



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 25 2014** OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

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 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 classify the beneficiary as an intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Texas limited liability company established in 2007, is engaged in "fast food." It claims to be a subsidiary of [REDACTED] the beneficiary's foreign employer located in Bangladesh. The petitioner seeks to continue to employ the beneficiary as a Director/Vice President for an additional three years.¹

The director denied the petition on November 15, 2013, concluding that: (1) the petitioner failed to establish that it will employ the beneficiary in a primarily managerial or executive capacity; (2) the petitioner failed to establish the beneficiary was employed in a primarily executive or managerial capacity by the foreign company; and, (3) the petitioner failed to establish that the its office space is sufficient to house all employees and the services the petitioner provides.²

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 petitioner submitted documentation establishing that the beneficiary was working in an executive capacity.

I. THE LAW

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

¹ The petitioner previously filed Form I-129L and the beneficiary was granted L-1 status from March 10, 2010 to December 27, 2012 [REDACTED]

² The AAO will withdraw this portion of the decision since the petitioner seeks an extension of L-1A status rather than a new office petition that requires evidence that sufficient physical premises to house the new office have been secured pursuant to the regulations at 8 C.F.R. § 214.2(l)(3)(v)(A).

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

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

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

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

II. THE ISSUES ON APPEAL

A. U.S. Employment in a Managerial or Executive Capacity

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

B. Facts

The petitioner filed the Form I-129 on December 26, 2012. The petitioner indicated in the attachment to the Form I-129 that it was established in 2007 to "manage, own and operate a chain of fast food restaurants." The Form I-129 indicated that it has 15 current employees. The petitioner described the beneficiary's proposed duties as follows:

Hiring and firing manager[s]; supervising subordinate employees; overseeing preparation of sales and inventory reports; reviewing an[d] analyzing sales data; establishing and implementing policies to manage and achieve marketing goals[;] preview financial reports; review budgets and expense reports prepared by subordinate employees; managing the company; [and] overseeing marketing campaign developed by subordinate manager.

The petitioner provided a "Proposed Organizational Chart" that identified a president/secretary who supervises the beneficiary as Vice President Director who in turn supervises the marketing director, three managers, four assistant managers, and six clerk/cashier/cooks.

The petitioner also submitted Forms W-2 for 2011. The Forms W-2 indicate two locations that coincide with two of the franchises the petitioner owns. One franchise is at [REDACTED]

Houston, Texas that employed seven individuals in 2011. The second franchise is [REDACTED] Texas and it employed 5 individuals in 2011. The petitioner did not provide any Forms W-2 for its third franchise located at [REDACTED] Houston, Texas.

The petitioner also provided copies of its Internal Revenue Service (IRS) Forms 941, Employer's Quarterly Federal Tax Return, and state quarterly wage reports for all four quarters of 2010 that indicated 11 to 15 employees. The petitioner also submitted Forms 941 for the first, second and third quarters of 2011 that indicated 8 to 9 employees.

The director issued a request for evidence (RFE) on February 5, 2013, instructing the petitioner to provide additional evidence, in part, to establish that the beneficiary will be employed in a managerial or executive capacity. The director requested additional documentation to establish the duties that the beneficiary will perform; a job description for each position in the company; evidence of the staffing of the petitioner such as name, duty title, job description, supervisor and work schedule; and Forms 941 for the third and fourth quarters of 2012.

In response, the petitioner submitted the duties for the proffered position as follows:

[The beneficiary] works about 40 hours per week for [the petitioner].

- 1) She spends about 4 hours per day on executive and managerial supervision for 5 working days in a week.
- 2) She spends about 2 hours per day on Data Analysis for 5 working days in a week
- 3) She spends about 2 hours per day for reporting to other directors of [the petitioner] and [REDACTED] the foreign investment company for 5 working days in a week.

She currently has 2 supervisors who directly work and report to her every week. Their duties include General Management and Marketing of the [REDACTED] Franchises at the 3 locations.

Her duties consist of but are not limited to the following:

- 1) Supervision of subordinate employees
- 2) Establishment and implementation of policies
- 3) Hiring and Firing of Managers
- 4) Management of the overall company and administer marketing campaigns developed by her subordinate managers
- 5) [W]atch over preparation of sales and inventory reports
- 6) Reviewing and analyzing Sales Data
- 7) Monitor potential growth opportunities and expansion of business in the Franchise industry.

The petitioner did not provide the names and job duty descriptions for each employee as requested by the director. The petitioner also failed to submit Form 941, Employer's Quarterly Federal Tax Return for the fourth quarter of 2012. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The director denied the petition on November 5, 2013, concluding that the petitioner failed to establish that it will employ the beneficiary in a qualifying managerial or executive capacity. In denying the petition, the director observed that the petitioner provided a vague description of the beneficiary's duties that failed to specify what she will be doing on a day-to-day basis within the context of the petitioner's staffing arrangement.

