEO), including: a commercial division responsible for marketing and sales; a technical support division providing highly specialized technical support services; an operations management division providing advisory and management services such as engineering and technical support; and a financial division devoted to the financial and administrative activities of the company.

The petitioner further noted that the technical support division was composed of five departments, including technical services, technical maintenance, logistics, information technology, and human resources, each with its own manager. The petitioner stated that the beneficiary has been in employed in L-1 status in a position subordinate to the technical support division manager. The petitioner explained that the division manager position recently became vacant and that the beneficiary would be promoted to fill the position. In an employee list submitted at the time of filing, the petitioner identified the beneficiary's current position as "Special Project Management Engineer."

In order to determine whether the beneficiary would be employed in a qualifying executive or managerial capacity, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). In a support letter submitted with the petition, the petitioner's chief executive officer (CEO) explained the beneficiary's proposed duties as technical support division manager, in part, as follows:

> In the position of Technical Support Division Manager, [the beneficiary] shall be responsible for the definition and the accomplishment of the goals, objectives, and policies of the business division, and responsible for planning, organizing, directing, and controlling the business unit. As his objective, he shall help the company to reach the goals that ensure its satisfactory results in terms of profitability, continuity, and customer satisfaction. For that, he shall define, implement, follow-up, and report all the goals, objectives, policies, and initiatives of the business division, in the short, mid, and long terms, and he shall plan, organize, direct, and control all the management and functional aspects of the business division. He shall exercise full authority delegated by the Chief Executive Officer, under his general supervision, reporting the progress and status of the business division under his authority.

Further, the petitioner's CEO set forth the following "basic duties" of the proposed position: (1) conferring with subordinate managers to decide upon matters with problems or matters needing to take special decisions, (2) helping and orienting them with specific problems within each of their areas of activities or amongst inter-related areas, (3) conferring with the managers to review policies, goals, objectives, and procedures, and to review and evaluate the business division and its performance in general within each one of the departments and sections of the organization, (4) joining electronic meetings with management of headquarters to confer with the directors and managers of the organization abroad, (5) getting information about new developments within the organization, increasing the knowledge and enriching the expertise within the American affiliate of our economic group, (6) performing reviews of activities of all the areas of the business division, to evaluate their performance, approve expenditures, enforce rules, change individual procedures, and make decisions related to the management procedures, (7) conducting general evaluation meetings, where the matters of general interest of the business division are discussed, (8) conferring with the

managers to oversee their activities related to clients of the organization, (9) reviewing documents, statements, reports and performance data to measure productivity and goal achievement and to determine areas needing changes or improvement, and (10) performing full reviews of ongoing projects, to make decisions to change course, if needed, or to keep track of them to ensure their successful development.

The petitioner's initial evidence included three organizational charts depicting the "general management" hierarchy and the structure of the technical support and operations management divisions. The beneficiary's proposed position is identified on the general management chart as one of four division manager positions reporting to the company's CEO. The technical support division chart identifies five managers who would report to the beneficiary in his proposed position: technical services manager, technical maintenance manager, logistics manager, information technology manager, and human resources manager. The operations management division chart identifies six subordinate managers in that division. The three charts combined identify a total of 16 positions within the company, including the CEO, four division managers, and subordinate managers.

The petitioner also provided a document describing its management structure and the roles of each level of the organizational hierarchy. The petitioner stated that its division managers direct the department managers and, indirectly, their subordinate supervisors, while the department managers oversee supervisors, and, indirectly, all employees and contract employees of the company and the day-to-day activities of the organization. The petitioner also included "Special Project Management Engineers," below the department managers, noting that these employees "offer support to the company and to the company's clients, transferring from our group the highly specialized knowledge in the exploration of oil and gas in deep and ultra-deep waters." The petitioner noted that its list of employees "does not include the contract employees of the company and the employees of contractors, sub-contractors, business partners, and clients, performing the company's operational and other non-executive and non-managerial activities." The petitioner did not further identify any contract employees.

In the NOID, the director advised the petitioner that USCIS' investigation revealed that the beneficiary has been working and residing in Texas, not Orlando, Florida, as stated in the petition and supporting documentation. In addition, the director acknowledged the position description provided for the proposed position, and advised the petitioner that the duties were described in overly broad terms and did not convey an understanding of what the beneficiary would do on a day-to-day basis. Finally, the director emphasized that the beneficiary is currently employed as an L-1B specialized knowledge worker and questioned whether the offered employment meets the requirements found at section 101(a)(44)(A) or (B) of the Act.[2]

[2] In the NOID, the director noted that the petitioner stated at the time of filing that "the beneficiary was transferred to the United States to work as the petitioner's Technical Support Division Manager," and that his "L-1B temporary employment is the same job title as the proposed employment." Upon review, the petitioner did not make these statements, but rather indicated at the time of filing that the beneficiary is currently employed as a special project management engineer and that he would be promoted to the technical support division manager position.

