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DEC 04 2007

File: EAC 06 183 52692 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant visa petition seeking to employ the beneficiary as its vice president of marketing as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of Illinois and is allegedly an import/export trading company.

The director denied the petition concluding that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel to the petitioner asserts that the director erred and that the beneficiary's duties are primarily those of an executive or manager.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The primary issue in the present matter is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

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

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

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

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

The petitioner does not clarify in the initial petition whether the beneficiary will primarily perform managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner may not claim that a beneficiary will be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner is indeed representing the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

The petitioning organization described the beneficiary's job duties in a letter dated May 17, 2006 as follows:

As Vice President of marketing, [the beneficiary] will be in charge of expanding the

marketing program at the Chicago subsidiary. She will be responsible for the formulation policy [sic] and oversee its implementation. She will also have the authority to hire personnel, set their compensation and discharge them as she deems necessary. She will be reporting directly to the president of the parent company.

The petitioner also submitted an organizational chart for the United States operation. The chart shows the beneficiary reporting to the petitioner's president and supervising a "sales manager" and a "warehouse manager."

On September 18, 2006, the director requested additional evidence. The director requested, *inter alia*, job descriptions for the beneficiary's proposed subordinates, including a breakdown of the number of hours devoted to each of their job duties on a weekly basis; educational credentials for the proposed subordinates; a copy of the petitioner's 2005 federal income tax return; copies of the petitioner's 2005 Forms W-2; and copies of the petitioner's 2005 payroll roster.

In response, counsel submitted a letter dated December 12, 2006 in which she further describes both the beneficiary's duties and those of her proposed subordinates as follows:

Greater participation in trade shows is another objective of the company. The company anticipates to partake in at least five (5) trade shows per year. [The beneficiary] will make a determination in which trade shows the company should participate and what products should be exhibited. She will determine the presentation of the products and their displays. Prior to the trade show, [the beneficiary] will oversee and coordinate the preparation of catalogs, advertising and handouts. She will determine the size and quantity of samples to be made available to the trade show participants. During the show, [the beneficiary] will be available to discuss special requirements of interested customers, bulk purchases, price discounts and payment terms.

[The beneficiary's] duties will include work to increase the company's market share to other industry leaders. She will also oversee the company's customer service department. She will develop and implement marketing policies; define and assign territory; set quotas for sales, evaluate product lines and their success in the market; prepare market reports and analysis for management. She will have the authority to discuss and arrange for wholesale discounts, determine credit and payment terms with potential purchasers, determine the need for the development of new products and the feasibility of marketing them. She will have an input into the level of inventory on hand.

[The beneficiary] will have two subordinates reporting to her, i.e., the sales manager who supervises two indoor salespersons and acts as an assistant in handling matters which do not require the expertise and authority vested in [the beneficiary] by the Board of Directors; and the warehouse manager, who supervises inventory control, shipping, receiving, and customer service. While the warehouse manager has the authority to decide how returned goods under warranty are to be treated, e.g., whether repaired in-house, contracted out or returned to China for credit, situations dealing with sensitive customers, such as Sears or W.W. Grainger, for

example, or borderline cases may require [the beneficiary's] final input and decision.

The sales manager monitors performance of the company's sales personnel and independent sales representatives. This comprises about 50% of his time per week. The assignment of territory and the monitoring of sales potential takes [sic] about 10% of his time. He also monitors sales quotas, which comprises about 20% of his time. The review of sales reports takes up about 10% of his time. Review of reports and preparation of reports takes another 10% of his time.

The warehouse manager supervises inventory control, which takes about 20% of his time; another 20% of his time is spent on monitoring shipping; 15% of his time in verifying the receiving of merchandise; about 25% is spent on customer service; 10% on returned merchandise under warranty and 10% on review and preparation of reports.

