



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 14 2014**

OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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 ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to amend and extend the beneficiary's status as an L-1A 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 New York corporation, states that it engages in construction, real estate development, auto parts import and export, and IT consulting. On the Form I-129, the petitioner stated that it is an affiliate of the beneficiary's last foreign employer, [REDACTED] located in India. The petitioner claims that it recently acquired the beneficiary's current L-1A employer, [REDACTED] by merger. The petitioner now seeks to employ the beneficiary as its chief executive officer and requests that his status be extended for two years.

The director denied the petition on two independent grounds, concluding that the petitioner failed to establish: (1) that it has a qualifying relationship with the foreign entity; or (2) that the beneficiary would be employed 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 asserts that the director erred in evaluating the facts presented and emphasizes that the petitioner does in fact have a qualifying foreign affiliate, [REDACTED], located in India. In addition, counsel submits an expanded description of the beneficiary's proposed duties as CEO and indicates that "the beneficiary's role in [a] managerial or executive capacity is clearly justified."

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.

II. THE ISSUES ON APPEAL

The director denied the petition on two independent grounds, concluding that the petitioner failed to establish: (1) that it has a qualifying relationship with the beneficiary's foreign employer; or (2) that the beneficiary would be employed in a qualifying managerial or executive capacity.

A. Qualifying Relationship

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

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

* * *

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

* * *

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

over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means

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

1. Facts

The petitioner filed the Form I-129 on September 24, 2013. On the petition, it stated that it has an affiliate relationship with [REDACTED] (India), which was the beneficiary's employer abroad from 1996 until 2009, when he commenced employment with [REDACTED] in L-1A status. Where asked to describe the company stock ownership and managerial control of each company, the petitioner stated: "50% Partner of [REDACTED] (India); 50% stakeholder of [REDACTED] (formerly known as [REDACTED])" The petitioner indicated that it recently acquired [REDACTED] with that company being merged into the petitioning company.

In a letter dated September 19, 2013, the petitioner stated that the beneficiary acquired a 50% ownership interest as a result of the merger and will serve as its CEO. The petitioner submitted the beneficiary's paystubs indicating that it currently pays his salary, copies of three I-797A Approval Notices as evidence that he was authorized to work for [REDACTED] in L-1A status, and a copy of the biographical page from his Indian passport. The petitioner did not submit any other evidence in support of the petition.

The director issued a request for evidence (RFE) on October 1, 2013, in which she advised the petitioner that its initial evidence did not establish the required qualifying relationship, as it did not include documentation to support its claim that it has an affiliate relationship with [REDACTED] (India) based on common ownership and control, or evidence of its claimed acquisition of [REDACTED]. The director instructed the petitioner to provide evidence of the ownership and control of both entities and noted that such documentation could include articles of incorporation, a partnership agreement, partnership registration, relevant meeting minutes, stock purchase agreements, stock ledgers, proof of stock purchase, recent income tax returns, or recent annual reports.

The director further advised the petitioner that it must submit evidence that it is doing business in the United States and in at least one other country. The director requested evidence that the foreign entity is doing business such as copies of its most recent annual report, tax documents, audited financial statements, purchase orders, invoices, contracts, or other similar business documentation.

In response to the RFE, counsel for the petitioner stated that the beneficiary was the 50% partner of [REDACTED] (India), and the 50% shareholder of [REDACTED] and that he previously qualified for L-1A status with [REDACTED] based on an affiliate relationship between those companies. The petitioner indicated that, subsequent to the merger of [REDACTED] into the petitioner, the beneficiary owns 50% of the current petitioning company, while the remaining 50% of its shares are owned by [REDACTED]. Counsel stated that [REDACTED] is also the 100% owner of [REDACTED] in India, and thus the petitioner has a qualifying relationship with that foreign entity. The petitioner's RFE response included the following documentation:

- The petitioner's Certificate of Incorporation filed with the New York Department of State on September 26, 1997;
- The petitioner's Certificate of Authority authorizing the petitioner to conduct business in New Jersey, filed July 1, 2003;
- The petitioner's recent bank statements for [REDACTED];
- New York Department of State filing receipt for the incorporation of [REDACTED] dated July 8, 2009;
- "Agreement of Merger of Interest & Purchase of Assets" between the petitioner and [REDACTED] dated August 12, 2011;
- The petitioner's stock certificate no. 2 issuing 100 of the company's 200 shares to [REDACTED] dated August 12, 2011;
- The petitioner's stock certificate no. 3 issuing 100 shares to the beneficiary, dated August 12, 2011.
- A filing receipt from the New York department of state indicating that the petitioner filed a "Merger (Domestic Business)" document on November 26, 2013, and identified the constituent company as [REDACTED]

The merger agreement reflects that the [REDACTED] agreed to sell, and [REDACTED] agreed to purchase, 100% of its shares, and that "[REDACTED] shall be merged with and into [REDACTED] which shall be the surviving corporation." The agreement includes the following terms regarding the purchase price: "[REDACTED] in return will give 50% (fifty percent) shares of [REDACTED] to [the beneficiary], at present the CEO of [REDACTED] and the 50% Owner of [REDACTED]. The document indicates that the merger would take effect from August 15, 2011, but the "articles of merger may be filed with the Secretary of the State of New York on or after 12/31/2011." The agreement indicates that [REDACTED] will own the other 50% of the shares and act as president of the company, while the beneficiary will be the vice president and CEO.

With respect to the ownership and business activities of the two foreign entities, [REDACTED] the petitioner submitted the following:

- Deed of Partnership for [REDACTED] (India) dated May 26, 1996 identifying the beneficiary and [REDACTED] as 50-50 partners;
- Various [REDACTED] Indian tax documents for the years 2007 through 2009;

- Form ITR-V Indian Income Tax Return Verification Form for [REDACTED] for the 2013-14 assessment year, which identifies his net income for [REDACTED]
- Certificate of Permanent Registration for [REDACTED] issued by the District Industries Centre, [REDACTED] on July 30 2001;
- A partially translated Indian document dated 2001 that identifies [REDACTED] as the proprietor of [REDACTED]; and
- [REDACTED] account statement for the period July 1, 2013 to December 18, 2013.

The director denied the petition, concluding that the petitioner did not establish that it has a qualifying relationship with the foreign entity. The director acknowledged the petitioner's claim that the beneficiary owns 50% of [REDACTED] (India) and 50% of the petitioning company. The petitioner determined that neither the foreign entity's deed of partnership nor the merger agreement submitted for the petitioner establishes the beneficiary's actual control of the foreign and U.S. entities. As such, the director determined that the petitioner had not supported its claim of an affiliate relationship with [REDACTED]

On appeal, counsel for the petitioner asserts that the director denied the petition in error and "ignored the fact that there has been a shift in the relationship of the U.S. and foreign entities." Counsel does not directly address the petitioner's relationship with [REDACTED] but rather asserts that the evidence establishes that [REDACTED] (India) is a qualifying foreign affiliate.

2. Analysis

Upon review, the petitioner has not established a qualifying relationship, as it has not provided evidence that it and the organization which employed the beneficiary abroad are qualifying organizations, as required by 8 C.F.R. § 214.2(l)(3)(i).

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm'r 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual

control of the entity. See *Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

At the time of filing, the petitioner claimed eligibility based on an affiliate relationship between the beneficiary's last foreign employer, [REDACTED] an Indian partnership, and the petitioner. The petitioner indicated that the beneficiary owns 50% of each company and submitted a deed of partnership for the foreign entity, along with the above-referenced merger agreement and two stock certificates for the petitioning company in support of its claim.