In response, the petitioner confirmed that USCIS accurately listed the beneficiary's addresses in Texas in the NOID. The petitioner clarified that the home address provided for the beneficiary on the Form I-140 is a property the company uses to temporarily house employees traveling to work at the company's head office in Orlando. The petitioner indicated that its operations office is located at in Texas and explained the beneficiary's role as a special project management engineer required him to perform services based in

In addition, the petitioner provided additional insight into the beneficiary's current specialized knowledge role, specifying that the beneficiary has acted as a special project management engineer with the petitioner providing professional services to the petitioner's main client, The petitioner stated that the beneficiary worked to create operational procedures for the client related to disconnecting offshore drilling operations in the Gulf of Mexico through a technology called a floating-type vessel platform (FPSO). The petitioner further explained that the beneficiary provided expertise to the client on sub-sea equipment fabrication, installation and control systems and operational support capabilities. The petitioner asserted:

> The beneficiary's roles and responsibilities include, but are not limited to, the management of his areas of responsibility on a daily basis, as well as the development of policies, processes, roles, and responsibilities and procedures for the entire organization business areas.
>
> The above described knowledge, roles and responsibilities led us to believe that the beneficiary, our Technical Support Division Manager, fulfilled all requirements [to qualify as a manager or executive consistent with the Act].

Further, in response to the director's NOID and on appeal, the petitioner submits numerous invoices including bills issued to from 2009 to 2012 for services provided by the beneficiary as both an "interface coordinator," "site representative," and a "consultant on project."

The petitioner stated that the beneficiary's responsibilities in his current role have included site engineering management, project management, interface management, IT support and management, process engineering, construction and commissioning pending items management, regulatory surveillance plan management, and offshore logistics management. The petitioner noted that each of these areas was supervised directly by experienced engineers. The petitioner concluded that "the above described knowledge, roles and responsibilities led us to believe that the beneficiary . . . fulfilled all requirements defined on INA 101(a)(44)(A). Therefore, we understand that his multinational manager classified petition is fully supported." The petitioner did not provide any additional information regarding the proffered position of Technical Support Division Manager.

The petitioner's response to the NOID included copies of all IRS Forms 941, Employer's Quarterly Federal Tax Returns, filed between 2009 and 2011, including the Forms 941 for the last two quarters of 2010. At the time of filing, the petitioner submitted a Form 941 for the third quarter of 2010 which indicated that the company had 16 employees and paid $314,444 in salaries and wages. The petitioner also provided a copy of its Florida Form UCT-6, Employer's Quarterly Report, for the same quarter which listed the 16 employees

named in the petitioner's organizational chart. However, the petitioner submitted a different Form 940 for the third quarter in response to the NOID which indicated that the company had 11 employees and paid $269,788.33 in salaries and wages. The petitioner also included the Form 941 for the fourth quarter of 2010, the quarter in which the petition was filed, which indicates that the company had only six (6) employees. In 2011, the petitioner reported 3 to 7 employees on its Forms 941.

In denying the petition, the director found the petitioner's responses and additional evidence submitted in response to the NOID were insufficient to overcome the insufficiencies and discrepancies addressed therein. Further, the director noted that the petitioner had failed to provide further explanation regarding the beneficiary's duties in the United States despite being advised that the initial description of duties provided was overly vague. In addition, the director emphasized discrepancies in the record with respect to the petitioner's staffing levels. The director observed that the Form I-140 petition stated that the petitioner had sixteen employees, while the petitioner's IRS Form 941 Employer's Federal Quarterly Tax Return for the last quarter of 2010 indicated that the petitioner had only six employees at the time the petition was filed. Lastly, the director stated that "it appears that the petitioner has misrepresented relevant facts concerning the beneficiary's proposed employment with its company based on his current employment as an L-1B nonimmigrant worker."

On appeal, counsel states that the director's conclusion was erroneous, and submits additional evidence in support of her assertion that the beneficiary will be employed in a managerial or executive capacity. This evidence includes a revised organizational chart for the petitioner, copies of the petitioner's IRS Forms W-2, Wage and Tax Statements for the years 2009 through 2012, copies of the petitioner's IRS Forms 1120, U.S. Corporation Income Tax Return, for the years 2009 through 2012, support letters from the petitioner's employees attesting to the beneficiary's role, evidence of the beneficiary's bachelor's degree in Chemical Engineering, and other evidence of the beneficiary's training and membership in trade associations.

