



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **JUN 19 2015**

FILE #: [Redacted]

PETITION RECEIPT #: [Redacted]

IN RE: Petitioner:  
Beneficiary:

[Redacted]

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]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner, a rotary tooling business, seeks to employ the beneficiary in the United States as an information technology manager. The petitioner filed Form I-140, Immigrant Petition for Alien Worker, on February 7, 2014, seeking to classify the beneficiary as an employment-based immigrant under 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 November 7, 2014, concluding that the petitioner had not shown that the beneficiary's duties, either abroad or in the United States, qualify as managerial or executive.

On appeal, the petitioner submits a legal brief and copies of previously submitted letters. The petitioner asserts that the prior approval of a petition, granting the beneficiary L-1A nonimmigrant status, establishes that U.S. Citizenship and Immigration Services (USCIS) recognizes the beneficiary as a qualifying manager or executive.

### I. 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 the alien 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 only to 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 Form I-140, Immigrant Petition for Alien Worker, to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The regulation at 8 C.F.R. § 204.5(j)(5) states:

No labor certification is required for this classification; however, 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 letter must clearly describe the duties to be performed by the alien.

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

(A) 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.

(B) The term “executive capacity” means an assignment within an organization in which the employee primarily—

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

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

## II. Issues on Appeal

The issues in this proceeding concern whether the beneficiary's duties qualify as managerial, both previously abroad and currently in the United States.

### A. Facts

#### 1. Managerial Capacity Abroad

The regulation at 8 C.F.R. § 204.5(j)(3)(i)(B) requires that, if the beneficiary is already in the United States, he must have been employed by the entity abroad for at least one year in a managerial or executive capacity during the three years preceding the beneficiary's entry as a nonimmigrant. The petitioner's December 3, 2013 introductory letter described the beneficiary's previous work as a computer aided design / computer aided manufacturing (CAD/CAM) department manager for [REDACTED] in the United Kingdom. The petitioner asserted that the beneficiary "was responsible for managing all activities related to the development, implementation and maintenance of [CAD/CAM] systems which control the machining of custom products at the U.K. facility." The petitioner listed the beneficiary's "[m]ajor responsibilities":

Manage an Essential Function Within the Company – [The beneficiary] managed the essential function of the CAD and CAM systems that control the manufacturing process.

- Managed CAD/CAM operations in the U.K. facility in alignment with corporate objectives to ensure efficient design [and] operation of automated manufacturing processes
- Provided direction and leadership for the maintenance and supported current CAD/CAM system processes and developed enhancements and new systems
- Coordinated schedules with Production Manager to ensure deadlines are met
- Supervised and trained CAD/CAM programmers and staff
- Provided leadership and employee development to achieve Company's goals in activities related to CAD/CAM
- Ensured compliance of programming operations with Company standards
- Created and implemented programs for training designers and other users.

Exercise Discretion Over the Day-to-Day Operations of CAD/CAM Department

- Provided day to day direction & technical oversight to CAD/CAM programmers
- Provided technical expertise and leadership in solving technical problems and maintenance/operation of existing processes
- Monitored systems and communicated with machine operators, pattern designers, department managers, and operations managers regarding system problems and provided leadership in correcting problems
- Established operational priorities and scheduling in conformance with objectives
- Monitored and reviewed performance of staff through establishment of appropriate performance measures and initiated corrective action as appropriate
- Monitored quality of applications

Function at a Senior Level Within the Organization

- Reported directly to the Information Technology Director in the U.S., who reports to the CEO.
- Provided technical knowledge to senior management and participated in meetings pertaining to CAD/CAM operations
- Remained current on industry standards and advancements
- Prepared and managed budget
- Participated in strategic planning for future CAD operations and enhancements

An organizational chart for the petitioner's European operations shows Dr. [REDACTED] as managing director in charge of five departments, organized into columns. The leftmost column lists four directors for Finance, Technology, Technical Service and Business Development. The fourth column consists solely of the IT manager. A note on the chart indicated that the beneficiary "is not included in the European Organizational Chart as he does not report to anyone in the company in Europe. He reports directly to the IT director in the U.S.A."

The director issued a request for evidence (RFE) on July 14, 2014. The director stated that the initial submission did not establish the amount of time that the beneficiary spends on each task, or that the beneficiary was "relieved of performing the nonqualifying operational or administrative tasks necessary for the function." The director requested a letter from an authorized official of the foreign entity, stating the beneficiary's "specific daily tasks . . . and the percentage of time spent on each duty"; identifying the beneficiary's subordinates; and describing the foreign entities "products and services, including the exact productive and administrative tasks necessary to produce the products and services." The director also requested a more detailed organizational chart, and payroll documentation for the beneficiary and his subordinates.

