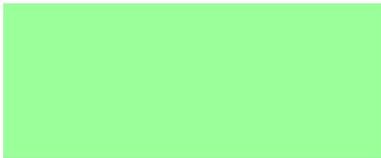




U.S. Citizenship
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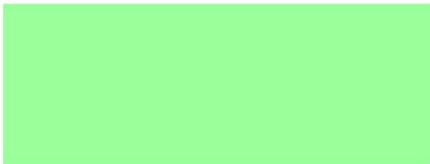


DATE: **DEC 15 2014** Office: VERMONT SERVICE CENTER FILE:

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 corporation established in [REDACTED],¹ states that it is engaged in oil services. The petitioner claims to be a wholly owned subsidiary of [REDACTED] located in the United Kingdom. The petitioner seeks to employ the beneficiary as a technical division manager in the United States for a period of two years.

The director denied the petition, finding that the petitioner had not established that (1) the beneficiary was employed in a managerial or executive capacity with the foreign entity for one year out of the three years prior to the filing of the petition; and (2) the beneficiary will be employed in a qualifying managerial or executive capacity.

On appeal, counsel submits a one-page statement contending that the director's decision was factually and legally incorrect, and is inconsistent with controlling decisions and regulations. Although counsel indicated on the Form I-290B that a brief and/or additional evidence would be submitted to our office within 30 days, no additional submissions have been received. The record, therefore, is considered complete as currently constituted.

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.

¹ Contrary to the petitioner's contention on the Form I-129, which indicates that it was established in 2001, the record contains evidence that the petitioner was initially established as a Florida corporation in [REDACTED]. In 2013, the petitioner filed a Certificate of Conversion of a Foreign Corporation Converting to a Texas Corporation with the Texas Secretary of State, establishing it as a Texas corporation. Online corporate records maintained by the Secretary of State of Florida indicate that the petitioner filed for voluntary dissolution as a Florida corporation on May 1, 2014.

- (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.

Finally, 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.

II. THE ISSUES ON APPEAL

A. MANGERIAL OR EXECUTIVE CAPACITY (ABROAD)

The first issue to be addressed is whether the petitioner has established that the beneficiary was employed in a qualifying managerial or executive capacity with the foreign entity for at least one of the three years prior to the filing of the petition.

1. Facts and Procedural History

In a support letter dated February 17, 2014, counsel for the petitioner stated that the beneficiary is currently employed by the foreign entity as its office manager. Specifically, counsel stated that the beneficiary is responsible for "management of all office based tasks," and provided the following list of specific duties:

- Training new hires
- Monitoring the quality procedures
- Checking all deliverables before shipment
- Organizing resources for specific jobs
- Collecting timesheets for invoicing

Counsel also submitted a copy of the beneficiary's resume, which indicated that the beneficiary has been employed by the foreign entity in four different positions since 2008. In relevant part, the beneficiary's resume listed his employment history as follows:²

2012 – Present (Officer Manager / Checker)

Key Responsibilities:

Ensure all employees have a good understanding of what work is required to do and to a high standard.

All work to be checked by myself before issuing to clients.

Ensure all employees are fully trained and are aware of all areas of Virtual Manager.

Ensure all [REDACTED] model conversions are fully completed and compiled for project use within company software.

² As the petitioner must demonstrate that the beneficiary was employed in a qualifying capacity abroad with the foreign entity for one continuous year within the three years immediately preceding the filing of this petition, we will limit our review of the beneficiary's employment history to the positions he held during the past three years.

Quality Assurance representative for the company ensuring all procedures are adhered to within the company Quality Manual.

Assisting with the development and customization of Virtual Manager for various project needs.

Overseeing weekly reporting to project form [sic] the various project leads

2010 – 2011 Project Engineer – Flange Manager

Key Responsibilities

Working as part of the commissioning team to collect all documentation for flange management then to track that all joints have been signed off and complete to minimize leaks detected whilst leak testing.

Responsible for installing and maintaining Virtual Manager on project laptops for project use as a whole and to ensure project users were trained in the use of Virtual Manager.

Assisting with the customization of Virtual Manager for the project needs.

The petitioner also submitted documentary evidence in the form of payroll records, establishing that the beneficiary was continuously employed by the foreign entity from January 2013 to December 2013.

The director found the initial evidence insufficient, and issued an RFE on March 18, 2014. Specifically, the director noted that the beneficiary's narrative of his duties abroad, without supporting documentation from the foreign entity, was insufficient to establish the capacity in which the beneficiary was employed. In addition, the director noted that the record contained only six months of payroll records for the beneficiary, and requested additional documentation establishing that the beneficiary was continuously employed by the foreign entity during the relevant period.³ Finally, the director outlined the specific types of evidence that would be considered persuasive in establishing that the beneficiary's claimed employment with the foreign entity was managerial and/or executive in nature, or involved specialized knowledge.