2. *Analysis*

Counsel's assertions are not persuasive. Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5).

The petitioner's initial description of the duties for the technical support division manager position were vague and non-specific, and thus failed to convey an adequate understanding of what the beneficiary would be doing on a day-to-day basis. For example, the petitioner stated that the beneficiary's duties would include: "the definition and the accomplishment of the goals, objectives and policies" of the division; "planning organizing, directing and controlling the business unit"; "define, implement, follow-up and report all the goals, objectives, policies and initiatives"; "organize, direct and control all the management and functional aspects of the business division"; and "exercise full authority" over the progress and status of the division. These statements merely paraphrase the statutory definition of "executive capacity" at section 101(a)(44)(B)

of the Act. 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 remainder of the beneficiary's proposed duties were described in similarly general terms, and included attending various meetings, performing reviews of activities, approving expenditures, enforcing rules, making decisions regarding management procedures, reviewing reports and performance data, and reviewing ongoing projects to ensure successful development. 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, *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner was given an opportunity to provide an expanded description of the beneficiary's proposed duties in response to the NOID, but instead it provided additional information regarding the beneficiary's previous specialized knowledge role as a special project management engineer, stating that the duties qualify the beneficiary as a manager or executive. At the same time, the petitioner indicated that the beneficiary currently holds the proffered position of technical support division manager, but it failed to provide the requested detailed description of this role. Therefore, the petitioner's response to the NOID, and the additional evidence submitted on appeal, fail to address the director's conclusion that the provided duties for the beneficiary in the United States were overly vague. 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).

Overall, the petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine, even following notice from the director of their insufficiency. The actual duties themselves reveal the true nature of the employment. Here, the evidence submitted by the petitioner suggests that the beneficiary will remain in a role similar or identical to that he previously held, leaving question as to whether he will primarily perform managerial or executive duties. As noted above, the petitioner asserted in response to the director's NOID that it believed the petitioner's specialized knowledge role qualified him as a manager or executive. Alternatively, the petitioner also asserted in support of the petition that the beneficiary would be promoted, upon the approval of the petition, to the position of technical support division manager from his former specialized knowledge role, which was not initially characterized as managerial or executive. The petitioner's confusion and vagueness with respect to the beneficiary's claimed new managerial or executive position leaves question as to whether there will be any change in his current role. Indeed, to the extent the petitioner's has provided specifics regarding the beneficiary's duties, these specifics support a conclusion that the beneficiary has provided, and will continue to provide professional services directly to the petitioner's clients. The record reflects that the petitioner continues to invoice its client for services provided by the beneficiary as "interface coordinator" and "consultant on project" in 2012, despite the petitioner's assertion at the time of filing that he was being promoted to a managerial role based in Florida.

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). Without a sufficient duty description for the beneficiary in his newly proposed managerial or executive role, USCIS cannot determine whether the beneficiary will primarily perform executive or managerial duties and the petitioner's claims fail on an evidentiary basis. The director properly denied the petition based on this evidentiary deficiency.

Further, when examining the managerial or executive capacity of a beneficiary, USCIS reviews the totality of the record, beyond the beneficiary's duties, including the duties of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business.

The petitioner's evidence of its staffing levels and organizational structure is rife with inconsistencies. The petitioner has submitted, without explanation, dissimilar organizational charts bearing similar dates, and multiple conflicting versions of its IRS tax documentation for the relevant time period. Accordingly, the AAO cannot determine the number or types of employees working for the company at the time of filing.

As noted above, organizational chart submitted at the time of filing identified the beneficiary's proposed role as technical support division manager, and indicated that he would supervise a technical services manager, a technical maintenance manager, a logistics manager, an information technology manager, and a human resources manager. The chart included a commercial division manager, a financial division manager, and an operations management division manager, who was depicted as having six subordinates with managerial job titles. The organizational chart was dated November 2010.

The petitioner stated on the Form I-140 that it had 16 employees and its initial evidence included an IRS Form 941 and a Florida Employer's Quarterly Report (Form UCT-6) for the third quarter of 2010 on which it reported that it had 16 employees. All employees named on the organizational chart were also identified on the Employer's Quarterly Report for the quarter ended on September 30, 2010. Both the Form 941 and Form UCT-6 were self-prepared and neither document was signed. However, in response to the director's NOID, the petitioner submitted an IRS Form 941 for the third quarter of 2010 reflecting that the petitioner had eleven employees and an IRS Form 941 for the fourth quarter of 2010 indicating that the petitioner had only six employees during the quarter in which the petition was filed. Both of these documents were prepared by the petitioner's usual tax preparer and were signed by the petitioner. The petitioner did not explain why it submitted two different IRS Forms 941 for the same quarter of 2010. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the petitioner introduces additional discrepancies into the record. First, the petitioner submits an organizational chart dated September 2010 which depicts a completely different organizational structure and named employees than those listed in the chart submitted at the time of filing. For instance, the newly

submitted organizational chart reflects a General Manager at the head of the organization. The General Manager position has five direct subordinates including an executive assistant, a contract management employee, an "operations project" employee, a technical support manager, and a "subsea consulting" employee."

