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



U.S. Citizenship
and Immigration
Services

DATE: **JUL 17 2013** 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:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you.


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 extend the beneficiary's status as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a Nevada limited liability company, established in 2010, stating that it is engaged in the import and export of cosmetics. The petitioner states that it is a subsidiary of [REDACTED] located in China. The beneficiary was previously granted one year as an L-1A nonimmigrant intracompany transferee as the company's General Manager in order to open a "new office" in the United States. The petitioner now seeks to extend the beneficiary's employment for two additional years.

The director denied the petition, concluding that the petitioner had not established that the beneficiary is primarily employed in a managerial or executive capacity. The director noted that the beneficiary evidence submitted demonstrated that the beneficiary was primarily engaged in performing non-qualifying day-to-day operational duties.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the director erred in concluding that the beneficiary is primarily engaged in performing non-qualifying day-to-day operational duties.

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.

Further, the regulation at 8 C.F.R. § 214.2(l)(14)(ii) states that a petitioner seeking an extension of a one year "new office" petition submit 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. The Issue on Appeal:

The sole issue to be addressed on appeal is whether the petitioner established that the beneficiary is employed in the United States in a primarily executive or managerial capacity as required by 8 C.F.R. § 214.2(l)(3)(ii).

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.

On appeal, counsel submits an updated organizational chart for the petitioner that reflects additional employees from those asserted in response to the director's request for evidence (RFE). Counsel emphasizes the continued growth of the petitioner and the beneficiary's managerial role overseeing other managers, supervisors and professionals. Further, counsel asserts that the beneficiary has "non-existent" English speaking and writing skills. As such, counsel contends that it would be impossible for the beneficiary to primarily perform non-qualifying operational tasks, as found by the director. Counsel points to the beneficiary's accomplishments over the last year and asserts they are consistent with the duties of a manager or executive, such as establishing the petitioner, implementing company policies, purchasing properties totaling over \$3.5 million, and hiring a professional management team.

The AAO does not find counsel's assertions persuasive. Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary primarily performs managerial or executive duties with the petitioner or that the petitioner operates as necessary to support the beneficiary in her asserted 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(l)(3)(ii). In support of the I-129 Petition for a Nonimmigrant Worker, the petitioner submitted the following duty categories for the beneficiary including percentages of time spent on each described task:

1. Recruiting, training and directing the management team, and assigning them their proper jobs (Percentage of time spent: 25%)
2. Development of the company's strategy and vision (Percentage of time spent: 10%)
3. Management and supervision of the overall operations and decision-making of the company (Percentage of time spent: 20%)
4. Establish departments to meet the needs of company operations; direct and coordinate each department of the company (Percentage of time spent 20%)
5. Determine the company's overall financial plan and budgets; and decide what projects are to be funded and what projects to cut funding to (Percentage of time spent 15%)
6. Report to the president and board of directors of the parent company on a monthly basis (Percentage of time spent 10%)

Further, the petitioner provided prospective duties identical to those above that indicated that once the beneficiary was approved for extension that she would spend more time developing strategies and visions for the company, managing and supervising the company, and reporting to the foreign employer board and president, rather than recruiting and training a team and establishing departments.

The director subsequently issued an RFE requesting that the petitioner submit a more detailed description of the beneficiary's duties in the United States. In response, the petitioner provided the following general duty categories for the beneficiary, including percentages of time spent on each task:

1. Manages the organization or department, subdivision, function or component of the organization. (Percentage of time spent: 20%)
2. Has the authority to hire, fire, or recommend similar personnel actions (such as promotion or leave authorization) if another employee or other employees are directly supervised. (Percentage of time spent 10%)
3. 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; (Percentage of time spent: 10%)
4. Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Management and supervision of the overall day-to-day operations and decision-making of the company: (Percentage of time spent: 30%)
5. Determine the company's overall financial plan and budgets; and decide what projects are to be funded and what projects to cut funding to: (Percentage of time spent: 15%)
6. Development of the company strategy and vision. (Percentage of time spent: 10%)
7. Report to the president and the board of directors of the parent company on a monthly basis: (Percentage of time spent: 5%)

The petitioner further explained various duties that encompassed each duty category listed above. For instance, the petitioner stated that the beneficiary would "manage the company through the managers once

all managerial positions are filled.” In sum, the duty description indicated that the beneficiary would be responsible for hiring all managers; establishing their respective departments; setting policies, objectives and goals to be followed by each department; and monitoring the progress of these objectives.

