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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **MAY 06 2015**

[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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner is a Florida corporation engaged in the export of automobile, truck, and heavy machinery parts to Latin America. It seeks to employ the beneficiary in the United States as its general manager. Accordingly, the petitioner filed a Form I-140, Immigrant Petition for Alien Worker, to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition, concluding that the petitioner failed to establish: (1) the petitioner has a qualifying relationship with the foreign employer abroad; (2) the beneficiary was employed abroad in a qualifying managerial or executive capacity; and (3) the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. The director further found that the petitioner willfully misrepresented information regarding the beneficiary's intended employment which is material to his eligibility for the benefit sought.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner submits a brief disputing the director's adverse findings.

I. THE LAW

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

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

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

II. THE ISSUES ON APPEAL

A. Qualifying Relationship

The first issue is whether the petitioner established that it has a qualifying relationship with [REDACTED] located in Venezuela. The petitioner indicates that the beneficiary worked for this foreign entity from 2006 until 2009.

To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates."

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

* * *

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

1. Facts

The petitioner filed the Form I-140 on March 3, 2010. The petitioner asserts that [REDACTED] owns 51% of its stock thus creating a qualifying relationship between the two companies. The petitioner provided stock certificate number 1, dated April 19, 2001, issuing "51%" of its capital stock to the foreign entity.

The petitioner also submitted copies of its IRS Forms 1120, U.S. Corporation Income Tax Return, for the 2007 and 2008 tax years. In 2007, the petitioner stated at Form 1120, Schedule K that 51% of the company was owned by a "foreign person" from Venezuela; however, the petitioner did not include the Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or Foreign Corporation Engaged in a U.S. Trade or Business or otherwise identify the foreign owner. On the Form 1120 for 2008, the petitioner indicated at Schedule E that [REDACTED] owned 100% of the petitioner's stock and the petitioner checked "no" on Schedule K indicating that a foreign company did not directly own 20% or more or indirectly own 50% or more of the voting power of the company.

On April 24, 2014 the director issued a Notice of Intent to Deny (NOID) the petition. The director stated that the petitioner had not established a qualifying relationship with the foreign entity and instructed the petitioner to provide additional evidence demonstrating its ownership and control such as copies of all issued stock certificates, a corporate stock certificate ledger, corporate bylaws, relevant minutes of shareholder meetings, and any relevant shareholder agreements. In addition, the director instructed the petitioner to resolve the discrepancies created by its submission of tax documentation indicating company ownership that is inconsistent with the petitioner's claim.

In response to the director's request, the petitioner submitted two additional stock certificates issued on April 19, 2001. Stock certificate no. 2 certifies issuance of 25% of the company shares to [REDACTED] and stock certificate no. 3 certifies issuance of 24% of the company shares to [REDACTED]

The petitioner also provided its copies of its IRS Form 1120 for tax years 2010, 2011 and 2012. In 2010, the petitioner's Schedule E, Compensation of Officers, indicated that [REDACTED] owned 49% of the petitioner's shares; Schedule K reflected 49% of the company held by Venezuelan owners, and Schedule G, Information on Certain Persons Owning the Corporation's Voting Stock, indicated that the foreign entity owned 51% of the stock, [REDACTED] owned 24%, and [REDACTED] owned 25%. This basic ownership information was reported on the petitioner's tax returns for 2011 and 2012.¹

The petitioner acknowledged ownership inconsistencies represented in its tax documentation and claimed that "the company's accountant made a clerical error on the tax return." The petitioner further asserted that the errors made in its tax returns do not impact its ownership structure since it has already "conclusively demonstrated" its ownership by presentation of its stock certificates.

The director found that the petitioner had not established that it had a qualifying relationship with the foreign entity since the petitioner had not resolved discrepancies and did not provide requested information.

On appeal the petitioner asserts that the director erred in finding that the evidence already provided was insufficient to establish a qualifying relationship in this matter. The petitioner reiterates that the stock certificates conclusively establish that the petitioner is a subsidiary of the foreign entity which owns 51% of the petitioner's stock.

