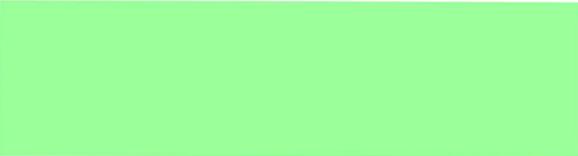




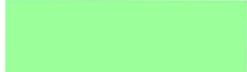
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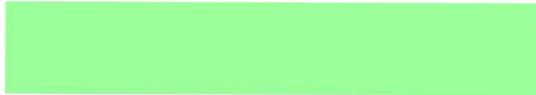


DATE: **NOV 13 2014**

OFFICE: TEXAS SERVICE CENTER

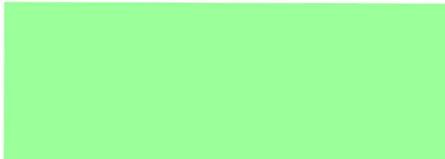
FILE: 

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 Director, Texas Service Center, denied the employment-based immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed Form I-140, Immigrant Petition for Alien Worker, to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner, a Texas limited liability company, states that it operates as a provider of oil exploration services and equipment. It seeks to employ the beneficiary as its president.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the evidence of record establishes by a preponderance of the evidence that the beneficiary qualifies as both a manager and an executive, and that she will supervise subordinate managers as well as the operations of two subsidiary companies. The petitioner submits a brief and additional evidence in support of the appeal.

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

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

II. THE ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that it would employ the beneficiary in a primarily managerial or executive capacity.

A. Facts

The petitioner filed the Form I-140 on May 28, 2013. The petitioner stated on the Form I-140 that it operates an oil exploration services and equipment business with 16 employees and gross annual income of \$823,033.

In support of the petition, the petitioner provided a job offer letter which described the beneficiary's U.S. duties as "president/executive director" as follows:

- Hire and train necessary managers and personnel as the company grows and assign responsibilities as well as mentor managerial staff;
- Direct and supervise the acquisition of new business for the company and formulate, direct and implement marketing strategies for the sale of services and merchandise;
- Identify, develop and evaluate business activities based on her knowledge of company objectives, market characteristics and cost and markup factors in order to maximize revenues;
- Formulate, direct and coordinate Direct, plan and implement policies and procedures to ensure quality standards are met, maximize efficiency of our services, equipment installation and increase availability;
- Analyze budges [sic], expenditures, research and development, return-on-investemnt [sic] and profit-loss projections. Use sales forecasting and strategic planning to ensure the sale and profitability of company products and services.

The petitioner provided an organizational chart depicting its staffing levels and structure. The chart identifies the beneficiary as president and indicates that she directly supervises an executive assistant, a director of operations, and a director of business administration. The chart depicts two employees reporting to the director of administration, specifically, an assistant and an employee whose job title is not provided, as well as four external professional service providers (an attorney, an accountant, a realtor and an insurance agency). The director of operations is shown to have two direct reports, a sales manager, and a general manager. The chart appears to indicate that the sales manager oversees [REDACTED] and two employees are listed for this entity – a sales person and an employee whose job title is not provided. The general manager is shown to supervise [REDACTED] and identifies a dispatcher, five drivers, and "3 additional hires" as employees of this entity. In total, 16 individuals were identified by name on the chart.

The petitioner did not submit any additional explanation regarding the two separate limited liability companies named on the chart, but it did provide a 2011 IRS Form 1065, U.S. Return of Partnership Income, for [REDACTED]. According to the attached Schedules K-1, this company was owned by the petitioner (50%) and by [REDACTED] (50%) at the end of the 2011 tax year.

Finally, the petitioner submitted copies of its IRS Forms W-2, Wage and Tax Statement, for 2012. The petitioner paid a total of six employees, including the beneficiary (\$45,600), the director of

operations (\$2,670), the assistant (\$8,932), the executive assistant (\$6,960), and the sales manager (\$4,247), as well as one additional employee not identified on the chart who earned \$2,900.

The director issued a request for evidence (RFE) on July 31, 2013. The director advised the petitioner that the initial evidence was insufficient to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. The director requested that the petitioner submit a definitive statement describing the beneficiary's position, including her title, all specific daily duties and the percentage of time spent on each duty. The director further requested an organizational chart identifying all employees by name, job title, job duties, educational level, and whether they work full or part-time. The director also requested IRS Forms W-2 and Forms 1099 for any contract employees, as well as an explanation of the number of contractors used and the duties they perform. Finally, the director observed that the petitioner submitted evidence of wages paid to only six employees, despite stating on the Form I-140 that it has 16 employees.

