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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: **AUG 29 2014** Office: VERMONT 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,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
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 appeal will be dismissed.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to qualify 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 Florida limited liability company established in [REDACTED] states that it is engaged in the commercial hotel industry and residential real estate development. The petitioner states that it is an affiliate of [REDACTED] located in Nigeria. The petitioner seeks to employ the beneficiary as its president and chief executive officer in the United States for a period of one year.¹

The director denied the petition, finding that the petitioner failed to establish that the beneficiary will act in a qualifying managerial or executive capacity in the United States. Further, the director concluded that the petitioner did not demonstrate that the beneficiary has been employed abroad in a qualifying managerial or executive capacity for at least one year out of the three years prior to the filing of the petition.

On appeal, counsel contends that the petitioner has submitted sufficient evidence to establish that the beneficiary has been acting in a qualifying managerial or executive capacity abroad since the creation of the foreign entity in [REDACTED]. Further, the petitioner provides additional clarification with respect to the beneficiary's proposed duties on appeal, and asserts that this demonstrates that he will act in a qualifying managerial or executive capacity in the United States.

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.

¹ The petitioner alternately asserts that it is filing a new office petition and that it is an already established business in the United States. The regulation at 8 C.F.R. § 214.2(l)(1)(ii)(F) defines a "new office" as an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year. The petitioner did not indicate in the Form I-129, Section 1, Item 12 that it was petitioning as a new office in the United States. However, counsel referred to the petitioner as a new office, and cited the applicable regulations, in a support letter submitted with the petition. In his decision, the director concluded that the petitioner should not be adjudicated as a new office since bank records indicated that it had been operating as far back as 2011, shortly after its establishment as a limited liability company in Florida. On appeal, counsel makes no reference to the petitioner filing as a new office in the United States, but indicates that it is currently doing business as defined by the regulations and notes that it has four employees. As such, the totality of the evidence suggests that the petitioner had been doing business for more than one year at the time of filing and the evidentiary requirements for new offices at 8 C.F.R. § 214.2(l)(3)(v) are not applicable.

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.

II. THE ISSUES ON APPEAL

A. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

The first issue to be addressed is whether the petitioner has established that it will employ the beneficiary in a qualifying managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization.

1. Facts

The petitioner filed the Form I-129 on January 25, 2013. The petitioner states that the foreign entity is a "well-established [REDACTED]" based in Nigeria and that it acts as a branch office of the foreign entity in Florida. The record indicates that the petitioner owns and manages a motel, and that it is involved in other real estate investments. The petitioner specified in the Form I-129 that it earned \$600,000 in gross annual income during the last year and that it employed six workers.

In the aforementioned support letter the petitioner explained the beneficiary's foreign duties and proposed U.S. duties as follows:

[The beneficiary]'s position of Chief Executive Officer of the company clearly qualifies as an Executive. [The beneficiary's] proposed job duties will remain the same as his current job duties which include:

- Overseeing and managing all aspects of the day-to-day operations of the company and ensuring operations are in sync with strategy.
- Taking a leadership role in the establishment of performance indicators, and monitoring of performance against goals.
- Developing and administering operational and administrative policies, standards and practices.
- Develop and administer financial and effective internal controls including budget setting and tracking, expenditure approvals processes, record-keeping and reporting, and the preparation of accurate and timely monthly financial statements. Assure safeguarding of assets. Lead capital planning and budgetary activities. Ensure preparation for quarterly financial audit. Review all receipts and disbursements.

- Develop and administer revenue generation activities, including fundraising, business development and grants applications.
- Develop and administer personnel-related policies and practices. Take a lead role in the development of staff performance objectives and in the evaluation of performance against organizational goals. Provide coaching and counseling where necessary. Foster a staff culture that supports the Foundation's strategy.
- Ensure compliance with any and all requirements for funders and regulatory bodies.
- Lead internal communications efforts through active communications to all staff including meetings, announcements, reports and bulletins.
- Provide assistance and information for the Board as requested.
- Other duties as assigned.

The petitioner indicated that it employed four employees, including [REDACTED] Manager; [REDACTED], Bookkeeper; [REDACTED], Maintenance Supervisor; and [REDACTED] Property Manager.

