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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

87

DATE: **AUG 07 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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)

ON BEHALF OF PETITIONER:

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California 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 petition seeking to classify the beneficiary 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, a Georgia corporation, states that it operates a beauty supplies business. It claims to be the parent company of Powdercraft (Pty) Ltd., located in South Africa. The petitioner seeks to transfer the beneficiary from the South African company to serve as its Vice President and General Manager for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that it would employ the beneficiary in a qualifying managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner contends that the director erroneously denied the petition based on a finding that the beneficiary cannot simultaneously serve as both a manager and executive of the U.S. company. Further counsel contends that the director "intentionally misstates multiple facts" and failed to take into account the petitioner's multimillion dollar sales and resources. Counsel submits a brief and additional evidence in support of the appeal.

## I. THE LAW

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 sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed by the U.S. entity in a qualifying 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.

## II. FACTS AND PROCEDURAL HISTORY

The petitioner filed the nonimmigrant petition (Form I-129) on May 7, 2010. The petitioner stated on the Form I-129 that the U.S. company has 25 employees (including contractors) and gross annual income of \$3.9 million.

In a letter dated April 30, 2010, the petitioner stated that the company's operations "are involved in various specialized aspects of human hair products, enhancements, and maintenance." The petitioner noted that its product spokespersons include [REDACTED]. According to the notes to the petitioner's financial statements for 2009, the company "licenses celebrity brands for the purpose of manufacturing and distributing beauty products worldwide." The petitioner states that the company does business as "Dreamcatchers International."

The petitioner explained that the petitioner has budgeted \$2 million for "immediate expansion of our present office and warehouse facilities in Irvine, California," and further noted that "our employment plans for 2008 indicate approximately 30 personnel to be added at additional facilities around the United States."

The petitioner described the beneficiary's proposed role as follows:

As Vice President and General Manager of U.S. Operations, [the beneficiary] will be responsible for directing and coordinating all activities of the Petitioner's operations in California, including Financial, Sales, Marketing, Purchasing and Distribution. As a Senior Executive of the Company, his duties will be both managerial and executive in nature and will include the authority to negotiate and contract for U.S. Operations; Develop Strategic Planning tools for company growth and promotional activities; Hiring and firing subordinate employees and management staff and exercising a wide latitude of discretionary decision making in consultation with our international directors and our South African affiliate/parent company.

The petitioner attached a separate statement of job duties for the position of "President and CEO" of the U.S. company. The position description for the role of president, which, according to the record is held by [REDACTED] is as follows:

- Manage and Direct U.S. Operations including multi-city expansion.
- Winter Haven (headquarters), Atlanta, Los Angeles, Dallas
- Chief Executive Officer for domestic and planning and decision making.
- Assessing Business Plan Requirements.
- Supervise Planning and Management of multiple project sites at various locations to ensure achievement of objectives – specified time cost, resources, and quality constraints.
- Responsible for supervision of quality control managers and services to buyers
- Direct staff and other resources to accomplish project tasks and maintain ultimate control over projects.
- Responsible for the Management, Identification and Time Resolution of project issues.

- Provide timely and accurate status reports and formal project completion reports
- Provide tactical and strategic support to ensure timely completion of all projects
- Hire terminate and oversee activities of approximately 300 subordinate managers and employees.
- Report directly to the Board of Directors.

The petitioner submitted copies of the U.S. company's Forms 941, Employer's Quarterly Federal Tax Return, for all four quarters of 2009. The petitioner reported a total of seven employees as of December 2009. The petitioner did not provide evidence to corroborate its claim that it has a staff of 25 employees and contractors as of the date of filing, nor did the evidence confirm the claimed staff of "300 subordinate managers and employees" referenced in the position description for the role of "president and CEO."