The chart submitted on appeal depicts the beneficiary as technical support manager, with six direct subordinates in the following roles: (1) interface manager; (2) site engineering (a contractor); (3) IT support; (4) process engineering third party verification; (5) regulatory surveillance engineer; (6) free issued equipments (a contractor); and (7) pending items management. The petitioner indicated that the same individual fills the roles of IT Support and pending items management. This individual is claimed to supervise a foundation software employee, an overseas contractor responsible for "compliance verification authority database", and a "DSI Team" comprised of eight contracted discipline engineers.

In total, the newly submitted organizational chart includes thirteen employees and three contractors. Additionally, only four of the named employees on the new organizational chart submitted on appeal appeared on the organizational chart submitted in support of the petition. These employees include the beneficiary, (previously CEO and now General Manager), (previously operations management division manager and now interface manager), and (previously electronic document systems manager and now "foundation software.")

The petitioner also submits IRS Forms W-2 indicating the employment of thirteen employees during 2010. There is one employee on the newly submitted chart who did not receive a Form W-2 in 2010, and one employee who received a Form W-2 in 2010 who did does not appear on the chart. The total salaries and wage reported on the petitioner's 2010 IRS Form W-3, Transmittal of Tax and Wage Statements, was $1,016,389.63. The petitioner reported salaries and wages of $1,129,106 on its IRS Form 1120 for 2010.

The petitioner has provided, without explanation, two completely different organizational charts for the same time period. Although the petitioner now indicates that a different structure was actually in place at the time of filing, it does not offer a revised description of the beneficiary's duties as technical support manager. None of the beneficiary's five subordinate staff identified on the petitioner's original organizational chart received an IRS Form W-2 from the petitioner in 2010. In fact, only four of the 16 employees named on the original chart and identified on the petitioner's IRS Form UCT-6 for the third quarter of 2010 worked for the company at all during that year, based on the 2010 Form W-2s. The original organizational chart, Florida Form UCT-6, and initial IRS Form 941 for the third quarter of 2010 all contained information that cannot be reconciled with the petitioner's subsequently submitted organizational chart, 2010 Form W-2s, and IRS Forms 941 for the third and fourth quarters of 2010, all of which indicated a different staffing and organizational structure than that claimed at the time of filing.

Finally, while the director's decision specifically addressed the discrepancy between the number of employees stated on the Form I-140 and the number of employees reported on the petitioner's IRS Form 941 for the fourth quarter of 2010, the petitioner has not submitted any explanation for these discrepancies but has only introduced new conflicting evidence in support of the appeal.

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). In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence submitted at the time of filing misrepresented the company's actual staffing levels and organizational structure.

Therefore, the petitioner's claim that the beneficiary will serve as the technical support division manager responsible for supervising the work of five subordinate who manage discrete departments is not credible. A review of the petitioner's contracts and invoices confirm that many of the petitioner's employees named on the newly submitted organizational chart, including the beneficiary, are engaged in providing technical consulting services to the petitioner's clients for which the petitioner bills the client at an hourly rate.

The petitioner has failed to submit a detailed duty description or sufficient evidence to establish that its organizational structure at the time of the filing of the petition was sufficient to support the beneficiary in a managerial or executive capacity. The preponderance of the evidence submitted demonstrates that the beneficiary was, and likely will continue to be, primarily engaged in the direct performance of services for clients. As such, the petitioner has not established that it will employ the beneficiary in a qualifying managerial or executive capacity. Accordingly, the appeal must be dismissed.

B. Employment with the foreign employer in a managerial or executive capacity

The next issue to be addressed is whether the petitioner established that the beneficiary was employed in a managerial or executive capacity for one of the three years preceding his entry into the United States as a nonimmigrant.

