



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 14 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [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:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the immigrant visa petition. The petitioner filed a motion to reconsider the decision. The director granted the motion and reaffirmed the denial of the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner filed Form I-140, Immigrant Petition for Alien Worker, on August 30, 2013, seeking to classify the beneficiary as an employment-based immigrant under 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 petitioner, a designer and manufacturer of printed circuit boards (PCBs), is an affiliate of the beneficiary's former employer located in Australia. It seeks to employ the beneficiary in the United States in the position of director and senior design manager.

The director denied the petition on September 12, 2014, concluding that the petitioner had not established that the beneficiary was employed abroad or would be employed in the United States in a qualifying managerial or executive capacity. The petitioner filed a motion to reconsider, which the director dismissed on November 17, 2014.

On appeal, the petitioner submits a brief and copies of previously submitted materials. The petitioner asserts that it has established that the beneficiary's duties are primarily managerial and that the beneficiary's previous duties with the foreign entity were "borderline executive in nature."

I. 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 the alien 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 only to those executives and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file Form I-140, Immigrant Petition for Alien Worker, to classify a beneficiary under section 203(b)(1)(C) of the Act as a multinational executive or manager. The regulation at 8 C.F.R. § 204.5(j)(5) states:

No labor certification is required for this classification; however, the prospective employer in the United States must furnish a job offer in the form of a statement which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such letter must clearly describe the duties to be performed by the alien.

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

- (A) 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.
- (B) The term “executive capacity” means an assignment within an organization in which the employee primarily—
- (i) directs the management of the organization or a major component or function of the organization;
 - (ii) establishes the goals and policies of the organization, component, or function;
 - (iii) exercises wide latitude in discretionary decision-making; and
 - (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

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

II. Issues on Appeal

At issue in this proceeding is whether the petitioner has established that the beneficiary was employed abroad, and would be employed in the United States, in a qualifying managerial or executive capacity.

A. Facts

1. Managerial or Executive Capacity

In a letter dated May 22, 2013, submitted in support of the Form I-140, the petitioner provided the following description of the position offered to the beneficiary:

In this key managerial position, this Director, Senior Design Manager will be responsible for managing the support and servicing of the Design Department, including the professional design team He will use his many years of experience with [the company's] protocols and design policies to manage the Design Team and set up and design the US Company's Printed Circuit Board specifications and product capabilities. The Director, Senior Design Manager will also be responsible for managing and delegating day-to-day activities of the Design team, which includes formulating, developing and implementing new design procedures with significant discretion in his day-to-day decision making. In this managerial position, he will also be responsible for overseeing the professional and timely solution of each service inquiry according to customer specifications. In this position, the Director, Senior Design Manager, will have the authority to recommend the hiring and firing of team member[s] and will also establish the Company's goals and policies for the design department.

The petitioner asserted that, while employed overseas by the petitioner's affiliate, the beneficiary "performed the same managerial duties described above" and held the same title of "Director, Senior Design Manager." The petitioner also provided an "Employment Verification Letter" signed by [redacted] on behalf of its Australian affiliate. [redacted] provided a job description for the beneficiary's employment with the foreign entity which mirrors that provided in the petitioner's letter describing his proposed U.S. duties. Therefore, the petitioner did not significantly distinguish between the beneficiary's past duties abroad and his intended duties in the United States.

The petitioner provided its U.S. organizational chart dated November 2012, which showed that the following individuals and groups reported directly to the petitioner's Vice President and General Manager:

Director of Program Management/Quality Rep
Engineering Manager
Production Manager
Purchasing Manager
Design Director of Engineering (the beneficiary)
Layout Design Team

The chart indicated that the Project Management Team and Quality Manager reported to the Director of Program Management/Quality Rep. The chart did not show that anyone else at the same level, including the beneficiary, had subordinate employees. The chart showed that the Layout Design Team reported directly to the Vice President/General Manager, not to the beneficiary. The petitioner did not specify the size of the Layout Design Team, either in the United States or abroad, and the petitioner did not provide job descriptions for the team members.

On Form I-140, the petitioner claimed 54 employees. The petitioner's initial submission did not include an organizational chart for the foreign affiliate, and did not specify the number of its employees. The petitioner has since stated that, with one exception, "[a]ll of the employees [the beneficiary] managed in Australia continue to work under his direction in the U.S." Subsequent payroll documents show that the petitioning U.S. entity now has 65 employees.