While the evidence submitted indicates that the beneficiary was a founding partner of [REDACTED] the record does not support a finding the foreign entity continues to exist and do business as a qualifying organization abroad. In response to the director's RFE, the petitioner submitted [REDACTED] (India) tax documentation and accountant's audit reports for the tax assessment year 2008 to 2009. The petitioner did not establish that this company continued to do business at the time of filing. On appeal, the petitioner no longer claims a qualifying relationship with [REDACTED] despite the fact that the petitioner indicated on the Form I-129 that [REDACTED] is its foreign affiliate.

Further, there are several deficiencies with respect to the evidence submitted to establish that the petitioner had acquired [REDACTED] and merged that company into its own operations in 2011. The agreement indicates that the Board of Directors recommended that the merger agreement be approved by the companies' respective shareholders. However, the agreement does not indicate that either company's shareholders had already approved the merger. Further, the record does not establish the identity of the shareholders of either entity at the time of the merger. The petitioner stated that the beneficiary held only a 50% interest in [REDACTED] and there is no evidence that the other shareholder(s) had agreed to the sale and merger.

Moreover, although the agreement of merger indicates that the merger would take effect on August 15, 2011, the record reflects that [REDACTED] filed an I-129 petition to extend the beneficiary's status as an employee of that company on September 22, 2011, more than a month after the merger purportedly took place. Moreover, the evidence submitted in support of this petition indicates that the merger was not registered with the New York Department of State until November 26, 2013, subsequent to the filing of the petition and more than two years after the merger was claimed to have taken place. 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 must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Thus, while the petitioner submitted the merger agreement and copies of two stock certificates (both unendorsed) ostensibly showing that the company was owned by the beneficiary and [REDACTED] as of August 12, 2011, the record does not reflect when or if the companies' respective shareholders had approved the merger or that the acquisition or merger of [REDACTED] had been recorded with the appropriate authority prior to the filing of the petition.

Further, the petitioner did not submit a stock ledger or a copy of its stock certificate number one, or provide evidence that the earlier stock certificate had been canceled at the time of the merger and redistribution of stock. 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)). There is simply insufficient evidence to establish that the merger had taken place at the time the petition was filed. The unendorsed stock certificates are insufficient to establish the petitioner's actual ownership and control.

The record does contain evidence that Mr. [REDACTED] owns a sole proprietorship in India doing business as [REDACTED]. However, this foreign entity has no relationship with the company that employed the beneficiary abroad, and the claimed merger between the two U.S. companies did not include a similar merger of the entities' claimed foreign components.

The regulations require evidence that the petitioner and the organization which employed . . . the alien are qualifying organizations." 8 C.F.R. § 214.2(l)(3)(i). Due to the inconsistencies and omissions in the evidence submitted, the petitioner has not met this requirement. Accordingly, the appeal will be dismissed.

B. Managerial or Executive Capacity (United States)

The second issue addressed by the director is whether the petitioner established that it will employ the beneficiary in a qualifying managerial or executive capacity.

1. Facts

The petitioner stated on the Form I-129 that it will employ the beneficiary as its CEO. The petitioner indicated on the petition that it is engaged in "construction, real estate development, auto parts export and import and IT consulting" with 17 current employees and gross annual income of \$1.5 million. The petitioner stated that the beneficiary will perform the following duties:

1. Responsible for overseeing financial and accounting procedures, internal controls and assure internal control compliance per requirements;
2. Direct company financial planning and budget management functions;
3. Develop benchmarks for measuring the financial and operating performance of divisions;
4. Monitor and analyze monthly operating results against budget;
5. Supervise debt financing and debt service payments with external agencies;
6. Review month end / quarter end / year end closing process;
7. Identify potential issues regarding business operations and financial management;
8. Work on special assignments purchase and export of products, deal with manufacturers and suppliers for products, finance matters, budget, forecasting and project feasibility / viability;
9. Negotiate with manufacturers and suppliers, sign business contracts and agreements on behalf of the organization;
10. Oversee the reporting and integrity of accounting for invested assets;

11. Manage portfolio of projects by monitoring functional management of various units managing different projects.

In the RFE, the director advised the petitioner that the initial job description was insufficient to establish the beneficiary's employment in an executive capacity. The director suggested that the petitioner submit an organizational chart and identify the beneficiary's subordinates by name, job title, duties, education level and salary. The director also suggested the petitioner submit a more detailed description of the beneficiary's typical executive duties, examples of expected executive decisions, and the percentage of time he will allocate to specific tasks. In addition, the director requested evidence related to the petitioner's business activities, such as its income tax returns, financial statements, major sales invoices, business bank statements, and vendor, supplier or customer contracts.