1. *Facts*

At the time of filing, the petitioner stated that the beneficiary held the position of Operational Support Director for its Brazilian parent company from May 2, 2006 until November 30, 2008, at which time he transferred to the United States in L-1B status. In a letter dated November 3, 2010, the foreign entity stated that, during his tenure, the beneficiary successfully managed large projects for international organizations such as [redacted] With respect to the beneficiary's specific duties, the foreign entity stated:

> [I]n his position, as the Operational Support Director, [the beneficiary] had the full authority over all the management of the Operational Support Division. He was responsible for directly supervising six subordinate managers and through these managers he was indirectly responsible for employees and contract employees of the entire Operational Support Division, at all of its levels. [In] his position, he was also indirectly responsible for all employees of the company's contractors and business partners working with our organization, or with our clients, under our responsibility. The

managers who he was directly responsible for directing were the Technical Services Manager, the Maintenance Services Manager, the Logistics Manager, the Information Technology Manager, the Human Resources Manager and the Health, Safety and Environment Manager.

The petitioner further explained that the beneficiary's various subordinate managers were responsible for supervising different aspects of providing specialized technical services to the petitioner's clients. The petitioner listed the various qualifications and skills deemed necessary to the position, including but not limited to, experience and knowledge in operations on deep and ultra-deep waters, the ability to direct plans that improve revenue and profit, and the ability to drive change and to build consensus.

The petitioner submitted a copy of the foreign entity's organizational chart, which identifies a total of 22 employees, all with managerial job titles. The chart depicts the beneficiary as Operational Support Director, reporting to the company's Executive Director, with six subordinate employees as stated in the foreign entity's letter.

The petitioner also provided copies of the beneficiary's monthly "Statements of Payment of Salary" issued by the foreign entity for the period December 2007 to November 2008, which indicate his job title as "Director of Operational Support."

In the NOID, the director advised the petitioner that Department of State records indicated that the beneficiary stated on an application for a nonimmigrant visa in July 2008 that he worked for (hereinafter) as a chemical engineer. This information conflicted with the petitioner's claim was employed as the foreign entity's operational support director from May 2, 2006 through November 30, 2008.

In response, the petitioner explained that the foreign entity had agreements with to manage two major oil and gas sector projects. The petitioner states that these two agreements were the foreign entity's primary business beginning in 2006, so the company assigned the beneficiary and his subordinate team to manage the operations at the worksite of The petitioner asserted that the job description provided for the Operational Support Director position at the time of filing was entirely accurate. It also provided additional information regarding the specific areas the beneficiary managed specific to each project, and copies of the foreign entity's contracts with

The petitioner provided contracts between and evidencing a contractual relationship between the parties with respect to crack repair on subsea tanks and a power point presentation from confirming the foreign entity's role as a subcontractor on the revamp of a offshore drilling operation. The petitioner asserted that the beneficiary's duties were primarily managerial in nature.

As additional evidence of the beneficiary's one-year of employment with the foreign entity, the petitioner provided copies of the beneficiary's monthly "Receipts of Payment of Salary" for the period of July 2006 through September 2008. These documents appear to contain much of the same information as the "Statements of Payment of Salary" covering the same period which were submitted at the time of filing.

However, the two sets of documents are quite different in appearance. The receipts identify the beneficiary as "manager of operational support" rather than "director of operational support." Both sets of documents indicate on their face that they were generated by the foreign entity's human resources department, however, they contain slightly different information which raises questions regarding their validity. For example, both the "receipts" and the "statements" have a "code" field in the upper left section which appears to be an internal employee number. The code on all of the receipts is and the code on the "statements" is There are also some differences in the reported financial information. For example, for the month of December 2007, both the statement and the receipt indicate that the beneficiary's gross salary was 5,444.16 Brazilian reals. However, the statement of salary indicates "Sal. Cont. INSS" as 2,894.27, "Base Calc. IRRF" as 5,125.79 and "FGTS Month" as 462.75. The corresponding figures on the salary receipt for the same month were: 5,144.16, 5,144.16 and 435.53. Discrepancies in the figures reported in these fields are repeated in most of the documents. For the month of April 2008, the net payment amount was 4,287.97 on the statement of salary and 4,097.50 on the receipt of payment of salary.

The director denied the petition, concluding that the petitioner failed to establish that the foreign entity employed the beneficiary in a qualifying managerial or executive capacity. In denying the petition, the director acknowledged the petitioner's explanation regarding the beneficiary's response on a nonimmigrant visa application that he worked for However, the director observed that there was nothing in the initial evidence to suggest that the beneficiary's role as the foreign entity's operational support director involved managing projects for the unrelated company. The director emphasized that the petitioner cannot make material changes to its initial claims about the nature of the beneficiary's role with the foreign entity, and noted that the petitioner did not support a clarifying letter from the foreign entity in response to the NOID. The director concluded that the beneficiary may have misrepresented relevant facts regarding the beneficiary's previous employment. Further, the director found that the duty description submitted for the operational support director position at the time of filing was vague and did not have sufficient specificity to establish what duties the beneficiary performed on a day-to-day basis.