In response, the petitioner submitted a letter dated September 22, 2014, from Dr. [REDACTED] who stated that the beneficiary "supervised three skilled operators who made the patterns utilizing the CAD/CAM software." The petitioner did not provide payroll materials or any other details about the

three operators. Dr. [REDACTED] repeated the itemized job description submitted previously, with one exception. The earlier description indicated that the beneficiary “[r]eported directly to the Information Technology Director in the U.S.,” identified on organizational charts as [REDACTED]. The new description indicated that the beneficiary “[r]eported directly to the Vice President of Global Information Technology in the United States,” identified on a new organizational chart as “currently [REDACTED] formerly [REDACTED].” None of the previously submitted organizational charts identified [REDACTED] or any vice president [VP] of global information technology.

The revised organizational chart for Europe largely resembles the first version, but in the first column, a controller and an IT manager have replaced the directors of finance and technical service, even though the same IT manager ([REDACTED]) is still shown in the fourth column. Unbroken lines connect each of these officials to the managing director, as before, but broken lines now connect the IT manager to the beneficiary and to the “Vice President Global IT in U.S.A.”

The director denied the petition, stating that the petitioner had not provided a specific breakdown of the time that the beneficiary devoted to his various duties, identified his administrative or operational tasks, or indicated who performed non-qualifying tasks to leave the beneficiary free to perform managerial or executive duties.

On appeal, the petitioner submits a brief that does not distinguish between the beneficiary’s duties abroad and those in the United States. Because the petitioner discusses both issues together, we will address this brief further below.

## **2. Managerial Capacity in the United States**

The petitioner stated that, in the United States, the beneficiary “performs essentially the same duties as he did in the U.K., but now has responsibility for CAD/CAM operations at all manufacturing facilities around the world. He no longer has people reporting directly to him, but continues to be the primary technical resource for programmers, designers, managers and senior management.” The accompanying list of duties overlaps the list relating to the beneficiary’s duties abroad:

Manage an Essential Function Within the Company – [The beneficiary] manages the essential function of the development, maintenance, improvement and trouble shooting of CAD/CAM programs/applications that control the automated manufacturing of flexible and solid tooling for the company worldwide.

- Manage CAD/CAM operations in alignment with corporate objectives to ensure efficient design and operation of automated manufacturing processes
- Provide direction and leadership for the maintenance and support of current CAD/CAM system processes and development of enhancements and new systems
- Provide leadership in development of proprietary system code
- Establish procedures and safeguards to ensure system security

- Determine timing of implementation of system improvements to minimize disruptions in production. Coordinate improvements with shop management on system down time
- Oversee implementation of system improvements
- Provide leadership and technical expertise in integration of AutoCAD and AlphaCAM programs with the Oracle ERP systems and machine controls

Exercise Discretion Over the Day-to-Day Operations of CAD/CAM Department

- Exercise discretion over day-to-day operation of development of CAD/CAM programs and troubleshooting automated manufacturing processes
- Lead and manage testing of applications code
- Monitor systems and determine corrective action to eliminate source of errors
- Oversee and coordinate implementation of corrective actions with machine operators, pattern designers, department managers, and operations managers to correct problems
- Monitor Applications and ensure programmers' compliance with company standard operating procedures and best practices
- Provide training on standard operating procedures and system improvements as necessary

Function at a Senior Level Within the Organization

- Establish and enforce standards for CAD/CAM programmers and designers globally
- Develop, implement and enforce standard operating procedures company-wide
- Provide technical knowledge to senior management in strategic planning and determining feasibility of design and manufacturing improvements
- Remain current on industry standards and advancements
- Participate in strategic planning with production managers, IT [information technology] Director, and CEO [chief executive officer] for future CAD operations and enhancements
- Serve as technical source to all users company-wide

The petitioner asserted that the beneficiary “continues to report directly to the Information Technology Director who reports directly to the CEO.”

The petitioner’s “Corporate Organizational Chart,” dated November 28, 2012, shows seven departments, four overseas entities, and one executive administrative assistant, all subordinate to the president/CEO. The top officials of the seven departments are as follows:

Sr. VP Admin./Corporate Counsel  
Chief Financial Officer

VP – Global Marketing & Business Dev.  
VP – Technology/Quality  
Director, Information Technology  
Director, Facilities Management  
Director, Engineering

The chart lists the beneficiary as one of six subordinates under information technology, with the title “Process Automation Engineer.”