2. Analysis

Upon review, the petitioner has not established that it has a qualifying relationship with the beneficiary's last foreign employer.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); see also *Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the

¹ The director's decision included a detailed discussion of the inconsistencies found in the petitioner's tax returns which will not be repeated here.

total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

Here, the petitioner's stock certificates served as ownership evidence as of the year 2001 but the petitioner's more recent tax documentation indicates that there may have been changes in the petitioner's stock ownership. For example, in 2008 it appears that [REDACTED] held 100% of the petitioner's stock but in 2010, 2011 and 2012 he owned either 49% or 24% depending on the document consulted. However, the petitioner has submitted copies of only three stock certificates, all issued in 2001, and has not acknowledged any subsequent changes in ownership. The director specifically requested documentation to clarify stock ownership such as a stock registry, ledger, or meetings minutes but the petitioner did not comply with this request. Therefore, even if the petitioner had provided no conflicting evidence related to the stock holdings in this matter, its failure to submit requested evidence precludes a material line of inquiry and shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In response to the director's request for evidence to resolve the tax return inconsistencies, the petitioner merely stated that its accountant made clerical errors. We note that the entries made on the tax forms were prepared and provided by the petitioner, included conflicting shareholder information on more than one tax return over the course of several years. The assertion that the errors were merely clerical is inadequate and fails to resolve or establish the majority shareholder of the petitioner's shares at the time this petition was filed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the petitioner once again acknowledges several "clerical errors" in its own documentation but it maintains that it has sufficiently demonstrated that it is a subsidiary of the foreign entity. The petitioner relies on the stock certificates issued in 2001 to demonstrate its claimed ownership but does not further discuss its own conflicting tax documentation that it created well after those initial stock certificates were issued. The petitioner is obligated to clarify the inconsistencies in the record by independent and objective evidence. *Id.* Simply asserting that the reported shareholder information in the tax returns was made as a result of a clerical error does not qualify as independent and objective evidence. 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)).

For the foregoing reasons, the petitioner failed to establish that it has a qualifying relationship with the foreign entity. Accordingly, the appeal will be dismissed.

B. Employment Abroad in a Managerial or Executive Capacity

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

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

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

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

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

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

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and

- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

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

1. Facts

The petitioner provided a letter dated September 30, 2009 in support of this petition stating that the beneficiary was employed with the foreign entity as general manager since March 7, 2006. The petitioner stated that the foreign entity was engaged in the purchase and sale of car glass and that the company employed 32 individuals. The petitioner claimed that while employed abroad, the beneficiary was responsible for supervising marketing representatives, preparing payroll, making payments, and guiding marketing representatives through marketing processes and techniques. The petitioner also provided a letter from the foreign entity dated September 30, 2009 which reiterated this same brief description of the beneficiary's duties.

The petitioner provided the foreign entity's organizational chart depicting a total of over 30 employees. However, the chart, dated April 2009, post-dates the beneficiary's transfer to the United States in 2008 and is not accompanied by an English translation. The petitioner also provided the foreign entity's monthly payroll reports for 2008, but these documents were also not accompanied by an English translation.

The petitioner provided a two page unsigned, undated document that included short duty descriptions for the positions of general manager, purchasing manager, whole sales manager, retail sales manager, and administration for the foreign entity. The general manager's description was described as follows:

1. Hire all the management positions;
2. Conduct periodic evaluations of the performance of the functions of the various departments
3. Plan and develop goals in the short and long term along with annual projections and deliver these goals for the approval of corporate managers;
4. Coordinate with the administrative office to ensure that records and analyses are being carried properly;
5. Create and maintain good relations with customers, suppliers and corporate managers to maintain the smooth running of the company.

The director observed that the petitioner provided the foreign entity's untranslated organizational chart and did not provide a letter from the foreign entity with detailed information regarding the beneficiary's employment abroad. The director issued a NOID instructing the petitioner to provide a

letter from the foreign entity detailing the beneficiary's duties, the percentage of time the beneficiary spent on each duty, and a properly translated and detailed organizational chart.

In response to the director's RFE, the petitioner did not include any additional information but instead stated "with respect to the beneficiary's previous duties as General Manager with the parent company in Venezuela, the previous submission is incorporated by reference."

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity. In denying the petition, the director emphasized that the petitioner did not provide the requested translation of the foreign entity's organizational chart or the requested detailed letter from the foreign entity describing the beneficiary's experience abroad.