The director issued a request for evidence (RFE) on May 13, 2014, stating that the petitioner's initial submission was not sufficient to establish that the beneficiary has been, or will be, employed in a managerial capacity. The director instructed the petitioner to: specify the beneficiary's duties and the time spent on each; provide a list of employees in the beneficiary's "immediate division, department, or team," along with job descriptions and other information; and provide detailed organizational charts for both the petitioner and the foreign affiliate.

In response, the petitioner submitted a July 28, 2014 letter from its president, [REDACTED] who is also the co-owner of both the U.S. and foreign entities. [REDACTED] stated:

[The beneficiary] was "in charge" of [the Australian] office for several years, working as not only the Senior Design Manager, but also as the primary manager for the office from June 2000-June 2005. He then came to the U.S. in L-1A status to work as our Design Manager from June 2005-December 2008. Because our Australian office was the primary "Design Headquarters" at that time, we transferred [the beneficiary] back to Australia in December 2008, so that he could resume his leadership role there, and he assumed the title of Director, Senior Design Manager. Over the last several years, as our design needs continued to grow, we brought most of our design team from Australia and China to the U.S.

Therefore, the position in Australia and the position in the U.S. are virtually the same, with the exception of the PCB Library Administration Services in Australia.

letter included separate charts showing the beneficiary's duties abroad and in the United States, but the two charts are identical, each containing the following information (with some technical details omitted):

Duties	Time Spent
Manage the support and servicing of the Design Department, including the professional design team. . . .	10%
Manage the design engineering team and oversee the implementation of [the company's] protocols and design policies.	5%
Manage and delegate day-to-day activities of the Design Team, which includes formulating, developing and implementing new design procedures with significant discretion in day-to-day decision making.	5%
Manage engineering design protocols for Sustaining Design Services, including Managed obsolescence (MO); Component Engineering; Component consolidation and cost reduction; Feasibility Studies; Redesign . . . ; and Project Management: Engineering, Layout, Procurement, Prototype, Production, Documentation, and Scheduling.	5%
Oversee the provision of PCB Layout design engineering services with a strategic focus on Medium to High Complexity; Advanced constraints (timing, noise, power, thermal, manufacturability); and Aggressive schedule and resource scalability requirements.	20%
Oversee and direct the proper design engineering implementation of PCB technologies . . . , Mixed technologies and Manufacturing.	10%
Provide guidance to engineering designers in the Company's utilization of PCB design tools. . . .	5%
Oversee and manage Company's professional "On-Time Delivery" design engineering protocol which includes strong project management skills, multiple resource planning and utilization, daily communication of schedule progression, web meetings to review milestones, scalability for multi-board projects, and innovative compensation plan rewards for on time performance.	10%
Manage and assess the design engineering team's performance for each customer service inquiry and determine best strategy to meet customer specifications.	5%
Oversee the implementation of RFQ ("Requests for Quote") policies. . . .	15%
Assess the professional performance of a design engineering team and recommend the hiring and firing of team members.	5%
Establish the Company's goals and policies for the Design Engineering Department.	5%

The petitioner submitted also submitted a job description on company letterhead for the Director, Senior Design Manager position, which listed the following details:

Accountability: Director of PCB Layout is hired by and reports to President

Job Summary: Responsible for managing PCB Layout & Library Departments

Job Responsibilities:

- Apply independence and creativity to drive projects.
- Develop and manage a staff of internal and external resources of varying technical disciplines.
- Provide technical sales support for new and potential customers.
- Manage several projects concurrently by planning, setting schedules, and proactively communicating in-process progress to our customer.
- Identify and resolve project issues as they arise.
- Formulate, develop, and implement design procedures to ensure quality, efficiency, and consistency.
- Help grow existing business by effectively being customer advocate

asserted that the beneficiary “directly managed 8 professional PCB Design Professionals” in Australia (seven “Sr. PCB Designers” and one “Sr. PCB Librarian”), most of whom now work with the beneficiary in the United States. (The “Sr. PCB Librarian” remained in Australia.) added that the beneficiary is also “training and overseeing the work of a Junior PCB Designer. . . . He manages a staff of 8 professional employees, who all either have a bachelor’s level degree or the equivalent in years of education and/or progressive and directly-related work experience.”

