



U.S. Citizenship
and Immigration
Services

D7



DATE: **OCT 22 2012** Office: VERMONT SERVICE CENTER

FILE:

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)

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, Vermont Service Center, denied the nonimmigrant visa petition. 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 New York corporation, states that it is engaged in import and wholesale of surgical products and supplies. It claims to be a subsidiary of [REDACTED] located in Punjab, Pakistan. The beneficiary was previously granted L-1A status for a period of one year, from November 2009 to November 2010, and the petitioner now seeks to extend his status for a period of two years so that he may continue to serve in the position of project manager (business development).

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in a 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's decision "is improper because the petitioner [*sic*] has been employee [*sic*] in managerial capacity since the new office was open." Counsel for the petitioner submits a short brief and additional evidence on 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 regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

II. ISSUE ON APPEAL

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in the United States 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 filed the Form I-129, Petition for a Nonimmigrant Worker, on November 9, 2010. The petitioner stated on the Form I-129 that the beneficiary will be employed by the U.S. entity as project manager (business development). The petitioner indicated that it is engaged in the import and wholesale of surgical products and supplies with one current employee and indicated that its gross annual income is \$95,560.00.

On the Form I-129, the petitioner described the beneficiary's proposed duties in the United States as follows:

The position of [the petitioner] will require that [the beneficiary] perform the following responsibilities including, but not limited to: devising and implementing business and strategy planning for profit center; directing sales initiatives at corporate level; developing and maintaining manufacture relationship; and creating regulatory and business infrastructure; communicating corporate strategic planes [*sic*] and financial data to other upper level executive; prioritizing and tracking work progress and ensuring back office support from [the foreign entity] company by establishing proper quality control reviews and feedback; developing and motivating appraisal of key personnel; and developing and maintaining distributors [*sic*] and retail relationship as well as training and managing the sales team[.]

The petitioner submitted Form 941, Employer's Quarterly Federal Tax Return, for the first and second quarters of 2010 listing one employee, the beneficiary, for each quarter.

On November 18, 2010, the director issued a request for additional evidence ("RFE") in which he instructed the petitioner to provide the following to establish that the beneficiary will be performing the duties of a manager or executive with the U.S. company: (1) documentation evidencing the duties performed by the beneficiary in the past year and the duties he will perform if the petition is extended; (2) a breakdown of the number of hours devoted to each of the beneficiary's proposed job duties on a weekly basis; (3) evidence to show that the new company has grown to be of sufficient size to support a managerial or executive position; (4) information regarding the beneficiary's subordinate employees and the duties performed by each; and (5)

an explanation as to how much of the beneficiary's time will be allotted to executive/managerial duties and how much to other non-executive/managerial functions.

In response to the RFE, counsel for the petitioner submitted the following statements:

[The beneficiary] has been responsible for day to day discretionary control over the business. He reported directly to upper management in the organization with specific regard to managerial information that is critical for success of the organization. In the past year, the Beneficiary has put his best effort to increase the business in the United States of America he increased the culture of marketing on new patrons which is need of New world business and that is guarantee of success [*sic*]. The beneficiary has increased market share in the United States and introduce new products lines [*sic*] in the United States.

That, the beneficiary has worked forty hours a week and these forty hours itself an assert [*sic*] for the company indeed [*sic*].

* * *

Since this company has just started [*sic*] business in this Country in last year now only this company has one employee (Beneficiary) [*sic*] and hopefully as the business goes up the new employee will be hired to operate for the other fields of the business but currently this company has only one Employee.

On January 5, 2011, the director issued the petitioner a second RFE instructing the petitioner to submit evidence that the U.S. and foreign entities are still qualifying organizations.

While the second RFE did not specifically request evidence related to the beneficiary's employment capacity, the petitioner's response included the foreign entity's business plan for the U.S. entity. The business plan is undated, but, based on the information included, it appears to have been prepared in support of the new office petition filed on behalf of the beneficiary in November 2009. The business plan describes the U.S. company's staffing plans as follows:

[The petitioner's] management will consists [*sic*] of three full-time employees at first and enhanced afterwards. Additional assistance is acquired on a part-time basis and/or through the use of consultants, specifically in legal matters. . . .

[The petitioner] will be organized into three functional areas: marketing and sales; import and shipping; finance and administration.

[The beneficiary] will be principle officers/manager of [the petitioner]. He has diverse business experience of 12 years with [the foreign entity].