The petitioner submitted no evidence to support the assertions set forth in the Form I-129 and the submitted support letter. As such, the director issued a request for evidence (RFE) asking that the petitioner submit statements describing the beneficiary's duties and the staffing of the operation, including the number of employees, their positions, and an explanation of their duties. The director further requested that the petitioner submit evidence of wages paid to its employees, including IRS quarterly and annual wage reports. In addition, the director requested that the petitioner submit evidence regarding its current financial status, including tax returns or audited financials, and/or evidence of business or hiring plans.

In response, the petitioner submitted a support letter from the foreign entity, written by the beneficiary, stating that it owns and operates a motel in [REDACTED] FL. The beneficiary indicated that the petitioner had invested in the following properties: (1) the [REDACTED] FL; (2) a single family rental property in [REDACTED] MD; (3) four residential units in [REDACTED] FL; and (4) a duplex, also in [REDACTED] FL. The beneficiary explained that the petitioner has been operating the motel in [REDACTED] "for over a year," utilizing independent contractors, including [REDACTED] of the [REDACTED] and [REDACTED] of [REDACTED]. The beneficiary stated that he has been "coordinating and managing" the business from Nigeria using the internet and telephone calls. The beneficiary stated that "[the petitioner] intend[s] to hire up to 10 Americans total for the [REDACTED] motel as full time employees before the year runs out," including administrative, maintenance, accounting and building design employees.

The petitioner further explained that it was under contract to purchase an acre of land in [REDACTED] FL to build "a multi-storey [*sic*] hotel complex to be constructed and completed in 2014," and that it planned to acquire more hotels in the near future. The beneficiary articulated that he has invested over \$700,000 to build the proposed new hotel in Sanford.

The petitioner submitted an organizational chart indicating that the beneficiary will oversee [REDACTED]. In turn, the chart showed that Ms. [REDACTED] will supervise [REDACTED] CPA and [REDACTED] Supervisor. The chart indicated that Mr. [REDACTED] will supervise [REDACTED] Motel Operator and [REDACTED] a maintenance and janitorial employee. An RFE response

letter submitted by counsel stated that the petitioner currently employed [REDACTED] Manager; [REDACTED] Bookkeeper; [REDACTED] Maintenance Supervisor; and [REDACTED] Property Manager.

Furthermore, the petitioner submitted a projected organizational chart reflecting that the beneficiary will supervise a "hotel property division" and a "professional services" department. The former showed that the beneficiary would oversee and control a vice president of operations, "divisional heads," and "managers." In turn, the managers would supervise a "front office," "accounts," maintenance, "purchase," and janitors. The professional services department was shown to include a vice president (implementations), "principal consultants," "managers," and other architects and builders. The projected organizational chart did not specify where its current employees will fit into this hierarchy or specify when these projected employees will be hired.

The petitioner also provided a "Work Agreement" dated May 3, 2013 between Ms. [REDACTED] and the petitioner whereby she agrees to "work as contract staff to operate [the] [REDACTED] in [REDACTED] Ms. [REDACTED] duties include overseeing the day to day operations of the hotel, conducting background checks on potential renters, maintaining the premises, and performing accounting relevant to the operation for \$572 per month to be deducted from her rental of a residence on the premises. The petitioner further provided a "Management Contract" reflected in an email dated March 23, 2013 between Ms. [REDACTED] of [REDACTED] and the petitioner. The contract indicated that it was for the "management, maintenance, [and] compound care of [the] [REDACTED]" The agreement stipulated that the contract services "will be paid with the value of the rent of room #9 of the motel" and specified that the contract took effect October 1, 2012. In addition, the petitioner provided a contract with [REDACTED] dated March 27, 2013 noting that [REDACTED] will perform accounting services for the company monthly for \$200 per month, including reconciling the motel ledger, recording transactions, and completing tax documentation.

The petitioner submitted an email from Ms. [REDACTED] indicating that she was a realtor employed by [REDACTED] located in Maryland. The email informed the beneficiary of certain tax liabilities during 2010 and 2011. The petitioner provided a [REDACTED] activity statement reflecting payments to various parties during late 2012 and early 2013. For instance, it reflected several monthly payments to [REDACTED] for "bookkeeping services" or "salary" in the amount of \$125, \$225 to [REDACTED] for "2012 tax return services" on April 16, 2013, and payments to the petitioner's attorney to file the current petition. The record of payments also reflected several payments to Ms. [REDACTED] including \$400 in October 2012 for "monthly salary," and other nominal payments for maintenance including services such as carpet replacement, plumbing repairs and landscaping. The petitioner did not submit IRS or state quarterly wage reports, as requested by the director.