In a response dated April 16, 2014, counsel for the petitioner addressed the director's requests. With regard to the criterion, counsel submitted, *inter alia*, the following documents:

1. Brief description of courses undertaken by the beneficiary as part of his technical qualifications gained while a student;
2. Brief description of courses undertaken by the beneficiary as part of his managerial qualifications gained while a student;

³ We note, as pointed out by counsel in response to the RFE, that the director's finding here was erroneous, as the originally-submitted payroll records covered the entire year of 2013.

3. Certificates of completion issued to the beneficiary by the foreign entity for various training courses;
4. Additional payroll records for the beneficiary for 2012 and for January and February of 2014;
5. Employment contract between the beneficiary and the foreign entity; and
6. Organizational Chart for the foreign entity, which shows the beneficiary supervising six subordinate employees.⁴

Counsel also submits a document entitled "Job Description," which includes a description of the foreign entity's office manager position. This description, which appears on the foreign entity's letterhead, states as follows:

Role

Manage the companies [sic] systems (Virtual manager and [REDACTED] to ensure the data is configured and revised as necessary. Introduce Virtual manager into Dimension control to improve efficiency and accountability. Manage employees in a professional manner and ensure the company's Safety Management System is adhered to at all times.

Responsibilities

HSE

- Undertakes processing new employees through safety inductions
- Ensures all fire equipment is fully serviced and up to date

Quality

- The QA representative for [the foreign entity].
- Develops and revises the procedures within the company QA policies.
- Signs off on any non-conformance reports raised.
- Develop and gain approval for the internal and external audit programs.
- Carry out internal audits on the company QA policies.
- Manage the process of gaining certification for the company QA policies.
- Maintain personnel training records.
- Manages the quality management system.
- Final checks all deliverables before they are sent to clients.

⁴ The petitioner also submitted a document entitled "[REDACTED]", which lists the beneficiary as the foreign entity's focal point. However, this document refers to a project in 2009, a period outside the scope of consideration for qualifying employment abroad. Therefore, this document will not be considered in our determination of whether the beneficiary meets the requirements for qualifying employment abroad.

Virtual Manager

- Develops, maintains and executes the Virtual Manager training program for employees.
- Develops, maintains and executes the Virtual Manager training program for clients.
- Develops, maintains and executes the user manuals for Virtual Manager.
- Provides support to the marketing and business development manager.
- Assess trainees and signs off on their competence after training.
- Provides training for the conversion of the [REDACTED] design models.
- Maintains training records for the company.
- Issues and signs off training certificates for the company.
- Final checks all deliverables before they are sent to clients.

Survey and high definition scanning

- Develops, maintains and executes the survey and high definition scanning training program for employees.
- Develops, maintains and executes the [REDACTED] registering training program for employees.
- Develops, maintains and executes the user manuals for [REDACTED] use.
- Provide technical assistance for survey and high definition scanning.
- Final checks all deliverables before they are sent to clients.

Software development

- Any request for software development are [sic] is prioritized before discussions finalized with Technical Director.
- Provides input to the customization of software modules for project use[.]
- Develops, maintains and executes the [REDACTED] registering training program for employees.

Company hardware

- Provides up to date specifications for company hardware.
- Manages company equipment register.

General management

- Develop budgets for all training programs.
- Develop and maintain costs for all UK and European based work.
- Issues and Signs off on any disciplinary actions.
- Approves and plans for all employee time off.
- Approves any additional out of house training requirements.
- Ensures all employees have all appropriate equipment to undertake work.

- Financial authority of up to £1500 only with approval of directors.

In denying the petition, the director concluded that the petitioner had not provided sufficient detail regarding the duties of the beneficiary and his subordinates abroad. The director concluded that there was no substantive evidence that the beneficiary acted in a managerial or executive capacity, or a capacity that involved specialized knowledge, while employed by the foreign entity.

On appeal, counsel contends generally that the portions of the director's decision interpreting the beneficiary's job duties was incorrect, but fails to identify specifically those alleged errors, and refers generally to the "quantum" of supervised individuals. Despite counsel's vague objections to the director's findings, we will nevertheless review the director's decision and issue a full decision on the merits.

2. Analysis

Upon review of the record, the petitioner has not established that the beneficiary was employed in a managerial or executive capacity with the foreign entity.

When examining the executive or managerial capacity of the beneficiary, USCIS 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.* 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 foreign entity are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. For example, while the duties of the beneficiary are divided into numerous categories, all categories state that the beneficiary is responsible for the "final checks" of all deliverables before they are sent to clients. The record is devoid of evidence as to what these deliverables are, and how or by whom they are created. Although the record indicates that the beneficiary operates as the office manager, the statement of duties provided indicates that the beneficiary "develops, maintains, and executes" a number of training programs, provides technical assistance, develops budgets, and ensures fire safety equipment is up to date. This amalgamation of unrelated and somewhat random duties does little to shed light on the claimed managerial nature of the beneficiary's duties. Instead, counsel for the petitioner simply claims that the beneficiary was employed abroad in a qualifying managerial capacity, and asserts on appeal that the director's assessment of duties was erroneous, yet fails to provide specific examples of error. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Overall, the petitioner has failed to provide a sufficiently detailed explanation of the beneficiary's activities in the course of his daily routine abroad. 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).