Accordingly, on July 19, 2010, the director issued a request for additional evidence (RFE) instructing the petitioner to clarify the nature of the beneficiary's proposed U.S. employment. Specifically, the director requested: (1) a more detailed description of the beneficiary's proposed duties in the United States, including the percentage of time spent in each of the listed duties; (2) the total number of employees at the U.S. location where the beneficiary will work; (3) a detailed organizational chart for the U.S. company; (4) a brief description of job duties, educational level, annual salaries/wages, source of remuneration and immigration status for all individuals who will work under the beneficiary's supervision; (5) copies of the U.S. company's California Forms DE-6, Quarterly Wage Reports, for the first two quarters of 2010; and (6) copies of the company's IRS Forms W-2 and W-3 for 2009.

In response to the director's request for a more detailed description of the beneficiary's proposed duties, the petitioner re-submitted the position description for "President and CEO" provided at the time of filing, and changed the job title to "Vice President and General Manager." The petitioner also added a percentage to each of the duties, as follows:

- Manage and direct U.S. operations, including multi-city expansion, Winter Haven, Atlanta, Los Angeles, Dallas – 20%
- Chief Executive Officer for domestic and planning and decision making – 15%
- Assessing Business Plan Requirements – 3%
- Supervise planning and management of multiple project sites at various locations to ensure achievements of objectives – specified time, cost, resources, and quality constraints – 10%
- Responsible for supervision of quality control managers and services to buyers – 12%
- Direct staff and other resources to accomplish project tasks and maintain ultimate control over projects – 12%
- Responsible for the management, identification, and time resolution of project issues – 10%
- Provide timely and accurate status reports and formal project completion reports – 11%
- Provide tactical and strategic support to ensure timely completion of projects – 2%
- Hire, terminate and oversee activities of approximately 60 subordinate managers and employees – 3%
- Report directly to the Board of Directors.

The petitioner submitted a copy of California Form DE-6, Quarterly Wage and Withholding Report, for the second quarter of 2010. The Form DE-6 lists a total of nine employees, and indicates that the company reported no employees for the month of April 2010, five employees in May and six employees in June. The petitioner also submitted copies of 40 IRS Forms W-2 issued to employees in 2009. A total of 24 employees earned wages of less than \$1,000, while an additional six individuals earned less than \$5,000. Out of the 40 employees paid in 2009, only four were on the company's payroll in the second quarter of 2010.

The petitioner submitted an organizational chart which depicts a total of more than 30 positions within the U.S. company, although some individuals are indicated as holding dual roles. The chart depicts the beneficiary as vice president and general manager, reporting to the company president. Directly under the beneficiary's position, the chart depicts a technical director (██████████), a Finance and Operations employee (██████████) who is also identified as a salesperson), a legal department employee (██████████), and a Marketing department headed by the company president. Other employees identified by name include an accounting employee, who also serves as an inventory employee (██████████) an operations employee (██████████), a marketing employee (██████████) who also works on ad campaigns, and an international salesperson (██████████). All of these employees were included on the Form DE-6 for the second quarter of 2010; however, the Form DE-6 does not confirm that they were all employed as of the date of filing the petition in May 2010. As noted above, the petitioner reported on the Form DE-6 that it had five employees during that month.

In addition, the chart indicates that the company has two educators, three stylists, one additional inventory employee, three additional sales employees, two patent/trademark employees, two contracts employees, one product development employee, two additional international sales staff and two ad campaign staff. The petitioner did not identify the names of the individuals who fill these positions, nor did it provide evidence of wages or payments to contract employees.

Finally, the petitioner submitted a letter from its president, who stated:

The Beneficiary will be engaged in managing all operations of the company and as such will perform duties both executive and managerial in our complex and rapidly expanding U.S. office.

As both General Manager and Vice President, he supervises a number of subordinate management positions, as well as professionals, finance, staff and clerical positions and will be responsible for our expansion to new facilities around the US.

██████████ emphasized that the company has "assets over US\$2.7 million and sales over \$5 million," and that this is "proof that the US office is sufficiently large and complex to support beneficiary's position."

