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FILE: [REDACTED]  
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Office: NEBRASKA SERVICE CENTER

Date: JUN 02 2005

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Based on the petitioner's support letter, dated November 6, 2003, the petitioner claims to be a subsidiary of Asiana Airlines. The petitioner operates as an airline company and seeks to employ the beneficiary in its U.S. branch as a maintenance manager. 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 determined that the petitioner failed to establish that the beneficiary was employed abroad and would be employed in the United States in a qualifying capacity and denied the petition.

On appeal, counsel disputes the director's findings and submits a brief along with additional evidence in support of his arguments.

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.

The director addressed two related issues in this proceeding: 1) whether the beneficiary was employed abroad for the requisite time period in a qualifying managerial or executive capacity; and 2) whether the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

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.

In support of the initial petition, the petitioner stated that the beneficiary's duties abroad included managing and supervising 50 purportedly professional employees at the petitioner's Korean affiliate. In a letter dated October 30, 2003, the petitioner provided the following statements regarding the beneficiary's proposed duties in the United States:

He monitors and administrates management of the maintenance department of [the] Anchorage Airport Maintenance Dept. The most important duty is handling a variety of day-to[-]day actions including assessing manpower requirements, enforcing regulation[s] and rules, assigning personnel, consulting with other managers and subcontractors and deciding maintenance requirements and priorities. Also, overseeing, directing and coordinating the

procurement of maintenance equipment, parts, and supplies. Directs and performs QA on the technical library and maintenance equipment. Enforces numerous safety programs including fuels and the handling of hazardous materials. Reports all emergencies and potential maintenance delays to headquarters and makes on the spot decisions where necessary. Oversees, directs, and coordinates maintenance procedures to ensure compliance with corporate and local regulations and standards.

He participates to review current policies and procedures and develops appropriate plans necessary to ensure aircraft safety. [The beneficiary] is not a first line supervisor and does not perform manual labor. [The petitioner] has sub-contractors who performs [sic] first line supervisory duty [sic]. [The beneficiary] is a key factor in the success of Anchorage Airport operations. [His] principal duty is ensuring the standardization of technical support and service based on corporate rules and local rules and handles a variety of day-to[-]day action in Anchorage Airport Maintenance Dept.

In a separate list of duties, the petitioner stated that the beneficiary performs additional duties, including the following: "accompanie[s] flight crew to determine and record system performance during test flights;" "set[s] up and operate[s] ground test equipment to perform functional tests;" "oversees record keeping, writes reports as required;" and "[d]irects and performs QA on the technical library and maintenance equipment and tools."

The petitioner also submitted organizational charts for the foreign and U.S. entities illustrating each entity's hierarchical structure. The foreign entity's organizational chart shows the beneficiary as a third-tier manager subordinate to the senior manager. The chart indicates that the beneficiary's immediate subordinates include four assistant managers. The petitioner's organizational chart also illustrates the beneficiary as a third-tier manager with a senior manager as his immediate subordinate. The chart indicates that the beneficiary oversees the work of 49 people, but does not identify any of the subordinates by name or position title.

On June 2, 2004, the director issued a request for additional evidence instructing the petitioner to submit a statement from an authorized official of the petitioning entity describing the beneficiary's employment abroad and his proposed employment in the United States. The petitioner was asked to include dates of employment, job titles, specific job duties, types of employees supervised, and the title and level of authority of the beneficiary's immediate supervisor within each respective entity. The director also instructed the petitioner to specify the amount of time devoted to the listed duties.

The petitioner replied with a letter dated July 20, 2004. Despite the director's request, the petitioner failed to include a description of the beneficiary's overseas job duties. In regard to the beneficiary's proposed duties, the petitioner provided the following description:

[The beneficiary's] most important and principal duty is the standardization of technical support and service based on corporate and local rules. He handles a variety of day[-]to[-]day actions within the Anchorage Airport Maintenance Dept. He represents the corporate office and looks after the corporation's best interest while strictly enforcing numerous accident-prevention safety programs. He plans, directs, describes, and coordinates all maintenance activities [sic]. He is familiar with standard concepts, corporate practices, and procedures. He ensures that contractor costs stay within budget. He authorizes, issues, and approves

certificates of release. He also participates in department policy making. He determines the scope of sub-contractors' work. He relies on his judgment from extensive experience to plan and accomplish goals. He ensures that the plant follows Federal, State, and company environmental and regulatory requirements and guidelines. He consults with other managers to determine the causes of accidents and suggests remedies to the corporate office. Also, he also travels as required.

The petitioner further indicated that the beneficiary does not have ultimate authority to hire and fire employees, but can recommend such actions to the human resources department. The petitioner failed to specify the amount of time the beneficiary would spend carrying out each of the listed duties.

On August 25, 2004, the director denied the petition noting that the petitioner failed to provide any of the requested information regarding the beneficiary's overseas job duties. The director also determined that the petitioner provided an insufficient description of the beneficiary's proposed duties, thus failing to convey an understanding of what the beneficiary would be doing on a daily basis. The director further noted that the petitioner opted not to provide a breakdown of time the beneficiary would spend performing his duties in the United States.