In denying the petition, the director stated that the beneficiary's duty description was overly vague and noted that the petitioner had largely reiterated the statutory definitions of executive and managerial capacity. The director concluded that the evidence presented did not indicate that the petitioner's operations will support the beneficiary in a managerial or executive capacity. The director found that the petitioner did not establish that the beneficiary will supervise or control the work of other supervisory, managerial or professional employees or that he would otherwise be relieved from primarily performing non-qualifying operational tasks.

On appeal, counsel states that the petitioner has submitted sufficient evidence to demonstrate that the beneficiary will act primarily in an executive capacity. Counsel submits a job duty description written by the beneficiary which reads as follows:

An organization's reputation is often a reflection of the CEO's reputation and its success – providing the vision, leadership and direction that an organization needs to achieve its goals is the main function of the chief executive officer.

As the face of the organization, the CEO is typically required to represent the company in the public. This could include such activities as participating in meetings with the board of directors and stockholders, attending community functions, advocating for the organization in the business and political arenas and developing relationships with strategic partners and clients.

Reporting to the board of directors, the CEO serves as both an adviser and policy administrator. These high – level executives are responsible for a firm's productivity and profitability. The CEO is typically expected to ensure management & staff is supported with sufficient resources to stay ahead of industry and economic changes.

As the CEO, I am to supervise the general operations of [the petitioner], including human resources, finances, sales, production and physical resources. I will be responsible for all legal and regulatory requirements, product and service delivery, upholding quality standards and ensuring the organization's financial health.

To succeed, as the CEO of [the petitioner], I must be supported by a strong management team; therefore, recruiting, hiring and mentoring staff is another important role of the CEO. As the president, I will be responsible for expanding company and product awareness, establishing and implementing organizational goals and mission statements and maintain a positive public reputation.

The petitioner further provides an updated company organizational chart reflecting the corporate structure and employees working for the petitioner, the foreign entity and another foreign affiliate company, Jerome Innovations & Scientific. The organizational structure of the petitioner lists only one employee, Ms. [REDACTED] Vice President, and indicates that she is responsible for "real estate management/acquisitions." Further, the chart states that the beneficiary is responsible for "increasing companies [*sic*] horizons," "acquisitions soliciting development/expansions," "direct guidance," and being "directly in charge of Real Estates/Designs."

2. Analysis

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(3)(ii). The 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. The duties offered by the petitioner in support of the petition, such as overseeing and managing all aspects of the day-to-day operations of the company and ensuring operations are in sync with strategy, taking a leadership role in the establishment of performance indicators, developing and administering operational and administrative policies, standards and practices, leading capital planning and budgetary activities, developing and administering revenue generation activities, developing and administering personnel-related policies and practices, amongst others, are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. The evidence of record includes no specific examples or documentation to substantiate the beneficiary's claimed duties. Indeed, much of the submitted position description simply paraphrases the regulatory definitions of executive and managerial capacity.

On appeal, the petitioner has failed to provide further detail regarding the beneficiary's daily duties, but merely comments on the general attributes of a CEO and the ways through which they can be successful. For instance, the petitioner has offered few details as to the vision, leadership and direction the beneficiary will set in place and lead, or the human resources, finances, sales, production and physical resources he will oversee and direct. In each case, the petitioner has failed to provide specifics and supporting documentation to corroborate the beneficiary's proposed performance of his duties. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Overall, despite submitting a lengthy list of responsibilities, the petitioner has failed to provide sufficient detail or explanation of the beneficiary's proposed activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In addition, the petitioner's descriptions of the beneficiary's role include discrepancies that cast doubt on his proposed duties. For example, the beneficiary's duties state that he will report to a board of directors and stockholders. However, both the petitioner and the foreign entity are closely held limited liability companies that do not have boards or stockholders. These discrepancies only reinforce a conclusion that the petitioner has provided a generic duty description applicable to any CEO that does not provide a true reflection of his proposed duties. 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).