The director denied the petition on September 13, 2010, concluding that the petitioner failed to establish that it would employ the beneficiary in a primarily managerial or executive capacity. In denying the petition, the director observed that the petitioner's description of the beneficiary's duties in the United States was too general and vague, and noted that the petitioner failed to respond to the director's request for a more detailed

description of the beneficiary's duties or the percentage of time he allocates to specific duties. Further, the director noted that the petitioner did not demonstrate that the company has the organizational structure in place to support the claimed duties. Specifically, the director noted that the evidence does not show that the company is engaged in a "multi-city expansion," or that it has "300 subordinate managers and employees."

The director acknowledged the petitioner's submission of an organizational chart for the U.S. company, but emphasized that the petitioner failed to provide job descriptions, educational qualifications, and other information requested with respect to the beneficiary's subordinates. The director thus found the evidence insufficient to establish that the beneficiary would be primarily supervising subordinate managers, supervisors or professionals, or that the beneficiary would be relieved from performing the non-managerial duties of the business.

On appeal, counsel asserts that the petitioner submitted more than sufficient documentation of the beneficiary's employment in both an executive and managerial capacity. Counsel states that the petitioner did in fact respond to the director's request for a more detailed description of the beneficiary's duties, the amount of time the beneficiary will spend on each duty, and a "flow chart, indicating each of the individuals in the company who would be supervised, their job duties, job titles and job description." Further, counsel contends that the practice of providing a breakdown of the beneficiary's job duties is "useless" and is "rarely how jobs are performed in the real world."

In addition, counsel contends that the petitioner's initial description of the beneficiary's proposed duties was sufficiently detailed to warrant approval of the petition. Counsel asserts that the director "intentionally misstates multiple facts, including the number of employees, which clearly are shown to be in excess of 20 (see W-2s), counting subcontractors, distributors and licensees." Counsel emphasizes that the petitioner has a sales volume in excess of \$5 million and asserts that the company can clearly support a vice president and general manager position.

### III. ANALYSIS

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that it will employ the beneficiary in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(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.* A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. At a minimum, the petitioner must demonstrate that the beneficiary's responsibilities will meet the requirements of one or the other capacity.

The petitioner initially described the beneficiary's proposed position in very broad terms, noting that he will be "directing and coordinating all activities," "hiring and firing subordinate employees and management staff" and "exercising a wide latitude of discretionary decision-making." These duties merely paraphrase the statutory definitions of managerial and executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act.

Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

The petitioner indicated that the beneficiary will be responsible for coordinating operations in the areas of "Financial, Sales, Marketing, Purchasing and Distribution." However, it failed to clearly define any specific tasks he would perform in relation to these areas of responsibility, nor did it clearly indicate who would carry out the day-to-day activities of these functions within the organization. For example, the petitioner has not specifically claimed to have a purchasing or distribution department, or any employees or contractors who would be responsible for performing operational tasks related to the company's purchasing and distribution activities. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner 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. at 1108. *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

While the petitioner submitted a separate position description at the time of filing, the AAO cannot disregard the fact that the petitioner indicated that the list of twelve duties submitted is for the position of "President and CEO," a position held by [REDACTED].<sup>1</sup> The petitioner has consistently indicated that the beneficiary's proposed position is that of "Vice President and General Manager." 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).

In response to the director's request for a more detailed description of the beneficiary's duties, the petitioner submitted the same duties previously attributed to the position of "President and CEO" and simply relabeled the position description "Vice President and General Manager," without providing any explanation for the discrepancy. Furthermore, the petitioner did not add the requested level of detail and specificity to the position description. Therefore, the petitioner's response to the RFE offered no further insight into the beneficiary's actual duties. 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).

