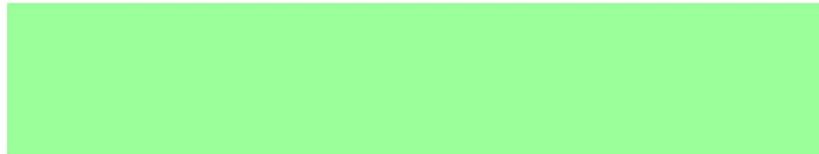
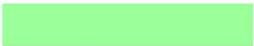


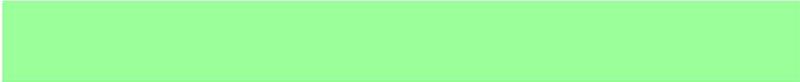


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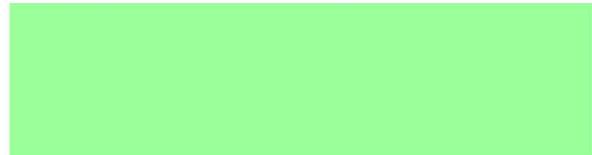


DATE: **JUN 06 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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,

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 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 Michigan corporation established in 1991, designs, develops, and manufactures hydraulic automotive breaking devices. It claims to be a subsidiary of [REDACTED] (the foreign entity), located in [REDACTED] China. The petitioner seeks to extend the beneficiary's employment as its chief technology officer for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish that: (1) the beneficiary has been or will be employed in a primarily managerial or executive capacity in the United States; and (2) the petitioner is doing business as a qualifying organization in the United States.

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 asserts that the beneficiary has been and will be employed in a managerial or executive capacity, and that the petitioner continues to do business as a qualifying organization in the United States. Counsel submits a brief and additional evidence in support of the appeal.

I. The Law

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior

education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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 pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (I)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

* * *

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

II. The Issues on Appeal

The first issue to be addressed is whether the petitioner established that the beneficiary has been and will be employed in the United States in a primarily managerial or executive capacity.

The petitioner filed Form I-129, Petition for a Nonimmigrant Worker, on April 21, 2011. On Form I-129, the petitioner indicated that it currently employs five persons.

In a letter accompanying the initial petition, the petitioner asserted that it currently employs the following five employees: (1) Mr. [REDACTED] (2) the beneficiary, (3) Mr. [REDACTED] (4) Mr. [REDACTED] and (5) Mr. [REDACTED]. The petitioner explained that Mr. [REDACTED] the beneficiary, and Mr. [REDACTED] are all managers/executives.

The petitioner described the beneficiary's primary duty in the United States as managing an essential function of the company, i.e., supervising the company's technical operations. The petitioner stated:

[The beneficiary] is our Chief Technology Officer. His main duty is to ensure that our patented technology maintains its cutting edge and competitiveness for the market. There are many things that impact competitiveness, but technology-related activities have one of the greater levers on how the company does in the marketplace. [The beneficiary] has to be constantly aware of the technology status of our company in the context of market requirements, and prepared to make the judgment call as to what research should be initiated and who to collaborate with. A second important area of his job is to create options for our company between our patented technology and new technical breakthroughs. His third important part of his work is to promote our technology in the auto parts manufacturer community, representing our company in various forums and conferences.

[The beneficiary] performs these duties by working closely with the President and Vice President in strategic decision making regarding any scientific and technical issues within [the petitioner]; supervising [the petitioner's] research and development efforts; collaborations with universities and other research institutes such as the Engineering School at [redacted] and [redacted] and establishing and implementing companywide policies, goals, objectives, and procedures regarding our technical operations, with a goal to commercialize our braking systems patents. Once our technology is commercialized, he will promote [the petitioner's] product line to local, regional, national and international customers, and will supervise technical and engineering personnel.

