



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **DEC 05 2013**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

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

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

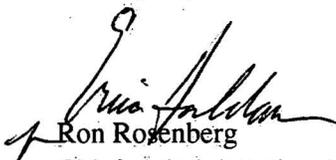
ON BEHALF OF PETITIONER:

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, Texas Service Center denied the employment-based immigrant visa petition and dismissed the petitioner's subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Florida corporation engaged in business development and legal consulting services. It seeks to employ the beneficiary as its Director of U.S. Operations. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary's proposed U.S. employment would be in a qualifying managerial or executive capacity. The director also found that the petitioner failed to establish a qualifying relationship with the foreign employer.

The director dismissed the petitioner's subsequent motion to reopen and reconsider, finding that the evidence submitted on motion did not overcome his determination that the petitioner failed to establish that it will employ the beneficiary in a qualifying managerial or executive capacity. However, the director determined that the petitioner's evidence submitted on motion, which included amended federal income tax returns, was sufficient to establish that it has a qualifying affiliate relationship with the beneficiary's foreign employer.

On appeal, counsel disputes the director's findings and provides an appellate brief laying out the grounds for challenging the denial.

I. The Law

Section 203(b) of the Act states in pertinent part:

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

- (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. See 8 C.F.R. § 204.5(j)(5).

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.

II. The Issue on Appeal

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

A. Facts

The petitioner indicated on the Form I-140, Immigrant Petition for Alien Worker, that it is engaged in business development and legal consulting services with four employees and a gross annual income of \$381,963. The petitioner states that it wishes to employ the beneficiary as its Director of U.S. Operations. In a letter submitted in support of the initial petition, the petitioner explained that, most recently, the company focused on "import and representation services" for the importation of beach pebbles and mosaics used in private and commercial landscape projects. The petitioner stated that the beneficiary was granted authority to "reinvest [profits] and recruit the personnel required to develop a plan of growth."

Specifically, the petitioner stated that the beneficiary will be responsible for the following duties: (1) directing and coordinating the activities of the operations department; (2) formulating administrative and operations policies; (3) directing and coordinating operations to obtain optimum use of facilities, equipment, and personnel; (4) reviewing and analyzing expenditures, financial and operations reports to determine policies of increasing profits; (5) making contact and overseeing negotiation of contracts with suppliers and buyers of [REDACTED] (6) supervising the order process, shipment, and compliance with customs both in the U.S. and Peru; and (7) supervising the timely delivery of products.

In support of the petition, the petitioner provided, among other evidence, the following: a copy of its 2010 IRS Form 1120, U.S. Corporation Income Tax Return; its organizational chart; position descriptions for its employees; bank statements showing that the beneficiary has control of the corporate accounts; copies of invoices and shareholder meeting notes showing the beneficiary's scope of authority; its business plan; copies of IRS Form 941, Employee's Quarterly Federal Tax Returns for 2009, 2010, and the first three quarters of 2011; and copies of its Florida quarterly wage report filings for 2009 to 2011.

The petitioner's organizational chart shows the beneficiary as the director of the Miami office reporting to the Board of Directors in Peru. Reporting to the beneficiary is an Import Manager. Reporting to the Import Manager are a sales position, an administration position, and an external accountant. The only employee identified by name on the chart is the accountant. The chart also

depicts two unaffiliated companies – " [REDACTED] " and [REDACTED] as reporting to the beneficiary on a dotted-line basis. The petitioner identified the division manager of each company and indicated that they supervise supporting staff comprised of accounting, administration, shipping, warehousing, sales and marketing and production personnel.

The petitioner provided position descriptions for the positions of director, sales, "management", and accountant. The position description for the management position did not clearly relate to the import manager position as listed on the organizational chart and did not include any supervisory duties. The petitioner did not provide a position description for the "administration" position.

The petitioner's Florida quarterly wage reports indicate that it regularly employed three workers through the first seven months of 2011, two employees in August 2011, and four employees as of September 2011.

Finally, the petitioner provided a description of its agreements with [REDACTED]. The petitioner indicated that [REDACTED] processes and categorizes the petitioner's stones at its production facilities in Arizona and explained that issues related to quality control are made directly to the beneficiary. The petitioner indicated that [REDACTED] supplies the petitioner's beach pebbles to the gardening department of [REDACTED] stores in Florida, and also receives and processes the stones at its own facilities. The petitioner stated that [REDACTED] carries out its work in coordination with the beneficiary in order to ensure quality.

The director issued a request for evidence ("RFE"). The director requested that the petitioner provide, among other items, evidence that the beneficiary will be employed in a qualifying capacity as a multinational manager. Specifically, the director requested a statement from the petitioner describing the beneficiary's duties including: (1) position title; (2) all specific daily duties; (3) percentage of time spent on each duty; (4) an organizational chart showing subordinate employees including job description, educational level, full-time or part-time status; (5) if the petitioner used contract labor, the number of contractors and the duties performed by each; and (6) IRS Form W-2s, Wage and Tax Statement, for the relevant years for each employee.