On appeal, counsel asserts that the director erred in concluding that the petitioner misrepresented material facts with respect to the beneficiary's foreign employment and submits additional evidence of the foreign employer's operations and financials, an organizational chart, supporting foreign payroll documentation, and other evidence relevant to the foreign employer.

The additional evidence submitted by counsel is not persuasive. Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the foreign entity employed the beneficiary in a managerial or executive capacity for at least one of the three years preceding the beneficiary's admittance to the United States on a nonimmigrant visa.

First, the petitioner has submitted insufficient and inconsistent evidence relevant to the period of the beneficiary's claimed employment with the foreign employer. The petitioner has provided two conflicting foreign organizational charts thereby casting doubt as to the foreign employer's actual organizational structure and the beneficiary's role therein. The petitioner submitted an organizational chart in support of the petition reflecting that the foreign employer had a board of directors with three members overseeing an Executive Director. The executive director is reflected as overseeing five subordinate managers, including a

commercial director, an administrative division manager, and operational support director (the beneficiary), an operations director, and a special projects director. The beneficiary is shown to have six managerial subordinates including a technical services manager, a maintenance services manager, a logistics manager, an information technology manager, a human resources employee, and a health, safety, and environmental manager. In total, the foreign organization chart submitted in support of the petition reflected twenty-two managerial employees.

On appeal, the petitioner submits another organizational chart for the foreign entity dated "June 2007" that is materially different than that submitted in support of the petition. The organizational chart submitted on appeal identifies a President with five subordinate employees, including one devoted to "SMS," a commercial vice president, an employee devoted to "finances," a "manager of operations" , and "manager of operations support"(the beneficiary). Reporting to the operations manager is an employee devoted to "onshore operations" and another assigned to "operations offshore." The chart indicates that the beneficiary had six subordinates, but these subordinates have titles varying from those reflected in the original organizational chart. Specifically, the beneficiary's subordinates are identified as holding the positions of "contracts," "planning," "IT," "logistics," "human resources," and "GA/CQ." Additionally, the organizational chart lists a total of only 14 employees. 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, 591-92 (BIA 1988).

Further, the petitioner has not submitted sufficient evidence to support the beneficiary's managerial capacity from May 2, 2006 through November 30, 2008. In fact, the majority of the submitted evidence regarding the foreign employer's operations post-dates the beneficiary's claimed tenure with the foreign entity. For instance, the petitioner submitted substantial payroll documentation for the foreign employer. However, this payroll documentation is from 2012, and is not relevant to the beneficiary's asserted period of employment with the foreign employer from 2006 through 2008. Given the discrepancies in the submitted organizational charts, the petitioner has not submitted sufficient supporting documentation to establish that the beneficiary oversaw supervisory, managerial or professional subordinates as necessary to establish him as a manager or executive. In fact, the payroll documentation submitted for the foreign employer on appeal includes none of the asserted managerial employees listed in either organizational chart provided for the foreign company. For example, the foreign entity's payroll report for the month of January 2012 includes electricians, welders, scaffold assemblers, "instrumentists," welders, plumbers, and blowtorch operators. The petitioner does not claim that there has been any change in the nature of the foreign entity's operations, so it is unclear why a company that previously submitted an organizational chart with 22 managers now reports no managerial staff.

The petitioner has provided an explanation as to why the beneficiary indicated his employer as '[redacted] when applying for a nonimmigrant visa, but it has not explained why he indicated his position as "engineer" rather than operations support director or "project manager" if that was his role at the client's site. While the

petitioner has submitted payroll statements and receipts for the beneficiary's claimed period of employment abroad, as addressed above, these too contain inconsistencies.

Finally, as noted by the director, the petitioner has provided two different position descriptions for the beneficiary's foreign position of operations support director. There was no information in the original description to suggest that the beneficiary was assigned to manage a project or projects at a client site, and the petitioner provided no additional supporting information from the foreign employer to support the beneficiary's assignment to Spartacus. 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)). 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. at 591-92.

In conclusion, the petitioner has failed to provide sufficient, consistent supporting evidence to establish that foreign entity employed the beneficiary in a managerial or executive capacity for one of the three years preceding his admission to the United States as an L-1B nonimmigrant. For this additional reason, the appeal will be dismissed.

C. Foreign employer doing business

The next issue to be addressed is whether the petitioner has established that the foreign employer is doing business as defined in the regulations. *See* 8 C.F.R. § 205.5(j)(2).