The petitioner submitted its organizational chart, depicting [redacted] at the top as President and CEO, followed by [redacted] as Secretary. The next tier consists of the beneficiary as Chief Technology Officer, [redacted] as Vice President and Chief Operation Officer (COO), [redacted] as Information Technology [officer], and Dr. [redacted] as Liason Officer. The beneficiary is depicted as having no subordinates. [redacted] is depicted as having two subordinates: [redacted] Acting Director, and [redacted] Chief Engineer. [redacted] is depicted as having no subordinates. Dr. [redacted] is depicted as having three subordinates: Dr. [redacted] Hydraulic Engineer and Professor at [redacted] Engineering Manager Automation and Control Services; and [redacted] Brake Engineering Specialist at [redacted]

The petitioner submitted its Technical Assistance Agreement with [redacted] for a project entitled "Conceptual Design Analysis" to be performed from January 7, 2008 to April 30, 2008. The agreement indicated that Dr. [redacted] would work on the project. The agreement listed the petitioner's project contact person as Mr. [redacted]

The petitioner submitted its Forms 941, Employer' QUARTERLY Federal Tax Return, for 2007, 2008, and the first quarter of 2009. These forms reflected that the petitioner employed one employee in 2007 and 2008, and then employed zero employees in the first quarter of 2009. The petitioner did not submit its Form 941 for 2011.

The petitioner submitted the Forms I-9, Employment Eligibility Verification, it completed for [REDACTED] and [REDACTED] both dated January 21, 2011. Both forms were signed by [REDACTED] Agent.

The director issued a request for evidence ("RFE"), in which she instructed the petitioner to submit, *inter alia*: (1) the petitioner's U.S. organizational chart, including: the current names of all executives, managers, supervisors; the number of employees within each department or subdivision; and all employees under the beneficiary's supervision. The director specified that the chart should also include a brief description of job duties, educational levels and salaries for all employees under the beneficiary; (2) a more detailed description of the beneficiary's duties in the United States, including the percentage of time spent on each of the listed duties; (3) the petitioner's Quarterly Wage Reports for all employees for the last four quarters that were accepted by the state, including the names, social security numbers (last four digits only), wages paid, and number of weeks worked for all employees; and (4) additional explanations regarding the beneficiary's employment capacity.

In response to the RFE, the petitioner reaffirmed that the five employees listed on Form I-129 are: (1) [REDACTED] President and CEO; (2) the beneficiary, Chief Technology Officer; (3) [REDACTED] Vice President and COO; (4) [REDACTED] Research and Development (R&D) Director; and (5) [REDACTED] R&D Technician. The petitioner asserted that the beneficiary supervises Mr. [REDACTED] who holds a Ph.D., and Mr. [REDACTED] who holds a M.S. degree, and submitted brief descriptions of their job duties and evidence of their degrees.

In response to the RFE, the petitioner described the beneficiary's employment capacity in the United States in terms such as: "manager or executive;" "executive/managerial capacity;" and "executive and managerial." The petitioner provided an additional description of the beneficiary's duties in the United States, as summarized below.

1. Studying the overall auto parts market situation and technology advancement each day and keeping the President/CEO informed and assisting him in formulating plans for all the R&D and marketing efforts (10%);
2. Together with the Vice President/COO, searches for ways for the company to stay current with emerging technology trends in the auto parts industry, maintaining oversight of the company's technological assets and developing and implementing a plan for future development in those areas (20%);
3. Responding to a variety of situations and is responsible for the correct handling of issues in different fields, such as Regulatory issues with the government including Environmental Protection issues, Intellectual Property issues, (e.g., patents, trade secrets, license contracts), as well as interfacing with company negotiations. Maintaining the oversight of confidentiality and intellectual property of the petitioner (20%);
4. Supervising two employees, Dr. [REDACTED] and Mr. [REDACTED]. Directs the work of these two employees, formulates plans and directions of their work, and supervises their collaboration with other departments and outside research facilities. For example, Dr. [REDACTED] is currently working with Mr. [REDACTED] the Engineering Manager of Automation & Control Services in refining and developing the final product. The beneficiary oversees the research activities, as well as all other issues related to the two employees' work such as product development cycle, financial planning and budgeting, outside vendor and collaborator selection, test results report and analyzing (20%);

5. Promoting the petitioner's product line to local, regional, and international customers. Supervises the petitioner's participation in shows, national and international conferences, private meetings with local and international manufacturers, demos, and formulating long term and strategic, step by step promotion plans (20%); and
6. Travelling between China and the United States to perform his duties as a member of the Board of Directors for the foreign entity (10%).