The personnel plan for establishment in USA will require an increase in outlet employees as per growth of business and increase in number of outlets.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary will be employed in a managerial or executive capacity. In denying the petition, the director found that the beneficiary remains the only employee at the U.S. company and thus must be performing non-qualifying duties producing a product or providing a service of the petitioner. The director further found that the U.S. company did not demonstrate sufficient growth to allow the beneficiary to be primarily performing the duties of a manager or executive.

On appeal, counsel for the petitioner submits a brief addressing the beneficiary's role as a manager as follows:

The basis for the denial is improper because petitioner [*sic*] has been employee [*sic*] in managerial capacity since the new office was open. Beneficiary is the one who has been working very hard for the company to do marketing, timely delivery of goods, quality assurance, increase the business, and also "establishing goals and policies".

The company was established in January of 2011 [*sic*]. And with in the period of ten month [*sic*] the company has been growing its business in present economic condition. It is true that in the beginning beneficiary was the only employee for the company who was performing managerial and non managerial duties. Now the company has hired a one new employee from February 2011. Who is performing all the non managerial duties. The goal of the company is to hire a 3rd employee with in the next 6 months. Please also see attached . . . document that shows the company growth and copy of bank statements.

The petitioner submits copies of the beneficiary's IRS Form W-2, Wages and Tax Statement, illustrating that the petitioner paid the beneficiary \$49,999.92 in 2010. The petitioner's Form 1120, U.S. Corporation Income Tax Return, for 2009 shows that it paid \$41,666 in salaries and wages.

Upon review, and for the reasons stated herein, the petitioner has not established that the beneficiary will be employed in a primarily managerial capacity.

As discussed above, the petitioner has requested the extension of a petition that involved a new office. The one-year "new office" provision is an accommodation for newly established enterprises, provided for by USCIS regulation that allows for a more lenient treatment of managers or executives that are entering the United States to open a new office. When a new business is first established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of low-level activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed in that first year. In an accommodation that is more lenient than the strict language of the statute, the "new office" regulations allow a newly established petitioner one year to develop to a point that it can support the employment of an alien in a primarily managerial or executive position.

After one year, USCIS will extend the validity of the new office petition only if the entity demonstrates that it has been doing business in a regular, systematic, and continuous manner "for the previous year." 8 C.F.R. § 214.2(l)(14)(ii)(B). There is no provision in USCIS regulations that allows a petitioning corporation additional petitions under the "new office" regulatory accommodation for managers and executives. If the

business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension of the prior approved L-1 petition.

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 in either an executive or a managerial capacity. *Id.* 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 definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day operational functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The fact that the beneficiary owns or manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive").

On review, the petitioner's description of the beneficiary's duties fails to establish that the beneficiary will be engaged in a primarily managerial position. While the AAO does not doubt that the beneficiary will exercise discretionary authority over the U.S. company as its sole employee, the petitioner has not provided sufficient information detailing the beneficiary's duties at the U.S. company to demonstrate that these duties qualify him as a manager. Here, the petitioner characterized the beneficiary's role as project manager (business development) and identified his duties as described above. When asked to submit documentation to evidence that beneficiary's duties in the past year and those he will perform if the petition is approved, counsel for the petitioner submitted a single paragraph describing the beneficiary's duties as, "has been responsible for day to day discretionary control over the business"; "reported directly to upper management in the organization"; "increased the culture of marketing on new patrons"; and "has increased market share in the United States and introduce[d] new product lines in the United States." While these tasks may be necessary in order to establish the U.S. operations, the petitioner has not indicated how such duties qualify as either managerial or executive in nature. 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. Although afforded a second opportunity to provide the deficient information, 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

On appeal, counsel contends that the beneficiary is a manager and satisfies all requirements of the statutory definition. In the instant matter, counsel for the petitioner simply made a statement in response to the first RFE, indicating that the beneficiary works 40 hours per week. Although requested by the director, the

petitioner failed to provide substantive details about each of the beneficiary's duties and allocate either a percentage of time or actual time dedicated to each of the duties performed by the beneficiary. 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). 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).

On appeal, counsel for the petitioner describes the beneficiary's duties in very broad terms, simply noting that he "is the one who has been working very hard for the company to do marketing, timely delivery of goods, quality assurance, increase the business, and also 'establishing goals and policies.'" Neither counsel nor the petitioner provided sufficient detail for each of the duties indicated above, nor a breakdown of the amount of time the beneficiary devotes to each of those duties. This failure of documentation is important because all of the beneficiary's listed duties do not fall directly under traditional managerial duties as defined in the statute. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties are managerial in nature, and what proportion are actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). In the instant matter, it appears that all of the beneficiary's listed duties are non-managerial.

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).