First, the petitioner did not explain why it would require the positions of president and vice president to perform the exact same job duties. Without such explanation, the AAO cannot discount the possibility that the petitioner simply submitted the same job description for the beneficiary that it submitted for a prior nonimmigrant petition filed on behalf of its company president. Given that the position description contains duties such as "Chief Executive Officer for domestic planning and decision making" and "Report directly to the board of directors," it is more indicative of a President and CEO position than of a general manager position. According to the petitioner's organization chart, the beneficiary's position reports to the company president. Further, notwithstanding the inconsistencies in the job title assigned to the list of job duties, and as noted by the director, the duties themselves are not corroborated by the record and the petitioner's descriptions of the nature and scope of the organization. For example, the petitioner initially stated that the position is responsible to oversee the activities of "approximately 300 subordinate managers and employees." The petitioner has never claimed to have more than 25 employees and contractors and has not documented its

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<sup>1</sup> USCIS records show that the petitioner has filed two nonimmigrant and one immigrant petition on [REDACTED] behalf and that he held L-1A status at the time the instant petition was filed.

employment of more than seven employees at any time during 2009 or 2010. Half of the proposed duties are related to oversight of "projects" and "project sites," duties which, without further explanation, appear to be inconsistent with the licensing, marketing and distribution business in which the company is engaged. Further the position description specifies that the position will supervise "quality control managers," a position that does not exist on the petitioner's organizational chart. Therefore, even if the AAO were satisfied that the duties are actually those of the vice president and general manager as opposed to the president, the duties, as described, would still fail to adequately explain what the beneficiary would be doing on a day-to-day basis.

The AAO cannot accept an ambiguous position description and speculate as to the related managerial or executive duties to be performed. 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. at 1108.

Overall, while several of the duties described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity and the discrepancy in the position titles assigned to the same set of duties raise questions as to the beneficiary's actual proposed responsibilities. Furthermore, beyond the required description of the job duties, U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 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).

As a preliminary matter, the AAO emphasizes that the record does not corroborate the petitioner's claims regarding the size of the petitioner's staff as of the date of filing. While the petitioner indicated on the Form I-129 that it had 25 employees and contractors in May 2010, the petitioner's relevant Form DE-6 for the second quarter of 2010 indicates that the company had only five employees on its payroll in May 2010. The petitioner was given the opportunity to identify and corroborate the existence of its contract employees in response to the RFE and failed to do so. 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)).

Although requested by the director, the petitioner did not provide information regarding the full job titles, job duties or educational level of any employees identified as the beneficiary's subordinates on the company organizational chart. Any 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). Thus, the petitioner has not established that these employees possess or require a bachelor's degree, such that they could be classified as professionals.<sup>2</sup>

Nor has the petitioner shown that the beneficiary's proposed subordinates supervise subordinate staff members or manage a clearly defined department or function of the petitioner, such that they could be classified as managers or supervisors. Again, while some employees are depicted as supervisors on the organizational chart, many of these same employees also hold dual roles. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even 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, 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)). The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; 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 managerial position. Absent a description of the subordinates' job duties, the AAO cannot conclude that his subordinate staff includes managers or supervisors. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

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 position description 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. Here, the petitioner has not clearly articulated a claim that the beneficiary will manage an essential function of the petitioning company. As discussed above, the petitioner has not

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<sup>2</sup> In 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 be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee, and as such, requires a description of the subordinates' job duties. 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.

provided a detailed description of the beneficiary's duties sufficient to establish that he will perform primarily managerial duties.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of 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 supervisory employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* While the petitioner's general description suggests that the beneficiary would have the appropriate level of authority, the petitioner has not demonstrated that he would spend the majority of his time focused on the broad goals of the organization or that he would be relieved from performing day-to-day aspects of operating the business.

Absent the requested clear and consistent description of the beneficiary's actual job duties and evidence substantiating the number and types of employees working for the U.S. company, the AAO is unable to conclude that the beneficiary would be employed in a primarily managerial or executive capacity. Therefore, the petitioner's claims fail on an evidentiary basis. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). 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).

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.