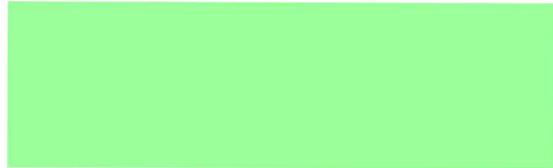
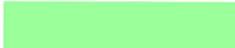


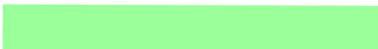
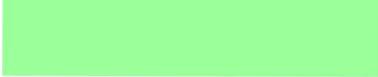


U.S. Citizenship  
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Services

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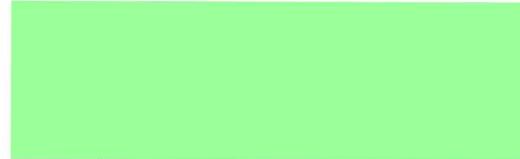


DATE: **AUG 29 2014** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

  
Ron Rosenberg  
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 Texas limited liability company established in [REDACTED] is engaged in wholesale jewelry distribution and sales. It claims to be an affiliate of [REDACTED] the beneficiary's current foreign employer located in Pakistan. The petitioner seeks to employ the beneficiary as a business manager for a period of three years.

The director denied the petition, concluding that the petitioner did not establish that the beneficiary is employed in a qualifying managerial or executive capacity abroad. Further, the director found that the petitioner did not demonstrate that the beneficiary will act in a qualifying managerial or executive capacity 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. On appeal, counsel contends that the petitioner has provided a duty description and other supporting evidence establishing that the beneficiary, the founder of the foreign entity, has been acting in a qualifying executive capacity abroad for over thirty years. In addition, counsel states that the petitioner had provided a duty description relevant to the beneficiary's capacity in the United States demonstrating that he will act in a qualifying managerial or executive capacity.

#### 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.

Finally, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, United States Citizenship and Immigration Services (USCIS) must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. Section 101(a)(44)(C) of the Act.

## II. THE ISSUES ON APPEAL

### A. MANAGERIAL OR EXECUTIVE CAPACITY (ABROAD)

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

#### 1. Facts

The petitioner filed the Form I-129 on August 8, 2012. The petitioner stated that its foreign affiliate "is a respected automotive supplies, tire and repair shop in operations [*sic*] for over thirty years." The petitioner specified that the foreign entity was founded by the beneficiary in 1980, and that he currently owns 49% of the entity, while the petitioner's vice president, [REDACTED] owns 51%. A submitted 2010 Return of Total Income/Statement of Final Taxation from Pakistan indicated that the foreign entity earned 4,513,786 rupees during that year.

The petitioner explained that the beneficiary performs the following duties as the foreign entity's president:

In this chief executive officer role, [the beneficiary] develops and implements policies and procedures to operate his automotive shop selling automobile parts and performing automobile services and repairs. He oversees the daily business operations and trains and supervises the employees. He must also plan work schedules and budgets. [The beneficiary] understands and addresses client needs and maintains positive customer relations. He also manages payments for parts and invoices to vendors and ensures the delivery of supplies, services, utilities and taxes.

In addition, the petitioner submitted a resume for the beneficiary reflecting that he performed the following duties for the foreign entity as its owner since 1980:

- Developed and implemented policies, systems and procedures of firm.
- Banks Reconciliation for outflow fund management.
- Handles daily operations Oversees and organizes tasks of employees.

- Plans and prepares work schedules in accordance with budget and workload.
- Watches & assess [*sic*] performance of workers. Solves objections and answers queries of clients concerning sales and services.
- Created enhanced procedures to complete and go beyond customer expectation.
- Rightly understanding the client needs and requirements, and planning and designing the material for them according to those briefs and details.
- Always maintained good relations with all the employees and motivated them to keep the work flow smooth.
- Personally monitored work on important accounts and guaranteed to the clients, its quality.
- Kept optimum budget and time constraints on the projects according to work load.
- Handling of invoicing and receipts functions of the Firm.
- Handling of payable and payment functions of the company in the following manners:
  - Delivery of Supplies and Services, Receiving and Recording of Vendor invoices, Payment through Cheques, Pay Orders, Demand Drafts and Cash, Co-ordinations with vendors for the issues of payments.
- Controlled and Proper Filling Management Documents like Vouchers, Utilities Bills, and Vendor Invoices etc.
- Showing an interest in every customer's needs.
- Resolving customer complaints in a sensitive & polite manner.
- Highlighting special promotions to customers.
- Assisting customers with queries in a professional, courteous and friendly manner.