The petitioner submitted an amended organizational chart for the U.S. business. The amended chart depicts [REDACTED] at the top as President and CEO. The next tier consists of the beneficiary as Chief Technology Officer, [REDACTED] as Vice President and COO, and [REDACTED] Ph.D. as Liason Officer. The beneficiary is depicted as having two subordinates: [REDACTED] Ph.D., R&D Director, and [REDACTED] M.S., R&D Technician. [REDACTED] is depicted as having two subordinates: [REDACTED] Acting Director, and [REDACTED] Chief Engineer. Dr. [REDACTED] is depicted as having three subordinates: Dr. [REDACTED] [sic] Ph.D., Hydraulic Engineer and Professor at [REDACTED] Engineering Manager Automation and Control Services; and [REDACTED] Brake Engineering Specialist at [REDACTED]. In its response to the RFE, the petitioner asserted that "some positions included in the Organization Chart are not direct employees of [the petitioner] but members of projects developed in association with [REDACTED] Automation & Control Services, and [REDACTED]."

The petitioner submitted its Form 941 for the first quarter of 2011 (ending in March) reflecting that it employed two employees. In its response to the RFE, the petitioner explained that the two employees reflected on the petitioner's 2011 Form 941 are Dr. [REDACTED] and Mr. [REDACTED]. The petitioner explained that the CEO and the beneficiary's salaries are paid by the foreign entity, Mr. [REDACTED] and Mr. [REDACTED] are contractors, and Mr. [REDACTED] voluntarily forewent his salary. The petitioner also stated that it "did not have any direct employees during 2010."

Finally, the petitioner submitted a letter from [REDACTED] dated January 1, 2011, affirming that he agreed to forego his monthly salary "[f]or the year 2011 and forward" until the economic situation stabilizes.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has been and will be employed in a primarily managerial or executive capacity in the United States. In denying the petition, the director found that the beneficiary's duties are more indicative of an employee who is performing the necessary tasks to provide a service or to produce a product. The director also observed inconsistencies in the petitioner's claimed staffing, and concluded that it was unclear whom the petitioner employs. The director found that the beneficiary cannot be deemed a functional manager, as the beneficiary appears to be involved in the performance of routine operational activities rather than the management of a function of the business.

On appeal, counsel explains the discrepancies in the petitioner's claimed staffing by reasserting that Mr. [REDACTED] has agreed to work without receiving payment, and that the beneficiary and the CEO's salaries have been paid by the foreign entity. Counsel asserted: "As for the other two employees listed on the I-129 form, they are unpaid employees who have been providing services to [the petitioner] under a separate agreement. The two other persons added on the organizational chart . . . are the two researchers."

Regarding the beneficiary's job duties, counsel states:

As the Chief Technology Officer, [the beneficiary's] responsibilities have been essential in managing the most important areas of the business, getting the company to where it is today. In the initial filing of the visa extension petition, we specified [the beneficiary's] managerial duties and responsibilities and also explained the significant effect the current economic situation has forced upon the Petitioner's business and how important [the beneficiary's] position is to the continuation and survival of the business in order to lead the business to the next level. Nonetheless, the Service issued a Request for Evidence asking for, in addition to other materials, more detailed information on [the beneficiary's] duties, in order to judge the managerial/executive nature of his job, which, we believe, in and of itself is an almost impossible task to fulfill because as more details are specified, the more difficult it is to prove the manager is not performing any hands-on duties, and if no further details were specified, the case would have been denied for insufficient documentation or information to prove the job is a managerial or executive position. Without knowing exactly what the Service is requesting or has requested, it is nearly impossible to respond to the request with assurance that we have provided what it is looking for. Thus if anything additional is needed, it will be provided.

In support of the appeal, the petitioner submits: (1) confidentiality agreement, dated May 1, 2007, between the petitioner and Automation & Control Services; (2) three invoices from [redacted] to the petitioner, issued in 2008 and October 2010, for design, assembly, and manufacturing services, and corresponding payments made by the petitioner; (3) Report entitled "Mechanism Analysis and Optimal Design for [redacted]" dated May 31, 2008, by Professor [redacted] and (4) working papers on the [redacted] dated February 27, 2011.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary has been and will be employed by the United States entity in a 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). 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 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.

