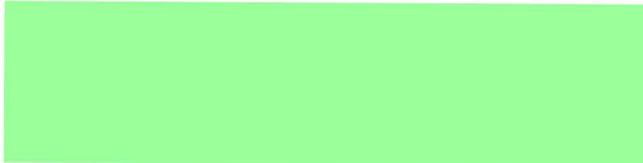
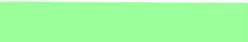


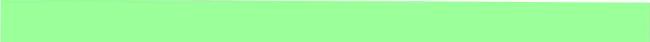


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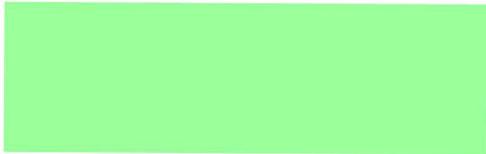


DATE: **JUL 23 2014** Office: VERMONT SERVICE CENTER FILE: 

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 Vermont Service Center Director 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 Petitioner for a Nonimmigrant Worker seeking to extend the beneficiary's status as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Florida limited liability company, is engaged in the sale and distribution of paint and coating materials. The petitioner states that it is a subsidiary of [REDACTED] located in Columbia. The petitioner seeks to extend the beneficiary's employment as general manager for three additional years.¹

The director denied the petition, concluding that the petitioner did not establish that it will employ the beneficiary in a qualifying managerial or executive capacity

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 states that the director erroneously denied the petition based on the petitioner's failure to submit evidence that was not requested in the request for additional evidence (RFE) and asserts that the beneficiary acts in a qualifying managerial capacity through his supervision of professional subordinates.

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:

¹ United States Citizenship and Immigration Service records indicate that the beneficiary was previously approved as an L-1A intracompany transferee on three previous occasions pursuant to petitions filed by the current petitioner, including from October 15, 2008 to October 14, 2009 [REDACTED] from October 15, 2009 to October 14, 2011 [REDACTED] and from August 15, 2012 to July 30, 2013 [REDACTED]. The director indicated in the request for evidence (RFE) and his decision that the petitioner was filing as a new office in the United States. However, the petitioner clearly states in the Form I-129 that it is filing for an extension and the evidence and the beneficiary's immigration history do not indicate that the petition is for a new office. As such, any reference to the petitioner as a new office in the United States is hereby withdrawn and the current matter will be adjudicated treating the petitioner as an already existing office in the United States filing for the extension of the beneficiary's status as an L-1A intracompany transferee.

- (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, 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. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in a managerial or executive capacity in the United States.

A. Facts

The petitioner filed the Form I-129 on July 30, 2013. The petitioner states that the foreign entity “is one of the leading surface coating manufacturers in Columbia,” with average annual sales in excess of \$20 million, and 120 employees abroad. The petitioner stated that it was established in 2008 to act as a wholesale distributor of the foreign entity’s products in the United States. A submitted 2012 IRS Form 1065 U.S. Return of Partnership Income indicated that the petitioner earned \$245,540 and that it employed four individuals.

A support letter submitted from the petitioner stated that the beneficiary performs the following duties in his capacity as general manager:

[The beneficiary] ensures that the goals and objectives of the business are accomplished within a prescribed time frame and funding parameters. He reviews proposals and business plans to determine time frames, funding limitations, procedures for accomplishing goals, staffing requirements, and allotment of available resources to various phases of the development of the business. [The beneficiary] develops and oversees the development of client accounts, prepares reports, makes business plans and modifications and takes steps to ensure development of this business. He hires, trains and liaises with employment recruiters to fill additional positions as needed. He has the power to hire and fire all staff members and all existing employees report to him. [The beneficiary]

negotiates contracts, liaises with attorneys, and U.S. government agencies and exercises full control of the financial aspects of the organization.

The petitioner indicated that the beneficiary oversees and controls “professional staff members” in his capacity as general manager. The petitioner stated that the beneficiary supervises a head of compliance and sales with a [REDACTED] who analyzes compliance procedures, import/export distribution, and coordinates the logistical and distribution functions and a development and operations manager with a “degree in engineering” who plans the daily operations of the company, oversees human resources, sets agendas for the technical aspects of the sales facility, and facilitates the smooth operations of the business. Further, the petitioner explained that the sales director supervises “sales and marketing agents” trained “for the sales and handling of the Company’s inventory.”