The job responsibilities of a Senior PCB Layout Designer (which appears to be the same position identified elsewhere as “Sr. PCB Designer”) are as follows:

- Design printed circuit boards that meet or exceed our customer’s mechanical, electrical and manufacturing requirements.
- Design printed circuit boards to comply with the Optimum Designer’s Handbook to ensure project consistency among all designers.
- Meet or exceed customer’s on-time delivery requirements by effectively planning needed resources and proactively communicating in-process progress to our customer.
- Record all project hours daily on Optimum Time Tracker.
- Identify and resolve project issues as they arise.
- Help grow existing business by effectively being customer advocate.

The Junior PCB Layout Designer’s job responsibilities include the last three items listed above, as well as:

- Assist Sr. Designers in designing printed circuit boards that meet or exceed our customer’s mechanical, electrical and manufacturing requirements.
- Learn all aspects of Optimum Designers Handbook to ensure project consistency among all designers.

The job responsibilities of the Senior PCB Librarian include the last three responsibilities listed for a Senior PCB Layout Designer, as well as the following:

- Create and check schematic logic symbols based on our customer's tool, quality and delivery requirements.
- Create and check PCB footprint land patterns based on our customer's tool, quality and delivery requirements.
- Database entry of parametric value attributes per customer's tool and quality requirements.

The job descriptions indicate that all of the jobs described above, including the beneficiary's, require a "BA or BS degree or an AA degree with four years of experience." One of the petitioner's designers has no academic degree, and neither does the Senior PCB Librarian in Australia. Three of the designers hold associate's degrees, either in electronics or in mechanical drafting. A fifth designer holds an unspecified "Diploma in Electrical Design," while a sixth has an unspecified "Degree in Applied Computing." Only two individuals hold degrees that the petitioner has identified as a baccalaureate, and the record shows that the petitioner hired those workers before they earned their respective degrees. Specifically, a Senior PCB Designer began working for the petitioner in 1988, before he earned the degree in 1990. An individual identified as a Junior PCB Designer earned a bachelor's degree in literature in 2014, after the petitioner hired him in 2012.

A new organizational chart submitted in response to the RFE shows seven departments that report to the Vice President, but the Design Management Team is not among them. Instead, that team, led by the beneficiary, reports directly to the President. The chart also names a "Design Manager" in addition to the beneficiary. The petitioner submitted no other information about this individual or his position at the company.

The petitioner's 2013 payroll summary shows that it had 65 employees at that time, 12 of whom (including the beneficiary and the seven named Senior PCB Designers) worked in "Department 200." The document indicated that the beneficiary is the third highest-paid employee in the department, with a salary of \$100,053.94. The Design Manager named in the second organization chart had the second highest salary, with \$101,153.84. The department's highest paid employee was one of the Senior PCB Designers, who earned \$115,000.08. Most of the other Senior PCB Designers had annual salary figures between \$90,000 and \$100,000; others earned less.

The director denied the petition on September 1, 2014, finding that the petitioner had not established that the beneficiary's subordinates are professionals. The director also observed that the two organizational charts submitted for the petitioning entity do not match, as the newer chart "shows a different reporting structure from" the older one, and refers to a Design Manager whose position the petitioner has not described in the record. The director also determined that the petitioner had not supported its claim that the beneficiary "was also the highest-ranking manager in charge of overseeing the staffing, payroll, budgeting, and operations of the foreign entity." The director concluded: "The petitioner has not demonstrated that the beneficiary is a qualified first line manager and that he performs primarily qualifying managerial duties in the U.S. or abroad."

In its motion to reconsider, the petitioner asserted that it had fully complied with the RFE, and that it had submitted detailed information to show that the beneficiary has devoted “at least 90 – 95%” of his time to qualifying managerial functions. The petitioner maintained that changes in its organizational structure “are organic and consistent with the evidence provided.” The petitioner stated that “[t]he Design Manager was not included in the ‘Design Team’ breakdown, because . . . he exercises independent decision making,” but he nevertheless “reports to the Beneficiary.” The petitioner asserted that the beneficiary’s subordinates qualify as professionals if we equate three years of experience to one year of university education.