Beyond the required description of the job duties, United States Citizenship and Immigration Service (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of

a beneficiary, including the company'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 business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

The petitioner has submitted conflicting statements, and insufficient evidence, as to its number of employees and organizational structure, leaving question as to whether the petitioner employs sufficient staff to relieve the beneficiary from primarily performing non-qualifying operational duties. First, it should be noted that the director requested in the RFE that the petitioner submit detailed duty descriptions for each of the beneficiary's subordinates, their salaries, and tax evidence reflecting the payment of their salaries. However, the petitioner failed to submit this explanation and supporting documentation. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On the Form I-129, the petitioner stated that it had six employees. However, directly thereafter in the accompanying support letter, it indicated that it had four employees: Ms. [REDACTED] Manager; Ms. [REDACTED] Bookkeeper; Mr. [REDACTED] Maintenance Supervisor, and Ms. [REDACTED] Property Manager. Again, the petitioner stated that it employed these employees in its RFE response, but proceeded to submit an organizational chart reflecting that it employed the following employees: Ms. [REDACTED] Manager; [REDACTED] CPA; Ms. [REDACTED] Accountant (replacing Ms. [REDACTED]; Mr. [REDACTED] Supervisor, Ms. [REDACTED] Motel Operator, and Mr. [REDACTED] Maintenance/Janitor. Now, on appeal, counsel states in his brief that the petitioner employs the four employees set forth in both the Form I-129 support letter and the RFE response letter, but submits an organizational chart reflecting only Ms. [REDACTED] in the positions of vice president (operations) and indicating that she is engaged in "real estate management/acquisitions." However, a submitted contract indicates that Ms. [REDACTED] was engaged part time as a caretaker of the [REDACTED] motel in May 2013 for \$572 per month, to be deducted from her rent. The petitioner submits no evidence to substantiate the assertion that Ms. [REDACTED] acts either as a manager or a vice president. Indeed, the evidence submitted does not support that Ms. [REDACTED] is even engaged as an employee, but merely that she is a part time independent contractor loosely affiliated with the petitioner and that she coordinates occasional repairs and maintenance.

Furthermore, the petitioner provided another contract relevant to maintenance and management services for the [REDACTED] executed with Ms. [REDACTED] from the "[REDACTED]" Again, Ms. [REDACTED] is being paid in the form of reduced rent at the motel. The petitioner has provided no explanation of Ms. [REDACTED]'s apparent overlap in function with Ms. [REDACTED] but instead reflects both Ms. [REDACTED] and Ms. [REDACTED] in its organizational chart occupying separate managerial positions subordinate to the beneficiary. Likewise, the evidence submitted with respect to Ms. [REDACTED] and Mr. [REDACTED] both asserted accountants/CPAs, is also insufficient to demonstrate they are employees of the petitioner or engaged sufficiently to primarily relieve the beneficiary from performing non-qualifying operational tasks. The submitted evidence indicates that Ms. [REDACTED] is engaged monthly to provide accounting services on a part time basis at \$200 per month, and that Mr. [REDACTED] was paid \$255 in April 2013 for the provision of 2012 tax return services.

Similarly, a submitted email from Ms. [REDACTED] indicates that she is engaged as a real estate agent specific to the petitioner's ownership of a property in [REDACTED] the purpose of which is not fully articulated. As such,

the evidence presented is not sufficient to demonstrate that Ms. [REDACTED] is employed as a property manager as claimed. In addition, the petitioner has not provided supporting evidence to substantiate that it employs Mr. [REDACTED] as a maintenance supervisor or Mr. [REDACTED] as a maintenance/janitorial employee. 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. *Matter of Ho*, 19 I&N Dec. 582, at 591-92. Also, 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)).

Upon review of the totality of the record, the petitioner has not established that it has sufficient staff to relieve the beneficiary from primarily performing operational tasks. As noted above, the evidence indicates that the petitioner does not have any fulltime employees on staff. The beneficiary's IRS Form 1040, Schedule C further specifies that the petitioner earned only \$40,529 in 2012 and the record reflects that the petitioner collects approximately \$6,000 to \$7,000 in rental income per month from the [REDACTED]. Although the petitioner has submitted evidence to demonstrate that the beneficiary owns other properties in Florida and Maryland, it has not sufficiently communicated the impact on these properties on its current operations.

Likewise, the petitioner asserts that it plans to build a hotel in [REDACTED] but provides little supporting evidence to establish that this prospect is imminent or that it has engaged prospective employees for this purpose. The petitioner states that the beneficiary has invested \$600,000 in this project, but submits no supporting evidence to corroborate this contention. 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)). Further, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Therefore, the totality of the evidence relevant to the petitioner's operations indicates that it is not sufficiently operational to support the beneficiary in a qualifying managerial or executive capacity.

In fact, the evidence reflects that the beneficiary would be primarily engaged in performing non-qualifying operational tasks relevant to managing the [REDACTED] albeit through part-time caretakers and independent contractors. The statute and regulations mandate 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. Sec. 101(a)(44)(A)(iv) of the Act.