The petitioner also submitted the first page of its 2005 Form 1120S, U.S. Income Tax Return for an S Corporation, which indicates that, in 2005, the petitioner paid out \$29,400.00 in "compensation of officers" and \$44,960.00 in "salaries and wages," for a total of \$74,360.00. The petitioner also submitted a single 2005 Form W-2 showing federal wages of \$74,360.00. The employee's name and social security number does not appear on the single 2005 Form W-2. Finally, the petitioner submitted a 2005 payroll report which lists three employees – [REDACTED] and [REDACTED]. The total 2005 compensation for all three employees in the report is \$74,360.00. While [REDACTED] is identified in the organizational chart as the "warehouse manager," the other two individuals listed in the payroll report do not appear in the organizational chart.

On February 1, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed primarily in a managerial or executive capacity.

On appeal, the petitioner asserts that the beneficiary's duties are primarily those of an executive or manager.

Upon review, the petitioner's assertions are not persuasive.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

As a threshold issue, the AAO notes that, as counsel failed to corroborate her descriptions of the duties of both the beneficiary and her proposed subordinates in the letter dated December 12, 2006, these assertions have no evidentiary value. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Regardless, in this matter, both counsel's and the petitioner's descriptions of the beneficiary's job duties fail to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the

petitioner and its counsel have submitted vague and non-specific job descriptions which fail to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will develop and implement marketing policies, plan the petitioner's participation in trade shows, and oversee the company's customer service department. However, the petitioner does not specifically define these marketing policies or the beneficiary's level of participation in the trade shows. Furthermore, the petitioner does not explain what, exactly, the beneficiary will do in overseeing the "customer service department" when the petitioner's organizational chart does not identify this department or describe any employees performing these duties. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature; otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Likewise, many of the duties ascribed to the beneficiary appear to be non-qualifying administrative or operational tasks which will not rise to the level of being managerial or executive in nature. For example, the petitioner asserts that the beneficiary will prepare for, and participate in, trade shows. The petitioner also asserts that the beneficiary "will have the authority to discuss and arrange for wholesale discounts, determine credit and payment terms with potential purchasers" and will oversee the "customer service department." However, sales and marketing tasks are considered to be non-qualifying administrative or operational tasks when those tasks are performed by the beneficiary. As the record does not establish that the petitioner will employ workers to relieve the beneficiary of the need to perform these "customer service" tasks, it must be concluded that she will perform them. Furthermore, as the petitioner has failed to establish that her subordinate workers are supervisory, managerial, or professional employees (*see infra*), the supervisory functions ascribed to the beneficiary, e.g., setting sales quotas and assigning sales territory, would also be non-qualifying, first-line supervisory tasks. As the petitioner has not established how much time the beneficiary will devote to such non-qualifying tasks, it cannot be found that she will "primarily" be employed as a manager or an executive. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization. As alleged in the organizational chart, job descriptions, and payroll report, the beneficiary will directly supervise a "warehouse manager" and a "sales manager." Despite his managerial title, the warehouse manager is described as primarily performing non-supervisory tasks necessary to the provision of a service or the production of a product. While the "sales manager" is described as spending half of his time monitoring the performance of "the company's sales personnel and independent sales representatives," the petitioner has nevertheless failed to persuasively establish that the sales manager is truly a bona fide supervisory or managerial employee. First, the petitioner has not established that either [REDACTED], the person allegedly

employed as the "sales manager," or any of the "sales representatives" are even employed by the petitioner. [REDACTED] does not appear in the 2005 payroll roster, and the record is devoid of any evidence establishing when, or whether, [REDACTED] and the sales representatives were first hired by the petitioner. Furthermore, the organizational chart fails to identify any sales representatives subordinate to the sales manager, and their existence was only first alleged in the petitioner's response to the director's Request for Evidence. The petitioner offers no explanation for their exclusion from the organizational chart or for when or how the petitioner's employment roster quintupled from three employees at the end of 2005 to the fifteen claimed in the Form I-129. Also, the petitioner failed to provide job descriptions for the sales staff, even though such evidence was specifically requested by the director. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190. 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). 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).

