



U.S. Citizenship
and Immigration
Services

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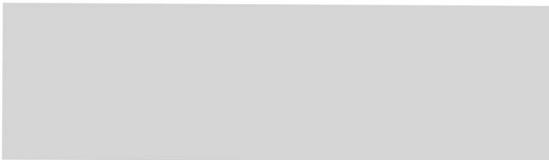
DATE: **MAY 08 2015**

PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

 Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office 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 Texas corporation established in [REDACTED] is a general contractor specializing in luxury homes. The petitioner states that it is an affiliate of the beneficiary's foreign employer [REDACTED] in Syria. The petitioner seeks to employ the beneficiary as its director and vice president for a period of three years.

The director denied the petition, finding the petitioner did not establish that the beneficiary is employed in a qualifying managerial or executive capacity with the foreign employer. Further, the director concluded that the petitioner did not demonstrate that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to this office. On appeal, the petitioner contends that it submitted "substantial evidence" to establish that the beneficiary has been employed abroad, and will be employed in the United States, in a qualifying managerial or 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:

- (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

A. MANAGERIAL OR EXECUTIVE CAPACITY (FOREIGN EMPLOYMENT)

The first issue to be addressed is whether the petitioner has established that the beneficiary is employed in a managerial or executive capacity with the foreign employer.

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

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

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

- (i) directs the management of the organization or a major component or function of the organization;

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

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

1. Facts

The petitioner filed the Form I-129 on March 28, 2014. Along with the petition, the petitioner submitted a support letter from the asserted owner of the foreign employer, [REDACTED]. The letter indicated that the foreign employer is engaged in "a multi-million dollar operation specializing in trading, importing, and exporting of materials associated with clothing manufacturing." The petitioner explained that the foreign employer "has been a major importer of products from Japan, South Korea, China, Germany, Austria, Italy into Syria and the entire Middle East region for over thirty (30) years," and that it is "the exclusive agent manufacturer for [REDACTED] for the Middle East and Southern Europe." The petitioner stated that the foreign employer has "substantial earnings" and that it employs ten individuals, including the beneficiary, who currently serves as the general manager of the foreign employer.

The petitioner submitted various bank statements from a number of bank accounts in the name of [REDACTED] reflecting a large number of debits and credits for unknown purposes. The petitioner provided largely identical employee lists for 2012 and 2013 indicating that the foreign employer has eleven employees, including the beneficiary as general manager. The lists further reflected that the foreign entity employed a financial manager, a sales manager, a warehouse manager, a supervisor, three sales employees, a "coordinator," and an employee devoted to "transportation." The lists set forth the names of these employees, their salaries and the number of years they worked for the company.

The director later issued a request for evidence (RFE) indicating that the evidence was insufficient to establish that the beneficiary has been employed in a qualifying managerial capacity abroad. As such, the director requested that the petitioner submit copies of the beneficiary's training, pay or other personnel records. Further, the director asked that the petitioner provide an organizational chart reflecting the foreign employer's organizational structure, including the names, job titles, duties, education levels, and salaries for each employee. The director requested that the petitioner submit a letter from the foreign entity describing the beneficiary's typical managerial duties and decisions, including the percentage of time he spent on each task. The director asked the foreign employer to articulate how the beneficiary supervised and controlled the work of other supervisory, professional or managerial employees.

In response, the petitioner submitted a letter from [REDACTED] who explained that he and the beneficiary managed the foreign employer together and described their duties as follows:

Together, [the beneficiary] and I manage and direct the [foreign employer] and its affiliated entities. We import textiles, embroideries, and associated products from Europe and the Far East (specifically China) for sale in the Middle East Region. We make staffing and personnel decisions, and hold authority to hire and fire employees and conduct performance reviews. We also track the sales performance of individual employees, and consider productivity when making personnel decisions. Furthermore, we correspond with distributor's agents in China and beyond to identify new products, track prices, and enter into purchase agreements. We also monitor and verify financial transactions and work to ensure that the businesses are meeting all project sales goals. On a day to day basis, we monitor sales, track warehouse inventories, and transfer merchandise from warehouses to stores so that we can promptly respond to customer needs.

