



U.S. Citizenship
and Immigration
Services



b7

DATE **OCT 24 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 Georgia corporation established in July 2010, states it will be engaged in the telecommunications industry and various retail businesses. It claims to be a subsidiary of SRI SD Enterprises located in New Delhi, India. The petitioner seeks to employ the beneficiary as the Chief Operating Officer of a "new office" in the United States for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish: 1) that beneficiary was employed in a managerial or executive capacity with the foreign employer in one of the last three years, and 2) that the beneficiary would be employed in a managerial or executive capacity with the U.S. employer within one year, in accordance with the "new office" regulatory requirements at 8 C.F.R. § 214.2(1)(3)(v). The director concluded that the record did not support a finding that the beneficiary has been or would be employed in a managerial or executive capacity with either the U.S. or foreign employer, noting various discrepancies and deficiencies in the record.

The petitioner subsequently filed a timely appeal. The director erroneously determined that the appeal was untimely and rejected it as *improperly filed on May 18, 2011*. The director's determination that the appeal was untimely filed is withdrawn.¹

On appeal, counsel asserts that the director erred in finding: 1) that the beneficiary had not been acting in a managerial or executive capacity with the foreign employer, and 2) that the petitioner would not be acting in a managerial or executive capacity with the U.S. employer. Counsel submits new evidence on appeal including an updated business plan and job duty descriptions for the beneficiary, amongst other new supporting documents. Counsel claims, in part, that the previous discrepancies and deficiencies in the record were due to ineffective assistance of the petitioner's former counsel.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19

¹ The AAO notes that, even if the appeal had been untimely filed, which it was not, the service center director does not have the authority to reject an appeal. If the director determines that favorable action on an appeal is not warranted, the proper course of action is to promptly forward the appeal and the related record of proceeding to the AAO. See 8 C.F.R. § 103.3(a)(2)(iv).

I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The petitioner has not submitted any of the above evidence in support of its claims of ineffective assistance of counsel. As such, counsel and petitioner's claims of ineffective assistance of counsel will not be considered by the AAO on appeal, and a decision will be made on the record as submitted.

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)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;

- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

II. The Issues on Appeal:

A. *Employment in the United States in a managerial or executive capacity*

As stated, the director denied the petition, in part, based on a finding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity within one year.

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.

Further, the "new office" provision was meant as an accommodation for newly established enterprises and provided for by U.S. Citizenship and Immigration Services (USCIS) regulation to allow 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.

However, if a petitioner indicates that a beneficiary is coming to the United States to open a "new office," it must show that it is prepared to commence doing business immediately upon approval so that it will support a manager or executive within the one-year timeframe. This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). The petitioner must describe the nature of its business, its proposed organizational structure and financial goals, and submit evidence to show that it has the financial ability to remunerate the beneficiary and commence doing business in the United States. *Id.*

The AAO does not find counsel's arguments on appeal persuasive. Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the petitioner will support the beneficiary in a managerial or executive capacity within one year as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

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.* Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's proposed organizational structure, the duties of the beneficiary's proposed subordinate employees, the petitioner's timeline for hiring additional staff, the presence of other employees to relieve the beneficiary from performing operational duties at the end of the first year of operations, 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 petitioner's evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties. *See generally*, 8 C.F.R. § 214.2(1)(3)(v).

In the instant matter, the petitioner has described the beneficiary's job duties in broad terms offering typical duties of a Chief Operating Officer and giving the beneficiary wide authority to establish the new business in the United States. For instance, in the petitioner's business plan submitted on appeal, the petitioner describes the beneficiary as having "total managerial and executive authority over the company; all of its activities and employees including accounting and financial management decisions." Further the duty description submitted on appeal clarifies that once the company grows and expands into two projected divisions, two (2) operations manager will be hired, who will report to the beneficiary. No other immediate plans are detailed to hire personnel to relieve the beneficiary of non-managerial duties.

