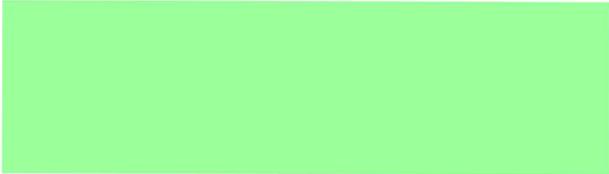




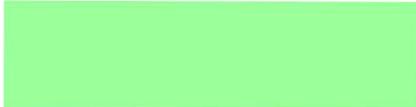
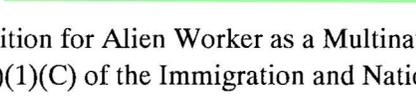
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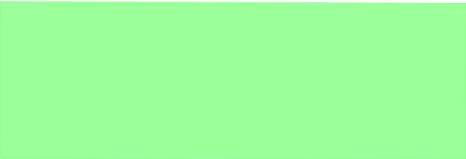
DATE: **JUL 25 2014** OFFICE: TEXAS SERVICE CENTER

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)

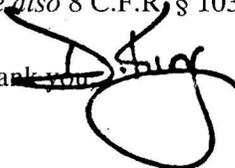
ON BEHALF OF PETITIONER:



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

The petitioner is a Texas corporation that operates in the United States as a food wholesaler. It seeks to employ the beneficiary in the United States as its president and CEO. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad and that he would be employed in the United States in a qualifying managerial or executive capacity.

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.

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. Procedural History

The record shows that the petition was filed on April 19, 2013 and was accompanied by a supporting statement, dated March 28, 2013, which included a list of the petitioner's employees and their respective position titles. The statement also included job descriptions of the beneficiary's respective positions abroad and with the U.S. entity. In addition to the supporting statement, the petitioner also provided a copy of its own organizational chart, the petitioner's corporate and tax documents, a letter from the foreign entity discussing the beneficiary's former employment abroad, the petitioner's office and warehouse lease agreements, and photographs of the U.S. and foreign entities' business premises.

After reviewing the evidence on record, the director determined that the petitioner did not provide sufficient evidence of its eligibility. Accordingly, the director issued a request for evidence (RFE), dated June 14, 2013, in which he instructed the petitioner to provide, in part, additional supporting evidence addressing the

beneficiary's former employment abroad as well as his proposed employment with the U.S. entity. In response, counsel provided a statement, dated September 4, 2013, listing the supplemental documents that were being submitted. Included in the petitioner's response were supplemental job descriptions of the beneficiary's positions with the foreign and U.S. entities, respectively.

In a decision dated November 13, 2013, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary was employed abroad and would be employed in the United States in a qualifying managerial or executive capacity. The director found that the job descriptions provided were overly broad and thus failed to establish what specific job duties the beneficiary performed abroad and would perform in his proposed position with the U.S. entity. With regard to the beneficiary's former employment abroad, the director found that the petitioner provided an organizational chart that was inconsistent with the petitioner's statements. Specifically, the director determined that while the petitioner claimed that the beneficiary had two professional subordinate employees, the submitted organizational chart did not corroborate this claim.

With regard to the beneficiary's proposed employment in the United States, the director focused on the information provided in the 2012 Form W-2s the petitioner issued to its employees. Namely, the director determined that five of the eight Form W-2s showed wages that were indicative of part-time employment, thus leading the director to question whether the petitioner's staffing at the time of filing was sufficient to support the beneficiary in a position that involved primarily managerial or executive job duties.

The petitioner subsequently filed an appeal supported by a statement from counsel, who disputes the director's grounds for denial. The petitioner resubmitted statements pertaining to the beneficiary's foreign and proposed positions as well as the academic credentials of the beneficiary's direct subordinate in his proposed position with the petitioning entity.

As a preliminary matter, we find that the director's conclusion regarding the beneficiary's employment abroad erroneously focused on a submitted organizational chart and the inconsistency between the petitioner's claims and that chart. The record shows that the only organizational chart the petitioner submitted pertained to the petitioning U.S. entity, rather than the foreign entity where the beneficiary was formerly employed. Thus, any deficiencies the director may have found in the submitted organizational chart would be irrelevant to the issue of the beneficiary's employment abroad with the foreign parent entity.

Notwithstanding the director's error, based upon the review conducted pursuant to the petitioner's appeal, and for the reasons stated below, we find that the petitioner has failed to establish that the beneficiary was employed abroad and would be employed in a primarily managerial or an executive capacity.

III. Issues on Appeal

As indicated above, the primary issues to be addressed in this proceeding call for an examination of the beneficiary's former and proposed positions with the foreign and U.S. entities, respectively.