The director granted the petitioner’s motion and affirmed the denial of the petition, finding that the petitioner had not overcome the stated grounds for denial. The director stated that the petitioner cited no support for its assertion that the beneficiary’s subordinates are professionals, and that “[t]he record remains unclear on what the exact relationship is between the Director, Senior Design Manager and the Design Manager.” The director stated that the petitioner’s claimed reorganization after the petition’s filing date cannot establish that the petition was approvable at the time of filing. The director also stated that the petitioner did not submit an organizational chart for the foreign entity, and therefore the record lacks material evidence needed to determine eligibility with respect to the beneficiary’s foreign employment.

On appeal, the petitioner states that the director incorrectly concluded that the beneficiary’s positions, both abroad and in the United States, were not managerial in nature. The petitioner states that the director also erred in finding that the beneficiary’s subordinates are not professionals.

Upon review, and for the reasons stated below, we find that the petitioner has not established that the beneficiary was employed abroad or will be employed in the United States in a qualifying managerial or executive capacity.

B. Analysis

As indicated above, the two primary issues to be addressed in this proceeding are whether the petitioner provided sufficient evidence to establish that the beneficiary was employed abroad and would be employed by the petitioning entity in a qualifying managerial or executive capacity. In general, when examining the executive or managerial capacity of a given position, we review the totality of the record, starting first with the description of the beneficiary’s proposed job duties with the petitioning entity. *See* 8 C.F.R. § 204.5(j)(5). Published case law has determined that the duties themselves will reveal the true nature of the beneficiary’s 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). We then consider the beneficiary’s job description in the context of the petitioner’s organizational structure, the duties of the beneficiary’s subordinates, and any other relevant factors that may contribute to a comprehensive understanding of the beneficiary’s actual duties and role within the organization.

The petitioner’s claim that the beneficiary has been and will be employed in a qualifying managerial capacity is based on a claim that the Senior Design Manager, both in the United States and in Australia, supervises a staff of subordinate professionals. The majority of the beneficiary’s stated duties reference his oversight, supervision and assessment of subordinate staff in the design department.

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; 204.5(j)(4)(i). 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. § 204.5(j)(2).

Although the beneficiary is not required to supervise personnel, if the petitioner claims that the beneficiary’s duties involve supervising employees, then the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. See *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm’r 1988).

The petitioner has claimed that the beneficiary managed essentially the same team of workers both in Australia and in the United States, and that these individuals “all either have a bachelor’s level degree or the equivalent in years of education and/or progressive and directly-related work experience.”

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, 818 (Comm’r 1988); *Matter of Ling*, 13 I&N Dec. 35, 36 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686, 687-8 (D.D. 1966).

Therefore, we must focus on the level of education required by the position, rather than the degree held by a particular 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. An employee may hold a degree that the position does not require. The hiring of employees without a bachelor’s degree, on the other hand, tends to demonstrate that the position does not require a bachelor’s degree. In this instance, none of the petitioner’s PCB Designers, Senior or Junior, held bachelor’s degrees when the petitioner (or the foreign entity) hired them and almost all of them still lack such degrees. Further, the petitioner’s own stated minimum requirement for all of these positions, including the beneficiary’s, is an associate’s degree plus four years of experience. Based on the evidence submitted, the evidence of record does not establish that the petitioner requires a bachelor’s degree or its equivalent as a minimum hiring requirement for any position on its PCB layout design team.

The petitioner states that the director should not have overlooked “USCIS’ well-established standard of equating 3 years of work experience to 1 year of academic accomplishment.” The petitioner states: “the Reviewing Officer must look to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) which clearly establishes this standard of review when considering whether or not an individual is eligible for an H-1B as a professional worker.” This proceeding is not a nonimmigrant petition, to determine whether the beneficiary’s subordinates qualify for H-1B nonimmigrant status. The H-1B regulations do not apply to immigrant petitions for multinational managers and executives, and the petitioner does not explain why we should adhere to that standard rather than the statutory definition of a professional at section 101(a)(32) of the Act and the case law cited above. The petitioner cites no authority that permits, let alone requires, USCIS to rely on the H-1B standard in this matter. Furthermore, the cited regulation concerns eligibility for classification not as a “professional,” but as a “specialty worker.” Those terms overlap to some extent, but they are not identical.

For the reasons explained above, the petitioner has not established that the beneficiary has supervised, or will supervise, professionals in his position with the petitioning company. As the petitioner indicates that many of the beneficiary’s duties involve his oversight and supervision of non-professional employees, the petitioner has not established how his duties qualify as primarily managerial in nature.

