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U.S. Citizenship  
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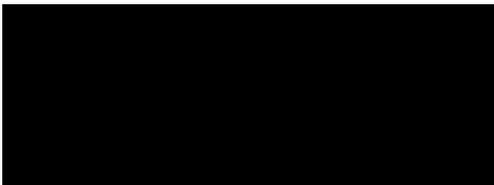
Office: VERMONT SERVICE CENTER

Date: NOV 23 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:



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 Director, Vermont Service Center, denied the employment-based petition.<sup>1</sup> The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner claims it is a corporation established in 1962 in the State of New York. It provides design, production, and delivery services. It seeks to employ the beneficiary as its communication 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 denied the petition on March 7, 2005, determining that the petitioner had not established: (1) it had a qualifying relationship between the United States and the foreign entity; (2) that the beneficiary would be employed in a managerial or executive capacity for the United States petitioner; or, (3) that the beneficiary had been employed in a managerial or executive for the foreign entity prior to her entry into the United States as a nonimmigrant.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On April 8, 2005, counsel for the petitioner submitted a "statement of the case" and resubmitted documents that had been submitted in response to the director's request for evidence. The documents include: (1) page two of "International Smart Sourcing, Inc. and Subsidiaries" 2003 annual report;<sup>2</sup> (2) the foreign entity's payroll statement for the beneficiary for five months in 2001, all of 2002, all of 2003, and the first two months of 2004; and, (3) an organizational chart for an unidentified company.

In the statement of the case, the petitioner observes that page two of the petitioner's 2003 annual report identified two addresses for the petitioner, one in the United States and one in China and asserts the two addresses clearly

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<sup>1</sup> The AAO observes that a separate entity, [REDACTED] submitted a second Form I-140, Immigrant Petition for Alien Worker, on behalf of the beneficiary for the position of communications manager on April 13, 2005. The president of the petition in the matter on appeal and for Allen Field Company, Inc. is the same. Further, in the second Form I-140 petition: (1) the beneficiary's place of employment is designated as a Post Office Box in Farmingdale, New York; (2) the petitioner fails to note that a previous petition had been filed on behalf of the beneficiary; and, (3) the petitioner fails to submit any evidence to support the second petition. Further, the AAO notes that the company information provided under Part 5, Item 2 in the second Form I-140, is identical to that provided for the instant petitioner. The AAO questions the legitimacy of the second entity and whether the president of the petitioner and the purported second entity and his attorney are attempting to circumvent this appeal process by attempting to "hide" the denial of the first petition.

<sup>2</sup> The petitioner submitted page 10 and attachment F-5 of "International Smart Sourcing, Inc. and Subsidiaries" 2003 annual report in response to the director's request for evidence. The information contained on these pages refers to the petitioner's ownership and does not outline the ownership and control of the foreign entity.

indicate related branches. The petitioner asserts that the foreign entity's payroll statement shows the "progression" of the beneficiary within "International." The petitioner also references the attached organizational chart and notes that it "referred to as [sic] the three levels within the department;" and that "[t]he Communication Department was created in the China's office to serve as liaison between manufacturing and navigating the intriguing government regulations in China." The petitioner indicates that "[p]erhaps the Service misread the evidence submitted." Finally, the petitioner states that "[i]t is the intention of International of having [the beneficiary] shuttling back and forth between offices in the United States and China giving support to the United States' offices of International and our subsidiaries and affiliates."

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 petitioner has not identified an erroneous conclusion of law and has only suggested that Citizenship and Immigration Services (CIS) has misread the submitted evidence. However, a review of the record does not show a misreading of the evidence.

First, the petitioner does not establish a qualifying relationship between itself and the foreign entity. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

The petitioner has provided some evidence of its ownership and control, but the record is deficient in establishing the legal status of the beneficiary's foreign employer. The petitioner initially referred to the beneficiary's foreign employer as its subsidiary and on appeal has pointed to its 2003 annual report showing two addresses for the petitioner, one in the United States and one in China to establish that the two entities are related branches. It is not clear from this information whether the petitioner is claiming the beneficiary's foreign employer is the petitioner's branch office or whether it is continuing to claim that the beneficiary's foreign employer is its foreign subsidiary. 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 record does not contain documentation establishing the legal status or the ownership and control of the beneficiary's foreign employer. 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)).