On appeal, the petitioner disagrees with the director's finding and requests that we review the entirety of the record and "objectively assess the evidence presented."

2. Analysis

Upon review, the petitioner has not established that it the beneficiary was employed with the foreign entity in a qualifying managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). We will then consider this information in light of other relevant factors, including job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the foreign company's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role within the foreign entity.

In this matter, the evidence does not support a finding that the beneficiary was employed in a qualifying managerial or executive capacity. The petitioner provided a vague and nonspecific description of the beneficiary's duties with the foreign company that failed to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner's assertion that the beneficiary coordinated with the administrative office to ensure records and analyses were being properly carried out provides no insight into the actual tasks the beneficiary actually performed. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Furthermore, the petitioner's description did not include the percentage of time spent on any particular tasks in order to demonstrate that the beneficiary had been engaged in primarily executive or managerial instead of non-qualifying duties. Notably, the director's NOID instructed the petitioner to provide this additional evidence but the petitioner did not comply. 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).

Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial and what proportion would be non-managerial. The petitioner provided a short list of the beneficiary's duties that included both managerial and administrative or operational tasks, but failed to quantify the amount of time the beneficiary allocated to each of them. This failure of documentation is important because several of the beneficiary's daily tasks, such as conducting periodic performance evaluations, coordinating with the administrative office to ensure proper handling of records, and preparing payroll do not fall directly under traditional managerial duties as defined in the statute. Therefore, we are unable to determine whether the beneficiary was primarily engaged in qualifying or non-qualifying duties. 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'r 1988).

In addition, according to the brief description of the beneficiary's duties provided by the foreign entity, the beneficiary oversaw "different marketing representatives" and "guided marketing reps." However no marketing positions are included in the list of defined duty positions provided by the petitioner. Thus, there appears to be an unresolved discrepancy between the beneficiary's duty description and the subordinate employee positions he oversees. 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).

Beyond the beneficiary's required duty description, we review the totality of the record when examining the claimed managerial capacity of a beneficiary, including the company's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, and the nature of the business. Here, in addition to providing a vague description of the beneficiary's duties, the petitioner failed to provide sufficient documentation to demonstrate the foreign entity's organizational structure. We observe that the petitioner submitted evidence including a two page English document purporting to be a translation of one of the foreign entity's documents but there is no accompanying certification of translation. Because the petitioner failed to submit certified translation of the document the evidence is not probative and was not given any weight in this proceeding. Therefore, we could not determine whether the evidence supported the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). This is also true regarding the foreign entity's organizational chart which was provided without any purported translation at all, and which also post-dated the beneficiary's transfer to the United States.

A review of the petitioner's evidence provides us little insight into nature of the beneficiary's duties or the actual structure of the foreign entity at the time the beneficiary was employed. Accordingly, due to the lack of probative evidence in the record, the petitioner has not established that the beneficiary was employed abroad in a qualifying managerial or executive capacity. For this additional reason, the appeal will be dismissed.

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

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

1. Facts

The petitioner claims to be engaged in the export, import, marketing and distribution of car glass from Venezuela to the United States. The petitioner stated on its Form I-140 that the beneficiary's duties include: "Develop and implement strategic plans of work to sale company products. Valuation and legal consulting. Provide financial and legal consulting to the CEO and the board of directors."

The petitioner provided a letter of support dated September 30, 2009 stating that the beneficiary "has played a key role in the operation of the company." The petitioner states that the beneficiary "has been and will continue to be in control of all sales and import and export department and for managing and overseeing the company's day-to-day operations (financial investments, human resources, and the assets to the company)." The petitioner's letter further described the beneficiary's proposed duties as follows:

He coordinates functions and sales operations between the foreign company and the US affiliate, directing all marketing sales and fiscal policies. He supervises the compilation of financial data and the reporting of it.

[The beneficiary] works 40 hours a week and the percentage of time spent on each duty are equitably in equal proportion or average because all of them are very important.

It is important to stand out that [the beneficiary] has an excellent experience and skills as the following ones:

His responsibilities include but are not limited to:

- 1.1. Establish new contacts, and new products.
- 1.2. The information flow is canalized [*sic*] and development of the petitions of their clients (proposals, invoices, brokers)
- 1.3. The necessity is generated in the projects and the information it's canalized [*sic*] to the members of the development team.