In response the petitioner provided the following documentation: (1) a company statement with a list of the beneficiary's duties and the percentage of time spent performing each; (2) organizational chart showing all subordinates as well as brief descriptions of their duties; (3) a diploma for a subordinate; (4) IRS Forms W-2 for all employees for the past two years; (5) shareholder meeting notes showing the scope of the beneficiary's authority; (6) copies of letters from the petitioner's distributor and production companies stating the beneficiary is the director for the purposes of all business dealing; and (7) copies of tax returns signed by the beneficiary as director of the company.

The petitioner's letter stated that the beneficiary performs the following duties as Director of U.S. Operations:

Direct and supervise the employee's performance. - 50%

- Direct the company's finances. - 20%
- Project the company growth, pointing out their goals and aims. - 5%
- Plan and program the company activities, according to projections for growth. - 10%
- Approve and sign: financial statements, annual income tax, etc. - 5%
- Report periodically to the headquarters in Peru. - 5%
- Other duties - 5%

The petitioner also provided the requested organizational chart. The chart showed the beneficiary as director of the Miami office reporting to the board of directors in Peru. Four positions were shown reporting directly to the beneficiary: import, administration, sales, and accountant. The positions of import and account were listed as "Professional Level" and the positions of administration and sales were listed as "Technical Level." The position of accountant was shown reporting with a dotted line, suggesting that this is a contracted employee.

The petitioner noted that all positions were full time, but added a footnote that the positions of import, administration, and sales may be part time due to "market fluctuations" occurring from January to June. The petitioner did not provide the names of the employees filling each of the positions as requested. The petitioner provided a copy of a diploma for an employee, but did not specify which position the employee fills.

The petitioner provided position descriptions for all of the subordinate positions. The duties for the "professional level" import position were as follows: (1) coordinate with the sales area any purchase orders placed by the company's clients; (2) place purchase orders; (3) make cargo reservations with shipping companies and coordinate payment of ocean freights; (4) coordinate with suppliers the types of packaging as well as shipping dates; (5) gather documentation required for importation and hire a customhouse broker; (6) coordinate the delivery of goods; (7) inform management about the imports on a regular basis. The duties for the "professional level" accountant position included the following: (1) record all the company's transactions; (2) file all quarterly tax returns and reports; (3) prepare the annual corporate income tax return; (4) prepare the company's financial statements; (5) answer any queries from the company regarding accounting and tax matters.

The petitioner's IRS Form 941 for the fourth quarter of 2011, which includes the month in which the petition was filed, shows a total of seven employees. The State of Florida quarterly report for the same quarter reflects that only four of those employees were actually paid wages during this quarter. The beneficiary and three other employees were paid; however, the only other named employee for whom the petitioner included a diploma did not receive wages during the quarter in which the petition was filed. The petitioner employed the beneficiary, [REDACTED] at the time of filing in December 2011, but the evidence reflects that none of the subordinate employees remained with the company in January 2012. The petitioner's Florida quarterly wage report for the first two quarters of 2012, reflect that the petitioner employed the beneficiary, [REDACTED]

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. In denying the

petition, the director found that the petitioner failed to establish that the beneficiary would be performing duties that are executive or managerial in nature. The director further noted that the petitioner did not provide evidence that the beneficiary would be directing managerial or professional level personnel. Finally, the director concluded that the beneficiary appears to be the only full-time or professional level employee working for the petitioning company.

On appeal, counsel asserts that evidence of record is sufficient to establish that the beneficiary will be acting in a primarily managerial or executive position. Specifically, counsel states that the beneficiary supervises a professional-level employee who runs the petitioner's sales department. Counsel further asserts that the director improperly relied on staffing levels and failed to consider that the reasonable needs of the company are being met by the current organizational structure. In addition, counsel emphasizes that the director failed to consider the two companies that distribute the petitioner's product when evaluating the totality of the evidence and the extent of the company's hierarchy. Counsel contends that the evidence submitted supports a finding that the beneficiary will be employed in an executive capacity.

B. Analysis

Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a managerial or executive capacity.

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.

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 beneficiary's job descriptions submitted in support of the initial petition and in response to the RFE were overly general and vague, and therefore do not convey a meaningful understanding of how much time the beneficiary will spend performing qualifying tasks versus those that would be deemed non-qualifying. For instance, the petitioner stated that the beneficiary will direct and supervise employee performance, direct the company's finances, plan and program the company activities, approve and sign financial statements, and other duties. These duties provided little or no insight into what the beneficiary primarily does on a day-to-day basis or how he carries out his objectives as

Director of U.S. Operations. 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 her daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The director advised the petitioner that its initial description of the beneficiary's duties, which described seven broad areas of responsibility, was insufficient to establish eligibility and specifically requested a definitive statement listing all specific daily duties the beneficiary performs, as opposed to categories of duties, as well as the percentage of time allocated to specific tasks. The position description submitted in response to the RFE included a list of seven even broader responsibilities and was not responsive to the director's request for a definitive statement of the beneficiary's actual daily activities. Furthermore, the petitioner initially stated that the beneficiary would directly make contact with suppliers and buyers, supervise the order, shipment and customers processes, and supervise the delivery of products, duties that were absent from the job description provided in response to the RFE.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description. The 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).