The record does not establish that a qualifying relationship between the petitioner and the beneficiary's foreign employer. For this reason, the petition will not be approved.

Second, the petitioner has not established that the beneficiary's employment with the petitioner will be in a managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). In this matter the petitioner indicated in a February 25, 2004 letter appended to the petition, that the beneficiary was being transferred "to serve as Manager of the Communication Department and work closely with the Marketing and Sales Department to provide our full spectrum of services to our customers' products from design to production and deliveries anywhere in the world." In the same letter, the petitioner noted that the beneficiary would report only to the president and would have the authority to hire and fire employees under her supervision. Although the director failed to request further evidence on this issue in his October 7, 2004 request for evidence, the director's March 7, 2005 decision specifically noted that the evidence submitted failed to establish that the beneficiary would work in a managerial or executive capacity for the petitioner. On appeal, the petitioner addresses this deficiency in the record by noting that the petitioner intends to have the beneficiary shuttling back and forth between offices in the United States and China giving support to the petitioner and its affiliates.

The record does not contain sufficient information to conclude that the beneficiary's position for the United States entity will be primarily managerial or executive. The petitioner does not clarify whether the beneficiary is claiming 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. The description provided hints that the beneficiary may have some employees under her supervision and that she will have the authority to hire and fire those employees, but the record does not include the United States petitioner's organizational chart depicting the beneficiary's position as well as those of her subordinates. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Moreover, the petitioner's indication that the beneficiary will shuttle back and forth between the Chinese and United States offices suggests that the beneficiary may be

performing operational tasks rather than managerial or executive tasks. 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).

The record in this matter is deficient in establishing that the beneficiary will perform primarily managerial or executive duties for the petitioner. Despite the director's decision on this issue, the petitioner does not adequately address this deficiency on appeal. For this additional reason, the petition will not be approved.

Third, the petitioner has failed to establish that the beneficiary's foreign employment was in a managerial or executive capacity. The petitioner initially indicated in the February 25, 2004 letter appended to the petition, that the beneficiary had been serving as the "Manager of the Communication Department for International in China since April 2001 through the present." In response to the director's October 7, 2004 request for further evidence on this issue, the petitioner provided more information on the beneficiary's foreign position. The petitioner indicated: that the beneficiary had three subordinates under her supervision, who in turn supervised others; that the beneficiary had day-to-day discretionary authority to recruit, hire, train, promote, and terminate her staff and exercise discretion over operations; and that the beneficiary spent 90 percent of her time on managerial duties and 10 percent of her time on non-managerial duties. The petitioner also attached an organizational chart showing a general manager, a communication department manager (the beneficiary's position), and the beneficiary's three subordinates, including a vendor relationship supervisor, a translations department supervisor, and a customer relationship supervisor. The petitioner provided brief job descriptions for the beneficiary's subordinates but did not identify the names of the employees or their number of subordinates. On appeal, the petitioner submits the same information previously submitted and notes that the foreign communication department was created "to serve as liaison between manufacturing and navigating the intriguing government regulations in China." On appeal, the petitioner also suggests that the director may have misread the evidence previously submitted on this issue.

The AAO acknowledges that the director does not articulately distinguish the dual requirements of a beneficiary's managerial or executive capacity for both the proposed employment with the petitioner and the beneficiary's prior employment for a foreign entity in her decision. However, upon review of the record, the petitioner has not provided sufficient evidence to establish that the beneficiary's duties for the foreign entity were primarily managerial or executive. As the director pointed out, it is not sufficient to claim a beneficiary's duties will be 90 percent 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). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.* In this matter the petitioner has not provided an adequate description of the beneficiary's duties for the foreign entity. It is not clear if the beneficiary's responsibilities will be to primarily supervise her three direct subordinates or whether the beneficiary will be involved in other tasks, managerial or non-managerial. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. 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. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Further, the record does not identify the beneficiary's subordinates and their subordinates on the

organizational chart. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The record is simply deficient in establishing this element of eligibility for this visa classification. For this additional reason, the petition will not be approved.

Inasmuch as the petitioner's statement does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal. The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.