A. Qualifying Employment Abroad

In general, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary's job duties with the foreign entity. *See Fedin*

Bros. Co., Ltd. v. Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Beyond the required description of the job duties, we conduct a review of other relevant factors, including the employer's organizational structure, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the business conducted by the employing entity, and any other factors that may contribute to a comprehensive understanding of a beneficiary's actual duties and role in his position with the foreign entity.

In the present matter, the March 28, 2013 supporting statement indicated that the beneficiary was responsible for overseeing the work of "10 to 20 employees depending upon workload." The petitioner also stated the following with regard to the beneficiary's employment overseas:

[The beneficiary's] primary responsibility was to manage the organization in order to optimize customer service, quality and profitability through his subordinates. As such[,] he approved personnel decisions and budgets. He ultimately decided bidding and pricing strategies and contracts. He represented the company before government officials and worked with counsel to coordinate due diligence. He directed the completion of contracts and handled any issues that would not be resolved at a lower level. He met with financial advisors and auditors to resolve any issues and approved all financial decisions and annual reports.

In a separate statement, dated October 26, 2011, [REDACTED] partner of the foreign entity, stated that the beneficiary's employment abroad involved establishing policies and goals with regard to marketing, finance, and project development. Mr. [REDACTED] stated that the beneficiary had full authority to hire, fire, and train employees. He also provided the names of various construction projects that the beneficiary directed and stated that the beneficiary's direct subordinates included the company's "other corporate partner, [sic] and the operations [m]anager."

Although the director's RFE expressly instructed the petitioner to provide the foreign entity's organizational chart depicting the beneficiary's placement within the organizational hierarchy, the petitioner did not comply with this portion of the director's request. Rather, the petitioner provided a statement, dated August 20, 2013, indicating that the beneficiary had "oversight of a staff of 20 employees." The letter emphasized the beneficiary's discretionary authority in issuing final approvals on projects and allocating funds and staffing. The beneficiary was also said to review feasibility studies, negotiate with banks and investors, and work closely with project managers, architects, engineers, building control officials, and contractors.

Additionally, in a statement dated October 1, 2011, the petitioner included the following percentage breakdown of the beneficiary's job duties with the foreign entity:

- [The beneficiary] developed, implemented, and consistently applied business-related policies to optimize the quality of the organization and employees. [He] worked with various government agencies and officials to ensure that the petroleum products were delivered and manufactured safely and according to government regulations (10% time spent).
- He worked with banks to set up accounts and meets [sic] with bankers to keep relationships and networking [sic] (15% time spent).
- From time to time he stepped in and dealt with accounting professionals to ensure proper documentation and remittance of payment from commercial clients (10% time spent).

- In addition, [the beneficiary] developed and implemented marketing strategies using current market information, competitive and economic conditions, and innovative programs and rebates (25% time spent).
- Furthermore, [the beneficiary] developed pricing strategies, and responded to government inquiries (15% time spent).
- [The beneficiary] also met with and coordinated the due diligence process with in-house counsel and outside auditors, and directed the preparation and completion of contracts and other related documents (25% time spent).

In the same statement, the petitioner claimed that the beneficiary was employed in a managerial capacity, which required the beneficiary to manage "several major organizational components and their related functions." The petitioner claimed that the beneficiary oversaw numerous subordinate employees and stated that, alternatively, the beneficiary managed the essential functions of marketing and business development.

Despite the petitioner's attempt to comply with the director's RFE, the percentage breakdown the petitioner provided failed to identify the beneficiary's specific daily tasks. Instead, the petitioner provided broad overviews of the beneficiary's position without delineating the actual daily job duties. For instance, the petitioner did not describe the specific nature of the beneficiary's communications with government agencies and officials to determine that such communications fit the criteria of managerial or executive capacity. In other words, the petitioner did not provide a clear distinction between the beneficiary's communications, which are claimed to have been within a managerial capacity, and other types communications meant to address administrative concerns. The petitioner also failed to explain how setting up bank accounts can be deemed as anything other than a basic administrative task required for the business's regular operation. Similarly, the petitioner failed to establish that the beneficiary's role in dealing with commercial clients for the purpose of ensuring proper payment would fall within a qualifying managerial capacity. Next, with regard to the beneficiary's role in the marketing of the foreign entity's services, the petitioner indicated that the beneficiary both developed and implemented marketing strategies. However, based on this overly broad description, it is unclear whether someone other than the beneficiary actually carried out the foreign entity's underlying marketing tasks. As the petitioner failed to provide the entity's organizational chart or discuss who carried out the entity's key functions, we cannot ascertain whether the beneficiary was relieved from having to assume the responsibility of carrying out these functions himself.