The petitioner again indicated that the foreign employer employs ten individuals, including the beneficiary. The petitioner explained that it typically "employed a more substantial workforce; however...the ongoing civil war in Syria has caused great fluctuation in staffing." The petitioner stated that "of the current full-time employees, six have over a decade of experience with [the foreign employer]."

The petitioner provided approximately 12 bills of lading relevant to the foreign employer reflecting the shipment of goods from 2012 to 2014 from China to Beirut and Syria, including items such as "plastic beads," "hot fix tape," "zippers," "accessories for clothes," "buttons," and other miscellaneous items. The petitioner submitted various invoices from Chinese companies for the sale of the above referenced items to the foreign employer during the same time period. In addition, the petitioner provided the same listing of employees submitted previously, but did not further elaborate on their job duties or foreign employer's organizational structure. The foreign employee listing indicated that the financial manager holds a "B.A. accounting," that the warehouse manager has an accounting degree, that one of its sales representatives has a bachelor's degree in business administration and another a marketing degree, and that the coordinator and the transportation employee also have marketing degrees.

In denying the petition, the director found that the petitioner had submitted a vague duty description for the beneficiary, no duty descriptions for his subordinates, and no organizational chart to indicate the beneficiary's place within the organization. The director noted that although the list of foreign employees reflects that the company employs "managers," it is not clear from the evidence presented who these employees manage. The director indicated that the foreign employer's bills of lading reflected that it was not transacting business in the clothing industry as asserted. The director ultimately concluded that the petitioner had not established that the beneficiary is primarily engaged in qualifying managerial tasks.

On appeal, the petitioner asserts that its letters and other evidence provide substantial support that the beneficiary has been employed in a qualifying managerial capacity with the foreign employer for the last eighteen years. The petitioner states that its support letters confirm that the beneficiary makes personnel

decisions, has professional subordinates, and that he is relieved from the performance of operational tasks by his subordinate staff. The petitioner contends that the regulations do not require that the petitioner provide a "formal organizational chart" and that this should not be a basis of the denial of the petition. Lastly, the petitioner asserted that the director was mistaken to conclude that the foreign employer's bills of lading represent a discrepancy on the record, noting that the petition not be denied based on the foreign employer doing business "beyond its core business."

The petitioner further asserts that the interpretations set forth in *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) are not applicable to the current matter. The petitioner contends that the aforementioned case involved the regulations applicable to an immigrant petition by an alien entrepreneur, indicating that the regulations at 8 C.F.R § 204.6(j) "provide specific guidance regarding the types of necessary evidence to be submitted in support of such an application – including but not limited to: bank statements, invoices, sales receipts, purchase contracts, bills of lading, loan or mortgage agreements, and security agreements." The petitioner states that this case is distinguishable from the current matter, noting that the regulations applicable to intracompany transferees "do not contain any similar list of required documents." Furthermore, the petitioner asserts that the Adjudicator's Field Manual states that "the regulations do not require submission of extensive evidence of business relationships or of the alien's prior and proposed employment." Pursuant to these contentions, the petitioner asserts that it has established by a preponderance of the evidence that the beneficiary has been employed in a qualifying managerial capacity abroad.

2. Analysis

Upon review of the petition and the evidence, and for the reasons discussed herein, the petitioner has not established that the beneficiary is employed in a qualifying managerial or executive capacity with the foreign entity.

First, we will address the petitioner's arguments relevant to the burden of proof in this matter and the submission of supporting evidence. As referenced above, the petitioner contends that the petitioner is not obligated to submit supporting evidence to support its contentions, including such evidence as a detailed duty description, duty descriptions for the beneficiary's subordinates, and an organizational chart, among other supporting evidence requested by the director. The petitioner suggests that since this type of evidence is not specifically required by the regulations, that its absence from the record should not be the basis of a denial in the current matter. We do not find this argument persuasive.

