



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF C-USA CORP

DATE: NOV. 24, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a Florida corporation that operates a clothing supplier, seeks to employ the beneficiary in the United States as its Vice President. The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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 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 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 which 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.

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. EVIDENTIARY STANDARD

As a preliminary matter, and in light of the Petitioner's references to the requirement that we apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

.....

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

.....

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.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

*Id.*

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support eligibility for the benefit sought.

### III. FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on August 12, 2014. The Petitioner submitted various business and corporate documents as well as a supporting statement, dated July 24, 2014, addressing its eligibility. The Petitioner also provided organizational charts, depicting the staffing and organizational structures of the U.S. and foreign employers, along with tax and corporate documents.

On December 15, 2014, the Director issued a request for evidence (RFE), informing the Petitioner of various evidentiary deficiencies that may preclude approval of the petition. The Director addressed the following issues: The Beneficiary's managerial or executive capacity during her employment abroad; the Beneficiary's managerial or executive capacity in her proposed employment with the U.S. entity; and, the requisite qualifying corporate relationship between the foreign entity and the U.S. entity.

In response, the Petitioner submitted a response to the RFE on March 9, 2015, addressing the three issues identified by the Director and providing additional evidence. On April 7, 2015, the Director denied the petition, noting that the Petitioner established the qualifying corporate relationship between the two affiliated companies; however, the Petitioner had not submitted sufficient evidence to establish that the Beneficiary would be performing primarily executive duties in her role with the U.S. entity. The Director also stated that the Petitioner submitted inconsistent evidence documenting the Beneficiary's job title and job duties with the foreign entity and therefore, had not established that her employment with the foreign entity was in a qualifying managerial capacity.

The Petitioner now files an appeal contesting the Director's decision. Based on our own comprehensive review of the record and for the reasons provided in our discussion below, we find that the Petitioner has not provided sufficient evidence to overcome the grounds for denial.<sup>1</sup>

### IV. THE ISSUES ON APPEAL

#### A. Managerial or Executive Employment in the United States

The first issue to be addressed in this decision is whether the Petitioner submitted sufficient evidence to establish that the U.S. entity would employ the Beneficiary in a qualifying managerial or executive capacity. In the initial filing, the Petitioner does not clarify whether the Beneficiary claims to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. A petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. The petitioner must demonstrate that the beneficiary's responsibilities will meet the requirements of one or the other capacity. In the RFE, the Director

---

<sup>1</sup> While we have considered all evidence that has been submitted into the record, we will specifically reference only those submissions that are relevant to the above listed grounds for denial.

noted that the Petitioner attributed both executive and managerial areas of responsibility to the Beneficiary and requested that the Petitioner indicate whether the Beneficiary would be primarily engaged in managerial duties or executive duties. On appeal, the Petitioner asserts that the Beneficiary will serve in an executive capacity.

The statutory definition of the term “executive capacity” focuses on a person’s elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person’s authority to direct the organization. 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.”

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. 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, job duties assigned to the petitioner’s support staff, and any other relevant factors that may contribute to a comprehensive understanding of the beneficiary’s proposed daily tasks and his/her prospective role with the U.S. entity.

Turning to the Beneficiary’s job description, we find that the Petitioner did not provide sufficient information to establish that the primary portion of the Beneficiary’s time would be allocated to tasks within an executive capacity. The Beneficiary’s duties as Vice President along with the percentages of time spent on each duty are outlined below:

- Plan and implement long-term goals for [the Petitioner] (13% of time spent)
- Find and organize partnerships with other organizations to make business alliances in the textile industry (16% of time spent)
- Attend board meetings to discuss development and business strategies for [the Petitioner] growth and develop a vision and strategic plan to guide the organization (11% of time spent)
- Take care of financial aspects by creating plans and strategies to earn more income in a year. (20% of time spent)
- Take care of day-to-day operations of [the Petitioner] (18% of time spent)
- Identify and assess internal and external issues that could affect the company (10% of time spent)
- Handles management of human resources (12% of time spent)

The Petitioner stated that the Beneficiary will be responsible for managing and overseeing the operations of the company and will plan and execute business objectives, develop and execute organizational policies, coordinate functions and operations and establish responsibilities and procedures for attaining objectives. There is very little detail that reveals exactly what the Beneficiary will be required to do on a daily basis. For example, the Beneficiary spends 18% of her time handling day-to-day operations and 10% of time identifying issues that could affect the company. These are very general statements that do not reveal what the Beneficiary will actually do for more than a quarter of her time.