The director also noted several unresolved deficiencies with respect to the petitioner’s organizational charts. The petitioner, on appeal, contests the assertion that the petitioner did not submit an organizational chart for the foreign entity. The petitioner cites Exhibit 10, submitted in response to the RFE. That exhibit, however, is not an organizational chart. It is, rather, a list, in chart form, of the beneficiary’s “Supervised Professional Employees in Australia and China,” along with a similar list of U.S. employees and the job descriptions outlined elsewhere in this decision. The list does not establish the foreign entity’s overall corporate structure at the time of the beneficiary’s employment there, and the petitioner has not overcome this omission on appeal.

With respect to the petitioner’s submission of two different organizational charts for the U.S. entity, counsel observes that the organizational chart submitted with Form I-140 was dated November 1, 2012, almost 10 months before the filing of the petition on August 30, 2013. Counsel maintains that the organizational changes in question occurred before the filing date, and therefore “[t]he RFE [response] contained an updated organization chart that was valid at the time of filing” (emphasis in original). No official of the petitioning entity makes this claim. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The organizational chart submitted in response to the RFE is dated June 12, 2014, more than nine months after the filing date.

Regarding the relative dates of the organizational charts, counsel states: “This clarification was provided in the RFE response *and* in the Petitioner’s Motion to Reconsider.” In the RFE response, both counsel and [redacted] referred to the submission of a new chart, but they did not state the effective date of that chart or claim that the 2012 chart was already outdated when the petitioner filed the petition in August 2013.

It is correct that the motion to reconsider included the assertion that “[t]he company had changed its organization,” but this assertion came once again from counsel, with no supporting statement or evidence

from the petitioner. The dates on the two organizational charts do not establish or imply that the change in the petitioner's organizational structure occurred before the filing date (which would occasion the question of why the petitioner knowingly submitted outdated evidence that no longer accurately described the company's structure).

The material differences between the two organizational charts are significant. The first showed that the beneficiary reported to the Vice President of the petitioning entity, as did the Layout Design Team. The chart did not identify the position of Design Manager. The new chart has the Layout Design Team reporting to the beneficiary and the Design Manager, who, in turn, report directly to the President. This substantial change in management structure raises unanswered questions, and the petitioner (through counsel) does not resolve the issue by claiming, on appeal, that the petitioner originally submitted a chart that was already outdated at the time. The petition must be approvable at the time of filing, and must remain approvable throughout adjudication. See 8 C.F.R. § 103.2(b)(1). Subsequent alterations to the petitioner's actual or claimed management structure cannot cause a previously unapprovable petition to be approvable. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971).

The petitioner has not overcome the issue described above, or addressed the director's finding that "[t]he record remains unclear on what the exact relationship is between the Director, Senior Design Manager and the Design Manager." The petitioner's initial submission did not mention the latter employee at all, although he may have been part of the Layout Design Team that existed separately from the beneficiary on the 2012 version of the organizational chart. The lack of information about the Design Manager is not an insignificant omission; the record does not reveal to what extent the Design Manager, rather than the beneficiary, controls and oversees the Layout Design Team. Counsel has claimed that "the Beneficiary oversees the work of the Design Manager." By asserting that the 2014 organizational chart was already in effect as of the filing date, counsel effectively contends that the beneficiary already oversaw the work of the Design Manager as of the petition's filing date. It remains, nevertheless, that the petitioner's initial filing did not mention the Design Manager at all, and the petitioner has not submitted further information or evidence about that employee after the director raised concerns about the issue in two separate notices.

Furthermore, the assertion that the beneficiary and the Design Manager shared oversight and control of the Layout Design Team in some undefined fashion is inconsistent with [REDACTED] RFE response statement, in which he indicated that the beneficiary "is solely responsible for the performance of the Design Team." That statement implies that the Design Manager has no such responsibility.

The petitioner, on appeal, maintains that it has established eligibility by a preponderance of the evidence. The inconsistencies and omissions discussed above, however, preclude that finding. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.



Accordingly, we find that the petitioner failed to provide reliable, probative evidence sufficient to establish that the beneficiary was employed abroad, or will be employed in the United States, in a qualifying managerial or executive capacity. For this reason, the appeal will be dismissed.

III. Conclusion

We will dismiss the appeal 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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.