The petitioner has not established that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or that it has other employees to relieve the beneficiary from performing non-qualifying operational duties. At the time of filing the petition, the beneficiary was the sole employee of the U.S. company. The petitioner concedes that the beneficiary has been performing all non-qualifying duties for the petitioner, including providing a service or producing a product. On appeal, counsel for the petitioner indicates that the petitioner hired a second employee in February 2011 and plans to hire a third employee within six months. However, the petitioner did not submit any evidence of wages paid or an employment contract or other information pertaining to the position filled by the second employee. Regardless, the new employee was hired subsequent to the denial of the visa petition and the beneficiary did not have any staff to relieve him from performing non-qualifying duties at the time of filing the petition. Therefore, the AAO cannot consider the existence of the new employee in order to qualify the beneficiary as a manager. A visa petition may not be approved based on speculation of future eligibility or after the petitioner

or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

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 describes the duties to be performed in managing the essential function, i.e. identifies the function with specificity, articulates the essential nature of the function, and establishes 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 did not indicate that the beneficiary performs as a function manager. The petitioner did not articulate the beneficiary's duties as a function manager and did not provide a breakdown indicating the amount of time the beneficiary devotes to duties that would clearly demonstrate he manages an essential function of the U.S. company.

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

While the definition of "executive capacity" does not require the petitioner to establish that the beneficiary supervises a subordinate staff comprised of managers, supervisors and professionals, it is the petitioner's burden to establish that someone other than the beneficiary carries out the day-to-day, non-executive functions of the organization. Here, the beneficiary has not been shown to be employed in a primarily executive capacity. The petitioner failed to demonstrate that the beneficiary's duties will primarily focus on the broad goals and policies of the organization rather than on its day-to-day operations.

The AAO notes 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). In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). 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. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Here, the petitioner indicates that the beneficiary is its sole employee. Due to the extremely short and vague description of job duties provided for the beneficiary, and the petitioner's admission that it has required him to perform all non-managerial functions of the company along with any qualifying duties prior to February 2011, it remains unclear how the beneficiary was employed in a primarily managerial or executive capacity as of the date of filing. This conclusion is supported by a review of the company's initial business plan. At the time the company was established, the petitioner anticipated a need for at least three full-time employees, as well as part-time employees and consultants, in order to carry out the business plan. The petitioner also indicated that the company would be organized into three functional areas, including marketing and sales; import and shipping; and finance and administration. The record indicates that the petitioner did not implement its original personnel plan. Thus, to the extent that the company is doing business, it is reasonable to believe that the beneficiary, as its sole employee, is responsible for marketing, sales, import, shipping, finance and administration duties, in addition to any managerial duties he may perform, and that these operational and administrative duties require the majority of his time.

Even though the enterprise is in a preliminary stage of organizational development, the petitioner is not relieved from meeting the statutory requirement that the beneficiary perform primarily managerial or executive duties, pursuant to section 101(a)(44) of the Act. Based on the limited documentation furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. The AAO will uphold the director's determination that the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

III. QUALIFYING RELATIONSHIP

Beyond the decision of the director, a remaining issue to be discussed in the present matter is whether the petitioner maintains a qualifying relationship with the beneficiary's foreign employer. *See* 8 C.F.R. § 214.2(l)(14)(ii)(A). 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. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l). When considering the totality of the evidence presented, the petitioner has not sufficiently documented its claim that the U.S. company is a subsidiary of the foreign entity.

The record as presently constituted does not contain any evidence of a relationship between the U.S. company and a foreign entity. The Form I-129 indicates that the petitioner is a subsidiary of the foreign entity; however, where asked to list "company stock ownership and managerial control of each company," the petitioner failed to provide a response. The petitioner failed to submit any evidence of the U.S. company's existence or ownership, other than its 2009 IRS Form 1120. The petitioner's 2009 IRS Form 1120 indicates that the beneficiary owns 100% of the voting stock of the U.S. company. The petitioner also failed to submit any evidence of the continuing existence or ownership of the foreign entity. The petitioner failed to submit

any evidence of shares issued to the foreign entity (to establish the U.S. company as a subsidiary of the foreign entity). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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).

Additionally, the RFE issued on January 5, 2011 specifically requesting evidence that the U.S. and foreign entity are still qualifying organizations. In response, counsel for the petitioner failed to explain the qualifying relationship and solely submitted a copy of an undated business plan. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). In this case, the record contains insufficient evidence to establish the ownership of the U.S. company and thus does not establish that the company is in any way affiliated to the foreign entity. Due to the deficiencies detailed above, the petitioner has not met its burden to establish that the petitioner has a qualifying relationship with the foreign entity. For this additional reason, the petition cannot be approved.

IV. CONCLUSION

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.