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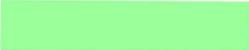


U.S. Citizenship
and Immigration
Services



DATE: **JAN 08 2015**

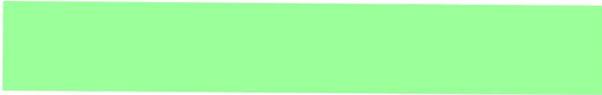
Office: CALIFORNIA SERVICE CENTER

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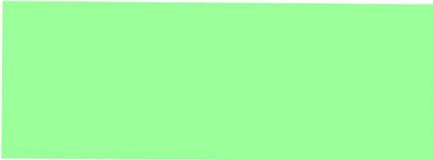
Petitioner:

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:

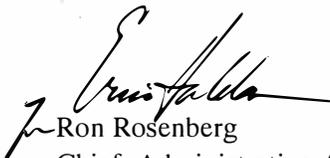


INSTRUCTIONS:

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, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to classify the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California limited liability company established in [REDACTED] states that it is engaged in the sale of automobile parts and equipment. The petitioner indicates that it is a wholly owned subsidiary of [REDACTED] located in China. The petitioner seeks to employ the beneficiary as the sales manager of its new office in the United States for a period of one year.

The director denied the petition, finding that the petitioner did not establish that the beneficiary will be employed in a qualifying managerial or executive capacity within one year.

On appeal, the petitioner contends that the director erred in reviewing the evidence and asserts that the evidence of record establishes that the beneficiary will manage an essential function and primarily perform qualifying managerial duties.

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.

The regulation at 8 C.F.R. § 214.2(l)(3)(v) further provides that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

- (A) Sufficient physical premises to house the new office have been secured;
- (B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and
- (C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii)(B) or (C) of this section, supported by information regarding:
 - (1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;
 - (2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and
 - (3) The organizational structure of the foreign entity.

II. THE ISSUES ON APPEAL

A. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES)

The sole issue addressed by the director is whether the petitioner has established that the beneficiary will be employed in a qualifying managerial or executive capacity within one year.

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.

1. Facts and Procedural History

The petitioner filed the Form I-129 on February 12, 2014. In a support letter submitted with the petition, the petitioner indicated that it has not earned significant revenue prior to the filing of the petition and that it currently has one employee. The petitioner stated that the foreign entity is "the top brand in the industry of auto maintenance equipment in China" and that beneficiary is being transferred to the United States to establish a network of dealers and distributors for the foreign entity's automobile parts and equipment. The petitioner explained that the beneficiary will be "overseeing and managing these dealer relationships that will be crucial to [the] petitioner's success." The petitioner noted that the dealers and distributors will not be employed by the petitioner, but that they will nonetheless "be a critical element in [the] petitioner's plans to import and sell automotive maintenance equipment in the U.S. market." The petitioner further indicated that the beneficiary will devote half her time to her duties in the United States and the other half to continuing responsibilities as manager of the international sales department for the foreign entity.

The petitioner further described the beneficiary's proposed duties in the United States as follows:

As Sales Manager, [the beneficiary] will pursue strategic business partnerships with key dealers who can appropriately nurture, protect, and retail the company's brand. She will oversee the dealer network, including identifying prospective new dealer outlets, evaluating current authorized dealers, and making decisions on promotion of individual

leaders to higher tiers of dealer rights/responsibilities. She will be in charge of managing dealer and major client requests for product line information and pricing. She will also be tasked with analyzing sales data, generating sales reports and forecasts, and managing adaptations and updated goals to conform to changing market conditions.

The petitioner submitted bank records from July 2013 reflecting that the foreign entity had transferred \$300,000. The petitioner provided a proposed organizational structure indicating that it would employ a President at the top of the organizational hierarchy overseeing a secretary and a manager of an "administrative department." The chart reflected that the beneficiary would be subordinate to the President in the positions of sales manager and chief financial officer (CFO). The chart showed that the petitioner projected it would hire a sales assistant subordinate to the beneficiary in her position as sales manager, an office assistant reporting to the administrative manager, and an accountant subordinate to the beneficiary in her capacity as CFO, all in 2014. In addition, the chart indicated that the beneficiary would oversee three types of dealers: "Level A Dealers" having exclusive dealership rights in assigned areas; "Level B Dealers" holding "general dealership rights," and "Level C Dealers" that will be "potential dealers or end users." The chart reflected that the petitioner planned on engaging one Level A dealer, two Level B dealers, and two Level C dealers in 2013-14 and that it would continue to add these three types of dealers for the next three to four years.