Counsel's letter in response to the RFE included a list of 19 duties to be performed by the beneficiary, the first 11 of which were substantially the same as those stated above. The petitioner added the following duties:

12. Prepare budgets and forecast reports;
13. Establish and implement short and long-range organizational goals, objectives, policies, and operating procedures;
14. Design, establish, and maintain an organizational structure and staffing to effectively accomplish the department's goals and objectives;
15. Serve on planning and policy-making committees;
16. Oversee financial management of foreign operations to include developing financial and budget policies and procedures;
17. Hire or fire new employees as required, negotiate on terms of employment, train new staff on specific tasks and assigned duties;
18. Evaluate performance of employees and subordinates; and
19. Supervise export operations, closely monitor business, and develop strategies for the growth of the organization.

The petitioner submitted an organizational chart indicating that the beneficiary, as CEO, reports to the president of the company and supervises four general managers, who manage the separate departments of marketing, administration, finance and overseas operations. The chart indicates that the general manager – marketing supervises an assistant manager for construction, who in turn supervises an unknown number of sales executives and a distribution team. The general manager for administration is shown to supervise a manager, administration, and a manager, projects. According to the chart, these employees supervise an administrative officer, administrative clerks, programmers, systems analysts and programmer analysts. The finance department includes a finance manager, a manager, accounts, a senior accountant, a staff accountant, a systems accountant and an account specialist. Finally, the chart reflects that the overseas operations department is comprised of an MIS manager, an HR manager, research analysts, technicians, HR specialists, apprentices and trainees. The chart identifies the general managers by full name, the seven subordinate managers by first name, and does not identify the names of any lower-level employees. Although the exact number of lower-level employees cannot be identified, the chart appears to depict an organization with well over 30 employees.

As evidence that the company is doing business, the petitioner chose to submit its [REDACTED] statements for the months of June through November 2013. The bank statements include a monthly withdrawal for payroll, as well as copies of canceled checks paid as "salary." There is no other evidence of the company's business activities or evidence of wages paid to employees.

The director determined that the petitioner did not establish that the beneficiary will be employed in a qualifying managerial or executive capacity. In denying the petition, the director found that the beneficiary's job description included certain duties that were neither managerial nor executive in nature. The director acknowledged that the petitioner submitted an organizational chart, but noted that the petitioner did not include information regarding the duties performed by the beneficiary's subordinates, thus leaving question as to whether the subordinate staff would relieve the beneficiary from performing non-qualifying duties.

On appeal, counsel asserts that the beneficiary's duties as CEO are in a managerial/executive capacity, as he heads all three divisions of the company, which include information technology and software development, real estate development, and automotive products import-export and consulting services. Counsel's brief contains a list of 25 duties performed by the beneficiary, the majority of which were included in the previous job descriptions. The petitioner also submits a new organizational chart. Whereas the petitioner previously indicated that the beneficiary oversees four general managers responsible for marketing, finance, administration, and overseas operations departments, the new chart indicates that his subordinates are the general managers for administration, IT operations, and finance, as well as one vice president. The new chart identifies eight managers subordinate to the four general managers, with responsibility for construction, administration, software development, networks & systems, accounts, finance, import and export and human resources. The new chart does not identify any employees by name. Moreover, the chart does not specifically identify a "real estate development division" or an "automotive import/export division."