The adjudication in the current matter requires that we determine whether the petitioner has established by a preponderance of the evidence that the beneficiary has been employed abroad, and will be employed in the United States, in a qualifying managerial or executive capacity. The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence

standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Consistent with determining whether a petitioner has established the beneficiary's eligibility by a preponderance of the evidence, a director may request additional evidence. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(8) and (12). Therefore, the fact that certain sections of the regulations, including those related to an immigrant petition by an alien entrepreneur as in *Matter of Soffici*, set forth more specific types of evidence that can be submitted to meet the petitioner's burden of proof, does not preclude United States Citizenship and Immigration Services (USCIS) from reasonably requesting probative evidence and supporting documentation to substantiate a beneficiary's eligibility. Further, the regulation at 8 C.F.R. § 214.2(l)(3)(viii) provides that an L-1 classification petition shall be accompanied by "such other evidence as the director, in his or her discretion, may deem necessary."

Indeed, the current adjudication requires a review of the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the beneficiary's job description, 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.

We note that the burden of proof is on the petitioner in the current matter. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Further, it is noteworthy to clarify that *Matter of Soffici* cites another precedent case supporting a conclusion that a petitioner must submit sufficient supporting evidence to corroborate its assertions on the record, namely *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972). In this widely cited case, the Board of Immigration Appeals (BIA) noted that the burden of proof to establish eligibility for benefits sought rests with the petitioner. Further, in that matter, the petitioner sought to accord beneficiaries classification as trainees under section 101(a)(15)(H)(iii) of the Immigration and Nationality Act and the petitioner contended that it need only go on record stating that training is not available outside the United States. However, the BIA rejected this contention that USCIS must rely solely upon a petitioner's statements. As such, we do not find the petitioner's assertions regarding a modified standard of proof persuasive and will now evaluate the totality of the evidence on the record.

When examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The definitions of executive and managerial capacity each 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).

In the current matter, the petitioner has not submitted a sufficiently detailed description of the beneficiary's duties with the foreign entity. As noted, the director requested that the petitioner provide a letter from the foreign employer detailing the beneficiary's typical managerial duties and decisions, including the percentage of time he spends on each of his tasks. Instead, the petitioner provided a duty description that it claims is applicable to both the beneficiary and his brother and partner [REDACTED]. As such, it is not clear which of the duties are relevant to the beneficiary and his brother. 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).

Regardless, when reviewing the duties, the petitioner has not described the beneficiary's duties abroad with specificity. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The duties offered for the beneficiary in his capacity abroad, such as making staffing decisions, holding authority to hire and fire employees, tracking sales performance, corresponding with agents in China, identifying new products, entering into purchase agreements, monitoring financial transactions, and ensuring that the business meets projected sales goals are overly vague and provide little probative value as to the beneficiary's actual day-to-day activities. The evidence of record includes no specific examples or documentation to substantiate the beneficiary's current duties. For instance, the petitioner provides no specific examples of staffing decisions made by the beneficiary, agents he corresponds with in China, new products he has identified, purchase agreements he has entered into, financial transactions he has been involved with or sales goals he has set, despite being asked by the director to articulate specific managerial decisions he made. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Indeed, to the extent that the petitioner provided details regarding the beneficiary's foreign duties, these reflect that the beneficiary is engaged in non-qualifying operational duties, including monitoring sales, tracking warehouse inventories, and transferring merchandise from warehouses on a daily basis to "promptly respond to customer needs." As noted, whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties are managerial functions and what proportion is non-managerial, despite the direct request of the director. The petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, as indicated above, do not fall directly under traditional managerial duties as defined in the statute. For this reason, we cannot determine whether the beneficiary is primarily performing the duties of a manager. See *IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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.