In response to the RFE, the petitioner provided the following description of the beneficiary's duties:

- Administrative Capacity & Decision Authority: Control and full authority of the U.S. entity with authority to make independent business decisions. 50% 20 hrs/week
 - Hire and train necessary managers and personnel as the company grows and assign responsibilities as well as mentor managerial staff; *Performs monthly evaluations of personnel and management reports indicating requests for authorization of hiring and additional personnel as well as recommendations of salary increases.*
 - Direct and supervise the acquisition of new business for the company and formulate, direct and implement marketing strategies for the sale of services and merchandise; *Personal review of all weekly purchasing and sales reports, make notations on discrepancies and meet with corresponding manager to clarify doubts and discrepancies. Authorize purchases not included in the budget.*
 - Identify, develop and evaluate business activities based on her knowledge of company objectives, market characteristics and cost and markup factors in order to maximize revenues; *Daily performance of research of industry market in order to maintain an updated and in-depth knowledge of sales trends, developments in improved equipment used by the company and adjust sales pricing accordingly. . .*
- Operative Authority: Formulate, direct and coordinate Direct, plan and implement policies and procedures to ensure quality standards are met, maximize efficiency of our services, equipment installation and increase profitability; *Weekly review of managerial/departmental reports. Meet with managers weekly to discuss trends, issues, and recommendations on improvement of customer service. Discussion of problems and recommendations for managers. . . . Implement new policies and review implementation of recent policies by obtaining feedback 50% 20 hrs/wk*

- o Analyze budges [sic], expenditures, research and development, return-on-investment and profit-loss projections. Use sales forecasting and strategic planning to ensure the sale and profitability of products and services. Meet with Operations Manager and Business Development Manager monthly in order to go over conciliation reports and information to be submitted to outside professional services. Review daily conciliation reports of bank accounts and accounts receivable as well as billing of the company.

The petitioner also submitted an updated organizational chart. The petitioner indicated that it recently hired a pilot who is depicted as the beneficiary's direct subordinate. The chart shows three sales people working for [REDACTED] as well as a dispatcher, two drivers, and 3 new hires working for "[REDACTED]" The chart shows that the director of business administration oversees one employee, an assistant, rather than two as indicated on the previous chart. The remainder of the chart was the same. The petitioner also submitted a "[REDACTED] Organizational Chart" which indicates that the petitioner owns 60% of "[REDACTED]" and 100% of [REDACTED]

The petitioner submitted position descriptions for six employees and stated that they all work on a full-time basis. The petitioner indicated that the director of operations has an industrial engineering degree and is responsible to: monitor employees to ensure adherence to company policy, quality and safety regulations; monitor the Quality Tracking System to ensure that the company's projects are updated and maintained (installation and renting of valves, manifold service and rental, hydrostatic testing, hydraulic service, pressure cleaning through sandblast, construction of pipes); selecting personnel for assignment to projects; supervising the safekeeping of company equipment and reporting on equipment's movement; presenting financial reports; and overseeing management of sales and dispatch of fleet.

The petitioner stated that the director of business administration has a degree in business administration and performs the following tasks: maintains an inventory and invoice system on all sales; maintains constant contact with service providers and clients; schedules training and motivational activities for different company departments; reviews bank information for accuracy using accounting reports; reviews company accounts and bookkeeping records; makes and/or approves any and all transfers from company accounts for payments; confers with the director to present financial reports; and meets with external consultants for accounting, insurance and legal matters.

The petitioner indicated that the sales manager has "technical training" and is responsible for the following: planning and directing staffing, training and performance evaluations; determining price schedules and discount rates; reviewing operational records and reports to project sales and determine profitability; preparing budgets and presenting recommendations for expenditures; conferring with department heads to plan advertising and marketing services; and conferring with

potential customers regarding needs.¹ The petitioner stated that the general manager: oversees activities directly related to [REDACTED] division and ensures facilitation of contracted equipment deliveries to clients; reviews delivered equipment and activity reports and ensures pick up of company equipment; manages staff, prepares work schedules and assigns duties; implements company policies; determines staffing requirements and hires and trains new employees; and locates returned equipment, inspects returned machinery, identifies potential repairs needed; and presents reports to the director of operations. The petitioner also submitted descriptions for the assistant and executive assistant and copies of bachelor's degrees awarded to the director of operations and director of business administration.