In the RFE, the director requested further information and evidence to establish the managerial or executive nature of the beneficiary’s employment in the United States. In response, the petitioner submitted a September 22, 2014 letter from [REDACTED] VP of Global Information Technology. Mr. [REDACTED] repeated the same itemized list of duties submitted previously, without further elaboration.

The petitioner submitted a new version of the “Corporate Organizational Chart,” dated August 29, 2014. Where the earlier document showed seven departments directly subordinate to the president and CEO, the new chart shows only six. The petitioner’s RFE response also included a “World Wide Organizational Chart,” dated July 25, 2013, with eight domestic departments and four foreign departments reporting to the president and CEO. These charts overlap but do not match entirely:

<u>Corporate Organizational Chart</u>	<u>World Wide Organizational Chart</u>
Sr. VP Admin./Corporate Counsel	Sr. VP Admin./Corp. Counsel
Chief Financial Officer	Chief Financial Officer
VP, Global Marketing & Business Dev.	VP, Mktg & Business Dev.
VP, Global Human Resources	VP, Global Human Resources
Director, Global Quality	VP, Technology
VP, Global Information Technology	Director, Global Quality
	Director, Engineering

The “World Wide Organizational Chart” from 2013 shows neither the beneficiary nor the VP of Global Information Technology. Whereas the first “Corporate Organizational Chart” from 2012 showed the beneficiary as one of six subordinates under the Director, Information Technology, the new chart from 2014 showed him as one of nine subordinates under the VP, Global Information Technology, suggesting that the VP position is a recent creation. Both versions of the “Corporate Organizational Chart” stated the beneficiary’s title as “Process Automation Engineer.”

In denying the petition, the director stated: “the petitioner failed to establish the beneficiary will act primarily in a qualifying functional managerial capacity,” overseeing the company’s function rather than performing it himself. The director stated that the petitioner had provided only “broad job responsibilities,” with “no information as to the specific operational or administrative tasks . . . that the beneficiary purportedly manages or directs.” The director further stated that the petitioner had not provided the requested breakdown of time spent on specific tasks.

On appeal, the petitioner asserts that the prior approval of an L-1A nonimmigrant petition “settled the issue of whether Beneficiary is qualified,” and that the petitioner’s prior submissions established that the beneficiary performs “high-level duties at the top of the function that involve the managing and direction of the CAD/CAM function.”

Upon review, and for the reasons stated below, we find that the petitioner failed to establish that the beneficiary’s proposed position with the petitioning entity or his former position abroad with the petitioner’s parent entity can be classified as positions that fall within the statutory parameters of managerial or executive capacity.

### B. Analysis

As a preliminary matter, we note that the director acknowledged the beneficiary’s prior admission as an L-1A nonimmigrant intracompany transferee in the denial notice, but stated that the approval of such a nonimmigrant petition does not ensure the approval of a subsequent immigrant petition. The director noted that “USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions,” increasing the likelihood of error. The petitioner, on appeal, asserts that the relevant statutory language is “identical” for the immigrant and nonimmigrant classifications, and that the principle of *res judicata* mandates the approval of the present petition where there is no “issue of fraud, mistake [or] changed facts.” The petitioner contends that USCIS “has . . . simply chosen to ignore its own [prior] finding, for no reason at all other than its simple and lame excuse that it does not have time to do its own work.”

The petitioner’s reliance on the fact that the nonimmigrant visa petition has not been revoked is not persuasive. The very fact that nonimmigrant visas can be revoked pursuant to 8 C.F.R. § 214.2(l)(9) suggests that the approval of a nonimmigrant visa is not an unalterable, unreviewable decision subject to *res judicata*. Decisions subject to *res judicata* may not be revisited or reopened at all.

Furthermore, each petition filing is a separate proceeding with a separate record and a separate burden of proof. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). The approved nonimmigrant petition is not in the record before us. If that nonimmigrant petition was approved based on the same evidence contained in the current record, the approval would constitute material and gross error on the part of the director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm’r 1988). The petitioner dismisses the suggestion that the earlier approval may have been in error, stating that USCIS must “establish that assertion.” The matter at hand, however, is not a revocation of the beneficiary’s nonimmigrant status, but a separate immigrant petition. The question before us, therefore, is not whether USCIS approved the nonimmigrant petition in error, but rather, whether the petitioner met its burden of proof in the

present proceeding. We cannot disregard that issue and, instead, substitute the prior approval as *prima facie* evidence that the present petition should be approved.