On appeal, counsel for the petitioner contends that the proffered position qualifies as position in an executive capacity. Counsel also contends that the beneficiary "independently qualifies as a 'function manager,' based upon the evidence provided in the initial filing and the RFE response, however USCIS has made no determination in this regard."

C. Analysis

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

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 in either an executive or a managerial capacity. *Id.*

The petitioner, after being given an opportunity to supplement the record with additional details regarding the beneficiary's duties, provided a vague position description that provided little insight into what the beneficiary does on a day-to-day basis within the context of the petitioner's business. The petitioner stated that the beneficiary will be responsible for the "establishment and implementation of policies;" "management of the overall company and administer marketing campaigns developed by her subordinate managers;" "reviewing and analyzing Sales Data;" and "monitor potential growth opportunities and expansion of business in the Franchise industry." While the beneficiary, as a claimed senior employee in the company, exercises authority for planning, the petitioner has not established that her day-to-day tasks associated with overall planning are primarily executive in nature. Similarly, the beneficiary's responsibilities for the "establishment and implementation of policies" is poorly defined and fails to explain what specific tasks she performs. 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). 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 job duties. The petitioner has failed to provide sufficient detail or explanation of the beneficiary's

activities in the course of her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The job description also includes several non-qualifying duties such as the beneficiary will be responsible for "overseeing preparation of sales and inventory reports;" "reviewing an[d] analyzing sales data;" "preview financial reports;" and "review budgets and expense reports prepared by subordinate employees." The petitioner did not indicate any subordinate employees that would prepare the sales, inventory and financial reports, or prepare the budgets that would be reviewed by the beneficiary. It appears that some portion of the beneficiary's time will be devoted to non-executive duties associated with the financial operations and marketing functions, rather than directing such activities through subordinate employees. Based on the current record, the AAO is unable to determine whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does 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).

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

As noted above, the petitioner submitted Forms W-2 for 2011 that listed the petitioner's employees that are located at two different fast food locations owned by the petitioner. The petitioner only had employees for two of the franchises they own and did not submit any information regarding the third franchise. In addition, in reviewing the organizational chart submitted by the petitioner, it appears that the franchise fast food restaurant located in [REDACTED], Houston, Texas, employed two assistant managers, one manager, and three clerks/cashiers/cooks. It is not clear how three clerks/cashiers/cooks can run a fast food restaurant that is presumably opened seven days a week for several hours. In addition, the Forms W-2 indicated the employees located at [REDACTED] Texas include: the beneficiary, one manager, one marketing director and two employees that were not listed on the organizational chart. Again, it is not clear how a fast food restaurant would only have 5 employees, three of which are managers. The petitioner does not explain who will cook the food, order the inventory, handle customer service, or work the cashier for a fast food restaurant that is most likely opened seven days a week for eight to ten hours a day.

The petitioner also stated that the beneficiary will work at the offices at [REDACTED] Houston, Texas; however, the beneficiary is listed as an employee of one of the fast food restaurants on her Form W-2 for 2011.

In addition, the petitioner stated the beneficiary currently has two supervisors whose duties include general management and marketing. The petitioner did not provide a job description of the duties to

be performed by the beneficiary's subordinates. In addition, the petitioner does not explain who will be in charge of bookkeeping, negotiating new franchises, market research regarding new restaurants, sales functions, and operational activities of running three fast food restaurants.

On appeal, counsel for the petitioner states that the beneficiary will be working in an executive capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. *See* section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Beyond the required description of job duties, USCIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary. As discussed, due to the overly broad description of the beneficiary's proposed duties and the lack of subordinate supervisory-level staff and the scope and nature of the petitioner's operations, the evidence does not establish that the beneficiary is relieved from involvement in supervising the day-to-day operations of the petitioner's restaurants, such that she can devote her time primarily to qualifying executive responsibilities.

On appeal, counsel for the petitioner also contends that the beneficiary will act as a function manager. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* sections 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1101(a)(44)(A)(i) and (ii). The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a position description that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 214.2(l)(3)(ii). Here, the petitioner has not submitted evidence establishing these essential elements. In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. As discussed above, the petitioner has not provided a detailed description of the beneficiary's duties sufficient to establish that he performs primarily managerial duties and thus the petitioner has not established that he primarily manages an essential function of the business.

Based on the foregoing discussion, the petitioner has not established that it will employ the beneficiary in a qualifying managerial capacity. Accordingly, the appeal will be dismissed.

B. Employment Abroad in a Managerial or Executive Capacity

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

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means 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), provides:

The term "executive capacity" means 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.