In the instant matter, the petitioner has not clearly described the beneficiary's job duties in the United States. The beneficiary's job duties are described in a general and overly broad manner, such as: "keeping the President/CEO informed and assisting in formulating plans and strategies for all the R&D and marketing efforts;" "searching for ways for the company to stay current with emerging technology trends in the auto parts industry;" "maintaining oversight of the company's technological assets and developing and implementing a plan for future development;" "responding to a variety of situations and is responsible for the

correct handling of issues in different fields;” and “maintaining the oversight of confidentiality and intellectual property” of the petitioner. The petitioner has failed to provide meaningful detail or explanation of the beneficiary's activities in the course of his daily routine.¹ 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 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).

In addition to being vague, the petitioner's description of the beneficiary's job duties indicate that he is and will be performing non-qualifying duties. For example, the beneficiary's duties of “[s]tudying the overall auto parts market situation and technology advancement each day” and “[p]romoting the petitioner's product line to local, regional, and international customers” are not typical managerial or executive duties as defined by the statute. Rather, these duties constitute performing the tasks necessary to produce a product or to provide services for the U.S. entity. An employee who “primarily” performs the tasks necessary to produce a product or to provide services is not considered to be “primarily” employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one “primarily” perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Intn'l.*, 19 I&N Dec. 593, 604 (Comm'r 1988).

The petitioner failed to establish that the beneficiary is employed in a managerial capacity as either a “personnel manager” or a “function manager.” 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). 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 clearly describe the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 204.5(j)(5). 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. See section 101(a)(44)(A) the Act; *Matter of Church Scientology International*, 19 I&N Dec. at 604. Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. 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).

¹ On appeal, counsel states that “as more details are specified [regarding the beneficiary's job duties], the more difficult it is to prove the manager is not performing any hands-on duties.” Counsel's statement seems to suggest that the petitioner's descriptions of the beneficiary's job duties were left intentionally vague, as providing more details would make it more difficult to prove that the beneficiary is employed in a primarily managerial capacity.

The petitioner failed to establish that the beneficiary qualifies as a function manager. Here, the petitioner has failed to articulate the essential nature of the function. The petitioner broadly asserts that the beneficiary is a function manager in that he is responsible for “[t]he overall supervision of [the petitioner’s] technical operations” and “directing the management of [the petitioner’s] technical operations.” On appeal, counsel asserts that the beneficiary has been essential in managing “the most important areas of the business, getting the company to where it is today.” However, these vague descriptions are insufficient to establish what the essential nature of the function is that the beneficiary is purportedly managing. Broadly claiming that the beneficiary oversees “the most important areas of the business” or the company’s overall technical operations – when the petitioner is a technology company by nature- is insufficient to establish the nature of the essential function being managed.

Furthermore, the petitioner has not established that the beneficiary himself manages the function. *See* Section 101(a)(44)(A)(i). According to the petitioner’s descriptions, the beneficiary assists the President/CEO in formulating plans and strategies for all the R&D efforts. The beneficiary also collaborates with the Vice President to develop and implement a plan for future technological development. The petitioner specifically stated that both the beneficiary and the Vice President are responsible for working with the CEO in guiding the company’s planning for the future, especially in the area of R&D. Based on these descriptions, the petitioner has not established that the beneficiary himself directs the management of the function. Rather, the beneficiary appears to be assisting the President/CEO and Vice President in the management of the company’s technical operations. The AAO concurs with the director’s finding that the beneficiary appears to be involved in the performance of operational activities, rather than the management of the function.

The AAO acknowledges that the beneficiary supervises two professional employees, Dr. [REDACTED] and Mr. [REDACTED]. However, the petitioner failed to establish that the beneficiary qualifies as a personnel manager based upon his supervision of these two employees. Here, the petitioner failed to establish that the beneficiary *primarily* supervises and controls the work of these two employees. Specifically, the petitioner asserted that the beneficiary spends only 20% of his time supervising these employees. Furthermore, the petitioner failed to establish that the beneficiary has the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. *See* 8 C.F.R. § 214.2(l)(1)(ii)(B)(3). As such, the record fails to establish that the beneficiary qualifies as a personnel manager.

The petitioner failed to establish that the beneficiary is employed in a primarily executive capacity. The petitioner has not articulated with any specificity how the beneficiary’s employment is and has been in an executive capacity. With the initial petition, the petitioner claimed only that the beneficiary will be employed in a managerial capacity. In response to the RFE, the petitioner asserted in a general manner that the beneficiary will be employed as a “manager or executive” and in an “executive/managerial capacity,” without specifically explaining how his job duties are executive in nature. A beneficiary may not claim to be employed as a hybrid “executive/manager.” A petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

On appeal, counsel emphasizes the importance of the beneficiary’s position to the continuation and development of the petitioner’s business. However, the fact that the beneficiary is important to the

petitioner's business development does not establish that the beneficiary is employed in a qualifying managerial or executive capacity. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108.