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. Indeed, the petitioner fails to submit any specific evidence to describe the beneficiary's daily duties upon entry into the United States beyond simply describing his general authority to establish a business in the United States. Further, the duties mention little regarding the actual establishment of a telecommunications or retail business beyond generalities. The actual duties themselves will reveal the true nature of the employment. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Notably, the petitioner has not identified any non-managerial duties amongst the beneficiary's proposed U.S. duties for the first year, a curious discrepancy considering, as discussed below, no immediate plans have been provided for other employees to perform non-managerial duties undoubtedly necessary to establish new telecommunications and retail businesses in the United States. 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).

Thus, while several of the duties described by the petitioner would generally fall under the definitions of managerial or executive capacity, the lack of specificity in the description raises questions as to the beneficiary's actual proposed responsibilities. Overall, the position descriptions alone are insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity, particularly in the case of a new office petition where much is dependent on factors such as the petitioner's business and hiring plans and evidence that the business will grow sufficiently to support the beneficiary in the intended managerial or executive capacity. The petitioner has the burden to establish that the U.S. employer would realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period.

The AAO's analysis of the viability of the new business is severely restricted by the petitioner's failure to submit a credible business plan. As contemplated by the regulations, a comprehensive business plan should contain, at a minimum, a description of the business, its products and/or services, and its objectives. *See Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm. 1998). Although the precedent relates to the regulatory requirements for the alien entrepreneur immigrant visa classification, *Matter of Ho* is instructive as to the contents of an acceptable business plan:

The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefore. Most importantly, the business plan must be credible.

Id.

In this matter, the petitioner has not provided a credible business plan to establish that the U.S. employer is prepared to commence doing business immediately upon approval and support a manager or executive within the one year timeframe. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) requires the petitioner to describe the proposed nature of the office including the scope of the entity, its proposed organizational structure, and its financial goals. The petitioner stated on the Form I-129 that it anticipates that the U.S. company will employ 20 to 30 people and intends to invest in and operate retail convenience stores. The petitioner's initial evidence included a seven-page business plan. The petitioner indicated that it intends to open two retail convenience stores during its first year of operations and at least five retail outlets by the end of 2013. The petitioner's

business plan identified the positions to be filled by the end of 2013, but did not clearly indicate which staff would be hired during the first year of operations. For example, the petitioner indicated that it would hire five store managers by the end of 2011, however, it also stated that it anticipated opening only two stores during the first year of operations. Moreover, the petitioner indicated that other store positions, such as assistant managers, clerks and cashiers, would be staffed by "the end of 2012." Therefore, the limited hiring plan was of little probative value in establishing whether the company would support a managerial or executive position within the requisite one-year timeframe. Further, the petitioner failed to document any proposed locations for its retail stores, but simply indicated that it would invest \$1,000,000 over two years in order to set up the retail outlets. The record shows that the petitioner had less than \$10,000 in the bank at the time the petition was filed.

In the revised business plan submitted on appeal, the petitioner has provided an impressive listing of potential businesses which it may undertake, such as telecommunications, truck stops/convenience stores, storage sheds/rental businesses, tax services/payday loans, and tobacco warehouses. The petitioner has also provided pictures of potential businesses in which it *may* invest in each industry. However, no concrete plans are provided with respect to these businesses. For instance, the petitioner provides statements regarding informal correspondence with various owners and companies in the United States, but no immediate plans to buy or rent any retail businesses are offered, nor any other evidence to suggest the petitioner will be partaking in the telecommunications business immediately upon entering the United States.

As an example, the petitioner provides copies of correspondence with an engineering and construction firm in the United States that details questions on the part of the potential customer regarding the viability of the U.S. and foreign employer, and the specific type of business it conducts. However, no evidence is provided to show that the petitioner adequately answered these questions or established any concrete relationship with the proposed firm. Additionally, with respect to two other listed telecommunications contacts, the petitioner readily admits having no contact with one and being rebuffed by the other. Further, other businesses listed for purchase by the petitioner are not shown to be purchased or even for sale, other than through vague statements offered by the petitioner. Indeed, as suggested by the petitioner, its hiring plans appear to be wholly reliant on the acquisition of one of these businesses, which have not been established in the record as being imminently purchased or rented by the petitioner. Again, 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)).