On appeal, counsel asserts that the petitioner has submitted sufficient evidence to establish that the beneficiary will be employed in a qualifying executive capacity. 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.*

Here, the petitioner has not demonstrated that the beneficiary will be employed in a qualifying executive capacity. First, as previously stated, the petitioner has provided a vague duty description for the beneficiary that fails to articulate or substantiate his prospective primary performance of executive duties. The duties provide no detail as to the goals and policies the beneficiary will establish. Further, the petitioner has provided inconsistent statements regarding its organizational structure, and submitted evidence indicating limited engagement of independent contractors. The petitioner has not established that its current structure would allow the beneficiary to primarily focus on broad goals and policies of the organization rather than the day-to-day operations of the enterprise. In fact, as mentioned, the totality of the evidence indicates that the beneficiary would more likely than not be engaged in primarily non-qualifying operational tasks. Again, 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.

In conclusion, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity. For this reason, the appeal must be dismissed.

B. MANAGERIAL OR EXECUTIVE CAPACITY (ABROAD)

The next issue to be addressed is whether the petitioner has established that the beneficiary is employed in a qualifying managerial or executive capacity abroad.

1. Facts

The petitioner indicates that the foreign entity "is a consortium of internationally acclaimed design professionals" that provides architecture, project management, landscape architecture, interior design, urban planning, engineering, cost analysis and control and contract financing services. The petitioner noted that the company has worked on numerous construction projects in Nigeria, including the construction of several Catholic churches, government installations, and educational facilities. The petitioner indicated that the foreign entity was founded by the beneficiary and that it is now valued at approximately \$10 million. The petitioner explained that the beneficiary is an "accomplished architect, urban planner/designer and author," who formerly apprenticed with [REDACTED] the apprentice of renowned architect [REDACTED]

The petitioner indicated that the beneficiary founded the foreign entity in Nigeria in [REDACTED] and that he has been its majority owner and CEO since this time. As indicated previously, the petitioner submitted in support of the petition the same duty description for the beneficiary relevant to both his U.S. and foreign employment, which is quoted in the foregoing section of this decision. The petitioner stated that "at any one time, [the foreign entity] has at least 40 full-time employees." The petitioner submitted no other supporting evidence in support of the petition relevant to the beneficiary's employment in Nigeria.

The director issued an RFE advising the petitioner that it had failed to submit any evidence supporting the beneficiary's asserted foreign employment. As such, the petitioner requested that the petitioner submit copies of the beneficiary's pay, personnel, and training records to substantiate his employment. Further, the director asked the petitioner to provide a letter from the foreign entity describing the beneficiary's executive or managerial duties, including explaining whether the beneficiary oversaw and controlled other supervisory, professional or managerial employees. In addition, the director requested that the petitioner submit an organizational chart showing the members of the foreign entity's hierarchy and their titles, including summaries of their duties, education levels and salaries. The director also asked the petitioner to provide evidence to substantiate that the foreign entity has been doing business in a continuous fashion, including annual reports or financial documents, tax documents, purchase orders, invoices or other such relevant documentation.

In response, the petitioner submitted numerous letters between the foreign entity and clients in Nigeria relevant to the company's provision of architectural and project management services since [REDACTED]. For instance, a letter dated January 31, 2005, from the beneficiary to the [REDACTED] of Nigeria, informed them of the completion of a contract for the general renovation of an executive estate and requested payment from the bank. Likewise, the letters indicated the beneficiary's involvement in all matters related to the projects, including bidding, award, the provision of services, management of services, and billing.

The petitioner also provided the foreign entity's bank account statements dating from December 2011 to November 2012. The bank statements showed numerous withdraws by the beneficiary, including twenty-nine such transactions during the aforementioned period, by far the most frequent debit listed in the bank account records. Audited financial statements provided for 2012 indicated that the foreign entity earned over 13 million Naria and paid 413,860 Naria in wages and salaries during that year. The petitioner provided no further explanation of the beneficiary's duties abroad. The petitioner submitted the foreign entity's pension report listing five contributing employees in 2010, including the beneficiary, [REDACTED].

In denying the petition, the director stated that the petitioner submitted a vague duty description relevant to the beneficiary's employment abroad and noted its failure to submit detailed information regarding the foreign entity's organizational structure, as requested.