The definitions of executive and managerial capacity 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 prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

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. Portions of the duty description are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. For instance, the petitioner states throughout the three job duty descriptions that the beneficiary will be responsible for developing strategies, visions, objectives, policies, plans, guidelines, initiatives, amongst other policy setting activities. However, the petitioner provides no specific supporting documentation regarding any policies or initiatives implemented during the first year. In fact, the duty descriptions are entirely prospective, noting that the beneficiary will accomplish managerial or executive tasks, but not specifying any managerial or executive duties she performed during the first year. Further, the duty description provided for the beneficiary in response to the director's RFE merely repeats the statutory language. In sum, the lack of specificity, and supporting documentation, surrounding these offered duties calls into question their credibility. 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. at 1108, *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). 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. *Id.*

As noted above, the petitioner submits prospective duties for the beneficiary setting forth duties the beneficiary will perform once the petitioner reaches a projected level of development. Despite counsel's suggestions, the petitioner may not be granted a second "new office" L-1A visa approval. The L-1A nonimmigrant visa is not an entrepreneurial visa classification that would allow an alien a prolonged stay in the United States in a non-managerial or non-executive capacity to start up a new business. The regulations allow for a one-year period for a U.S. petitioner to commence doing business and develop to the point that it will support a managerial or executive position. By allowing multiple petitions under the more lenient standard, USCIS would in effect allow foreign entities to create under-funded, under-staffed or even inactive companies in the United States, with the expectation that they could receive multiple extensions of their L-1 status without primarily engaging in managerial or executive duties. The only provision that allows for the extension of a "new office" visa petition requires the petitioner to demonstrate that it is staffed and has been "doing business" in a regular, systematic, and continuous manner for the previous year. 8 C.F.R. § 214.2(l)(14)(ii).

In creating the "new office" accommodation, the legacy Immigration and Naturalization Service (INS) recognized that the proposed definitions of manager and executive created an "anomaly" with respect to the

opening of new offices in the United States since "foreign companies will be unable to transfer key personnel to start-up operations if the transferees cannot qualify under the managerial or executive definition." 52 Fed. Reg. at 5740. The INS recognized that "small investors frequently find it necessary to become involved in operational activities" during a company's startup and that "business entities just starting up seldom have a large staff." *Id.* Despite the fact that an alien engaged in the start-up of a new office may not be "primarily" employed in a managerial or executive capacity, as then required by regulation and later by statute, the INS amended the final regulations to allow for L classification of persons who are coming to the United States to open a new office as long as "it can be expected . . . that the new office will, within one year, support a managerial or executive position." *Id.*

Accordingly, 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. *See generally*, 8 C.F.R. § 214.2(l)(3)(v). At the time of filing the petition to open a "new office," a petitioner must affirmatively demonstrate that it has acquired sufficient physical premises to house the new office and that it will support the beneficiary in a managerial or executive position within one year of approval. Specifically, 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.* 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" as necessary to support the beneficiary in a managerial or executive capacity. 8 C.F.R. § 214.2(l)(14)(ii)(B).