2. Analysis

Upon review, and for the reasons stated 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 petitioner's initial description of the beneficiary's duties indicating that many of the beneficiary's duties would fall in the financial, budgeting and accounting management and compliance area, but it also indicated that he would work on "special assignments" regarding the purchase and export of products and "deal with manufacturers and suppliers" duties which suggested his involvement in procurement functions that may not be managerial or executive in nature. Therefore, the petitioner's description of the beneficiary's job duties did not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Further, beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's

business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business. As the petitioner did not provide any additional information regarding the beneficiary's duties, the organizational structure, or the nature of the business, the director reasonably issued a request for additional evidence.

Although the petitioner provided a lengthier description of the beneficiary's duties in response to the RFE, it did not clarify the original duties or include the percentage of time he allocates to managerial or executive tasks. Rather, the petitioner added a number of vague duties that merely paraphrase the statutory definitions of managerial and executive capacity. For example, the petitioner stated that the beneficiary will establish and implement the company's goals, objectives, policies and operating procedures, design the company's organizational structure, participate on planning and policy-making committees, and hire and fire employees and evaluate their performance. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

On appeal, the petitioner asserts that the beneficiary will head all three divisions of the company, including IT and software development, real estate development, and automotive products import and export. However, the beneficiary's position description does not reflect his responsibilities as the head of these divisions. Further, there is no real estate development division or automotive import/export division on either of the submitted organizational charts. The petitioner's claims regarding the beneficiary's duties and areas of responsibility have evolved throughout this proceeding, as the petitioner initially indicated that the beneficiary performs primarily financial management duties and now claims his oversight of the entire operation. While the majority of the beneficiary's duties are described in general managerial terms, the lack of specificity and the unexplained changes to the duty description and organizational chart leave question as to the nature of his day-to-day responsibilities. Given that the petitioner indicates that it already employs the beneficiary in the offered position, it is reasonable to expect a consistent, detailed description of his actual duties.

The petitioner has also provided inconsistent information regarding its staffing levels and organizational structure. The petitioner stated on the Form I-129 that it had 17 employees as of the date of filing, but in response to the RFE, the petitioner submitted an organizational chart which identified 13 managerial positions alone, and a total of at least 30 positions. On appeal, the petitioner submits a different organizational chart with a total of 14 managerial positions with significant changes made to the job titles of both the managers and the subordinate employees. Since the petitioner has not identified most of its employees by name and has submitted minimal evidence of wages paid to employees, it is impossible to determine who was working for the company at the time of filing, what positions they hold, or what duties they perform. 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. at 591-92. 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)).

Further, although the petitioner claims that it operates through three different divisions – IT, real estate development and automobile import and export – the only evidence of business activities the petitioner provided was bank statements for [REDACTED] which is presumably the company's IT division. The organizational charts submitted do not include the other divisions and the record does not provide evidence of the nature and scope of the organization and its activities.

For these reasons, the record contains insufficient evidence to support the petitioner's claims that the beneficiary is overseeing three distinct multiple divisions, each staffed with two tiers of subordinate managers and operational employees to carry out the day-to-day operations of the business. Despite the petitioner's claim on appeal that the beneficiary supervises a real estate development division and an automobile import export position, neither of the submitted organizational charts indicates the existence of these divisions. Therefore, a review of the beneficiary's role within the context of the totality of the evidence submitted sheds no additional light on what he actually does on a day-to-day basis and the petitioner's claims fail on an evidentiary basis.

Due to the discrepancies and lack of evidence regarding the staffing and organizational structure, the petitioner has not demonstrated that the beneficiary, as a personnel manager, will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. See section 101(a)(44)(A)(ii) of the Act. Furthermore, the petitioner has not established that it employs a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial duties.

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. Regardless of the beneficiary's position title of CEO, the record contains too many discrepancies and omissions to establish that the beneficiary allocates his time primarily to the broad goals and policies of the organization.

Based on the limited documentation furnished, it cannot be found that the beneficiary will be employed primarily in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, 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.

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NON-PRECEDENT DECISION

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ORDER: The appeal is dismissed.