The foreign entity stated that “[the beneficiary] is a key person in our organization as he is responsible for planning, formulating and implementing all management, executive, financial, operational and administrative procedures on behalf of the business group,” and that he “identifies business opportunities” and hires additional employees as necessary.

Following an initial review of the evidence, the director issued an RFE, stating that the description of the beneficiary’s job duties was not sufficient to establish that he has been employed in a qualifying managerial or executive capacity. As such, the director requested that the petitioner submit a statement describing the beneficiary’s duties for the previous year and those to be performed under the instant petition. In addition, the director asked that the petitioner provide: (1) a detailed statement listing the number of employees and the types of positions, (2) Florida employer’s quarterly wage reports for the last four quarters, (3) IRS Forms W-2 Wage and Tax Statements and/or IRS Forms W-3 Transmittal of Wage and Tax Statements showing wages paid to employees for the past year, and (4) an organizational chart indicating each employee by name and title, including a summary of their duties and salaries.

In response, the petitioner submitted an additional support letter restating the duties provided for the beneficiary in support of the petition. The petitioner further stated that the company “hired a number of new employees, launched a marketing campaign, introduced several new products, and oversaw shipments and customs control into the U.S.” under the beneficiary’s leadership. The petitioner explained that if the petition were approved, the beneficiary would perform the following duties:

- Act as the senior-most executive of the Company, with broad discretionary authority to make all final financial, operational and staffing decisions;
- Analyze client data and industry trends as part of the executive team;
- Review, prepare and present reports and its findings about current market trends, client demands and importing/sales conditions;
- Review, prepare and oversee all sales initiatives and projects to increase profitability;

- Make recommendations on feasible business opportunities;
- Handle all of the company's major client accounts[;]
- Make key business decisions regarding daily operations of the business[;]
- Hire, fire, train and supervise at least five (5) business professionals[;]
- Contribute extensive professional skills and knowledge in the import/customs, storage, care, maintenance, acquisition, inspection, delivery, use and quality control of paint products, and peripherals, both from a management and sales perspective[;]
- Negotiate contracts and oversee the daily operations of the business[;]
- Strategic planning and drawing up marketing forecasts;
- Implementing and developing a cohesive sales plan and sales projections;
- Direct and oversee brand positioning and expand the Company's market position;
- Responsible for development and establishment of all business policies, procedures and objectives[;]
- Coordination of the Company's business strategy and all new business development; [and]
- Research market conditions and delegate tasks to other management team members[.]

Furthermore, the petitioner provided an explanation of the beneficiary's "professional staff members." The petitioner stated that the beneficiary supervised [REDACTED] Regulatory Compliance and Customs Manager, who held a "University and Law Degree," and was responsible for legal issues, analyzing compliance procedures, import and export distribution, coordinating logistical and distribution functions and reviewing issues related to customs enforcement. The petitioner submitted Ms. [REDACTED] Columbian "professional attorney card," indicating that she received a "university degree" in 1990.

The petitioner stated that the beneficiary also supervised [REDACTED] Director of Operations and Sales, noted that he had a degree in chemical engineering, and that he was responsible for planning the daily operations of the Company, including reviewing the product line, making recommendations, overseeing human resources, and setting agendas related to technical aspects of the sales facility.

The petitioner explained that the beneficiary supervised [REDACTED] Director of Quality Control, who had a degree in electrical engineering, and stated that he reviews shipments prior to delivery, prepares paint sample reports, runs tests on products and advises senior management on quality. The petitioner provided a diploma from the [REDACTED] indicating that Mr. [REDACTED] had an electrical engineering degree. A submitted organizational chart further indicated that [REDACTED] Financial Comptroller, reports to Ms. [REDACTED]. The petitioner stated she holds a "University Degree in Accounting" and that she is responsible for accounts receivable and payables, reconciling financial transactions, recordkeeping, tracking expenses and structuring the budget. The chart further showed that [REDACTED] Office Manager, reports to Mr. [REDACTED] and that she focuses on administrative tasks.