A second resume for the beneficiary indicates that his role as owner of the foreign entity involves "handling all positions from managing, accounting, sales and retailing" to "supervising and more."

The director issued a request for evidence (RFE) stating that the evidence submitted was insufficient to establish that the beneficiary was acting in a qualifying managerial or executive capacity abroad. The director requested that the petitioner submit payroll documentation relevant to the beneficiary's employment abroad and a letter from the foreign entity providing a complete description of the beneficiary's duties abroad, including specifics regarding the managerial decisions made by the beneficiary and his typical managerial responsibilities. The director asked the petitioner to clarify whether the beneficiary oversaw any subordinate supervisors and to specify the amount of time he devotes to non-qualifying operational duties. Further, the director requested that the petitioner submit a foreign organizational chart identifying each employee by name and positions title and also provide complete position descriptions and a breakdown of the number of hours they devote to each of their duties.

In response, the petitioner submitted a support letter from the foreign entity written by the beneficiary. The beneficiary stated the following with respect to his employment abroad:

First, I have owned and operated [the foreign entity] continuously for 32 years since 1980. I remain President of the business today. In this position, I am the final authority for the entire business and I am in charge of overseeing all business operations. This means that I set all the rules and policies such as hours of operation, customer service, refund or exchange of purchases and others. I negotiate and sign all contracts with vendors and suppliers for the prices and quantity of the store's tires and other automobile products. I determine what line and type of tires the store will have as inventory. Also, I authorize payments to vendors and suppliers for the tires and automobile parts and ensure proper delivery. I handle all hiring and firing of employees and oversee payment for utilities and taxes related to the business operations.

When needed, a private accountant assists me with tax-related preparation and filing, but I remain the authority to review and sign any tax document. You will see in the documents included that my name and title as President or owner appears consistently in rent payments receipts, corporate tax documents, business invoices, license fees and other business documents.

The beneficiary further stated that he was paid through dividends from the business, and noted that this is customary for small businesses in Pakistan. The petitioner provided no further evidence regarding the beneficiary's duties abroad or documentation relevant to the organizational structure of the foreign entity and the beneficiary's subordinates.

In denying the petition, the director stated that the beneficiary's duties were overly vague and failed to convey his actual day-to-day duties. The director further pointed to the petitioner's failure to submit evidence specific to the beneficiary's subordinates or the foreign entity's organizational structure, as requested. The director emphasized that USCIS cannot conclude that a beneficiary is a qualifying executive based solely on the individual position or title, but that this must be established with supporting evidence that was not provided in this matter.

On appeal, counsel states that the beneficiary has been acting in a qualifying executive capacity for over thirty years with the foreign entity, noting that he is the founder of the company and currently its part owner. Counsel reiterates the beneficiary's foreign duty description and asserts that this is sufficient to establish that the beneficiary is employed in a qualifying executive capacity.

## 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 abroad 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(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).

The petitioner has offered duties for the beneficiary indicating that he allocates a significant portion of his time to non-qualifying operational duties. For instance, the duty description submitted in support of the petition indicated that the beneficiary handles payments for parts and invoices and ensures the delivery of supplies, services, utilities and taxes. Likewise, the beneficiary's duties set forth in his resume also reflect that he performs a number of non-qualifying operational duties in his capacity abroad, including planning and preparing employee work schedules; directly supervising employees in the performance of operational duties; assessing client needs and requirements and the provision of materials; handling invoicing and receipts; managing the delivery of supplies and services; receiving and recording vendor invoices, and all other forms of payment; and paying utilities and vendor invoices. The position description submitted in the resume suggests that the beneficiary also performs routine customer service functions, and that he performs "accounting, sales and retailing" duties. In addition, the beneficiary's duty statement submitted in response to the director's RFE shows that he focuses on similar operational duties, such as negotiating with all vendors and suppliers, authorizing payments, and paying utilities and rent. Given the breadth of the operational duties indicated in the beneficiary's duty descriptions, it is evident that he is involved in most aspects of the day-to-day operations of the business, and it is unclear to what extent he delegates such non-managerial duties to subordinates.

The director requested that the petitioner specify what percentage of time the beneficiary spends on qualifying managerial or executive duties and non-qualifying duties, but the petitioner did not provide this information. 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). Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, as discussed above, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the petitioner has not established that the beneficiary is primarily performing the qualifying duties of a manager or executive. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Further, to the extent that the petitioner references the beneficiary performing qualifying tasks consistent with an executive, such as setting policies and procedures, it has not provided sufficient

detail or supporting evidence to demonstrate the beneficiary's performance of these qualifying tasks. 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.). 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)).