- 1.4. The intern & extern communications is generated in conjunction with the communications department to present the company
- 1.5. The business plans are present

- 2.1. Supervise the purchase and sales department, and the import and exports.
- 2.2. The proposal information is transfer to the administration to perform the transfer to the client.
- 2.3. Cost analysis, search new products, Proposal follow up,
- 2.4. Cost negotiation and times of giving the client
- 2.5. Satisfaction follow up of the project, both of the products and the client
- 2.6. Generate more necessity base on the projects provided in teams with department that developed the project

- 3.1. Lifting of intern politics to satisfy human, technologic (equipment) necessities and human resources
- 3.2. Administrate all the company's resources
- 3.3. Invoice Control
- 3.4. Incentives and educate all the managers in the plan managing of the business
- 3.5. Manage bank accounts, cash in register, accounts payable, receivable

- 4.1. Follow up of the financial process of execution through the brokers.
- 4.2. Coordinate with the managers the pending export.

The petitioner's Form I-140 indicated that it employed seven individuals at the time of filing. The petitioner's letter asserts that it currently employs six but intends to hire two more employees in the future.

The petitioner submitted a document entitled "organizational chart" that identifies six employees and provides each employee's title, educational qualifications, duty description and functions. The beneficiary's functions and description included on this document are as follows:

Functions:

1. Develop and implement strategic plans of work to sale company products.
2. Valuation and legal consulting. Provide financial and legal consulting to the CEO and the board of directors.
3. Direct the organization's financial goals, objectives, and budgets
4. Plan investment of funds and manage associated risks, supervises cash management activities, execute capital-raising strategies to support the firm's expansion.
5. Appoint and supervise the professional staff.
6. Analyze of future earnings or expenses and supervise cash management activities.

The General Manager spends 100% of his time in qualifying managerial functions. The General Manager has full discretionary authority in the day-to-day operations if needed although most of the day-to-day duties have been delegated as per the US organizational chart and job descriptions.

The petitioner's undated organizational chart depicts [REDACTED] as president overseeing an assistant, [REDACTED]. The beneficiary is depicted as the general manager directly overseeing [REDACTED] (marketing department) and [REDACTED] (international sales) who, in turn, oversees sales representative, [REDACTED]. The petitioner stated that the marketing employee has a bachelor's degree in marketing and is responsible for three functions: (1) develop marketing strategies and support of all the product lines; (2) participate in the creation of the web page, brochures, sales aids and ads; and (3) responsible for product launching, packaging, and commercialization. The petitioner stated that the international sales employee has an associate's degree and performs three functions: (1) develop Colombian market; (2) design marketing and sales strategies for Venezuelan market; and (3) development of [REDACTED] seminars where he explains the benefits and usages of our products. Finally, the petitioner indicated that the sales representative is responsible for directing customer service, developing new customer development, creating reports on product demand and training and presentation of new products.

The petitioner provided state quarterly wage reports and IRS Forms 941, Employer's Quarterly Federal Tax Return, for all four quarters of 2009 showing wages paid to the employees included in the organizational chart. It also provided its payroll report for January 2010, which does not include wages paid to [REDACTED] but does include another individual, [REDACTED] who was not listed on the organizational chart.

In the NOID, the director advised the petitioner of potentially derogatory information obtained from outside the record, in accordance with 8 C.F.R. § 103.2(b)(16)(i). First, the director advised the petitioner that the beneficiary had provided a sworn statement to U.S. Customs and Border Protection on August 4, 2012 in which he stated that he has two employees under his supervision and performs duties such as verifying automobile glass for the export market, as well as "do materials for installation and accessories." The director found these statements to be indicative of an employee who performs the tasks necessary to provide the petitioner's services.

In addition, the director advised the petitioner that he reviewed the Form I-140 filed on behalf of its president, [REDACTED] which was approved on December 31, 2009. The director observed that the petitioner provided a nearly identical job description for its president as it did for the beneficiary's position of general manager, and questioned why it would require both employees to perform the same managerial or executive duties. As such, the director found that the petitioner may have misrepresented the nature of the beneficiary's tasks in order to obtain the immigration benefit sought.