The petitioner submitted a business plan stating that it has been engaged in entering the United States market "for some time now," and that it has "already exported more than 300 spray booths to the United States." The petitioner indicated that it not only plans on building a distribution network, but also engaging in "market investigation, business investigation, technical support and customer service." The petitioner asserted that it would "build showrooms for customers to check out our equipment, and warehouse(s) for basic stock inventory." The petitioner stated in the business plan that it planned to "first cooperate with end-users or general dealers and then upgrade those who demonstrate strong capabilities and good business relationship to the exclusive dealers in defined regions." The petitioner indicated that these exclusive "Level A" dealers would consist of five to six individuals, that they would wear foreign entity uniforms and be "in charge of sales and marketing management" and 24-hour service and technical support in particular regions. The petitioner explained that these dealers would also manage its proposed showroom and warehouse. The petitioner further stated that it anticipated that within five years the petitioner "will be in charge of our sales in the Americas region."

In the business plan, the petitioner further described the beneficiary's proposed duties as sales manager and "chief accountant"¹ as follows:

1. Follow the business policies; achieve goals set by the company;
2. Determine market information and product trends based on market research and analysis;
3. Responsible for the sales network development of auto equipment in the international market; emphasize on developing high capability dealers; improve export in major products;

¹ An organizational chart provided in the business plan indicates that the beneficiary will be the chief accountant and will report to a CFO to be hired during the first year of operations.

4. Introduce international brands of auto equipment to domestic market (in China) and be their sales agent; handles the company's foreign investment projects; handles cooperation in international projects such as OEM (Original Equipment Manufacturer) projects;
5. Establish policies for internal management; instruct and audit all related steps in the export process; ensure business is running efficiently;
6. Build a team of professional and efficient staffs focus [sic] on marketing; create a nice working environment and a positive corporate culture; emphasize on internal training, improve comprehensive performance of the team.
7. Hold concurrent post as Chief Accountant under President's direction. Responsible for U.S. Company's accounting works.

The petitioner provided brief duty descriptions for the beneficiary's proposed subordinates, indicating that the sales assistant would assist the beneficiary in establishing and executing related policies and in building relationships with dealers and that the dealers would "meet sales quotas," conduct market research, and "build and actualize [a] service channel."

In a separate document, the petitioner provided another proposed job description for the sales manager position, along with the percentage of time the beneficiary is expected to allocate to each area of responsibility. Briefly, the petitioner stated that the beneficiary would perform the following duties: 10% - identify, research and pursue strategic business partnerships; 10% - follow up on all prospective leads; 15% - coordinate communications between U.S. sales/distributorship forces and product line designers in China; 15% - oversee the company dealer and distributor network; 10% - manage requests for product line and pricing information, organize client correspondence, and create plans for follow up and closing of sales; 10% - travel to various dealers and customers to evaluate sales progress and opportunities; 10% - coordinate sales resource allocations among dealers; 10% - generate detailed sales reports and forecast plans; and 10% - manage efforts at process improvement within the dealer/distributor network.

The director later issued a request for evidence (RFE) advising the petitioner that it had not submitted sufficient evidence to establish that it will support the beneficiary in a qualifying managerial capacity after one year. The director asked the petitioner to submit a letter from the foreign entity explaining the need for the new office, the proposed number of employees and their positions, the amount of investment in the petitioner, and an explanation as to how the new venture will support the beneficiary in a qualifying capacity within one year. The director requested that the petitioner provide an organizational chart listing all of its proposed positions, the duties of these employees, and their expected education levels. Further, the director asked the petitioner to submit a letter describing the beneficiary's expected managerial decisions and her typical duties, along with the percentages of time she would devote to each task.

In response, the petitioner asserted that the beneficiary will oversee an essential function of the organization, namely the establishment and management of a dealer network in the United States. The petitioner explained that without the successful operation of the proposed dealer network the "petitioner's business model simply will not work." The petitioner indicated that it "will not have a dedicated sales force; rather it will retail its products through this distributor and dealer network." The petitioner asserted that the beneficiary "will be tasked with quintessentially managerial functions such as coordination,

oversight, evaluation of dealer/distributor effectiveness, and resource allocation." In support of these contentions, the petitioner pointed to the evidence it submitted in support of the petition.

In denying the petition, the director stated that the petitioner had failed to provide a breakdown of the beneficiary's proposed job duties, including the percentage of time she would spend on each of her tasks. The director concluded that based on this deficiency in the evidence she was unable to determine whether the beneficiary will primarily perform qualifying executive or managerial duties. The director found that the evidence did not demonstrate that the beneficiary would likely manage an essential function of the organization within one year, noting that the evidence provided indicated that she would primarily perform non-qualifying operational duties. Further, the director stated that the evidence demonstrated that the beneficiary was not likely to have sufficient subordinates to relieve her from these non-qualifying tasks within one year. Lastly, the director stated that the petitioner did not articulate how the investment in the petitioner would lead to its development as necessary to support the beneficiary in a qualifying capacity within one year.