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 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). On appeal, the Petitioner did not provide any further detail or explanation of the Beneficiary's activities in the course of her daily routine, instead stating that the Director erroneously focused on the Petitioner's size to determine if the Beneficiary is performing primarily executive duties.

It is noted that we do consider the proposed position in light of the level of complexity of the Petitioner's organizational hierarchy and available staff to carry out the Petitioner's daily operational tasks. Federal courts have generally agreed that in reviewing the relevance of the number of employees a petitioner has, USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d at 42; *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g., Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In addition to the size of the company, and as previously stated above, we conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004), reviewing the entire record of proceeding.

The record also includes an organizational chart depicting the U.S. entity's structure. The President is noted, along with the Beneficiary in the role of Vice President. There are eight subordinates listed who appear to directly report to the Beneficiary: Attorney,<sup>2</sup> Accountant, Office Assistant Warehouse Assistant, and four (4) Sales Representatives. An organizational chart was submitted in response to the RFE on March 9, 2015 and it is noted in the response that the chart is "current." Along with the organizational chart, the Petitioner submitted a description of the eight individuals'

---

<sup>2</sup> The attorney listed on the Petitioner's organizational chart is the attorney of record in the instant appeal, and appears to operate her own immigration law practice.

(b)(6)

*Matter of C-USA CORP*

job duties and educational credentials for the Warehouse Assistant, and the Attorney and resumes for the Warehouse Assistant, three (3) of the Sales Representatives. Neither a resume nor educational credentials were submitted for the Office Assistant. While the Petitioner submitted job duties and education credentials for [REDACTED], there is no other mention of her in the record, so it is unclear as to her role with the Petitioner.

This information is inconsistent with federal tax information contained in the record. For example, the Petitioner submitted Form 941 Employers Federal Quarterly Tax Return for all four quarters of 2014. In all four forms, the Petitioner indicated that it had three employees. The Form 1120 U.S. Corporation Income Tax Return for 2014 indicates that the Petitioner paid \$119,250 in salaries and wages. Form W-2 Wage and Tax Statements were also submitted in response to the Director's request in the RFE for three individuals. The Beneficiary earned \$65,600; the Warehouse Assistant earned \$26,450; and the Office Assistant earned \$27,200. It is noted that these three salaries, taken together, equal \$119,250, the amount indicated by the Petitioner as paid salaries and wages. The Petitioner also submitted Form 1099 Miscellaneous Income for two Sales Representatives, who earned \$8,703 and \$1,850, respectively, in 2014. No additional employee wage documentation was submitted.

This tax information not only conflicts with the claims made in the Petitioner's organizational chart, but is also inconsistent with the Form I-140, in which the Petitioner claimed 10 employees. If U.S. Citizenship and Immigration Services (USCIS) finds reason to believe that an assertion of fact stated in the petition is not true, USCIS may reject that assertion. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. INS*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Here, the Petitioner has provided an inconsistent account of its support staff and has not provided objective evidence to establish which of its statements is reflective of the Petitioner's actual staffing composition at the time of filing. 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).

The Director noted these inconsistencies in his decision. On appeal, the Petitioner does not explain the inconsistency except to note that it has two contractual employees (attorney and accountant), two regular employees (the Office Assistant and Warehouse Assistant), and four contract sales representatives. Thus, the attorney and accountant do not appear to be employed by the Petitioner and the sales representatives appear to work on a part-time or intermittent basis.

The record also contains an expert opinion letter written by [REDACTED], Director of Graduate Studies and Senior Lecturer, School of Business, [REDACTED] Connecticut.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately

(b)(6)

*Matter of C-USA CORP*

responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated or is in any way questionable. *Matter of Caron Int'l.*, 19 I&N Dec. 791, 795. Furthermore, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*. 905 F.2d 41 (2nd Cir. 1990).