In the RFE, the director requested that the petitioner provide an organization chart reflecting the beneficiary's place within the foreign employer's organizational hierarchy. In addition, the director asked that the petitioner submit duty descriptions relevant to the beneficiary's asserted subordinates to substantiate the beneficiary's managerial role. However, the petitioner did not submit this evidence. Again, 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 petitioner asserts that the regulations do not require that a petitioner provide a "formal organizational chart" to qualify a beneficiary as an intracompany transferee. As noted, the regulations state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). Although the regulations do not specifically require the submission of an organizational chart to establish eligibility for this classification, an organizational chart is probative to determining the beneficiary's place within the organization, and to determining whether he or she has managerial, supervisory or professional subordinates or is otherwise relieved from performing non-qualifying duties. Therefore, we do not find the petitioner's contention that it was not obligated to submit a formal organizational chart, or other probative evidence requested by the director, persuasive. 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)).

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

Here, the petitioner has not submitted sufficient evidence to establish that the beneficiary is employed as a personnel manager. As mentioned, the petitioner has not submitted evidence regarding the organizational structure and duties of the beneficiary's asserted subordinates abroad to substantiate the beneficiary's place within the organization, the number and types of subordinates he supervises, and the functions of his

claimed subordinates. Without this evidence it is difficult to determine whether the beneficiary has managerial or supervisory subordinates as asserted.

In addition, the petitioner contends that the beneficiary supervises professionals, noting that six of the ten individuals working for the foreign employer hold bachelor's degrees. 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). First, the petitioner has not explained the duties of the beneficiary's subordinates. Therefore, it cannot be determined whether these employees perform professional level duties. In addition, the petitioner has presented no evidence to indicate that these positions require specific baccalaureate level degrees or substantiated with supporting evidence that these individuals actually hold these degrees. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Lastly, the petitioner states that it was unable to submit supporting documentation to substantiate its assertions on the record due to turmoil caused by the ongoing civil war in Syria. Further, the petitioner indicates that this conflict has led to a reduction in the foreign entity's staffing levels and activity levels. We recognize the gravity of the events in Syria and the potential impact they may be having on the foreign employer's business. However, the petitioner has not articulated how the events in Syria have prevented it from responding to the director's evidentiary requests or from submitting sufficient supporting documentation to corroborate its assertions, particularly with respect to providing information regarding the beneficiary's specific duties and the duties of his subordinate employees. Our determination is based on the petitioner's failure to provide this relevant evidence, and is not based on the foreign entity's current activity or staffing levels.

Therefore, for the foregoing reasons, the petitioner has not established that the beneficiary is employed in a qualifying managerial capacity with the foreign entity. For this reason, the appeal will be dismissed.

B. MANAGERIAL OR EXECUTIVE CAPACITY (UNITED STATES EMPLOYMENT)

The next issue to be addressed is whether the petitioner has demonstrated that the beneficiary will be employed in a qualifying managerial or executive capacity in the United States.

1. Facts

The petitioner states that it has been involved in the construction of luxury homes in the [REDACTED] area for the last 25 years. The petitioner indicated that it employs six individuals and that it earned over \$1 million in gross revenue in 2012. The petitioner explained that it is majority owned controlled by the founder and sole owner of the foreign employer, [REDACTED]

In a support letter, [REDACTED] explained that he and the beneficiary will both serve in the position of director and vice president and perform the following duties:

In the U.S., [the beneficiary] and I will be officers of the [petitioner] and will be responsible for the management of the U.S. business. The company works with a wide array of subcontractors and contract laborers, including architects and civil and structural engineers, to design and construct each home. [The beneficiary] and I will supervise these subcontractors, and will liaise among clients, brokers, subcontractors, and suppliers to ensure successful completion of each stage of every project. Furthermore, we will negotiate contracts and contract revisions with subcontractors, suppliers and clients. We will also be involved in procuring necessary building licenses, and will supervise all phases of custom home build projects. We will investigate project delays as needed, and ensure effective management of projects by establishing deadlines.