Finally, it must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22, 23 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103, 1104 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, therefore, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

#### 1. Qualifying Employment in the United States and Abroad

As indicated above, the two primary issues to be addressed in this proceeding are whether the petitioner provided sufficient evidence to establish that the beneficiary was employed abroad and would be employed by the petitioning entity in a qualifying managerial or executive capacity. 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 proposed job duties with the petitioning entity. *See* 8 C.F.R. § 204.5(j)(5). Published case law has determined that 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). We then consider the beneficiary's job description in the context of the petitioner's organizational structure, the duties of the beneficiary's subordinates, and any other relevant factors that may contribute to a comprehensive understanding of the beneficiary's actual duties and role within the petitioning entity.

In addition, while performing non-qualifying tasks necessary to produce a product or service will not automatically disqualify the beneficiary as long as those tasks are not the majority of the beneficiary's duties, the petitioner still has the burden of establishing that the beneficiary is "primarily" performing managerial or executive duties. *See* Section 101(a)(44) of the Act. Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that her/his duties are "primarily" managerial.

In the present matter, the petitioner has not documented what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as managerial, but it failed to quantify the time the beneficiary spends on them, even after the director specifically requested that information. This failure of documentation is important because several of the beneficiary's daily tasks, such as "[r]emain current on industry

standards and advancements” and “[m]onitor systems,” do not self-evidently fall directly under traditional managerial duties as defined in the statute. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, we cannot determine what proportion of those duties would be managerial, nor can we deduce whether the beneficiary is primarily performing the duties of a function manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Furthermore, the petitioner describes many of the beneficiary’s tasks in terms such as “[e]xercise[s] discretion” and “[p]rovide[s] leadership,” general terms that provide little or no information about the beneficiary’s actual 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, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F.2d 41 (2d. Cir. 1990). 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. *Id.*

The petitioner submits copies of the letters from Dr. [REDACTED] and Mr. [REDACTED] submitted with the RFE response. Counsel, in the appellate brief, states: “On the second pages of each of these documents, the individuals who do the work within the CAD/CAM function are listed as follows.” Counsel then lists 14 employees in four locations. The record refutes counsel’s claim. Review of the letters in question – both in the RFE response and the copies submitted on appeal – confirms that the letters do not list the names or titles of the beneficiary’s claimed subordinates. The second page of each letter consists entirely of a breakdown of the beneficiary’s claimed duties. Counsel’s claim to the contrary is, therefore, contradicted by the record. Dr. [REDACTED] on the first page of his letter, stated only that the beneficiary “supervised three skilled operators” abroad, while Mr. [REDACTED] repeated the prior claim that the beneficiary “no longer has people reporting directly to him.”

None of the names listed in the appellate brief appear on any of the organizational charts, although counsel’s reference to ‘[REDACTED]’ listed as “Software Installation, Support Staff,” may be the same person as the ‘[REDACTED]’ who appears on some of the organizational charts as a “Lead Analyst, Production Support” who holds a position at the same level as the beneficiary, rather than subordinate to him. The newly submitted list does not establish that any of the named individuals are subordinate to the beneficiary, or that the beneficiary otherwise has authority over their work.

A list of employees submitted over counsel’s signature, with no supporting evidence from the petitioner, does not meet the petitioner’s burden of proof. Counsel’s unsupported assertions are not evidence. See *Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

With respect to the assertion that the beneficiary “supervised three skilled operators” abroad, the petitioner did not identify those individuals or establish that they qualify as professionals. The

beneficiary's supervision of non-professional employees would not constitute a managerial function. See 8 C.F.R. § 204.5(j)(4)(i). The director, in the RFE, requested information and evidence about the beneficiary's claimed subordinates both in the U.S. and abroad, and the petitioner's response did not include the requested materials. 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).

The petitioner has not explained why its two organizational charts for Europe, both of which purport to describe the foreign entity's corporate structure at the time the beneficiary worked there, do not match. The second chart is not a more detailed version of the first; it actually identifies fewer officials than the earlier version. The petitioner has, thus, provided two conflicting accounts of the foreign entity's corporate structure during the same period of time. Furthermore, as late as August 2014, the petitioner's own organizational chart identified the beneficiary as a "Process Automation Engineer," rather than as an "Information Technology Manager." These discrepancies raise broader questions. Doubt cast on any aspect of the petitioner's proof may 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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

Accordingly, we find that the petitioner failed to provide reliable, probative evidence sufficient to establish that the beneficiary was employed abroad, or will be employed in the U.S., in a qualifying managerial or executive capacity. For this reason, this petition cannot be approved.

### III. Conclusion

We will dismiss the appeal 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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.