Upon review of the record, it is apparent that the petitioner has not developed sufficiently during the first year of operations to support the beneficiary in her asserted managerial position. The petitioner indicated on the record that an intention to introduce the foreign employer's cosmetic products to the U.S. market during the first year of operation. However, the record includes no evidence that the petitioner is selling, importing, or exporting cosmetics in a regular, systematic, and continuous manner as necessary to support the beneficiary in an executive or managerial role. In fact, the petitioner support letters are entirely prospective in nature, noting what the petitioner *will* accomplish in order to reach full operations. Also, the record includes no evidence that the petitioner is currently operating as intended. Instead, the petitioner asserts that its only revenue during the first year resulted from rental income garnered from two properties purchased in the Las Vegas area. For instance, the record indicates that the petitioner purchased a condominium unit located at [REDACTED] stated to be worth \$449,000 and a large retail location located at [REDACTED] asserted as being worth \$3.5 million. However, the petitioner provides supporting documentation to support the assertion that it is garnering rental income from these properties such as leases or lease payments received. 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 fact, the petitioner is offered as operating out of the condominium at [REDACTED] casting doubt as to whether it could garner any rental income from this property. Further, the transaction related to [REDACTED] is left in material doubt since the Grant, Bargain, Sale Deed document relevant to this property notes that the petitioner purchased the large commercial space for only \$10 in consideration, despite claiming that the property is worth \$3.5 million. 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. 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). The record also reflects that the petitioner had a net loss of \$195,943.46 during 2012, casting doubt as to whether the petitioner can continue to sustain the beneficiary in an executive or managerial capacity. As such, the petitioner has not submitted sufficient evidence to establish that it has developed to a sufficient level after one year to support the beneficiary in a qualifying executive or managerial capacity.

Counsel also asserts that the beneficiary qualifies as a manager, consistent with the Act, based upon her supervision and control of other managers, supervisors and professionals. The statutory definition of "managerial capacity" allows for both "personnel managers" and a "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

In response to the director's RFE, the petitioner stated that it employed the beneficiary, a subordinate administrative manager, and five subordinate independent contractor employees provided by an independent marketing consultant called [REDACTED] the President of [REDACTED], was asserted as managing the petitioner's business development function overseeing subordinates from this independent company, including [REDACTED] General Business Research and Development and Public Relation Affairs, [REDACTED] General Marketing, Selling and Promotional Affairs, [REDACTED] General Administration and Accounting Affairs and [REDACTED] General Legal Affairs. On appeal, just under two months later, counsel states that the petitioner now employs [REDACTED] as a fulltime employee, along with [REDACTED] Sales and Marketing Manager and two sales representatives that report to [REDACTED]. Additionally, counsel also asserts that the petitioner now employs [REDACTED], previously employed by [REDACTED], as an administrative assistant. The updated organizational chart also indicates that the beneficiary's subordinate [REDACTED] Administrative Manager oversees the aforementioned administrative assistant and [REDACTED] an independent accountant asserted as providing bookkeeping services for the petitioner.

The AAO does not find counsel's assertion that the beneficiary qualifies as a personnel manager convincing. The petitioner has not provided sufficient evidence to establish that the beneficiary supervises and controls the work of other supervisors, managers, and professionals. For instance, [REDACTED] Business Development Manager is offered in the most recent organizational chart submitted on appeal as supervising [REDACTED] as a "business and legal consultant," but is not offered as having any

specific subordinates within the petitioner's organization. Previously on the record, [REDACTED] was offered as supervising four other subordinates within [REDACTED], but these subordinates are not submitted in the organizational chart on appeal. The petitioner does not specify the involvement of any subordinates to [REDACTED] such as hours worked for the company, or offer duty descriptions for any positions subordinate to [REDACTED].

Although the petitioner submits two checks written to [REDACTED] in the amount of \$25,000 on January 1, 2013 and for \$50,000 in July 12, 2013, specifics are not provided as to the nature of these payments and whether they reflect that [REDACTED] acts in a managerial capacity for the petitioner. In fact, the resume provided for [REDACTED] includes no mention of him working for [REDACTED] despite being previously offered on the record as its president. 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. 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, 591-92 (BIA 1988). Further, the petitioner has not established that [REDACTED] is a professional. While the petitioner has submitted sufficient evidence to establish that [REDACTED] attained a baccalaureate degree majoring in business administration, the possession of a degree alone is not sufficient to establish an employee as a professional. The petitioner has not submitted sufficient evidence to demonstrate that [REDACTED] holds knowledge of an advanced type in a field gained by a prolonged course of specialized instruction requiring such a degree. Indeed, the job duty description for the business development manager states that a bachelor's degree or "equivalent education" is required, but does not specify a specific type of degree or education. As such, the petitioner has not established that [REDACTED] position is that of a professional, as defined by law.