Finally, the director noted that one of the duty descriptions submitted for the beneficiary referred to his interaction with "the communications department," and emphasized that the petitioner did not include this department on its organizational chart.

The director's NOID instructed the petitioner to provide the beneficiary's detailed duty description along with the percentage of time he spends performing each specific task, as well as a detailed organizational chart. The director advised the petitioner that its response must resolve the discrepancies noted in the NOID, and must include corroborating evidence in support of the petitioner's assertions.

The petitioner responded to the NOID with a letter dated May 23, 2014 asserting that the beneficiary oversees import, export, and communications but the company does not have separate departments for those activities.

The petitioner provided the following, additional duty description for the beneficiary:

Overall responsibility for formulating and implementing long and short term business objectives geared towards maximizing profit and operational excellence (20%); investigating investment opportunities for the purpose of investing capital to expand business operations (10%-15%); overseeing and directing our company's operational processes and systems which are carried out on a day-to-day basis by subordinate personnel (20%-25%); recommending and overseeing the implementation of changes to optimize efficiency and considering solutions or alternate methods to streamline operations and maximize profits (10%-15%); establishing goals and policies and executing operational strategies that include cost analysis as well as reviewing and analyzing our competitors' pricing data (15%-20%); negotiating proposals and contracts, setting sales goals, and overseeing proper implementation of company policies and goals through subordinate personnel (15%-20%); coordinating and conferring with Vice President regarding marketing plans and sales strategies (5%).

The petitioner submitted a second, undated, organizational chart depicting the following organizational structure: [redacted] as president directly overseeing both vice president [redacted] and the beneficiary as general manager. The vice president and the beneficiary are both depicted as overseeing "marketing manager" [redacted]. The beneficiary is depicted as directly overseeing a sales representative, [redacted] and a secretary/administrator, [redacted].

The petitioner provided a document with duty descriptions for each employee depicted on the organizational chart. This document also stated that the marketing manager has an "advanced technical diploma" and the sales representative has an associate degree in arts.

The petitioner submitted a copy of its State of Florida Department of Revenue Form UCT-6 Quarterly for the first quarter of 2010, covering the period during which this petition was filed. The form lists seven employees, including: (1) the beneficiary; (2) [redacted] (3) [redacted] (4) [redacted] (5), [redacted] (6) [redacted]; and (7) [redacted]. The petitioner reported no wages paid to [redacted] during this quarter. The Form UCT-

6 also shows wages paid to [REDACTED] whose position whose position title has not been provided.

The petitioner also provided copies of more recent Forms UCT-6, which indicate that the petitioner employed only four employees in 2013, including the beneficiary, [REDACTED] the president, and [REDACTED]. The evidence reflects that [REDACTED] were hired during the first quarter of 2014.

The petitioner also responded to the derogatory information discussed in the NOID. With respect to the beneficiary's interview with a Customs and Border Protection agent at the [REDACTED] International Airport, the petitioner emphasized that the statement from the beneficiary quoted in the NOID was not a verbatim transcript of the interview, which was conducted entirely in Spanish. The petitioner emphasizes that the beneficiary did in fact corroborate his employment as the petitioner's general manager, and that he generally described the nature of the activities performed by the company rather than his day-to-day duties, as he does not directly export glass or install materials.

Further, with respect to the director's finding that the petitioner submitted essentially the same description of duties for two different positions in support of two different Form I-140s, the petitioner explained that the beneficiary was performing many of the president's duties when this petition was filed because in 2010, the petitioner's president, [REDACTED] was spending a significant amount of time in Panama heading a related company, [REDACTED]. The petitioner provided evidence related to [REDACTED] in support of these assertions.

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity. The director noted that the beneficiary's duties were not adequately detailed and the record contained unresolved inconsistencies. The director also concluded that the petitioner misrepresented information regarding the beneficiary's proposed employment which is material to his eligibility for the benefit sought.

On appeal, the petitioner asserts that the director erred in determining that the beneficiary will not be employed in a qualifying managerial capacity. The petitioner asserts that the beneficiary oversees professionals. Alternatively, the petitioner asserts that the beneficiary qualifies as a functional manager of essential functions such as "overseeing daily operations including international trade of products, process improvement, sales, financial and personnel matters." Further, the petitioner states that the beneficiary's subordinate staff "performs the overwhelming majority of the non-managerial tasks associated with the function he manages."