On appeal, the petitioner contends that the petitioner will act as a function manager by developing and overseeing the company's proposed dealer distribution network. The petitioner states that it has provided a detailed description of the beneficiary's proposed duties, including the percentage of time she will spend on her tasks, asserting that these reflect that she will be primarily engaged in qualifying managerial tasks. Further, the petitioner emphasizes that its dealers will not be clients, but channels it will use to allow its products to enter the U.S. marketplace. The petitioner reiterates that this network is essential to its business, as absent this network, it would have no business in the United States.

2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed in a qualifying managerial or executive capacity within one year.

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(1)(3)(ii). The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The petitioner has submitted duties indicating that the beneficiary will more likely than not devote a majority of her time to non-qualifying operational duties. Several of the beneficiary's daily tasks, such as following up on all prospective leads, managing dealer and client requests for product information and pricing, generating sales reports and forecasts, acting as a sales agent for the foreign entity in the United States, and conducting market research, do not fall directly under traditional managerial duties as defined in the statute. These non-qualifying duties are submitted throughout the beneficiary's duty description, thereby frustrating a determination as to whether the beneficiary will primarily perform qualifying managerial

duties. For this reason, the AAO cannot determine whether the beneficiary would be primarily performing the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999). Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that her duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

Further, to the extent that the petitioner offers qualifying duties for the beneficiary these examples lack specificity and supporting evidence to substantiate that she will devote a majority of her time to these duties. For instance, the petitioner states that the beneficiary will follow business policies, achieve goals, handle foreign investment projects, and establish policies for internal management, but fails to articulate in detail the nature of these policies, goals, and projects. 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. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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). 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 addition, there are unresolved discrepancies in the record regarding the nature of the beneficiary's role within the company. For instance, the petitioner stated that the beneficiary will fulfill a dual role within the company, but the record does not consistently identify whether she will fulfill the additional the role of CFO or chief accountant. In either case, the petitioner failed to articulate her responsibilities relevant to CFO or accounting position and did not indicate how much of her time she would allocate to such responsibilities. Furthermore, the petitioner provided duties for the beneficiary in the business plan that reflect her responsibility for exporting goods to the Chinese market, non-qualifying duties which are not included in her primary duty description. These discrepancies leave question as to the credibility and accuracy of the beneficiary's submitted duty descriptions. 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).

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 understanding a beneficiary's actual duties and role in a business. The petitioner has the burden to establish that the U.S. company would realistically develop to the point where it would require the beneficiary to primarily perform duties that are managerial or executive in nature within one year. Accordingly, the totality of the record must be considered in analyzing whether the proposed duties are plausible considering the petitioner's anticipated staffing levels and stage of development within a one-year period. *See generally*, 8 C.F.R. § 214.2(l)(3)(v)(C).

On appeal, the petitioner's primary contention is that the beneficiary will qualify as the function manager of the sales function through her establishment and oversight of the company's proposed dealer network. 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 clearly describe 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). 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. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir. 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988)).

The establishment of a dealer network appears to be essential to the petitioner's business plan. However, the petitioner has not demonstrated with adequate evidence that the beneficiary will act as a function manager within the first year, or that she will be primarily performing managerial duties associated with this function. As discussed previously herein, the petitioner has provided a duty description indicating that the beneficiary will be significantly engaged in the performance of non-qualifying operational duties. The petitioner fails to articulate or substantiate how the beneficiary will be primarily relieved from performing these duties. Further, the petitioner did not provide specifics to corroborate the beneficiary's qualifying duties and likewise did not support a conclusion that the beneficiary will be primarily relieved from her stated operational duties by her proposed subordinates. In addition, the evidence does not indicate that the petitioner will be sufficiently operational after one year to support the beneficiary in a qualifying managerial capacity. Therefore, the petitioner has not established that the beneficiary will likely qualify as a function manager after one year.

The petitioner has not, in the alternative, established that the beneficiary will be employed in a qualifying capacity as a personnel manager within one year. "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)."

Here, the petitioner has provided conflicting and insufficient explanations regarding its proposed hiring plans. As such, USCIS is unable to determine whether the beneficiary will have sufficient subordinates to primarily relieve the beneficiary from performing non-qualifying operational duties within one year. For instance, the petitioner indicates that it will engage several dealers during the first year. However, the

petitioner acknowledges that these individuals will not be employees of the petitioner and the evidence submitted does not reflect that these dealers will be under the oversight and control of the beneficiary.