The petitioner now indicates that the U.S. company and its parent company will invest "roughly \$300,000 over the next three 3 years in various sectors," rather than the previously stated \$1,000,000. Nevertheless, the petitioner now indicates that it expects to be operating 10 retail outlets by the end of 2014. The new business plan states that two "operations manager" will be hired "who will execute all the managerial decisions of the Company, including the purchasing of goods and equipment management hiring, firing and promotion of employees; assess store managers performance and assist with management issues." In other words, the petitioner claims it will be hiring staff, such as the operations managers, store managers, and other staff, to relieve the petitioner of the non-managerial duties inherent in establishing and running a business in the

United States. However, as in the previous business plan, specifics as to when these employees will be hired, particularly the important Operation Managers, are not provided. It is impossible to conclude that the beneficiary will be acting in a primarily managerial and executive role within the first year of the "new office" when no distinct plans regarding the hiring of his only subordinates have been provided. 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)).

Additionally, material inconsistencies are present throughout the business plan, leaving its credibility in doubt. In the petitioner's original filing and in response to the Director's Request for Evidence (RFE), the petitioner makes little mention of entering into the telecommunications business in the United States, which it claims to conduct abroad. The petitioner's original business plans in the United States, submitted with the I-129 petition, were singularly focused on the retail convenience store business. For instance, in a letter dated November 9, 2010 provided in response to the Director's RFE the petitioner states, "Our strategy in the U.S. is to open up or purchase convenience stores in underserved areas where the presence of the big box retailers such as Wal-Mart is limited." However on appeal, the petitioner details plans to launch its business through the telecommunications field, and then move into the realm of retail stores.

To illustrate, the petitioner estimated in the business plan that it will enjoy receipts of one million dollars in telecommunications construction orders in the United States during the first year of operations, but offers little information regarding how this will be accomplished. The aforementioned discrepancy leaves the petitioner's offered plan in doubt, particularly since entry into the telecommunications field in the United States was not even suggested before appeal. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). In short, the above-stated inconsistencies leave the submitted business plans generally ambiguous and inconsistent. 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.*

Finally, the petitioner has not shown the size of its United States investment in the "new office" as required by 8 C.F.R. § 214.2(3)(v)(C)(2). The petitioner does vaguely reference in the record an intention by the parent company and the U.S. company to invest either \$1,000,000 or "roughly \$300,000" in the proposed retail operations over a period of time." The revised business plan states that "the initial investments in business and infrastructure of [the petitioner] would be in between \$150,000 to \$200,000," and indicates that "[t]his investment would support the preliminary operations to achieve the revenue expectation of \$1 Million in the first year of operations. In fact, the original business plan referenced in a letter dated November 9, 2010 offers that the petitioner's parent company has invested only \$9,500 in the new venture. Also, the specific nature or viability of the investments are not supported anywhere in the record. As mentioned, no plans, or required supporting documentation, are provided to show: 1) the immediate or imminent rental or purchase of

any businesses; 2) hiring of employees in the U.S.; 3) entry into telecommunications contracts; 4) the purchase of necessary equipment or supplies; or 5) other actions consistent with the establishment of new telecommunications or retail businesses. Due to the lack of specificity in the provided plans, it is impossible to conclude the amount and location of any U.S. investment. *See generally*, 8 C.F.R § 214.2(3)(v)(C)(2).

Therefore, when analyzing the totality of the record, the AAO cannot conclude that the business plans offered by the petitioner are credible based on the unsupported conclusions, ambiguities, and inconsistencies included therein. As such, the AAO cannot conclude that the petitioner will realistically develop to the point where it would require the beneficiary to perform duties that are primarily managerial or executive in nature within one year. *See*, 8 C.F.R. § 214.2(1)(3)(v)(C). Further, the petitioner has not shown that the beneficiary will be performing primarily managerial or executive duties consistent with 8 C.F.R. § 214.2(1)(3)(ii). Accordingly, the appeal must be dismissed.