The director's denial on this ground was based upon the petitioner's failure to provide sufficient evidence of its operations in response to the director's NOID. Specifically, the director requested: (1) evidence to show that the foreign organization conducted regular, systematic, and continuous provision of goods and/or services; (2) receipts, invoices, and detailed reports to show that the foreign organization traded or exchanged goods or services; and (3) a copy of the foreign organization's import/export license, and contracts or agreements with shipping and receiving companies. The director acknowledged that the petitioner had submitted certain translated evidence, including an amendment to the foreign employer's articles of organization dated January 19, 2010, a foreign employer tax declaration for 2011, "fiscal notes" from the [redacted] to the foreign employer, a statement of financial results from 2009 and foreign company bank statements. However, the director concluded that, although the documents were translated, the petitioner had failed to demonstrate that the translations were certified consistent with 8 C.F.R. § 103.2(b)(3), and as result, had failed to demonstrate with sufficient evidence that the foreign employer was doing business as defined by the regulations.

Based on a review of the record, the AAO concludes that the petitioner has submitted sufficient evidence to establish with a preponderance of the evidence that the foreign employer is doing business.

On appeal, the petitioner provides certified translations of the following foreign company documents: (1) service agreements form 2010 and 2011 between the foreign employer and a company (2) numerous "invoices" from the dating from 2009 through 2013, (3) substantial payroll documentation relevant to the foreign employer from 2011 and 2012 indicating that the foreign employer, and (4) a statement from the Brazilian Ministry of Treasury reflecting that the foreign employer earned 4,079,571.79 reals in gross revenue in 2012.

Upon review of the totality of the evidence, the petitioner has demonstrated that the foreign entity has earned significant revenues in 2009, 2011 and 2012, and that it employs a substantial number of employees. Further, contracts, invoices and other licensing documentation suggest that the foreign employer has, and continues, to conduct business in Brazil. Accordingly, the director's finding that the petitioner failed to establish that the foreign employer is doing business is hereby withdrawn.

D. Finding of Fraud/Willful Misrepresentation

The final issue to be addressed is whether the director properly entered a finding of fraud.

The director denied the petition with a finding of "fraud or material misrepresentation" based on a determination that the petitioner submitted false evidence, specifically with respect to its statements regarding the beneficiary's employment abroad and its number of employees. The director further found that the petitioner misrepresented material facts with respect to the beneficiary's proposed employment.

Upon review, and for the reasons discussed below, the AAO concurs with the director's finding of material misrepresentation of facts with respect to the petitioner's stated number of employees and organizational structure.

The terms "fraud" and "misrepresentation" are not interchangeable. A finding of fraud requires a determination that the alien made a false representation of a material fact with knowledge of its falsity and with the intent to deceive an immigration officer. Furthermore, the false representation must have been believed and acted upon by the officer. *See Matter of G-G-*, 7 I&N Dec. 161 (BIA 1956).

Unlike a finding of fraud, a finding of material misrepresentation does not require intent to deceive or that the officer believes and acts upon the false representation. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288 (BIA 1975). Beyond the adjudication of the visa petition, a misrepresentation may lead USCIS to enter a finding that an individual alien sought to procure a visa or other documentation by willful misrepresentation of a material fact. This finding of fact may lead USCIS to determine, in a future proceeding, that the alien is inadmissible to the United States based on the past misrepresentation.

Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), provides:

> Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has

> procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. t 288.

An immigration officer will deny a visa petition if the petitioner submits evidence which contains false information. In general, a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, if a petition includes serious errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the facts stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The director determined that the petitioner had misrepresented its number of employees on the Form I-140. As previously discussed, the petitioner stated on the Form I-140 filed in November 2010 that it had 16 employees. It submitted an IRS Form 941 for the third quarter of 2010 which indicated 16 payroll employees, and a Florida Form UCT-6 for the same quarter identifying the same 16 employees named on the organizational chart submitted at the time of filing.

In response to the NOID, the petitioner submitted a different Form 941 for the third quarter of 2010 which indicated that the petitioner employed 11 employees, rather than 16 employees as stated on the previously submitted Form 941. In addition, it provided a Form 941 for the fourth quarter of 2010 which indicates that the petitioner had only six employees, rather than 16 employees, at the time the petition was filed. The petitioner has provided no explanation for these discrepancies, despite the director's observations in the notice of decision.