The petitioner re-submitted its 2012 IRS Forms W-2, and also provided copies of its federal and state quarterly wage reports for the first three quarters of 2013. The petitioner had eight employees as of May 2013, and six employees during the months of June, July, and August 2013. Employees who worked in both quarters included the beneficiary, the director of operations (\$4,620), the assistant (\$3,770), the executive assistant (\$1,740), the sales manager (\$6,282), the director of business administration (\$3,600 in second quarter, \$2,088 in third quarter), and an employee identified on the initial organizational chart as a sales employee with [REDACTED]. This individual did not appear on the petitioner's organizational chart submitted in response to the RFE.

The petitioner also provided salary and wage evidence for [REDACTED]. For 2012, IRS Form W-2s show that this company paid seven employees including the beneficiary (\$19,720), the director of operations (\$3,857), three individuals identified as sales employees on the latest organizational chart (\$2,423, \$12,470 and \$6,380 respectively), the sales manager (\$12,758), and the beneficiary's spouse, who is not listed on either of the organizational charts. The petitioner also included a copy of the Texas quarterly wage report filed by [REDACTED] for the third quarter of 2013, which indicates that only the beneficiary and her spouse received wages from this company.

With respect to [REDACTED] the petitioner submitted copies of [REDACTED] IRS Forms 1096 and 1099 for 2012. This entity issued a total of 15 Forms 1099, Miscellaneous Income, and totaling \$68,927 in payments.

Finally, the petitioner submitted a copy of the beneficiary's 2012 IRS Form 1040, Individual Income Tax Return, with attached Schedule C, Profit or Loss from Business, indicating her income from both the petitioner and [REDACTED]. Schedule E of the beneficiary's Form 1040 indicates that she is also a partner in [REDACTED] and [REDACTED].

The director denied the petition on January 2, 2014 concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity. In denying

¹ The petitioner also submitted a copy of the sales manager's resume. The resume indicates that he is the sales manager of [REDACTED] with responsibility for sales, placing orders, opening and closing the business, customer service, negotiations with suppliers, and inventory.

the petition, the director observed that the petitioner's description of the beneficiary's duties was lacking in specificity and appeared to include several non-qualifying duties. The director also found the evidence insufficient to establish that the petitioner owns the claimed subsidiary companies. Finally, the director observed that the evidence did not support the petitioner's claims regarding the full-time status of the beneficiary's subordinate staff. In this regard, the director noted that the petitioner had not provided any evidence of wages paid to the claimed general manager, while both the director of business administration and the executive assistant were earning wages that undermined the petitioner's claim that they were employed on a full-time basis. The director also noted that the assistant to the director of business administration was receiving a higher salary than her claimed supervisor.

On appeal, counsel for the petitioner asserts that the director erred in applying the law to the facts of this case. Counsel maintains that the petitioner clearly delineated the beneficiary's duties and demonstrated how such duties fall within the statutory definition of managerial capacity. Specifically, counsel maintains that the beneficiary manages the organization as a whole, supervises two managers who are also degreed professionals, makes decisions on hiring and firing, and exercises discretion over the petitioner, its subsidiary companies and its employees. The petitioner submits copies of the 2013 IRS Form W-2s for the director of business administration and the director of operations showing that they earned \$11,664 and \$17,702, respectively. Counsel asserts that these wages establish their full-time employment, noting that the cost of living is low in the petitioner's geographic region.

In support of its claims that [REDACTED] are subsidiary companies of the petitioner, it submits the minutes of the first meeting of the members of [REDACTED] which indicate that this company is owned by the petitioner (60%) and [REDACTED] (40%). The petitioner also submits copies of 10 IRS Forms 1099 issued by [REDACTED] in 2013, which indicate that Mr. [REDACTED] received \$65,639 in nonemployee compensation.

Counsel asserts that the petitioner has established by a preponderance of the evidence that it will employ the beneficiary in a managerial or executive capacity.