Second, assuming that he is an employee, the petitioner has failed to persuasively establish that the sales manager is a supervisory or managerial employee because it has not been established that he truly performs supervisory or managerial duties. The petitioner has not established that it has an organizational complexity which compels the employment of a subordinate tier of managers or supervisors. To the contrary, it appears that the sales manager will be performing sales duties alongside the sales representatives, and that he is not a bona fide supervisory or managerial employee. An employee will not be considered to be a supervisor simply because of a job title or because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. *See generally Browne v. Signal Mountain Nursery, L.P.*, 286 F.Supp.2d 904, 907 (E.D. Tenn. 2003) (cited in *Hayes v. Laroy Thomas, Inc.*, 2007 WL 128287 at *16 (E.D. Tex. Jan. 11, 2007)). Artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. The petitioner has not established that the reasonable needs of the United States operation compel the employment of a managerial or executive employee to oversee one or more subordinate supervisors. To the contrary, it is more likely than not that both the beneficiary and her staff will all primarily perform non-qualifying sales tasks. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006).

In view of the above, it appears that the beneficiary will be primarily a first-line supervisor of non-professional employees, the provider of actual services, or a combination of both. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. § 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604. Moreover, as the petitioner failed to establish the skills required to perform the duties of the subordinate positions, the petitioner has not established that the beneficiary will manage professional employees.¹ Also, the petitioner failed to enclose copies of the

¹In evaluating whether the beneficiary manages professional employees, the AAO 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

beneficiary's educational credentials even though this evidence was specifically requested by the director. Once again, 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). Therefore, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.²

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

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. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

²While the petitioner has not argued that the beneficiary will manage an essential function of the organization, the record nevertheless would not support this position even if taken. 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. 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. § 214.2(l)(3)(ii). 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. In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document what proportion of the beneficiary's duties will be managerial, if any, and what proportion will be non-managerial. Also, as explained above, the record establishes that the beneficiary will primarily be a first-line supervisor of non-professional employees and/or will be engaged in performing non-qualifying operational or administrative tasks. Absent a clear and credible breakdown of the time spent by the beneficiary performing her duties, the AAO cannot determine what proportion of her duties will be managerial, nor can it deduce whether the beneficiary will be 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).

stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The job description provided for the beneficiary is so vague that the AAO cannot deduce what the beneficiary will do on a day-to-day basis. Moreover, as explained above, it appears that the beneficiary will be primarily employed as a first-line supervisor and will performing tasks necessary to produce a product or to provide a service. Also, as the beneficiary is described as reporting to the president, it appears that any realistic authority to direct the enterprise is vested in this individual and not in the beneficiary. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

It is appropriate for Citizenship and Immigration Services (CIS) to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.* In this matter, the petition is rife with inconsistencies regarding its past and current staffing. For example, the petitioner claims to have fifteen employees in the Form I-129. However, the petitioner submitted an organizational chart listing nine employees or officers and 2005 payroll records identifying only three employees. Only one of the three employees listed in the 2005 payroll records appears on the organizational chart. Furthermore, when asked by the director to produce its 2005 Forms W-2, the petitioner submitted a single form that omits any information about the employee yet lists total wages of \$74,360.00. As this sum equals the total wages claimed on the 2005 payroll roster for *three employees*, it calls into question whether more than one employee was employed by the petitioner in 2005. The petitioner offers no explanation for these inconsistencies or for its exponential, and uncorroborated, growth from three (or, perhaps, one) employees to the fifteen claimed in the Form I-129. As indicated above, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Accordingly, in this matter, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.

Beyond the decision of the director, the petitioner failed to establish that it and the foreign employer are qualifying organizations.

The regulation at 8 C.F.R. § 214.2(l)(3)(i) states that a petition filed on Form I-129 shall be accompanied by "[e]vidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations." Title 8 C.F.R. § 214.2(i)(1)(ii)(G) defines a "qualifying organization" as a firm, corporation, or other legal entity which "meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section" and "is or will be doing business." "Subsidiary" is defined in pertinent part as a corporation "of which a parent owns, directly or indirectly, more than half of the entity and controls the entity." "Doing business" is defined in part as "the regular, systematic, and continuous provision of goods and/or services."