2. Analysis

Upon review of the totality of this record, we find the evidence does not support a finding that the beneficiary would be employed in a qualifying managerial or executive capacity. The director's finding that the petitioner willfully misrepresented facts material to the beneficiary's proposed employment will be discussed in a separate section below.

When examining the executive or managerial capacity of the beneficiary, we review the totality of the record, starting first with the petitioner's description of the beneficiary's proposed job duties. *See* 8 C.F.R. § 204.5(j)(5). A detailed job description is crucial, as the duties themselves will reveal the true nature of the beneficiary's foreign and proposed employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). We will then consider this information in light of other relevant factors, including job descriptions of the beneficiary's subordinate employees, the nature of the business that is conducted, the petitioner's subordinate staff, and any other facts contributing to a comprehensive understanding of the beneficiary's actual role within the petitioning entity. While an entity with a limited support staff will not be precluded from the immigration benefit sought herein, it is subject to the same burden of proof that applies to a larger entity with a moderate or large subordinate staff. In other words, regardless of an entity's size or support staff, the petitioning entity must be able to provide sufficient evidence showing that it has the capability of maintaining its daily operations such that the beneficiary would be relieved from having to primarily perform the operational tasks.

The petitioner initially provided a broad description of the beneficiary's duties and included an 18 point list of the beneficiary's responsibilities. A review of the responsibilities indicates that the beneficiary may devote a majority of his time to non-qualifying duties though the duties included in this list are not clear. For example, the beneficiary's stated responsibilities for managing financial accounts, cost analysis, administration of company resources, managing bank accounts and accounts payable and receivable, and invoice control are among those responsibilities that are non-qualifying. Furthermore, many of the remaining responsibilities are difficult to understand. In addition, some tasks are simply poorly articulated and thus do not convey any understanding of the beneficiary actual duties. In this regard, the petitioner stated that his responsibilities include "the information flow is canalized and development of the petitions of their clients (proposals, invoices, brokers)" and "generate more necessity base on the projects provided in teams with department that developed the project." Further, the petitioner indicated that the beneficiary will "supervise the purchase and sales department, and the import and exports," the petitioner did not clearly articulate that the beneficiary's subordinates performed duties associated with the company's purchasing, import or export functions, or that they relieve him from performing the non-qualifying banking and finance related duties noted above.

In this matter, we are unable to determine what the beneficiary will do on a day-to-day basis and therefore we are unable to determine how much of the beneficiary's time will be spent engaged in qualifying duties. 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 would perform are only incidental to the proposed position. An employee who "primarily" performs the tasks necessary to produce a product or provide a service is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I & N Dec. 593, 604 (Comm. 1988).

In response to the director's NOID, the petitioner submitted a new duty description for the beneficiary allocating a percentage of the beneficiary's time into seven broad responsibilities such as overall responsibility for formulating long and short term business objectives, overseeing and directing operational processes and systems, establishing goals and policies and executing operational strategies, setting sales goals, and coordinating and conferring with the vice president on marketing plans and sales strategies. These responsibilities identify the beneficiary's overall objectives and general approach to reaching objectives but the petitioner provided no insight into how the beneficiary will spend his time on a day-to-day basis. 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. In this description, the petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Moreover, this description is different from the petitioner's previous descriptions of the beneficiary's duties and we cannot reconcile those differences without a more detailed duty description than the one provided in response to the NOID. 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).

We also note that the beneficiary's initial duties were to include finance, import, export, and communications matters yet there appears to be no employees identified to perform the tasks related to those responsibilities; therefore no one who would relieve the beneficiary from primarily performing non-qualifying duties related to those responsibilities. The petitioner's new duty description does not reference the beneficiary's oversight of finance, personnel or import/export activities, all of which were initially attributed to the beneficiary. Further, the petitioner failed to explain who would perform those tasks other than the beneficiary. 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. 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 his duties are "primarily" managerial.

The statutory definition of "managerial capacity" allows for both "personnel managers" and a "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. § 214.2(l)(1)(ii)(B)(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. § 214.2(l)(1)(ii)(B)(3).