B. Analysis

Upon review, and for the reasons addressed herein, the petitioner has not established that the beneficiary would be employed in the United States in a 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 description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

At the time of filing, the petitioner provided a list of duties that described the beneficiary's position in very generalized terms, noting that she hires and trains managers and personnel, directs and supervises the acquisition of new businesses, formulates and implements marketing strategies, develops and evaluates business activities, formulates and implements policies and procedures, and analyzes financial data and projections to ensure the company's profitability. The duties were overly broad and lacked any specific references to the petitioner's oil exploration services and equipment business or to the specific tasks the beneficiary performs on a day-to-day basis. For example, the petitioner did not provide any further information regarding business acquisitions in progress, who the beneficiary supervises in this regard, or what specific activities the beneficiary must perform to "evaluate business activities." Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In response to the director's request for a definitive statement of the beneficiary's duties and the percentage of time she allocates to specific tasks (rather than to groups or categories of broad responsibilities), the petitioner stated that the beneficiary allocates 50% of her time to "Administration Capacity & Decision Authority" and 50% of her time to "Operative Authority." The petitioner added one sentence to each of the previously described duties, noting, for example, that the beneficiary's "Administration Capacity" includes performing monthly evaluations and reviewing subordinate managers' personnel recommendations. The petitioner indicated that the beneficiary is responsible for personal review of all weekly purchasing and sales reports, identifying discrepancies, and authorizing purchases, as well as "daily performance of research of industry market in order to maintain an updated and in-depth knowledge of sales trends, developments in improved equipment used by the company and adjust sales pricing accordingly in order to meet company financial objectives." The petitioner did not indicate how the beneficiary allocates her 20 hours per week among these three responsibilities, but notably, the only duty the beneficiary is claimed to perform on a daily basis is market research, an activity that has not been shown to be assigned to any of her subordinates and which is clearly not managerial or executive in nature. The other duties within this broad category appear to be performed on only a weekly or monthly basis.

The petitioner indicates that the beneficiary allocates the other 50% of her time to "operative authority" which includes formulating planning and implementing policy and procedures to maximize efficiency and profitability. The petitioner indicated that this responsibility requires weekly review of departmental reports, weekly meetings with managers, monthly meetings on financial matters, and review of daily conciliation reports of bank accounts, accounts receivable and billing activities. Again, the petitioner provided little insight into what the beneficiary actually does on a day-to-day basis to support its claim that policy matters require half of the beneficiary's time. The duties described appear to recur weekly and monthly, while the only daily task appears to involve direct oversight of banking and billing matters. 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 her 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 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).

The petitioner established that the beneficiary exercises the appropriate level of authority as the petitioner's owner and senior employee; however, based on the current record, we are unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Here, the petitioner claims that the beneficiary's responsibilities entail oversight of not only the petitioner, but also of two subsidiary limited liability companies. At the time of filing, the petitioner appeared to include the employees of the subsidiary companies when stating its current number of employees on the Form I-140, but it offered no additional explanation regarding the company relationships or the nature of the other businesses the beneficiary is claimed to oversee.

The petitioner indicated on the Form I-140 that it operates an "oil exploration services & equipment business" and stated in its letter that it exports oil-manufacturing components and equipment and provides services in the petroleum industry. According to the job description submitted for the director of operations, the company's product and service offerings include the rental and installation of valves, manifold service and rental, hydrostatic testing, hydraulic service, pressure cleaning through sandblast, and construction of pipes. While the petitioner's tax returns show that the company has been achieving significant revenue, the petitioner does not claim to have any employees engaged in the purchase, rental, sale or export of equipment or any employees engaged in any the provision of any of the labor-intensive services it claims to provide. The petitioner appears to indicate that the sales manager and operations manager perform duties associated with the subsidiary companies, which leaves the petitioner staffed with only the beneficiary, two assistants performing administrative and clerical duties, the director of operations, who has no subordinates claimed to perform duties for the petitioner, and the director of business

administration, whose duties are primarily accounting and finance-related. The petitioner has not explained how it operates as a service provider and exporter in the oil industry with the staffing structure described. 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 appears that the petitioner owns a majority ownership interest in [REDACTED] but that the company is managed by its other owner who is depicted as the general manager on the petitioner's organizational chart. The petitioner has provided no additional information regarding the nature of this business, which employs a dispatcher and fluctuating number of contracted drivers. Further, the petitioner has not described the beneficiary's duties or the subordinate managers' duties in a way that provides any insight into the extent of their oversight of this business.