Furthermore, [the beneficiary] and I will be responsible for making financial, staffing, and development decisions for the business. To that end, we will manager business finances to fund operations and to maximize investments and efficiency. We will implement policies and objectives to ensure continuing operations, and will use our significant managerial experience and the skills we have gained from building successful businesses abroad to determine areas of potential cost reduction and establish budgets. We will analyze operations and performance to assess staffing needs, and will direct and coordinate business activities.

The petitioner submitted 2011 and 2012 IRS Forms 1120, U.S. Corporation Income Tax Returns indicating that it did not pay any wages and salaries to employees and that it has no "cost of labor" during either of these years. Likewise, an itemized list of deductions accompanying the 2012 IRS Form 1120 did not reflect that the petitioner had paid any amounts to independent contractors. However, the 2011 IRS Form 1120 indicated that the petitioner had paid \$767,361 in "construction costs," specifically for "carpentry," "electrical," "masonry," "flooring covering," and "roofing."

The director later issued an RFE requesting that the petitioner submit a letter describing the beneficiary's expected managerial decisions and duties and the percentage of time he would spend on each of his tasks. The director asked the petitioner to explain how the beneficiary would supervise and control the work of supervisory, professional, or managerial employees. The director requested that the petitioner submit an organizational chart reflecting the names, titles, duties, education levels and salaries for each employee.

Further, the director asked the petitioner to provide a payroll summary and IRS Forms W-2, W-3, or 1099 to corroborate the employment of its current staff.

In response, the owner of the petitioner, [REDACTED], again provided a letter explaining the proposed duties to be performed by both he and the beneficiary. He stated that they would "identify properties appropriate for residential development, negotiate land prices, and enter into contracts." He indicated that they would "negotiate contracts with subcontractors, suppliers, and clients," "review plans and obtain licenses for construction projects," "ensure that all construction projects are effectively managed, and will establish and monitor deadlines and budgets," "investigate project delays and provide site supervision on a daily basis," and "employ brokers and supervise closing on completed residential units." He further explained that they would "exercise substantial personnel authority" and "provide direction to our professional U.S. staff, including company President, Assistant Supervisor, two Project Managers, a Bookkeeper and a Superintendent." He noted that the company had recently hired two additional staff members, as project manager and a superintendent. He also stated that the company "employs a wide array of contractors, including two framing crews, two stucco crews, a sheetrock crew, a carpentry crew, and an electrical crew, as well as various roofers, painters, plumbers, and flooring installers." He indicated that in total this accounts for "over eighty additional staff."

The petitioner submitted an internally-prepared payroll summary reflecting that it paid \$96,000 in "salary," \$35,000 in "salary-office," and \$40,320 in "hourly" wages during 2013. The summary further indicated that the petitioner had paid \$15,693.48 in payroll taxes during that year.

In addition, the petitioner provided two "residential fixed-sum construction contracts" dated in 2013, the former which had an estimated cost of \$1,918,800 and the latter for an estimated cost of \$1,472,000. The agreements indicated that the petitioner was considered an "independent builder" and that it would provide all subcontractors necessary to complete the two residential construction projects at lots in Texas.

In denying the petition, the director stated that the petitioner has submitted a vague description of the beneficiary's proposed duties. The director noted that the petitioner had failed to submit names, duties, education levels or salaries for the beneficiary's asserted subordinates or an organizational chart as requested. The director indicated that the petitioner had also not provided tax documentation to substantiate its claimed employment of managers or professionals subordinate to the beneficiary. Further, the director stated that although the petitioner asserts it employs various contractors to complete its construction projects, it failed to substantiate the engagement of them with supporting evidence.

On appeal, the petitioner contends that it has submitted sufficient support evidence to establish that the beneficiary will act in a qualifying managerial capacity, including 2013 financial statements and support letters that detail its engagement of over eighty contractors subordinate to the beneficiary. The petitioner asserts that it has provided a sufficiently descriptive duty description for the beneficiary. The petitioner states that the director issued a "boilerplate" decision that does not adequately consider the evidence submitted on the record. The petitioner contends that it has established with a preponderance of the evidence that the beneficiary will act in a qualifying managerial capacity.