On appeal, counsel addresses the issue of the beneficiary's overseas job duties, claiming that he carried out job duties similar to those he currently carries out in the United States. However, the regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If, as claimed by counsel, the beneficiary was performing the same duties abroad as he would perform in the United States, this information should have been disclosed in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, any information regarding the beneficiary's overseas duties as provided on appeal will not be considered.

Counsel also asserts that the director erred in concluding that the petitioner willingly declined to submit a time breakdown of the beneficiary's proposed duties. Counsel claims that the petitioner may have misunderstood the significance of director's request. However, the record indicates that the request for evidence was sent to both the petitioner and its counsel, who was assisting the petitioner and was able to explain the request for evidence and the significance of the requested information. Furthermore, the fact that the beneficiary's working hours vary with the daily flight schedules is irrelevant with respect to the petitioner's ability (or inability) to provide a breakdown of time the beneficiary would spend performing his respective duties. Contrary to counsel's interpretation of the director's request, the goal was to provide Citizenship and Immigration Services (CIS) with a description of the beneficiary's specific job duties and to assign a unit of time the beneficiary would spend performing his respective duties. Regardless of the varying flight schedules, the petitioner should be able to itemize the beneficiary's duties and quantify, either on a

weekly or daily basis, how much time the beneficiary spent performing each of his stated duties. The fact that the flight schedules change on a daily basis simply means that the beneficiary may work different hours from one day to another. This should not have prevented the petitioner from providing CIS with a precise list of duties.

In examining the executive or managerial capacity of the beneficiary, CIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). In the instant case the petitioner was informed in the request for evidence that the description of the beneficiary's proposed job duties is too general to convey an understanding of exactly what the beneficiary would be doing on a daily basis and how much of his time would be spent on qualifying tasks versus the non-qualifying ones. Accordingly, the director's request for evidence was a proper attempt to elicit a more detailed and comprehensive description of the beneficiary's proposed job duties. The claim that the petitioner's flight schedule changes daily does not adequately address the issue of the beneficiary's daily activities.

The petitioner addresses this deficiency on appeal by submitting the following list of the beneficiary's day-to-day duties as a maintenance manager at Incheon Airport, which counsel claims involve the same duties as it does at the Anchorage Station:

- Maintain, organize and keep track of logs and reports of each flight assigned.
- Maintain, organize and keep track of administrative documents.
- Consistent correspondence with head quarters [sic] and office of departure and arrival, to relay and request proper maintenance reports and information.
- Maintain top condition and safety of company fleets and vehicles.
- Check flight reports of pilots during flights.
- Delegate responsibilities and tasks to subordinates of each division.
- Order the proper division of mechanics to prepare to address specific reported problem before landing of flight to ensure time efficiency.
- List and order and [sic] parts and equipments needed.
- Return, dispose, [and] allocate, [sic] defective and no longer used parts and equipments.
- Check qualifications of each mechanic and/or specialist working in department, divisions and sub-divisions [sic].
- Nominate . . . the new Employee of the Month.
- Make suggestions to headquarters of special rewards given to employees in [the] department.

- Check identification of ALL who approach aircraft and avoid foreign contact during maintenance checks and procedures.
- Check exterior of airplanes [and] delegate maintenance matters and assignments to subordinates [sic].
- Check engine of airplane and ensure and oversee proper maintenance procedures are being enforced.
- Check cockpit computers, indicators and warning systems to ensure sound mechanical operations.
- Conduct briefs with subordinates [sic] of each division in the department and crew of each flight assigned, on maintenance matters, notifications, new regulations, precautions, procedures and updates.
- Constantly log and report all actions taken to address maintenance matter[s] to destination office and next shift manager.

While the petitioner has clearly complied with the director's request for a more detailed job description, a review of the beneficiary's proposed list of tasks suggests that the beneficiary would primarily perform the petitioner's daily operational tasks and oversee the work of non-professional subordinate employees. It is noted that an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). While tasks such as maintaining logs and administrative documents, keeping inventory of necessary equipment, and checking the planes for maintenance and mechanical soundness are all necessary tasks, they are not managerial or executive. Rather, they are the petitioner's daily operational tasks. While the petitioner indicates that the beneficiary would have a subordinate staff, there is no indication that this is a staff of supervisory, managerial, or professional employees. In fact, the petition has not submitted evidence that it employs any personnel subordinate to the beneficiary; it only claims its use of subcontractors to perform this work. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary was employed abroad and would be employed by the petitioner in a primarily managerial or executive capacity. The record indicates that a preponderance of the beneficiary's duties with the petitioning entity would be directly providing the services of the business. The petitioner has not demonstrated that the beneficiary will be primarily supervising a subordinate staff of professional, managerial, or supervisory personnel or that he would otherwise be relieved from performing non-qualifying duties. Rather, the record suggests that the beneficiary has been hired to specifically perform the non-qualifying daily operational tasks of the petitioning entity. The record does not demonstrate that the beneficiary primarily manages an essential function of the organization or operates at a senior level within an organizational hierarchy. Based on the lack evidence regarding the beneficiary's duties overseas, the AAO cannot affirmatively determine that the beneficiary primarily performed qualifying managerial or executive duties abroad. While the petitioner has submitted

sufficient information regarding the beneficiary's proposed duties, the record suggests that a majority of those duties would be of a non-qualifying nature. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.