Finally, the petitioner submitted sufficient evidence to establish its ownership of [REDACTED] which appears to be a retail auto parts business. Although this company has employed up to seven employees in the past, at the time the petitioner responded to the RFE, the evidence reflects that the beneficiary and her spouse were the only employees on its payroll. The petitioner did not define what duties the beneficiary and her spouse perform specific to this business.² While the sales manager's resume indicates that he performs sales and purchasing functions for the store, the petitioner provided a different description of his duties that did not adequately convey for which entity he works or what he does. 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). Regardless, even if he was still working for [REDACTED] the record does not establish that this entity had any additional employees other than the beneficiary and her spouse as of June 2013. A retail business with only two to three employees would reasonably require all of those employees, regardless of their job titles, to participate in its day-to-day operation.

Therefore, although the petitioner has represented the beneficiary as president with oversight over a group of three companies, it has not provided a clear description of the nature of all three businesses or the nature of her actual duties with respect to each business. Nor has the petitioner presented a credible explanation of the staffing structures of the companies involved, as the record reflects that the petitioner has no employees to perform most of its claimed operational functions and the subsidiary auto parts business has no sales employees. As such, reviewing the beneficiary's vague position description in light of the totality of the evidence submitted sheds additional light on the nature of her actual duties and in fact suggests that the description submitted does not fully convey the extent of her day-to-day duties with respect to the subsidiary auto parts business, in particular.

² The beneficiary's Form 1040, U.S. Individual Income Tax Return, filed jointly with her spouse, indicates that his occupation is "clerk."

On appeal, counsel for the petitioner asserts that the director failed to recognize that the beneficiary supervises two managers who are also degreed professionals. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act, 8 C.F.R. § 204.5(j)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 204.5(j)(2).

The petitioner's organizational chart indicates that the director of business administration supervises an assistant; however, the director's job description does not include any supervisory duties to support a finding that she is a supervisor or a manager. Several of her duties involve review of company accounts and banking information and overlap with the financial tasks assigned to the beneficiary, and the petitioner indicates that she also maintains contacts with service providers and maintains an inventory and invoice system. The chart indicates that the director of operations oversees subordinate employees working for both subsidiary companies, but his job duties suggest that he is responsible for supervision of the petitioner's own projects in the oil industry, despite the fact that the petitioner has not indicated that it has any employees to work on such projects. The job description does not appear to convey his authority over the other LLC entities and as such it cannot be concluded that he is a manager or supervisor.

The petitioner provided evidence that the director of business administration and the director of operations both have bachelor's degrees. In evaluating whether the beneficiary manages professional employees, we evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not established that a bachelor's degree is actually necessary to perform the duties assigned to these employees. Further, even if the petitioner established that one or both of these subordinates is a supervisor or professional, the petitioner did not indicate that the beneficiary primarily oversees subordinate personnel.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Here, while the beneficiary is the sole owner of the petitioner and either directly or indirectly owns or majority-owns two additional companies, the record does not establish that the beneficiary focuses primarily on the broad goals and policies of the organization. As discussed, the record does not establish that the petitioner has employees to actually purchase, sell and export its goods, or to sell and provide its services in the oil industry, nor does its auto parts subsidiary appear to have any employees to perform the day-to-day tasks of that business other than the beneficiary and her spouse. The beneficiary has the appropriate level of decision-making authority, but the record does not establish that she would be primarily focused on the broad goals and policies of the organization given its overall purpose and current structure. As such, the petitioner has not established that it will employ the beneficiary in an executive capacity.

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, 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. *Family Inc. v. USCIS*, 469 F.3d 1313 (9th Cir. 2006); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

The petitioner indicates that it was established to provide specific services to customers in the oil exploration industry and to purchase and export oil equipment and machinery. The petitioner employs the beneficiary, employees to perform administrative and financial functions, and a director of operations, but no employees to actually provide its purchasing, sales, and export functions or its claimed services. Since the petitioner nevertheless indicates that it is doing substantial business, we are left to question the job descriptions provided for the beneficiary and her subordinates. Similarly, the petitioner's auto parts subsidiary appears to operate a retail store with no employees other than the beneficiary and her husband. Collectively, the evidence brings into question how much of the beneficiary's time can actually be devoted to managerial or executive duties, and we are left to question the validity of the petitioner's general job description for the beneficiary's position. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a

reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Furthermore, the petitioner bears the burden of documenting what portion of the beneficiary's duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Here, the petitioner has not met that burden.

For the foregoing reasons, the petitioner has not established that it would employ the beneficiary in a qualifying managerial or executive capacity. Accordingly, the appeal will be dismissed.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons. 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.