On appeal, counsel contends that the director failed to articulate why the petitioner had failed to meet its burden of proof and asserts that the petitioner has submitted sufficient evidence to establish that the beneficiary has been acting in an executive capacity abroad since 1998. Counsel states that the beneficiary is the highest level executive in the foreign entity and asserts that he is not engaged in operational duties. The petitioner states that the beneficiary supervises subordinate managers and professionals.

Further, counsel states that the director did not request a foreign organizational chart in the RFE, and now submits this evidence on appeal. The submitted foreign organizational chart reflects [REDACTED] Vice President (Operations) subordinate to the beneficiary and indicates that she has a Bachelor of Science degree (B.Sc), a Master of Science degree (M.Sc), and a Master of Environmental Planning degree (MEP). The chart states that Ms. [REDACTED] performs general administrative duties and heads design teams. The chart reflects [REDACTED] General Manager, subordinate to Ms. [REDACTED] and indicates that he also has B.Sc, M.Sc and MEP degrees, and specifies that he "projects implementation and coordinations [sic]."

Further, the chart specifies that Mr. [REDACTED] supervises [REDACTED] Coordinations Manager, who in turn, oversees a principal architect and a "constructions head," both listed as having bachelor's degrees. The chart indicates that the constructions head oversees three construction teams. The chart further specifies that the beneficiary oversees a separate company wholly owned by the foreign entity, [REDACTED] with six listed employees. The petitioner provided a letter from [REDACTED] of [REDACTED] dated December 6, 2012 thanking the beneficiary for his contribution to designing a church, it stated in part, "[the beneficiary] skillfully and professionally design[ed] the renovation plan."

2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary is employed in a qualifying managerial or executive capacity abroad.

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). 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).

In the current matter, the petitioner submitted the same duty description for his foreign employment as provided for his proposed employment in the United States despite the fact that the two entities do not provide the same types of services. In the RFE, the director requested that the petitioner submit a letter from the foreign entity describing the beneficiary's executive or managerial duties, including whether the beneficiary oversaw and controlled other supervisory, professional or managerial employees. However, the petitioner provided no further description of the beneficiary's foreign duties, and has not submitted any further evidence with respect to this critical issue on appeal. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

As discussed previously herein, the duty description submitted in support of the petition was overly vague and did not sufficiently articulate or corroborate the beneficiary's actual day-to-day duties. Again, 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 evidence of record includes no specific examples or documentation to substantiate the beneficiary's claimed duties. Indeed, the beneficiary's duty description is many times repetitive of the regulatory definition of an executive or manager. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Overall, despite submitting a lengthy list of responsibilities, the petitioner has failed to provide sufficient detail or explanation of the beneficiary's proposed activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990).

Beyond the required description of the job duties, United States Citizenship and Immigration Service (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the company'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 business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

Despite counsel's assertion on appeal, the petitioner was in fact requested by the director to submit an organizational chart showing the foreign entity's hierarchy, the titles of its employees, summaries of their duties, education levels and salaries. However, the petitioner failed to submit the aforementioned organizational chart in response to the director's request, and now submits it on appeal.

Following a review of the organizational chart submitted on appeal, it is apparent that the petitioner has failed to submit evidence to substantiate the foreign entity's employment of the listed employees. The petitioner stated previously that the foreign entity employed approximately forty employees, but submits an organizational chart on appeal reflecting only five employees subordinate to the beneficiary. Although the petitioner vaguely indicates that there are five professional level employees and three construction teams, it has not substantiated this assertion with supporting evidence. Further, the petitioner has not submitted any evidence to corroborate its claim that the foreign entity employs five professional subordinates reporting to the beneficiary who hold baccalaureate level degrees. The petitioner has provided no supporting evidence to substantiate the employment of any employees abroad, beyond the beneficiary, and has submitted only brief sentence fragment descriptions of their duties. Further, the foreign entity's pension documentation includes only five employees and lists none of the employees identified in the organizational chart submitted on appeal.

Indeed, the weight of the evidence provided on the record indicates that the beneficiary has handled all company correspondence with customers since the company's inception in 1998 and indicates that the beneficiary is involved in operational matters, such as design duties and handling payment issues, duties that were not included in the petitioner's description of the beneficiary's position. 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). 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 sum, the petitioner submitted a limited response to the director's request for evidence, and to the extent that it has responded, it has provided a conflicting, incomplete and unsupported picture of the foreign entity's organizational structure. Therefore, the petitioner has not established that the beneficiary is employed in a qualifying managerial or executive capacity abroad. For this additional reason, the appeal must be dismissed.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.