While no beneficiary is required to allocate 100% of his or her time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary performed during his employment abroad were only incidental to the position in question. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). In the matter at hand, the percentage breakdown the petitioner provided to describe the beneficiary's employment abroad was overly broad and failed to delineate the specific job duties the beneficiary performed in relation to his broad job responsibilities.

In addition, the petitioner did not clearly distinguish between a personnel manager, whose primary focus is the oversight of subordinate employees, and a function manager, whose main focus is the management of an essential function. While the petitioner repeatedly claimed that the beneficiary oversaw a staff of employees, it is unclear whether that staff consisted of 10 or 20 employees, as both claims had been made in various

different statements. As previously indicated, the petitioner failed to discuss which job duties were carried out by the beneficiary's subordinates or what specific oversight tasks the beneficiary himself carried out.

Furthermore, whenever a petitioner claims that the beneficiary is managing an essential function, the petitioner must clearly describe the duties performed. This includes identifying the function with specificity, articulating the essential nature of the function, and establishing the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). Here, while the petitioner claimed, alternatively, that the beneficiary managed the essential functions of finance and business development, the petitioner failed to provide a job description conducive to understanding how the beneficiary executed his claimed managerial role, nor is there any evidence to establish who performed the underlying key tasks of the functions the beneficiary is claimed to have managed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *managed* the function rather than *performed* the duties related to the function. As previously noted, an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be 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). While counsel provides a brief list of additional job duties to describe what elements are part of a feasibility study, counsel's list of one portion of the beneficiary's job description is not comprehensive and does not explain how the beneficiary functioned within the foreign entity's organizational hierarchy.

Turning to the foreign entity's staffing, we note the petitioner's failure to provide the foreign entity's organizational chart illustrating the company's staffing hierarchy and the beneficiary's placement therein. 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). Given the inconsistent statements with regard to the number of employees the beneficiary managed and the competing claim that the beneficiary was actually the manager of an essential function, the petitioner's failure to provide the requested organizational chart pertaining to the foreign entity greatly impedes our ability to determine the likelihood that the beneficiary was employed abroad in a qualifying managerial capacity as claimed.

In summary, the petitioner has failed to provide sufficient probative evidence to establish what job duties the beneficiary performed during his employment abroad or to illustrate the beneficiary's placement within the foreign entity's organizational hierarchy. Therefore, given these considerable evidentiary deficiencies, we find that the petitioner has failed to establish that the beneficiary was employed abroad in a qualifying managerial capacity as claimed and on the basis of this initial finding the instant petition cannot be approved.

B. Qualifying Employment in the United States

Next, turning to the beneficiary's proposed employment with the petitioning U.S. entity, we conduct a comprehensive analysis of the totality of the record. As indicated above, a determination of the beneficiary's managerial employment capacity starts with an analysis of the beneficiary's proposed job duties with the petitioning entity. See 8 C.F.R. § 204.5(j)(5). In the petitioner's March 28, 2013 supporting statement, the petitioner stated that the beneficiary would be responsible for the company's staff of seven employees in his proposed position as president and CEO.

In the response to the director's RFE, the petitioner provided a statement, dated August 20, 2013, which was signed by [REDACTED] who identified himself in the capacity of the petitioner's president. Mr. [REDACTED] stated that since the beneficiary commenced his role as the petitioner's president on April 13, 2012, he has focused primarily on increasing the petitioner's client base and profitability and making the petitioner more efficient. Mr. [REDACTED] also provided a brief list of the actions the beneficiary has taken since assuming the role of president.¹ He stated that the beneficiary has addressed the petitioner's personnel needs by "terminating low performing workers and restructure[ing] the remaining employees," adding to the petitioner's existing product line, revising the petitioner's marketing strategy to target a larger variety of markets, negotiating with manufacturers for discounts and promotional events, expanding the operation to market to major retailers, and changing the petitioner's return policy. In a separate statement, dated October 1, 2011, the petitioner provided the following list of the beneficiary's proposed job responsibilities:

- 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;
- 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 company's guidelines;
- Overseeing legal and financial due diligence process 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.

The petitioner went on to state that the beneficiary would be employed in an executive capacity where he would establish and oversee a "management team," oversee the petitioner's "financial operations," plan and develop the petitioner's expansion by formulating and implementing plans to ensure that the petitioner's operations are profitable, establish organizational policies and procedures, create rules and guidelines for company operations, formulate objectives, policies, and procedures to be carried out by managerial employees, and exercise discretion in planning the direction of the company, executing or recommending personnel action, negotiating and supervising the drafting of purchase agreements, developing trade and consumer market strategies, and overseeing legal and financial processes.