Finally, the petitioner has failed to clearly establish its staffing and organizational structure. As discussed by the director, the petitioner claims to employ five employees, but the petitioner's organizational charts indicate otherwise. On appeal, in an attempt to explain the discrepancies, counsel states that "two employees listed on the I-129 form . . . are unpaid employees who have been providing services to [the petitioner] under a separate agreement" and the "two other persons added on the organizational chart . . . are the two researchers." However, counsel's explanation does not fully resolve all the inconsistencies. First, it is not clear which two employees counsel is referring to as the "unpaid employees" listed on Form I-129. The petitioner's organizational charts depict five employees who have been unaccounted for by explanation or evidence: [REDACTED] Counsel provides neither specific explanations as to these five individuals, nor any objective evidence of their employment with the petitioner. Second, the petitioner's initial organizational chart differs significantly from the amended organizational chart, in that [REDACTED] have been deleted from the amended chart, and the beneficiary has two subordinates in the amended chart whereas he had no subordinates in the original chart. Counsel has not explained why the petitioner submitted two different versions of its organizational chart, and which chart, if any, accurately depicts the petitioner's actual staffing at the time of filing.

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). 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.* In addition, 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).

The petitioner failed to submit evidence establishing that [REDACTED] can reasonably be considered current contractors or service providers to the petitioner, as depicted by the petitioner's organizational charts. The evidence in the record, including the petitioner's Technical Assistance Agreement with [REDACTED] and Dr. [REDACTED] report, reflects that Dr. [REDACTED] work with the petitioner concluded in 2008. The petitioner provided no evidence regarding [REDACTED] or [REDACTED] work with the petitioner. 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)). 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).

Overall, the vague job description provided for the beneficiary, considered in light of the petitioner's unclear staffing and organizational structure, prohibits a finding that the petitioner has and will continue to employ the beneficiary in a primarily managerial or executive position in the United States. Accordingly, the appeal will be dismissed.

The second issue to be addressed is whether the petitioner established that it is a qualifying organization in the United States. See 8 C.F.R. § 214.2(l)(1)(ii)(G). The petitioner claims to be a Michigan corporation established in 1991 under the name [REDACTED]. The petitioner claims to be a wholly owned subsidiary of the foreign entity based upon the foreign entity's acquisition all the shares of the corporation for a purchase price of USD \$5,000,000.00 in 2004.

As initial evidence of the petitioner's legal status and qualifying relationship with the foreign entity, the petitioner submitted, *inter alia*, the following documents:

1. Articles of Incorporation, filed in Michigan on July 23, 1991, for [REDACTED]
2. Certificate of Assumed Name of [REDACTED] certifying the company's use of the assumed name of [REDACTED] filed in Michigan on March 8, 2007;
3. Application for Certificate of Authority of a Foreign Corporation for [REDACTED] filed in Indiana on March 12, 2007;
4. Certificate of Assumed Business Name of [REDACTED] certifying the company's use of the assumed business name of [REDACTED] a Division of [REDACTED] A, filed in Indiana on March 12, 2007;
5. Registered Retail Merchant Certificate issued to [REDACTED] by the Indiana Department of Revenue on March 30, 2007;
6. Certificate of good standing issued to [REDACTED] by the Michigan Department of Labor & Economic Growth on October 6, 2008;
7. Share certificate [number illegible] issued to the foreign entity for 120,000 shares of capital stock of [REDACTED] dated September 28, 2005;
8. Copies of cancelled share certificates to the previous shareholders of [REDACTED]
9. Stock Purchase Agreement, dated May 20, 2004, between the shareholders of [REDACTED] a Michigan corporation (the "Company"), and the foreign entity and [REDACTED] ("Buyers"), agreeing to the sale and purchase of all the shares of the company for the total purchase price of USD \$5,000,000.00; and
10. Evidence of the foreign entity's payment of USD \$5,000,000.00 to [REDACTED]

The director issued a RFE requesting, *inter alia*, additional documentation to confirm the company's official name and address. In response to the RFE, the petitioner reaffirmed that the company's name is [REDACTED] and that it is doing business in Indiana under the name of [REDACTED]. The petitioner affirmed that it was initially established and incorporated in the state of Michigan. The petitioner resubmitted many of the documents listed above, along with new evidence including the following:

1. An updated Registered Retail Merchant Certificate issued to [REDACTED] by the Indiana Department of Revenue on March 2, 2011; and
2. Business license issued to [REDACTED] by the [REDACTED] Indiana on November 16, 2010.