The petitioner submitted an Employer's Quarterly Report for the third quarter of 2013, indicating salaries paid to the following employees: (1) the beneficiary: \$7,500 (or a projected \$30,000/year); (2) [REDACTED] \$6,000 (or \$24,000/year); (3) [REDACTED] \$4,500 (or \$18,000/year); (4) [REDACTED] \$1,869.60 (or \$7,478.40/year); (5) [REDACTED] \$1,869.60 (or \$7,478.40/year); and (6) [REDACTED] \$934.80 (or \$3,739.20/year). The stated and federal returns for the first and second quarters of 2013 showed that the petitioner had only three employees: the beneficiary, [REDACTED]

In addition, the petitioner submitted marketing information for its products and stated that "these detailed product summaries are highly professional in nature and details [sic] the new type of products the Company sells and how it plans to expand." Further, the petitioner explained that the "documents demonstrate the highly professional, sophisticated business transactions that the Company is involved in and how the Beneficiary will be directly responsible for overseeing the professional growth of the Company as General Manager." The petitioner provided a letter from [REDACTED] that states that it has provided storage and merchandise tracking services for the petitioner for the past six months.

In denying the petition, the director stated that the evidence submitted by the petitioner demonstrated that a majority of the beneficiary's subordinates worked only part time thereby suggesting that the company had insufficient employees to relieve the beneficiary from primarily performing non-qualifying operational duties. Further, the director pointed to the petitioner's failure to submit degree information for each of the beneficiary's claimed professional subordinates.

On appeal, counsel contends that the director erroneously denied the petition based upon the petitioner's failure to submit evidence that was not requested in the RFE, including degrees for each one of the beneficiary's claimed professional subordinates.² Counsel states that the director improperly based on the petitioner's small number of employees. Counsel asserts that the petitioner has submitted sufficient evidence to establish that the beneficiary acts in a qualifying managerial capacity through his supervision of professional subordinates.

B. 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(l)(3)(ii). The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the

² The director erred by saying he had specifically requested evidence of the beneficiaries' educational credentials. Nonetheless, the petitioner bears the burden of proof of establishing eligibility.

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, such as analyzing client data and industry trends; reviewing, preparing and presenting reports and their findings about current market trends; reviewing, preparing and overseeing all sales initiatives and projects to increase profitability; handling major client accounts; making key business decisions regarding daily operations of the business; partaking in strategic planning and drawing up marketing forecasts; and developing and establishing all business policies, procedures and objectives; amongst other listed duties, 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, the beneficiary's duty descriptions are many times simply repetitive of the regulatory definition of an executive or manager.

For example, in each case, the petitioner has failed to provide specifics and supporting documentation to corroborate his performance of his stated duties including major clients managed by the beneficiary, reports he created, key business decisions he made, or sales initiatives, marketing plans, business policies, procedures or objectives he implemented. 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).

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.

Certain discrepancies in the submitted organizational structures leave questions as to whether the petitioner employs sufficient operational staff to relieve the beneficiary from performing non-qualifying operational duties. The petitioner has submitted two conflicting descriptions of its staffing. On the Form I-129 petition, the petitioner indicated that it currently had four employees in the United States. In its initial support letter, the petitioner indicated that the beneficiary would

directly supervise a compliance/sales director, a development/operations manager and a sales director. In response to the director's RFE in November 2013, the petitioner stated that it employed the beneficiary, a regulatory compliance and customs manager, a director of operations and sales, a director of quality control, a financial comptroller, and an office manager. The petitioner submitted a tax report for the third quarter of 2013 showing that it had six employees. However, the petitioner's tax documentation for the two previous quarters demonstrated that the petitioner only employed the beneficiary, Mr. [REDACTED] and Ms. [REDACTED]. The documentation submitted shows that the petitioner hired three additional employees in the third quarter of 2013. Further, the petitioner changed the job titles of all its employees, and no longer made any reference to the claimed "sales and marketing agents," responsible for the performance of operational tasks, who were referenced in the initial organizational chart. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Following a review of the duties of the beneficiary's subordinates, we see a significant overlap between the beneficiary's duties and that of his subordinates, leaving questions as to the actual duties performed by the beneficiary. For instance, the petitioner indicates that Mr. [REDACTED] focuses on human resources and the beneficiary also focuses on the hiring and firing of employees, despite the company hiring very few employees from 2008 until the third quarter of 2013. Likewise, one of the few specific duties provided for the beneficiary was his provision of expertise on "import/customs, storage, care, maintenance, acquisition, inspection, delivery, use and quality control of paint products, and peripherals, both from a management and sales perspective." However, the petitioner is shown to employ a fulltime regulatory and compliance employee, an operations manager, and a quality assurance manager, focusing on these aspects of the business, leaving questions as to what duties remain for the beneficiary to perform. Likewise, the petitioner states that it employs a financial comptroller, which appears duplicative of the beneficiary's duties. The petitioner states that submitted marketing materials "demonstrate the highly professional, sophisticated business transactions that the Company is involved in and how the Beneficiary will be directly responsible for overseeing the professional growth of the Company as General Manager" and that these documents demonstrate that the business is "highly professional" and "how it plans to expand." But, these statements are conclusory and petitioner fails to specify how these materials establish that the beneficiary acts in a managerial capacity. 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 duties of the beneficiary and his subordinates fail to identify the performance of any operational duties of a business, such as selling, shipping and receiving products. For instance, none of these employees are stated to act in a sales capacity or to focus on the processing of orders, leaving questions as to who performs these necessary operational tasks. Further, the three employees hired by the petitioner during the third quarter of 2013, work only on a part time basis, given their evidenced salaries during this period, casting doubt on whether the company employs sufficient operational employees. In sum, the petitioner's organizational structure appears top heavy with management and appears to lack operational employees needed to allow the business to