B. Employment with the foreign employer in a managerial or executive capacity

As previously stated, the director also denied the petition finding that the petitioner had not established that the beneficiary had been employed in an executive or managerial capacity in one of the previous three years with a foreign employer as required by 8 C.F.R § 214.2(3)(v)(B).

The statutory definition of "managerial capacity" allows for both "personnel managers" and a "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(1)(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(1)(1)(ii)(B)(3).

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 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.*

Again, 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). In response to the Director's Request for Evidence, the petitioner described the beneficiary's foreign duties in the position of "Marketing Director" from "1/1/2004 to 12/10/2000 {sic}." On appeal, counsel clarifies that the beneficiary held this position not until 12/10/2000, but until entering the United States to explore opportunities for the foreign employer in December 2008. The petitioner generally described the beneficiary's "Marketing Director" duties as follows:

He led our marketing and sales operations while having supervisory responsibilities over our marketing and sales force, including firing and promotion authority. He possessed rights and assisted with management issues including sales supervision and human resources functions to promote SD's telephony trenching services. With the help of lower level managers Mr. [REDACTED] estimated the demand for our services and our competitors and identified potential markets for our services. He also developed pricing strategies to help us maximize profits and market share while ensuring that our customers are satisfied. In collaboration with our sales and development force he monitored trends that indicate the need for new services and oversaw its development. Moreover, Mr. [REDACTED] was also responsible for formulating projects for future development and executed steps to accomplish the desired growth; he prepared publicity and promotional campaigns; planned business strategy and target new business investments; set sales and product cost targets for managers and monitor progress.

Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. Indeed, the description of the beneficiary's U.S. job duties rarely, if ever, mentions the specific duties that were carried out in running the operations and marketing of a major Indian telecommunications construction company. The petitioner failed to submit any specific evidence to describe the beneficiary's daily duties with the foreign employer beyond simply describing duties which could apply to any managerial or executive role with any company. For instance, no details are provided as to the marketplace within which the company was operating, what pricing and marketing strategies were undertaken, or what projects were undertaken, as referenced in the job 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, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, there are various material discrepancies in the record regarding the petitioner's position with the foreign employer leaving doubt as to the nature of the foreign employment. The foreign organizational chart submitted with the original petition includes many differences when compared to the foreign organizational chart submitted on appeal. For instance, in the originally submitted organizational chart the beneficiary is listed as the "Marketing Director," while the organizational chart submitted on appeal has the beneficiary listed as the "Chief Operating Officer." Further, the job titles submitted in the organizational chart offered on appeal contain different job titles for nearly every member of the organization relative to the organizational chart submitted with the original petition. Also, the job titles in both organizational charts do not match those

titles included in the foreign employer's payroll records. Additionally, the I-129 petition and a letter submitted in support of the petition dated November 9, 2010, both list the beneficiary as being the "Marketing Director," and make no mention of the petitioner's claimed promotion to Chief Operating Officer, which is mentioned for the first time on appeal. In direct contradiction, counsel, the Chief Executive Officer of the foreign employer, and the beneficiary make no mention of the beneficiary working in the position of "Marketing Director" in their letters submitted on appeal.

With so many discrepancies on the record regarding the petitioner's foreign employment it is impossible to conclude that the beneficiary was employed abroad in the capacity claimed on appeal. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). 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.*

Therefore, due to the lack of specificity and material inconsistencies related to the beneficiary's foreign job duties the AAO cannot conclude that the petitioner was acting in an executive and managerial capacity with the foreign employer in one of the previous three years as required by 8 C.F.R § 214.2(3)(v)(B). For this additional reason, the appeal must be dismissed.

III. 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.