On appeal, the petitioner claims that the beneficiary employs professional employees. The petitioner's initial organizational chart indicated that the beneficiary directly supervised marketing employee, [REDACTED] and international sales manager, [REDACTED]. The petitioner also asserted that [REDACTED] had a bachelor's degree and that [REDACTED] had an associate's degree. However, the petitioner provided no documentation to support those claims and made no explicit claim that either employee required higher education credentials to perform their duties. On appeal, the petitioner asserts that even if its employees do not have a degree, the combination of their education, experience and skill qualifies them as professionals in their respective fields.

In evaluating whether the beneficiary manages professional employees, we must 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). In this matter, the petitioner provided brief duty descriptions for the managers it claimed were professionals and failed to provide documentation that either had earned a college degree. Moreover, only one of the managers is alleged to have completed a four year bachelor's degree. 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)).

Even if the petitioner had provided evidence sufficiently demonstrating that its employees had bachelor's degrees, we 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 this matter, the petitioner has not established that a bachelor's degree is necessary to perform the marketing manager or sales manager duties. Further, the petitioner's latest organizational chart and accompanying employee list indicate that the beneficiary would not be supervising any employees who have completed a bachelor's degree or its equivalent as of 2014.

We acknowledge that the petitioner's original organizational chart depicts [REDACTED] as the international sales manager's subordinate. However, despite this organizational chart, the international sales manager's duties do not include supervisory tasks and the petitioner has not established that [REDACTED] was employed as a supervisor or manager.

We also acknowledge that the petitioner submitted an undated organizational chart in response to the director's NOID and the petitioner references that chart on appeal. This chart identifies the beneficiary as the direct supervisor of marketing manager, [REDACTED] sales representative, [REDACTED] and secretary/administrator, [REDACTED]. The petitioner asserts that the marketing manager has an advanced technical diploma and the sales representative has an associate's degree. Once again, the petitioner did not provide evidence of the educational credentials, claim that the employees have bachelor's or equivalent degrees, or claim that the educational credentials were required for the respective positions. Nevertheless, even if this documentation was sufficient it would not establish eligibility because the petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). As demonstrated in the record, both [REDACTED] and [REDACTED] were hired during the first quarter of 2014 and were not employed by the company at the time of filing.

The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. 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 *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

On appeal, the petitioner asserts that, in the alternative, the beneficiary is primarily responsible for managing an essential function for the company. Specifically, the petitioner asserts that the beneficiary oversees its most essential functions such as overseeing daily operations including "international trade of products, process improvement, sales, financial and personnel matters." Nevertheless, the petitioner failed to provide sufficient evidence to demonstrate that the beneficiary had support to carry out the tasks relating to finance, international trade and personnel matters in order to relieve him from primarily performing those functions himself. The petitioner has not consistently articulated a claim that the beneficiary will manage an essential function, indicated the amount of time allocated to managing such function, or established that someone other than the beneficiary performs the non-qualifying duties associated with such function.

Counsel correctly observes that 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 claims to engage in the purchase, import, export and sale of automobile glass, and asserts that the beneficiary is responsible for overseeing its day-to-day operations, including the company's sales, import and export, financial, and personnel matters. While the petitioner has established that it typically employs subordinate marketing and sales staff, the petitioner has not claimed to employ staff responsible for the day-to-day financial, purchasing and import and export matters that the beneficiary is claimed to oversee. Further, the petitioner's latest organizational chart indicates that the petitioner, as of 2014, employs a vice president who is senior to the beneficiary and also oversees sales and marketing, and that the beneficiary now has only one subordinate sales representative, as opposed to two sales employees at the time of filing. The petitioner has not established that it has a reasonable need for the beneficiary to perform primarily managerial or executive duties based on the nature of the business or its current stage of development.

We have interpreted the statute to prohibit discrimination against small or medium-size businesses. However, we have consistently required the petitioner to establish that the beneficiary's position consists of "primarily" managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks. In this matter, the petitioner has not met that burden.

Overall, the record is insufficient to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

D. Willful Misrepresentation of a Material Fact

The final issue to be addressed is the director's finding that the petitioner willfully misrepresented information regarding the beneficiary's intended employment which is material to his eligibility for the benefit sought.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec.