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 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 the director's requests, the petitioner did not provide evidence relevant to the foreign entity's organizational structure or evidence to substantiate the existence of employees subordinate to the beneficiary. The director requested that the beneficiary submit a complete foreign organizational chart showing the beneficiary's place therein, and the names, titles, and duties of its employees. The petitioner did not submit this evidence, or any other evidence, to demonstrate the number or types of employees the beneficiary supervises. As such, although the beneficiary's duty description indicates that he is responsible for supervising employees, including hiring and firing them, it has failed to corroborate their existence with supporting evidence. Further, it has not described their functions and duties. It is not sufficient to merely state that a beneficiary has subordinates or that he acts as a president without substantiating these assertions with supporting evidence. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). In fact, given the operational nature of the beneficiary's duties, the evidence indicates that he more likely than not supervises non-managerial, non-supervisory, and non-professional employees. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988).

Counsel suggests on appeal that the beneficiary has been employed in a qualifying executive capacity for over thirty years, referencing his title and his wide discretionary authority. 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.*

In the current matter, the petitioner has not established that the beneficiary acts in a qualifying executive capacity with the foreign entity. As noted, the beneficiary's various foreign duty descriptions indicate that he performs many non-qualifying operational duties and they do not support a finding that he is primarily focused on setting broad goals and policies. Further, the petitioner has provided no evidence specific to the organizational structure of the foreign entity or the beneficiary's subordinates, as necessary to confirm that he has subordinates to whom he can delegate 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.

For the foregoing reasons, the petitioner has not established that the beneficiary is employed in a qualifying managerial or executive capacity abroad. Accordingly, the appeal must be dismissed.

#### B. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

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

##### 1. Facts

The petitioner states it was formed in 1992 and that it "focuses on wholesale jewelry distribution of high quality gold jewelry, diamond jewelry, precious and semi-precious stone and brand name watches." It indicated that its revenues exceeded \$15 million in 2011 and that it employs over twenty employees. The petitioner stated that it wishes to transfer the beneficiary from the foreign entity to the United States to act as a business manager at their office and showroom location in [REDACTED] TX. The petitioner indicated that it had "an incredible increase of four hundred (400%) of sales to Canada, the Caribbeans [*sic*] and South America," and for this reason, it required an additional business manager to assist its U.S. operations. The petitioner described the beneficiary's proposed duties in the United States as follows:

In this Business Manager position, [the beneficiary] will utilize his thirty-plus years of experience in sales and operations to perform key duties for our growing jewelry distribution business. More specifically, [the beneficiary] will perform the following duties: develop, implement and execute an expansion business strategy for [the petitioner]; review and monitor current services with vendors, sales with clients, marketing, and operations to suggest improvements; research business opportunities and new markets for possible investment; improve relations and communications with both vendors and retail clients; assist with

jewelry inventory tracking and shipping; assist with the training of sales, inventory and billing personnel; and conduct audits as needed.

The petitioner submitted an organizational chart reflecting Mr. [REDACTED] in the position of Vice President overseen by [REDACTED] President, and indicating that he supervises a controller. In turn, the controller was shown to supervise an accounts manager, purchasing manager, operations manager, sales manager, and an I.T. manager. Further, each manager was shown to have subordinates, whose titles were not identified, and in the case of the accounts and sales managers, several subordinates. In sum, the organizational chart reflected that the petitioner employs twenty-three individuals. The beneficiary's proposed business manager position was not identified on the chart.

The director issued a request for evidence (RFE) stating that the beneficiary's proposed duties in the United States did not appear to be primarily executive or managerial in nature. As such, the director requested that the petitioner submit a letter stating the managerial decisions to be made by the beneficiary and his expected managerial responsibilities. Specifically, the director asked that the petitioner articulate if the beneficiary will oversee and control subordinate supervisory or professional employees and to explain the job duties of the beneficiary's proposed subordinates. Further, the director requested that the petitioner indicate how much time the beneficiary will devote to executive or managerial duties as compared to non-qualifying operational duties. The director asked the petitioner to submit a list of its employees, including their names, titles, and complete descriptions of their hourly duties. In addition, the director requested that the petitioner provide copies of the company's IRS Forms 941 Employer's Quarterly Federal Tax Returns for the first and second quarters of 2012.