In this case, the expert opinion provides testimony that the Beneficiary's position as Export Manager for [REDACTED] is considered a managerial position, and that the prospective position, Vice President of [REDACTED] is an executive position. While the expert does list the stated duties associated with the Beneficiary's role in the U.S. and with the foreign entity, it is unclear what information the expert used to formulate his opinion. It appears that the expert was provided the job description; however, it is unclear if he was aware of the organizational chart and the fact that many of the claimed subordinate positions were not filled at the time of filing. These omissions indicate that the expert was unaware of the duties that the Beneficiary would have to perform that are not managerial or executive, given the lack of subordinate staff. There is also no evidence that the expert was aware of the multiple inconsistencies with regard to the organizational structure, and with regard to the Beneficiary's claimed employment abroad. Merely reviewing job duties without placing them within the context of an organizational hierarchy is not probative of the true nature of the position in question.

Without an objective and consistent depiction of the job duties, supported by independent objective evidence of the Beneficiary's role within the organization and her relation to her subordinates, and a clear understanding of who is actually employed by the Petitioner, we cannot find that the Beneficiary is primarily performing qualifying executive duties. In light of the various evidentiary deficiencies described above, we find that the Petitioner has not provided sufficient evidence to support the claim that the Beneficiary's proposed position in the United States would consist primarily of tasks within a qualifying managerial or executive capacity and for this reason, the instant petition cannot be approved.

#### B. Employment Abroad

Next, we will discuss the Beneficiary's employment abroad in order to determine whether the Petitioner has provided sufficient evidence to establish that the Beneficiary was employed in a qualifying managerial or executive capacity as claimed.

Similar to our analysis of the Beneficiary's proposed employment with the U.S. entity, we commence our analysis by looking to the Beneficiary's description of job duties. The Petitioner asserts that the Beneficiary acted in a function manager capacity abroad. Here, the primary source of information pertaining to the Beneficiary's employment with the foreign entity comes from the initial filing, dated July 24, 2014, which indicates that the Beneficiary served as an Export Manager

(b)(6)

*Matter of C-USA CORP*

beginning May 18, 2009, remaining in that position until January 31, 2011. Her duties were described as follows:

She was responsible for resolving problems concerning transportation, logistics systems and customer issues related to exports; collaborate with other departments to integrate logistics with business systems and processes, such as customer sales, order management, accounting, shipping; maintain export, reports, process documentation, customer service logs, etc.; supervise the work of department; direct inbound and outbound logistics and operations, such as transportation and warehouse activities, safety performance, and logistics quality management; direct and coordinate comprehensive logistical and reverse logistical functions for product life cycles, including acquisition, distribution, internal allocation, delivery, recycling, reuse and final disposal of resources; negotiate with suppliers and customers to improve supply chain efficiency and sustainability; travel internationally (UK, Spain, Portugal and USA) to fashion trade shows to show our collections to customers and to invite new customers to visit our company headquarters; direct distribution center operation to ensure achievement of cost, productivity, accuracy, or timeliness objectives; negotiate transportation rates and services; analyze the financial impact of proposed logistics changes such as routing, shipping modes and carriers.

In response to the RFE, the Petitioner submitted a letter dated January 18, 2015 from the foreign entity stating that the Beneficiary was “hired as an export assistant in our company [REDACTED] in May of 2009 but with her education level and past managerial experience, she was rapidly promoted to Export Manager after her six month revision. Her promotion took effect in November 2009.” The letter goes on to explain the Beneficiary’s duties as Export Manager as follows:

- Personnel management: hiring, training and supervision of staff to fit to the export objectives. Firing of staff is [sic] necessary. (25% of time spent)
- Keeping track of invoices due and preparing reports for billing process. (2% of time spent)
- Making sure that shipments are in compliance with regulation, laws and customs of the concerned country. (8% of time spent)
- Manage communications with export authorities for required countries. (15% of time spent)
- Design and develop sales strategies to attract new international customers and ensure compliance to all international regulations. (10% of time spent)
- Select efficient shipping activities and appropriate transportation method. (12% of time spent)
- Coordinate with management and plan participation to trade shows and business travels to meet new and existing customers. (2% of time spent)
- Monitor tags and labels production to ensure respect of countries regulations. (2% of time spent)
- Administer all existing clients and ensure optimal level of marketing strategies and design required consumer promotions to various trade fairs and maintain optimal level of customer satisfaction and assist to identify new markets. (4% of time spent)

(b)(6)