288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. See *Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

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

1. Facts

As discussed above, the director reviewed a prior Form I-140 filed by the petitioner on behalf of the petitioner's president which was approved on December 31, 2009 ([REDACTED]). The director referred to a letter in that petition, dated September 30, 2009, in which the petitioner described the president's duties. The director advised the petitioner that the letter submitted in support of the president's petition contained "nearly identical" language as the letter submitted in support of the beneficiary's position as general manager in this matter. The director stated that the petitioner did not explain how its president and general manager can share autonomous control over all corporate matters in their purview and exercise wide latitude in discretionary decision-making in establishing the most advantageous courses of action for the successful management of the petitioner's activities. The director determined that this was an unresolved inconsistency.

The director also advised the petitioner that the beneficiary, when interviewed by U.S. Customs and Border Protection in 2012, indicated that he performs duties suggesting his direct involvement in providing the petitioner's services.

Therefore, when the director issued the NOID, he stated that it appeared that the petitioner misrepresented the beneficiary's intended employment with the petitioner, which is material to whether he is eligible for the requested benefit. Specifically, the director stated that the petitioner or the beneficiary made a false representation to an authorized official of the United States government when it filed its Form I-140 certifying under penalty of perjury that the evidence submitted was true and correct. The director stated that the willful misrepresentation occurred when the petitioner claimed that the beneficiary would be doing several of the same duties that the president was responsible for and that he would also perform non-qualifying duties. The director indicated that the beneficiary made a sworn statement regarding these facts.

The petitioner denied any misrepresentation. As noted, the petitioner explained that its president began working in Panama to expand the business and therefore, the beneficiary assumed many of his

responsibilities and duties in the United States in 2010. The petitioner asserted that there was no misrepresentation. The petitioner also emphasized that the beneficiary's interview with Customs and Border Protection was conducted in Spanish and that the information quoted in the director's NOID was not a verbatim transcript of his interview. The petitioner explains that his statements were intended to describe the company's activities rather than his day-to-day duties as general manager.

The director acknowledged that the petitioner's legal representative attempted to explain the discrepancies discussed in the NOID. The director also acknowledged the legal representative's denial that the beneficiary misrepresented his employment with the petitioner. However, the director determined that the petitioner itself did not submit any evidence to support the statements made by its own legal representative and that assertions made by a legal representative do not constitute evidence.

Therefore, the director made a finding of willful misrepresentation of a material fact and stated that it shall be considered in any future proceeding where admissibility is an issue.

On appeal, the petitioner reiterates that neither it nor the beneficiary has made any misrepresentations and includes a discussion regarding the company, changes in personnel and structure. The petitioner acknowledged some discrepancies in the record but states that its explanations are logical and reasonable and were not intended to misrepresent eligibility. The petitioner also asserts that the beneficiary should not be penalized by a finding of misrepresentation in this matter because the beneficiary did not file this petition.

2. Analysis

Upon review, we find that the petitioner's assertions are persuasive. Accordingly, we will withdraw the director's finding of willful misrepresentation of a material fact.

The term "willfully" in the statute has been interpreted to mean "knowingly and intentionally," as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979) ("knowledge of the falsity of the representation" is sufficient); *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995) (interpreting "willfully" to mean "deliberate and voluntary"). In this matter, the petitioner asserts that there was no willful misrepresentation. The petitioner offers a reasonable explanation for the discrepancies found by the director. The director did not consider the petitioner's explanation because it was submitted by the petitioner's legal representative and not the petitioner itself. We will consider statements made by the petitioner's legal representative, on the petitioner's behalf and in furtherance of their petition. Further, the petitioner did submit supporting evidence regarding the company president's responsibilities in Panama in support of its assertion that the beneficiary assumed some of this employee's responsibilities in 2010. In addition, the record supports the petitioner's assertion that the beneficiary's interview with Customs and Border Protection was conducted in Spanish, and that no verbatim transcript of that interview has been incorporated into the record or provided to the petitioner for review.

While there are some inconsistencies in the record, the director's primary concerns regarding the petitioner's misrepresentation of material information have been resolved. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). Accordingly, we will withdraw the director's finding that the petitioner willfully misrepresented facts material to the beneficiary's eligibility for the benefit sought.

III. CONCLUSION

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The director's finding of willful misrepresentation of a material fact is withdrawn.