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.

As previously stated, when examining the executive or managerial capacity of the beneficiary, we will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the 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).

As noted, whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. Here, the petitioner fails to document what proportion of the beneficiary's duties would be managerial functions and what proportion would be non-managerial, despite the direct request of the director. 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 petitioner lists the beneficiary's duties as including both managerial and administrative or operational tasks, but fails to quantify the time the beneficiary spends on them. This failure of documentation is important because several of the beneficiary's daily tasks, such as, "providing site supervision on a daily basis," "procuring building licenses," and "supervising all phases of custom home build projects." For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

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.

As stated previously, the regulations state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). Although the regulations do not specifically require the submission of an organizational chart and specific information regarding a beneficiary's subordinates, this evidence is undoubtedly relevant and probative to determining the beneficiary's place within the organization, substantiating whether he is relieved from the performance of non-qualifying duties, and to determining whether he or she has managerial, supervisory or professional subordinates. However, despite the director's request, the petitioner did not submit a detailed organizational chart reflecting each of its employees by name and title, including a listing of their duties, education levels, or salaries. Additionally,

the petitioner has not provided Forms W-2, W-3 or 1099, which the director also requested, to corroborate its employment of the six workers claimed at the time of filing. Once again, 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). 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)).

As such, the petitioner has not submitted supporting evidence to substantiate its assertion that the beneficiary will supervise managerial and professional subordinates and over eighty subcontractors. Again, 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." See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988). In addition to the material evidentiary shortcomings referenced above, the evidence on the record includes discrepancies that leave further question as to whether the petitioner employs any fulltime employees, including its asserted supervisors, project managers, bookkeeper and superintendent. For instance, the petitioner's 2011 and 2012 IRS Forms 1120 reflect that the company paid no salaries and wages to any employees during these years. Further, although the IRS Forms 1120 and submitted construction contracts indicate that the petitioner likely engages contractors to provide its construction services, it has not established that it employs managers or professionals as necessary to qualify the beneficiary as more than a first line supervisor of non-professional employees. Indeed, the beneficiary's duties indicate that he will be responsible for overseeing all aspects of the construction projects onsite, thereby suggesting that he will be primarily engaged in the duties of a first line supervisor engaged in the direct provision of goods and services.

In addition, certain other discrepancies and deficiencies on the record leave question as to whether the petitioner engages sufficient employees and contractors to support the beneficiary in a qualifying managerial capacity. For instance, although the petitioner provides a payroll summary for 2013 indicating that it paid \$171,320 in salaries during that year, the petitioner fails to substantiate this internally created document with independent supporting documentation, including the IRS forms requested by the director. Again, 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). Further, the petitioner provides a construction contract clearly reflecting that the subcontractors it engages for its projects remain fully independent of the petitioner and do not act as representatives of the company. Therefore, this leaves question as to the petitioner's claim that the beneficiary is primarily relieved of his operational tasks by these fully independent contractors. Lastly, the petitioner states that the beneficiary will provide direction to and supervise its president, an arrangement incongruent on its face since the beneficiary is being transferred as the company's vice president. The petitioner did not provide a position description for the company president to support its assertion that the president will actually be subordinate to the beneficiary's vice president position.

Furthermore, the petitioner contends that the beneficiary will oversee "professionals." 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). Here, the petitioner has not identified these professionals, nor provided their names duties, or documentation of their employment or engagement. In addition, the petitioner has not submitted any evidence to establish that the beneficiary has subordinates holding baccalaureate degrees, or that are required to hold specific degrees to qualify for their positions. As such, the petitioner has not provided sufficient evidence to demonstrate that the beneficiary will qualify as a personnel manager through his supervision of professional subordinates. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

For the foregoing reasons, the record does not support a finding that the beneficiary will be employed in a qualifying managerial capacity with the petitioner. For this reason, the appeal will be dismissed.

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.