In response, the petitioner submitted a support letter indicating additional proposed duties for the beneficiary. The petitioner stated that the beneficiary, as business manager, will "direct and maintain the continued growth in sales and better manage the orders and shipments through our website sales orders." The petitioner indicated that the beneficiary will be responsible for developing, implementing and executing an expansion business strategy for [the petitioner], including expanding into India, the Middle East and China to "give [the petitioner] more flexibility and savings with our sourcing inventory and to increase our profit margins." Further, the petitioner specified that the beneficiary will review and monitor current services with vendors and operations to suggest improvements, including negotiating more profitable terms with overseas vendors using his asserted experience in vendor negotiations gained from his time with the foreign entity. In addition, the petitioner noted that the petitioner will "manage new international business opportunities and new markets," stating that this involved managing the proper documentation for the export and shipment of watches from China through U.S. customs, directing shipments to clients and buyers, obtaining proper insurance on shipments, and ensuring compliance with regulatory requirements. Finally, the petitioner indicated that the beneficiary will maintain and enhance a newly created website through a web site developer.

The petitioner provided another organizational chart which is very similar to the chart previously submitted on the record, except that it reflected the beneficiary acting as business manager

subordinate to Mr. [REDACTED] Vice President. The chart indicated that the beneficiary will oversee and control a purchasing manager, an operations manager, and a sales manager. The chart showed that the purchasing manager supervises a purchasing agent, that the operations manager oversees one untitled employee, and that the sales manager has two subordinate assistant sales managers. Further, the assistant sales managers were shown to supervise three employees each.

In denying the petition, the director pointed to the petitioner's failure to provide duty descriptions and other supporting evidence relevant to the beneficiary's proposed subordinates. In sum, the director concluded that the petitioner had not established that the beneficiary would be more than a first line supervisor of non-professional employees.

On appeal, the petitioner's president, Mr. [REDACTED] asserts that the beneficiary's duty description demonstrates that he will primarily perform executive or managerial duties. Further, he states that the evidence establishes that the beneficiary will direct the purchasing, operations and sales departments, that he will only answer to upper management, and that he will hold wide discretionary authority. Mr. [REDACTED] emphasizes the need for the beneficiary to negotiate with vendors and suppliers in Pakistan, pointing to his old age and travel advisories in Pakistan.

## 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 abroad 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(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 demonstrate 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).

The director requested that the petitioner specify what percentage of time the beneficiary spends on qualifying managerial or executive duties and non-qualifying duties, but the petitioner did not disclose how the beneficiary will allocate his time. 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). Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary would spend on them. This failure of documentation is important because the beneficiary's duty description indicates that he will perform a number of non-qualifying operational duties, including assisting in inventory tracking, shipping, billing, and the import of watches from China, which do not fall directly under traditional managerial duties as defined in the

statute. For this reason, the petitioner has not established that the beneficiary will be primarily performing the qualifying duties of a manager or executive. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Further, to the extent that the petitioner references the beneficiary performing qualifying tasks consistent with an executive, such as negotiating with vendors or suppliers abroad and formulating and implementing an international expansion plan, it has not provided sufficient detail or supporting evidence to demonstrate that the beneficiary is likely to primarily perform these tasks. 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.). 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)).

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 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.

With respect to the beneficiary's proposed U.S. employment, the petitioner did not fully respond to the director's evidentiary requests. The director requested that the petitioner provide titles and detailed duty descriptions for each of the beneficiary's proposed subordinates in order to substantiate its assertion that he will be employed in a qualifying managerial or executive capacity. Likewise, the director asked that the petitioner submit tax documentation to corroborate the employment of the beneficiary's subordinates, including IRS Forms 941. However, the petitioner did not provide this probative evidence necessary to substantiate the existence, roles, and duties of the beneficiary's claimed subordinates. Once again, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In addition, the petitioner submits an organizational chart reflecting that the beneficiary will oversee purchasing, operations, and sales managers. However, the petitioner indicated in the beneficiary's initial duty description that he would be involved in training sales, billing and inventory personnel, duties apparently relevant to his asserted supervisory subordinates. Further, the beneficiary's duty descriptions make no mention of his supervision of the aforementioned managers. In fact, the only subordinate referenced in the beneficiary's duty descriptions is a web site developer, who is not listed as one of the beneficiary's subordinates in the most recently submitted organizational chart. In sum, these inconsistencies leave question as to whether the

beneficiary will oversee and control managerial subordinates as asserted. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

For the foregoing reasons, the beneficiary has not established that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States. 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.