*Matter of C-USA CORP*

- Monitor all sales transactions and review all pending customers' orders and payments. Resolve all customer issues for processes and manage sales shipments for all export products and collaborate with suppliers to ensure smooth functioning of processes and forecast all requirements. (5% of time spent)
- Monitor all existing and prospective markets in Europe and assist to identify appropriate business opportunities and review all company products and develop and maintain professional relationships with all agents and clients and assist in shipment of warehouse products. (8% of time spent)
- Evaluate all reports submitted by subordinate staff and recommend appropriate changes if required and maintain all operational records to prepare all project sales and establish profitability in organization and provide training for all sales and service programs. (7% of time spent)

An organizational chart was submitted with the RFE response indicating that the Beneficiary, as Export Manager, directly supervised five employees including a warehouse manager, an individual responsible for billing/payments, and individual responsible for orders preparation, and two export assistants. The Petitioner also submitted duty descriptions of "employees to be under [REDACTED] (2010-2011)," noting that each of the five subordinates reported directly to the Beneficiary.

The Petitioner asserts on appeal that the Beneficiary's position was in a function manager capacity abroad. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. See 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function.

The fact that the Beneficiary had managerial control over all aspects or functions of the business does not establish that she qualifies as a function manager. While such authority is consistent with the statutory definition of managerial capacity, it is not sufficient to establish that the Beneficiary is employed in a managerial capacity. Whether the Beneficiary is a "function" manager turns in part on whether the Petitioner has sustained its burden of proving that her duties are "primarily" managerial. 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). Here, the Petitioner has not established that the beneficiary's actual duties are within a managerial capacity.

The job duties submitted by the Petitioner include functions such as "keeping track of invoices," "manage communications with export authorities," "monitoring tags and labels production," and

(b)(6)

*Matter of C-USA CORP*

“assisting in shipment of warehouse products.” Based on the statements provided in the record, we are unable to determine whether the claimed managerial duties constitute the Beneficiary's primary duties, or whether the Beneficiary primarily performs non-managerial administrative or operational duties relating to exporting a product. In order to qualify as the manager of an essential function, the Beneficiary must primarily manage the function, not perform the function. In this case, many of the job duties directly relate to performing the export function for the business.

Additionally, the Petitioner indicates that the Beneficiary allocated approximately 32% of her time to personnel management duties of five direct subordinates. Therefore, we cannot conclude that the Beneficiary "primarily" allocated her time to tasks relating to personnel management. Further, in reviewing whether the Beneficiary managed professional employees, we evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm'r 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). The Petitioner has not established that any of its employees abroad were employed in professional positions or that any of the company's positions required completion of a bachelor's degree. In addition, the Petitioner did not establish that any of the Beneficiary's subordinates abroad acted in a supervisory or managerial capacity. Thus, the evidence contained in the record does not support a conclusion that the Beneficiary allocated a significant portion of her time to supervision and control of subordinate professionals, supervisors, or managers, such that she could qualify as a personnel manager abroad.

Finally, we note that the record contains several material inconsistencies regarding the Beneficiary's job title and period of employment that cast doubt on the evidence submitted in support of her managerial function for the foreign entity. First, the initial filing indicated that the Beneficiary “served as Export Manager beginning May 18, 2009 remaining in that position until January 31, 2011.” However, in response to the RFE, the Petitioner submitted a letter from the foreign entity stating that the Beneficiary was “hired as an export assistant in our company [REDACTED] in May of 2009 but with her education level and past managerial experience, she was rapidly promoted to Export manager after her six month revision. Her promotion took effect in November 2009.” As noted by the Director, the record contains a verification of employment dated March 30, 2014 that indicates that the Beneficiary's job title was “Export Assistant,” Level 1 Step 1 from May 18, 2009 until January 31, 2011. On appeal, the Petitioner explained this inconsistency as a clerical error.

The record also contains pay-slips from January 2010 through January 2011 for the Beneficiary all indicating that her title was “Export Assistant.” This inconsistency cannot be reconciled as clerical error. 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). Here, the Petitioner does not provide independent objective evidence to resolve the considerable inconsistency described herein. Therefore, the Petition has submitted evidence containing multiple contradictions in the Beneficiary's job title and managerial level without explanation or evidence to point to where the truth lies.

For the reasons listed above, the Petitioner has not demonstrated that the Beneficiary was employed in a function manager capacity abroad.

#### V. CONCLUSION

The petition will be denied and the appeal 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.

Cite as *Matter of C-USA Corp.* ID# 14647 (AAO Nov. 24, 2015)