The director denied the petition, concluding that the petitioner failed to establish that it is doing business as a qualifying organization in the United States. The director noted for the record that the State of Michigan's Department of Licensing and Regulatory Affairs' website showed that [REDACTED] were dissolved on June 4, 2009. In addition, Indiana's Department of State's website showed that the

licenses of [REDACTED] a division of [REDACTED] a Michigan Corporation, were revoked on October 19, 2010. The director concluded that the petitioner is currently not authorized to conduct business in the states in which the petitioner's business entity resides.

On appeal, counsel for the petitioner asserts that the petitioner previously explained and provided evidence to establish that the petitioner has "restructured its business under the same tax ID, with the same ownership, and with renewed business permits and authorization, with a letter from the attorney who personally handled the restructure of the business confirming the continuation of the same business under the same name and tax id number." To support the appeal, counsel submits the following:

1. Certificate of Authority issued by the State of Indiana to [REDACTED] on August 1, 2011;
2. Certificate of Assumed Name of [REDACTED] certifying the company's assumed business name of [REDACTED], issued by the State of Indiana on August 1, 2011;
3. A certificate of good standing issued by [REDACTED] from the State of Michigan on July 20, 2011; and
4. Certificate of Assumed Name of [REDACTED] certifying the company's assumed business name of [REDACTED] issued by the State of Michigan on July 29, 2011.

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that it is a "qualifying organization" as defined in 8 C.F.R. § 214.2(l)(1)(ii).

As noted by the director, the State of Michigan's Department of Licensing and Regulatory Affairs' public website shows that [REDACTED] were dissolved on June 4, 2009.² In addition, Indiana's Department of State's public website shows that the licenses of [REDACTED] and [REDACTED] a division of [REDACTED] a Michigan Corporation, were revoked on October 19, 2010.³ Considering the above, the petitioner – which repeatedly identifies itself as a corporation established in Michigan in 1991 under the [REDACTED] and the assumed name [REDACTED] – has failed to establish that it is authorized to conduct business in the states in which the petitioner's business entity reside.

On appeal, counsel asserts that it previously provided evidence establishing that the petitioner has "restructured its business under the same tax ID [and] with the same ownership" under the name [REDACTED]. Counsel submits new evidence establishing [REDACTED] is currently authorized to conduct business in the states of Michigan and Indiana under the name [REDACTED]. However, counsel failed to submit any evidence to establish that the petitioner and [REDACTED] are one and the same company with the same ownership structure, as claimed. Contrary to counsel's claims, a thorough review of the record fails to reflect that the petitioner submitted any evidence of its restructuring as [REDACTED].

² See enclosed print-outs.

³ See enclosed print-outs.

⁴ The State of Michigan's Department of Licensing and Regulatory Affairs' website confirm that [REDACTED] was formed as a limited liability company on June 4, 2009 and is currently in active status. The Indiana's Department of State's website also confirms that [REDACTED] was registered as a foreign limited liability company in 2009 and is currently in active status. See enclosed print-outs.

The record is also devoid of any evidence establishing the ownership structure of [REDACTED]. Without evidence of the ownership structure of [REDACTED] the petitioner failed to establish that it and [REDACTED] is the same organization for purposes of establishing that the petitioner is authorized to conduct business in the United States. 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. at 165.

Moreover, without evidence of the ownership structure of [REDACTED] the petitioner failed to establish that it maintains a qualifying relationship with the foreign entity. All of the evidence in the record regarding the petitioner's qualifying relationship with the foreign entity pertains to the now-dissolved corporation [REDACTED] not [REDACTED]. As the petitioner failed to submit evidence establishing that the petitioner and [REDACTED] are one and the same company with the same ownership, the petitioner has failed to establish that it is a subsidiary of the foreign entity as claimed. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

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.