1. Facts

In the attachment to Form I-129, the petitioner explained that the beneficiary is employed by the foreign parent company as its Director of Business Development and is responsible for "developing human resources of the company as well as interact with key customers in the local market, identify key linkage with the like-minded partners, overseeing development of new business ideas; and reviewing and approving budgets prepared by controller and directing management of the company."

The petitioner submitted an organizational chart of the foreign company that indicated a Chairman & CEO who supervised the beneficiary as Director Investment, who in turn supervised the Fund Management WW CAP - COM and CFO. The petitioner also provided a job description for the beneficiary in her position abroad as Director Operation. The job duties of the beneficiary in the foreign company were as follows:

- Reviews and approves adequate plans for the control of planned outputs, budget spending, customer service, and order entry efficiency, along with human utilization.
- Reviews performance against operating plans and standards.
- Provides reports to subordinates on interpretation of results and approves changes in direction of plans.
- Presents monthly reports on performance as requested by Chief Executive Officer.
- Develops and presents to the President matters requiring a decision.
- Develops and recommends corporate operations policy within the Operations Department.
- Defines and recommends objectives in each areas of Operations.
- Develops specific short-term and long-term plans and programs, together with supporting budgets requests and financial estimates.
- Reviews and approves cost control reports, cost estimates, and manpower and facilities requirements forecasts.
- Coordinates and collaborates with other departments of the corporation in establishing and carrying our responsibilities.
- Reviews and approves Operations major projects involving major functional changes within the Department's functional areas and the setting of budgets throughout the Operations Department.

- Reviews and approves the implementation of organizational plans that support the Operations Master Plan.
- Establishes objectives and procedures governing the performance of assigned activities.
- Directs, monitors, and appraises the performance of units immediately reporting and provides the necessary coordination between activities.
- Identifies training needs, initiates development of subordinates, recommends effective personnel action.
- Maintains appropriate communications within area of responsibility.
- Keeps employees informed as to company/department plans and progress and ensures compliance within area of responsibility.

The director denied the petition, in part, concluding the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity.

2. Analysis

In 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. § 204.5(j)(5). Published case law clearly supports the pivotal role of a clearly defined job description, as the actual duties themselves 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); *see also* 8 C.F.R. § 204.5(j)(5). That being said, however, USCIS reviews the totality of the record, which includes not only the beneficiary's job description, but also takes into account the nature of the petitioner's business, the employment and remuneration of employees, as well as the job descriptions of the beneficiary's subordinates, if any, and any other facts contributing to a complete understanding of a beneficiary's actual role within a given entity.

As a preliminary matter, the petitioner provided several different job titles for the beneficiary when she was employed abroad. For example, the Form I-129 indicated that the beneficiary was the Director of Business Development but then an organizational chart indicated that the beneficiary was Director of Investment, and finally a job description for the beneficiary's position abroad with the foreign parent company indicated that she held the position of Director Operation. 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).

In the present matter, an analysis of the record does not lead to affirmative conclusion that the beneficiary was employed abroad in a qualifying managerial or executive capacity. With regard to the foreign position, the petitioner provided a description of the beneficiary's job duties, which included broadly stated job responsibilities, and did not provide a percentage breakdown for each duty. Due to the overly general information included in the job description, we are unable to gain a meaningful understanding of how much time the beneficiary spent performing qualifying tasks versus those that would be deemed non-qualifying.

The beneficiary's job description is deficient in that it fails to provide credible and detailed information about the actual tasks the beneficiary performed when working with the foreign company. Namely, the petitioner failed to establish what specific tasks the beneficiary performed while she "develops and present to the President matters requiring a decision;" "develops and recommends corporate operations policy within the Operations Department;" "develops specific short-term and long-term plans and programs, together with supporting budget requests and financial estimates;" and, "establishes objectives and procedures governing the performance of assigned activities." The petitioner did not define the petitioner's goals and policies, or clarify the objectives and procedures for the operations department. 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 petitioner has failed to provide any detail or explanation of the beneficiary's 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. at 1108. The petitioner's description of the beneficiary's position does not identify the actual duties performed, such that they could be classified as managerial or executive in nature.

Although the petitioner submitted an organizational chart of the foreign company, the petitioner did not submit a job description for the employees of the company. Thus, it is not clear if the subordinate employees would relieve the beneficiary from performing operational duties. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In the instant matter, the job description submitted by the petitioner provides little insight into the true nature of the tasks the beneficiary performed. The petitioner failed to provide a breakdown of the percentage of time the beneficiary spent on various duties, and the petitioner has not articulated a list of duties performed by the beneficiary and whether each duty is managerial or executive. In addition, the petitioner did not provide sufficient evidence regarding the inconsistent evidence of the foreign company's organizational structure. For these reasons, the appeal will be dismissed

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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.