¹ It is unclear whether the petitioner had two presidents as of August 20, 2013 since [REDACTED] identified himself as the petitioner's president and stated that the beneficiary became the petitioner's president on April 13, 2012.

We find that the petitioner provided job descriptions that fail to effectively convey a meaningful understanding of the specific tasks the beneficiary would perform on a daily basis within the scope of the organizational hierarchy that the petitioner had in place at the time the petition was filed. In lieu of the requested list of the beneficiary's daily job duties and their respective time allocations, the petitioner provided the above information, which primarily includes overly broad job responsibilities and paraphrased excerpts of the statutory definition of executive capacity. While the petitioner duly conveyed the beneficiary's discretionary authority by stating that the beneficiary would set goals and policies that would guide how the organization would function and advance the petitioner's profitability, the petitioner did not itemize the specific daily tasks that the beneficiary would perform to definitively explain how the beneficiary would meet his responsibilities as president. It is noted that 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. Although the director attempted to elicit the highly relevant information pertaining to the beneficiary's proposed employment, the petitioner failed to comply with the request for a list of the beneficiary's specific daily job duties and a percentage breakdown indicating how much time the beneficiary would allocate to each of his assigned tasks. This lack of requested information is particularly problematic given that the beneficiary's employment would include certain job duties that have not been established as qualifying within a managerial or executive capacity. Specifically, according to Mr. [REDACTED] who provided the most recent statement regarding the beneficiary's U.S. employment, the beneficiary has engaged in various human resources tasks and has negotiated with manufacturers. It is unclear what portion of the beneficiary's time would be allocated in the future to these potentially non-qualifying tasks. Looking to the list of job responsibilities listed in the October 1, 2011 statement, the petitioner also stated that the beneficiary would negotiate prices and formulate advertising techniques. However, the petitioner has not clarified the qualifying nature of these job responsibilities.

Furthermore, the petitioner's claim that the beneficiary would build a management team requires further explanation. Specifically, given that the statement, which included the job description, predated the filing of the petition by approximately 18 months, it is unclear that this item accurately illustrates the beneficiary's proposed employment at the time the instant petition was filed, particularly given that the petitioner identified multiple management positions within its organizational hierarchy at the time of filing. 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). Although the remainder of the job description is sufficiently broad such that it may be applied to a variety of positions within different organizational compositions, it does not specify the beneficiary's actual daily tasks and thus, while the general nature of the descriptions avoids the potential for other inconsistencies, the overall lack of detail precludes an in-depth assessment of the true qualifying nature of the proposed employment.

Next, turning to the issue of petitioner's organizational hierarchy, the record does not contain sufficient evidence to establish that the petitioner was adequately staffed to relieve the beneficiary from having to allocate his time primarily to non-qualifying tasks at the time of filing. In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in

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

In the present matter, evidence showing employee wages indicates that a number of the petitioner's staff, including the operations manager, sales/deliveries supervisor, and the two sales/warehouse employees, were compensated wages that were commensurate with those of part-time employees. Although this issue was duly raised in the director's decision, counsel's appellate brief does not address or clarify how the beneficiary would be able to allocate his time primarily to executive-level tasks while operating with a staff that is comprised, in large part, of part-time employees. In addition, the petitioner did not clarify who would actually market and sell the petitioner's goods to retailers. Given that the petitioner is a sales-driven business, establishing who would carry out the underlying sales and marketing tasks is highly relevant, particularly within the scope of an organization with limited human resources. While it is true that USCIS must take into account the petitioner's reasonable needs when considering staffing size, those needs do not serve to override the petitioner's legal burden of having to establish that the beneficiary would primarily perform duties of a qualifying managerial or executive nature. In other words, while it is possible that the petitioner may function adequately with a staff that is comprised, in part, of part-time employees, it is the petitioner's burden to establish that the staffing composition that existed at the time the petition was filed would be sufficient to relieve the beneficiary from having to allocate his time primarily to operational tasks that are outside the scope of what is deemed as being within a qualifying managerial or executive capacity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In the matter at hand, the petitioner has not established that the beneficiary would more likely than not perform tasks within a qualifying capacity within the organizational hierarchy that existed when the instant petition was filed. The petitioner failed to address the director's valid concerns regarding the sufficiency of the petitioner's staff, nor did the petitioner provide a detailed job description delineating the specific qualifying tasks the beneficiary would perform under an approved petition. Given the significant deficiencies described in the discussion above, we cannot conclude that the beneficiary would be employed in the United States in a qualifying capacity and on the basis of this second adverse finding the instant petition cannot be approved.

IV. Conclusion

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.