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; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 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 a threshold issue, the petitioner submitted only the first page of its 2005 Form 1120S, U.S. Income Tax Return for an S Corporation, in response to the director's Request for Evidence. As indicated above, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Given that the ownership and control of the petitioner is a fundamental element of the instant petition, and given that averments made in the petitioner's tax filings concern its ownership and control, the petitioner's failure to submit a complete copy of its Form 1120S precluded a material line of inquiry. Therefore, for this reason alone the petition will be denied.

Furthermore, in this matter, the petitioner asserts that it is 100% owned by the Chinese foreign employer, Shandong Machinery Import & Export Corporation, and is thus a subsidiary. In support of this assertion, the petitioner submitted organizational documents and a stock certificate dated December 1, 1994 purporting to represent the issuance of 10,000 shares of stock to the foreign employer. However, in response to the director's Request for Evidence, the petitioner submitted the first page of its 2005 Form 1120S, U.S. Income Tax Return for an S Corporation. To qualify as a subchapter S corporation, a corporation's shareholders must be individuals, estates, certain trusts, or certain tax-exempt organizations, and the corporation may not have any foreign corporate shareholders. *See* section 1361 of the Internal Revenue Code, 26 U.S.C. § 1361. A corporation is not eligible to elect S corporation status if a *foreign corporation* owns it in any part. Accordingly, since the petitioner would not be eligible to elect S-corporation status with a foreign parent corporation, it appears that the United States petitioner is owned by one or more individuals residing within the United States rather than by a foreign entity. This conflicting information has not been resolved. Once again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Finally, the petition is devoid of evidence of any current business activity by either the foreign employer or the petitioner. While the record contains evidence of business activity in 2005, the petition contains only four bills of lading and some invoices to the petitioner for telecommunications services from 2006. This evidence is not persuasive in establishing that the foreign employer or the petitioner was engaged in the regular, systematic, and continuous provision of goods and/or services at the time the petition was filed on or about May 31, 2006.

Accordingly, the petitioner has failed to establish that it and the foreign employer are qualifying organizations, and the petition may not be approved for this additional reason.³

Beyond the decision of the director, the petitioner failed to establish that the beneficiary had been employed abroad for at least one continuous year in a position that was managerial, executive, or involved specialized knowledge. 8 C.F.R. §§ 214.2(1)(3)(iii) and (iv).

The foreign employer described the beneficiary's duties abroad in a letter dated May 17, 2006 as follows:

[The beneficiary] has been employed by the parent company since June, 1991, initially in the sales department and then as its manager. In 1996, she was named Marketing Manager of the Department of Machines and Equipment where she supervised 12 employees. This department exported power tools, machine tools, [w]ood and metal tools and under the management of [the beneficiary] by 2005 generated \$14.5 million.

Upon review, the petitioner has failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity.

As a threshold issue, the petitioner failed to respond to the director's Request for Evidence as it pertained to the beneficiary's foreign employment. The director requested evidence regarding the beneficiary's subordinates as well as an organizational chart for the foreign employer. The petitioner ignored this request. 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). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). For this reason alone, the petitioner has failed to establish that the beneficiary was employed abroad in a primarily managerial or executive position, and the petition may not be approved for this additional reason.

Regardless, the petitioner has not described the beneficiary as performing "primarily" qualifying duties abroad. In support of the petition, the petitioner submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary did on a day-to-day basis. 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.

³The AAO notes that, according to the corporate records of the State of Illinois, the petitioner appears to have been involuntarily dissolved on April 1, 1997. The State of Illinois assigned file number [REDACTED] to the petitioner when it was incorporated on November 15, 1994. This file number appears at the top of the petitioner's articles of incorporation dated November 15, 1994, which were submitted in response to the director's Request for Evidence. While the records of the State of Illinois also indicate that a corporation using the same name as the petitioner was incorporated on January 25, 2005 (file number [REDACTED]), it is unclear whether this 2005 corporation is connected with the petitioner in light of the its submission of the 1994 articles of incorporation for the dissolved entity. Regardless, this additional inconsistency would call into question the petitioner's eligibility for the benefit sought if the appeal were not being dismissed for those reasons explained herein.