Regardless, even if the petitioner were to establish that the dealers were regularly engaged employees or independent contractors of the company, this would not be sufficient to raise the beneficiary to the level of a qualifying managerial or executive capacity. The beneficiary proposed subordinates, such as the sales assistant and dealers, appear to be administrative and sales employees that will not be supervisors or professionals in their own right. 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).² Here, the petitioner has provided no evidence to indicate that the beneficiary's subordinates will be professionals as defined by case law.

In addition, the petitioner has not provided sufficient explanation and evidence to substantiate that it is likely to develop sufficiently within the first year to support the beneficiary in a qualifying managerial capacity. The petitioner provided evidence that it has received \$300,000 from the foreign entity, but it does not describe how these funds will be used to launch the business within the first year. The petitioner fails to articulate milestones it expects to reach during the first year or relevant financial projections. As noted, the petitioner does not mention any projected dealers or clients by name to substantiate that it is likely to develop its asserted dealer network. The petitioner states that it will lease a warehouse and a showroom for the business, but also acknowledges that this will not be accomplished within the first year. Indeed, the petitioner directly states that it will take five years for the company to autonomously handle the foreign entity's U.S. sales. Therefore, in sum, the petitioner has not established with sufficient evidence that it will be sufficiently operational within the first year to support the beneficiary in a qualifying managerial capacity.

For the reasons set forth above, the petitioner has not demonstrated that the beneficiary will be employed in a qualifying managerial or executive capacity within one year. Therefore, the appeal will be dismissed.

B. MANAGERIAL OR EXECUTIVE CAPACITY (FOREIGN EMPLOYMENT)

Beyond the decision of the director, the petitioner has not established that the beneficiary is employed in a qualifying managerial or executive capacity with the foreign employer.

² In evaluating whether the beneficiary manages professional employees, we 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).

The petitioner states that the beneficiary acts as the manager of the international sales department and provided a description of the beneficiary's duties, including percentages of time she spends on these tasks, including overseeing department attainment of department goals and objectives (30%); expanding domestic market and developing international sales network (20%); creating and strengthening overseas dealership projects (10%); establishing and implementing departmental marketing plans, activities, and promotions (15%); and organizing and directing training and supervising output of international traders (15%). Within each of the categories above, the petitioner failed to provide details or supporting evidence to substantiate the beneficiary's primary performance of qualifying duties. For instance, the petitioner states that the beneficiary resolves problems impairing sales efficiency, ensures the maximization of sales goals and targets, establishes distributor networks overseas, assists in the implementation of overseas investment projects, and creates marketing strategies. However, in each case, the petitioner has not provided specific examples, or supporting evidence, or substantiate the problems the beneficiary overcame in the sales process, goals or targets she reached or drove, distributors with which she built relationships, investment projects she implemented, or marketing strategies she created. Again, 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. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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). 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)).

Furthermore, the evidence indicates that the beneficiary acts as a first line supervisor of non-professional employees. For instance, the petitioner submits a foreign organizational chart reflecting that the beneficiary supervises three sales representatives assigned to Europe and Africa, three sales representatives devoted to America and Asia and an administrative clerk. None of these aforementioned subordinates are shown to oversee employees of their own. Further, although the petitioner provides evidence that the beneficiary's subordinates hold what appear to be Chinese baccalaureate level degrees in various subjects, the duties of these employees reflect that they will not be engaged in professional capacities but that they will act as sales representatives performing non-professional level duties such as responding to customer inquiries, explaining promotions and handling orders. While the beneficiary is not required to supervise personnel, if it is claimed that her duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. The evidence submitted leaves question as to whether the beneficiary does indeed supervise her claimed subordinates as three of the beneficiary's sales subordinates have duties identical to the beneficiary's. 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.

Similar to the beneficiary's proposed role in the United States, the petitioner asserts that the beneficiary acts as a function manager with the foreign entity overseeing the company's distribution networks. However, the petitioner has not sufficiently articulated or supported the essential nature of this function by explaining this network or what the beneficiary is specifically responsible for managing. The petitioner fails to describe a single distributor she contracted with or submit supporting evidence to suggest that she oversees

this function, despite its assertion that she has been performing this function since 2012. Further, the petitioner foreign duties are overly vague and fail to demonstrate that she is primarily engaged in qualifying managerial duties. As such, the petitioner has not established that the beneficiary qualifies as a function manager abroad.

Therefore, in conclusion, the petitioner has not established that the beneficiary has been employed in a qualifying managerial or executive capacity with the foreign entity. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F.Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.