function, leaving uncertainty as to the asserted duties of the beneficiary and his stated professional and managerial subordinates. 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).

On appeal, counsel asserts that the beneficiary acts as a qualifying manager based upon his supervision of professional subordinates. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." See section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

In the present matter, the petitioner has not submitted sufficient evidence to demonstrate that the beneficiary primarily oversees and controls the work of managerial, supervisory or professional employees. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or managerial position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

As noted, the petitioner states that the beneficiary has two subordinate managerial or supervisory employees, including Mr. [REDACTED] Director of Quality Control, and Ms. [REDACTED] Regulatory and Compliance Manager. These managers are shown to have gained their subordinates during the third quarter of 2013, despite the company having operations dating back to 2008. Further, Mr. [REDACTED] was recently hired on a part time basis, as evidenced by his limited salary reflected in the petitioner's tax returns. In addition, Ms. [REDACTED] Office Manager, and Ms. [REDACTED] Financial Controller, are also shown to work on a limited part time basis, leaving doubt that Mr. Valadez and Ms. [REDACTED] spend a majority of their time acting as supervisors. Also as previous indicated, the petitioner appears to lack necessary operational employees to run the business, thereby suggesting that these operational duties are in fact performed by a combination of the beneficiary and his managerial subordinates. 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, 591-92 (BIA 1988). The petitioner has submitted insufficient and conflicting evidence with respect to its organizational chart and has not identified employees who perform the routine tasks inherent to operating its business. Therefore,

the petitioner has not demonstrated that the beneficiary oversees or controls managerial or supervisory subordinates as necessary to qualify the beneficiary as a personnel manager.

Likewise, the petitioner has not submitted sufficient evidence to establish that the beneficiary oversees subordinate professionals. In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Here, the petitioner asserts that four of the beneficiary's five subordinates hold professional degrees, thereby qualifying them as subordinate professionals. However, the petitioner has provided no evidence to establish that Mr. [REDACTED] holds a degree in chemical engineering or that Ms. [REDACTED] has a degree in accounting. Further, although the petitioner has submitted degree information for Mr. [REDACTED] the quality assurance manager, suggesting that he received a degree specific to electrical engineering, it fails to demonstrate that this degree is required for the performance of the position and specifically needed for entry into the field. In addition, Mr. [REDACTED] degree in electrical engineering from the [REDACTED] has not been established as the equivalent of a baccalaureate degree in the United States, but could just as likely be a trade certification. Likewise, the same could be stated with respect to Ms. [REDACTED]. Although some aspects of her job are stated to involve evaluating legal compliance, her position is not shown to require a law degree, and the petitioner has not established Ms. [REDACTED] attainment of a baccalaureate degree. 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 conclusion, the petitioner failed to submit a sufficiently detailed job description necessary to demonstrate the beneficiary's actual day-to-day tasks. The petitioner provided inconsistent information regarding its staffing. The petitioner appears to have only nominal staff assigned to perform operational duties. Finally, the petitioner failed to establish the beneficiary primarily supervises professional employees, as defined in the regulations. As such, 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.

III. CONCLUSION

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.