While the evidence establishes that the beneficiary is the senior employee in the U.S. company and that he possesses the requisite level of decision-making authority with respect to its operations, the inconsistencies and lack of specificity in the provided position descriptions raises questions as to the beneficiary's actual day-to day responsibilities. Regardless, the position description alone is insufficient to establish that the beneficiary's duties would be primarily in a managerial or executive capacity. Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the beneficiary's claimed managerial or executive capacity, 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.

Here, it is not clear who will be performing the actual work of the company. In response to the RFE, the petitioner provided an organizational chart stating that a number of the employees move from a full to part-time basis depending on the season. Additionally, the petitioner failed to provide the

names of the employees under the beneficiary's supervision and thus it cannot be determined which positions were occupied at the time the petition was filed. Without this information, the record does not support a finding that the beneficiary has sufficient staffing levels to relieve him of performing the non-qualifying day to day duties of the organization. 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)). Again, the 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).

Although the beneficiary is not required to supervise personnel, if it is claimed that his 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 petitioner failed to provide a consistent and credible description of the employees under the beneficiary's supervision. The petitioner's initial organization chart shows a three tiered management system, with the sales, administration, and accountant positions reporting to the import manager. The petitioner's organizational chart in response to the RFE shows the beneficiary as a first-line supervisor with all positions reporting directly to him. 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 evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by the subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the work of the sales manager, who is among the beneficiary's subordinates.

In the initial petition and in response to the RFE, the petitioner states that the positions of import and account were listed as "Professional Level" and the positions of administration and sales were listed as "Technical Level." The petitioner submits a copy of a diploma for an employee, but does not state

which position that person holds. On appeal, however, counsel for the petitioner claims that the professional level position is that of the sales manager position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, counsel claims that the sales manager position is professional level due to the fact that the person holding that position has a degree. As stated above, the determination is made by the level of education required by the position, rather than the degree held by the subordinate employee. Ultimately, neither the import manager nor sales manager position is a professional level or managerial position based on the position descriptions submitted in response to the RFE. In addition, there is no evidence that the employee holding the professional-level degree was not paid during the quarter in which the petition was filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

The petitioner also stated that the position of accountant is a professional level position. On the organization chart, however, the beneficiary was depicted as having "dotted-line" authority over the accountant, and the accountant does not appear on the petitioner's quarterly wage tax filings. If the accountant was a contract employee, the petitioner failed to provide a copy of the contract or other evidence that the position of accountant is under the beneficiary's supervision. Furthermore, the petitioner failed to show the amount of time that the beneficiary will spend supervising the accountant. 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).

Counsel further claims that the beneficiary "directs business dealings" with other companies that serve as the petitioner's distributors. The petitioner states that the beneficiary coordinates with these companies for "quality control" purposes. The petitioner, however, fails to evidence how the beneficiary supervises these companies or specify what employees the beneficiary oversees. 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)).

The proposed position of the beneficiary is a Director of U.S. Operations of an import and consulting business comprised of three employees other than the beneficiary. The petitioner has not demonstrated that the beneficiary, as a personnel manager, will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel. See section 101(a)(44)(A)(ii) of the Act. Furthermore, the petitioner has not established that it will employ a staff that will relieve the beneficiary from performing non-qualifying duties so that the beneficiary may primarily engage in managerial duties. Further, regardless of the beneficiary's position title, the record is not persuasive that the beneficiary will function at a senior level within an organizational hierarchy.

On appeal, counsel for the petitioner claims that the beneficiary's position is executive in nature. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a

complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. 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.*

Given the conflicting and incomplete information in the record regarding the beneficiary's duties and the petitioner's organizational structure and staffing levels, the petitioner has not established how the beneficiary is relieved from involvement in the day-to-day operations of the petitioning enterprise as the senior employee in a four-person company, or how the company's current organizational structure can support an executive position. The record establishes that the beneficiary exercises the appropriate level of discretionary authority over the company as its director of U.S. operations, but fails to establish that his actual duties would be primarily executive or managerial in nature.

Counsel further refers to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee or supervises only one other employee. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Furthermore, counsel claims that the petitioner's current staffing level meets the reasonable needs of the organization. As required by section 101(a)(44)(C) of the Act, 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. To establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not explained how the reasonable needs of the petitioning enterprise justify the beneficiary's performance of non-managerial or non-executive 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).

Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. See sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive

tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties.

In summary, the petitioner has failed to provide sufficient evidence to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity and the petition cannot be approved.

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.