Further, on appeal the petitioner submitted IRS Forms W-2 for 2010 which indicate that only four of the 16 named employees claimed at the time of filing actually worked for the company during that year. There is simply no credible evidence to support the petitioner's claim that it had 16 employees at the time the petition was filed. In addition, as the petitioner later submitted evidence indicating that it actually had only six employees, rather than 16 employees, at the time of filing, the petitioner's claim that the beneficiary alone would be supervising five subordinate department managers was also not credible. The petitioner has offered a completely different description of the company's organizational structure on appeal.

Based on the foregoing, it is evident that the petitioner's statement on the Form I-140 regarding its current number of employees at the time of filing was false. Moreover, the petitioner submitted an IRS Form 941 and Florida Form UCT-6 which also contained false information regarding the petitioner's number of employees in the third quarter of 2010.

A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). Here, the submission of false information on the Form I-140 petition and in supporting quarterly tax reports in support of the Form I-140 constituted false representations to a government official.

The record does not include documentary evidence substantiating that the number of current employees stated on the Form I-140 was accurate. In fact, the petitioner submitted evidence in response to the NOID and on appeal which confirms that the information provided at the time of filing on the Form I-140, was not accurate. The burden of proof remains with the petitioner to show by a preponderance of the evidence that a material misrepresentation was not committed in these proceedings. *See Matter of Ho*, 19 I&N Dec. at 589. The petitioner has not met that burden. The preponderance of the evidence indicates that the petitioner did not have 16 employees, nor did it employ 12 of the 16 people identified by name on the organizational chart and Florida Form UCT-6 submitted at the time of filing or at any time in 2010.

Accordingly, the AAO finds that the petitioner willfully made the misrepresentation. The petitioner stated that it had 16 employees on the petition and it created the Form 941, Form UCT-6, and November 2010 organizational chart identifying 16 employees. By signing the petition, the petitioner certified under penalty of perjury that the petition and all evidence submitted with it either initially or thereafter is true and correct. *See* the regulation at 8 C.F.R. § 103.2(a)(2), which states the following:

> An applicant or petitioner must sign his or her benefit request. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the benefit request, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on a benefit request that

> is being filed with the USCIS is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

The petitioner's willful and material misrepresentation that it had 16 employees as of the date of filing has not been rebutted as the petitioner has provided inconsistent information on appeal and has failed to directly address the director's findings with respect to the noted inconsistencies.

The false information and fabricated documents are material to the petitioner's claim that it will employ the beneficiary in a qualifying managerial or executive capacity. The petitioner's claim at the time of filing was predicated on a set of job duties that reflect his supervision of five subordinate department managers. The petitioner identified these managers on an organizational chart dated November 2010 and submitted fabricated evidence of wages paid to these employees in the form of a Florida Form UCT-6 and an IRS Form 941 for the third quarter of 2010. None of the beneficiary's five claimed subordinates were issued W-2 forms by the petitioner in 2010. Further, there is no evidence that they were employed as contractors or inadvertently included on the Form UCT-6. In fact, when the petitioner submitted a revised 2010 organizational chart on appeal, the five individuals identified as the beneficiary's subordinates at the time of filing were simply not mentioned.

The use of fabricated documentation to establish that the petitioner has a multi-tiered organizational structure with subordinate managers reporting to the beneficiary is material to the adjudication of this visa petition. These facts are directly material to the beneficiary's eligibility under the statutory definition of "managerial capacity" at section 101(a)(44)(A) of the Act. The petitioner's Form 941 for the quarter in which the petition was filed shows it actually employed only six workers at the time of filing, whereas the petitioner initially claimed that the beneficiary's division alone comprised five department managers. This misrepresented information regarding the company's staffing and structure casts doubt on the job description submitted for the beneficiary.

The petitioner's submission of falsified documentation in support of the petition is a material misrepresentation knowingly made. The petitioner's director and CEO signed the visa petition as the corporate officer of the petitioning company, certifying under penalty of perjury that the visa petition and the submitted evidence are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2). The signature portion of the Form I-140, at part 8, requires the petitioner to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct." On the basis of this affirmation, made under penalty of perjury, the AAO finds that the petitioner willfully and knowingly made the misrepresentation.

The falsified evidence is material to the beneficiary's eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the

misrepresentation cuts off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Matter of Ng*, 17 I&N Dec. at 537. The misrepresentation in this matter cut off a potential line of inquiry regarding the beneficiary's actual role and level of authority in the company. The AAO concludes that the petitioner's misrepresentations were material to the beneficiary's eligibility.

By filing the instant petition and submitted false information regarding its number of employees and organizational structure, the petitioner has sought to procure a benefit provided under the Act through the willful misrepresentation of a material fact. The AAO will enter a finding that the petitioner made a willful material misrepresentation.

IV. Conclusion

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

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to their eligibility for a benefit sought under the immigration laws of the United States.