Indeed, to the extent the petitioner provides detail regarding the beneficiary's foreign job responsibilities, these duties reflect the performance of non-qualifying operational duties consistent with an administrative or support position, as opposed to that of a truly managerial or supervisory position, where tasks such as "ensuring that fire safety equipment is up to date" are typically delegated to subordinate employees. 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).

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 a complete understanding of a beneficiary's actual duties and role in a business.

Here, the only evidence suggesting that the beneficiary performs supervisory duties in the organizational chart submitted in response to the RFE. Specifically, the chart indicates that the beneficiary supervises the following six employees:

1. [REDACTED] and European Project Ops
2. [REDACTED] – High Definition Scanning/Integrity Management
3. [REDACTED] Projects Manager
4. [REDACTED], Senior Systems engineer
5. [REDACTED], Systems Engineer
6. [REDACTED], [REDACTED] Systems Support Engineer

Other than the names and titles of these individuals as listed above, the record contains no evidence outlining the nature of the positions held by these employees. Absent additional evidence outlining the nature of their positions and their levels of responsibility, the petitioner has not established that the beneficiary was responsible for the supervision of subordinate managers or supervisors, as the chart demonstrates that none of these individuals oversee subordinates or other departments. Nor has the petitioner submitted evidence establishing that the supervised individuals are professionals. Finally, we note that the petitioner provided no payroll documentation supporting the contention that these asserted foreign subordinates of the beneficiary were or continue to be employed by the foreign entity during the beneficiary's tenure as office manager. It is unclear, therefore, whether the organizational chart provided accurately reflects the foreign entity's staffing levels during the relevant period.

In addition, absent the ability to verify the exact numbers of individuals on the foreign entity's payroll and their associated duties and responsibilities during the beneficiary's foreign employment, we are precluded from determining whether the foreign entity employed sufficient employees to relieve the beneficiary from performing non-managerial duties. The record indicates that the beneficiary is responsible for many of the daily operational tasks of the foreign entity, and the record contains no evidence suggesting otherwise. In sum, the petitioner has submitted a vague duty description for the beneficiary and has not provided consistent probative evidence to establish that he supervised subordinate managers, supervisors or

professionals. Further, due to insufficient evidence pertaining to the foreign entity's staffing levels, the petitioner has not established that the beneficiary was relieved from performing non-qualifying operational or administrative duties.

As such, the petitioner has not established that the beneficiary was employed by the foreign entity in a managerial or executive capacity. For this additional reason, 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 it will employ the beneficiary in a qualifying managerial or executive capacity within one year of the approval of the petition.

1. Facts

The petitioner filed the Form I-129 on March 10, 2014. In Section 1 of the L Supplement to the Form I-129, the petitioner described the proposed position in the U.S. as follows:

Set up and maintain the Quality Management System. Develop training programs and carry out training for the company's [REDACTED] advanced work flow management modules. Develop training programs and carry out training for the company's survey software ([REDACTED] and high definition scanning techniques.

Counsel's letter submitted in support of the petition indicated that the beneficiary was offered the position of division manager, and counsel claimed that the beneficiary would be "responsible for all training, support and setting up of the projects" that the petitioner handles. Specifically, counsel listed the beneficiary's proposed duties as follows:

- Creating new quality procedures and training programs
- Training all new resources
- Developing budgets for training
- Managing costs for training and equipment purchases
- Developing a safety management system

Counsel further stated that the beneficiary is well-qualified for the proffered position, since he received extensive and practical training as a corporate manager with the foreign entity, as well as through his educational background, which includes a bachelor of science degree in architectural technology. According to counsel, the beneficiary will supervise seven individuals and report only to [REDACTED]. In support of this contention, counsel submitted an organizational chart which outlined the proposed hierarchy of the U.S. entity. Specifically, the chart indicated that [REDACTED] as the head of USA Operations, would oversee the beneficiary. The beneficiary, in turn, would oversee seven employees, listed below:

1. [REDACTED], Material Management
2. [REDACTED], Time Writing
3. T.B.D., Commissioning

4. [REDACTED] Visualization
5. [REDACTED] Job Setting
6. T.B.D., Dimensional Control
7. [REDACTED], [REDACTED] Tracking/Reporting

Counsel for the petitioner also submitted a job offer letter from the U.S. entity to the beneficiary dated January 4, 2014. The letter provided an vague summation of the position and the petitioner's expectations for the beneficiary, as follows:

As you know our operations based in [REDACTED] have been steadily increasing over the last 3 years with existing contracts with [REDACTED] expanding and as of 2014 we have also signed a sole agreement with [REDACTED] to support them with both our experience and technology so they can provide more efficient operations to their clients.