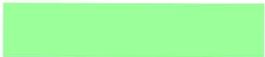
On appeal, the petitioner further identifies [REDACTED] Sales and Marketing Manager as a manager of two sales representatives. But, the petitioner has not submitted sufficient evidence to establish that [REDACTED] has subordinate sales representatives to qualify him as a manager or supervisor. The petitioner submits two IRS Form W-4 Employee's Withholding Allowance Certificates signed by the two asserted sales representatives, but no other evidence to establish that these claimed employees have worked, or currently work, for the petitioner. In fact, the aforementioned IRS Form W-4's are dated March 2, 2013, more than one year after the petitioner's one year new office period, indicating that these employees were not employed as necessary during the previous year to establish [REDACTED] as a subordinate manager. Further, as previously noted, the petitioner has also not demonstrated with sufficient evidence that the petitioner is actively engaged in the sale of cosmetics in the United States to necessitate a sales manager and two sales representatives. In fact, none of the aforementioned employees are offered as employed by the petitioner prior to appeal casting doubt on their employment. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). 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). Further, [REDACTED] resume does not indicate that he has the minimally required baccalaureate degree to qualify him as a professional and the position description for the sales and marketing manager does not demonstrate any educational requirements. Therefore, [REDACTED] is also not established as a professional, as defined by law.

The updated organizational chart submitted on appeal also reflects that [REDACTED] Administrative Manager has two subordinate employees, and therefore, that he is also asserted as a manager subordinate to the beneficiary. However, the petitioner has not submitted sufficient evidence to establish that [REDACTED] has two subordinates of his own. For instance, the petitioner only submits an IRS Form W-4 Employee's Withholding Allowance Certificate for [REDACTED] asserted subordinate administrative assistant, but no other evidence to establish that he has been employed during the last year. In fact, the aforementioned IRS Form W-4 is dated March 2, 2013, more than one year after the petitioner's one year new office period, indicating that [REDACTED] has not been employed as necessary during the previous year to establish [REDACTED] as a subordinate manager. The petitioner also states that [REDACTED] manages [REDACTED] CPA, a professional who it asserts performs bookkeeping services for the organization. Yet, the petitioner has not submitted evidence to demonstrate how often [REDACTED] is engaged by the petitioner as necessary to determine whether he could be considered a subordinate of [REDACTED]. In fact, the petitioner notes only \$2,213.57 in accounting expenses from January through November 2012, suggesting that [REDACTED] is not sufficiently engaged by the petitioner to be considered a subordinate of [REDACTED] or a member of the petitioner's organization. Additionally, the petitioner did not submit evidence to demonstrate that [REDACTED] is under the direction and control of the petitioner and [REDACTED] specifically. Lastly, [REDACTED] has not been offered or established as a professional consistent with law. As such, the petitioner has also not established that [REDACTED] is a manager, supervisor or professional as necessary to establish the beneficiary as a personnel manager. 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)).

Counsel also asserts on appeal that the beneficiary has no English speaking or writing skills thereby preventing her from primarily performing the day-to-day operational duties of the business, as was found by the director. However, taking counsel's assertion as true, the AAO finds that the same conclusion could be made regarding the beneficiary's ability to manage other apparently English speaking managers, supervisors, and professionals. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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, 591-92 (BIA 1988).

Therefore, after analyzing each subordinate to the beneficiary, the petitioner has not submitted sufficient evidence related to these subordinates to establish them as supervisors, managers, or professionals as necessary to qualify the beneficiary as a personnel manager.

In conclusion, the petitioner has provided overly vague duties for the beneficiary that fail to establish that she primarily performs executive or managerial duties. Further, the petitioner has not demonstrated that it has developed as necessary during the first year of operations to support the beneficiary primarily in an executive or managerial capacity. Also, the petitioner has not established that the beneficiary as a manager directing and controlling other managers, supervisors or professionals, as asserted by counsel. Therefore,



the petitioner has not established that the beneficiary acts in a managerial or executive capacity with the petitioner. For this reason, the appeal must be dismissed.

III. Conclusion

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.