Due to these expanding opportunities [the petitioner] would like to offer you the position of **Technical Division Manager** at our [REDACTED] based office. The role will be responsible for our integration with [REDACTED] providing Management, Quality Assurance and training for all departments.

As previously noted, the director issued an RFE after an initial review of the evidence, and requested additional documentation, including evidence supporting the beneficiary's qualifications for a managerial position in the United States. The director noted the regulatory requirements for the requested classification, and invited the petitioner to supplement the record with evidence it deemed relevant.

In response, counsel submitted additional evidence, much of which pertained to the beneficiary's employment abroad and the petitioner's corporate records. No new evidence, aside from additional documentation regarding the beneficiary's qualifications, was submitted to address this criterion. No additional details regarding the proffered position in the United States were provided.

In denying the petition, the director concluded that the petitioner had not established that it will employ the beneficiary in a qualifying executive or managerial capacity. On appeal, as previously noted, counsel for the petitioner makes general objections with regard to the director's findings, yet cites no specific erroneous conclusions of law or fact.

2. Analysis

Upon review of the record, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity.

Again, when examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(I)(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.*

Preliminarily, we note that the record lacks a detailed description of the duties to be performed by the beneficiary, which impedes our ability to examine the nature of the beneficiary's foreign employment with

the petitioner. Aside from the brief statement provided on the Form I-129, the record lacks an independent overview of the beneficiary's duties prepared by the petitioner. The only other statement regarding the duties of the proffered position, aside from the general discussion of the job offer in the January 4, 2014 letter, is the statement by counsel in the letter of support dated February 17, 2014.

Regarding counsel's letter of support, we note that the letter outlines in general terms the nature of the beneficiary's duties in the position of division manager. This description of the duties and the requirements of the position is not probative evidence, however, as the information was provided by counsel, not the petitioner. Counsel's submission was not endorsed by the petitioner and the record of proceeding does not indicate the source of the duties and responsibilities that counsel attributes to the position. 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 Obaighbena*, 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).

In this matter, the vague description of the duties of the proffered position renders it difficult to ascertain the exact nature of the beneficiary's responsibilities. This is particularly problematic given the lack of detail regarding the actual nature of the petitioner's business. The petitioner claims to be engaged in "oil services," yet the record provides no definitive statement of how the proposed duties of the beneficiary, in a claimed managerial capacity, will further promote these alleged "oil services." While a review of the petitioner's brochure suggests that the petitioner is engaged in the construction of [REDACTED] presumably geared toward companies in the oil industry, the record contains no clear, instructive statement that outlines the exact nature of the petitioner's services, including the manner in which they are provided and the beneficiary's role therein.

Specifically, the statement provided by the petitioner on the Form I-129 suggests that the primary duty attributed to the beneficiary is training. Although the job offer letter indicates that he will be responsible for overall management and quality assurance, as well as training, and refers to ongoing client agreements with companies like [REDACTED] it appears that the beneficiary's primary responsibility will be to provide training, specifically in the petitioner's software and high definition scanning techniques. The record, however, provides no additional information regarding the recipients of this training. For example, it is unclear if the individuals benefitting from the training programs implemented by the beneficiary will be internal personnel or clients in the oil industry. Moreover, another unexplained inconsistency is how the beneficiary's academic training in architectural technology is relevant to the training services he will be responsible for providing.

In addition to the vague description of duties, combined with an even vaguer discussion of the petitioner's services, the record contains contradictory evidence regarding the petitioner's staffing levels. On the Form I-129 petition, signed by the petitioner's president on February 17, 2014, the petitioner claimed to employ two persons. However, the organizational chart submitted with the petition lists five employees by name who apparently will work subordinate to the beneficiary, in addition to [REDACTED] the beneficiary's direct supervisor.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the

reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. To establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development.

In the present matter, the petitioner has not explained the nature of its business and how the beneficiary's proposed managerial position will further the goals of the petitioner. Moreover, the petitioner has failed to explain the discrepancies in staffing levels as claimed on the Form I-129 and the organizational chart. 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).

Regardless of whether the petitioner employs two persons or seven persons, it has nevertheless failed to articulate how the reasonable needs of the petitioning enterprise, an "oil services" company, justify the beneficiary's performance of non-managerial or non-executive duties (i.e., conducting training). 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.

In conclusion, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties, such as the training duties identified as the primary responsibility of the beneficiary in this petition.

For this additional reason, the petition must be denied.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons set forth above, with each considered as an independent and alternate 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.