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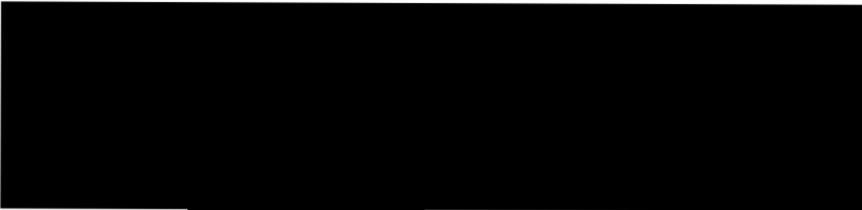
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [REDACTED]
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Office: TEXAS SERVICE CENTER Date: MAR 21 2006

IN RE: Petitioner:
Beneficiary:



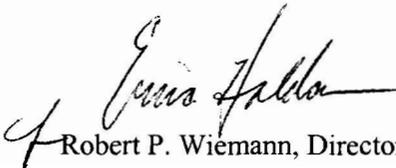
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Texas Service Center, approved the employment-based petition, yet revoked approval in a subsequent decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will affirm the director's August 15, 2005 revocation and dismiss the appeal.

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of South Carolina that is engaged as an agent and broker in the sale of ingredients and related machinery for the food industry. The petitioner seeks to employ the beneficiary as its general manager.

The director approved the immigrant petition on September 17, 2002. The director subsequently issued to the petitioner a notice of intent to revoke approval of the petition, allowing the petitioner an opportunity during which to rebut the director's findings. In a decision dated August 15, 2005, the director revoked approval, stating that the petitioner had failed to demonstrate that: (1) a qualifying relationship existed between the foreign and United States entities; and (2) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, the petitioner claims that a qualifying relationship exists in that "the petitioning company had total veto power and authority for the direct management of the operations."¹ The petitioner references the minutes from a board of directors meeting and a letter from the company's attorney as evidence of ownership and control of the United States company. The petitioner also states that the beneficiary functions as an executive of the United States company, in which he supervises "the staffs of manufacturers, forwarders, customer or final user and . . . the Venezuelan company." The petitioner submits a letter and documentary evidence in support of the appeal.

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.

¹ The AAO notes that according to the surrounding documentation in the record, it appears the petitioner is attempting to demonstrate ownership and control of the *petitioning entity* on the part of the *foreign company*.

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

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement, 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.

Following approval of an immigrant or nonimmigrant petition, the director may revoke approval of the petition in accordance with the statute and regulations. Section 205 of the Act, 8 U.S.C. § 1155 (2005), states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition."

Regarding "good and sufficient cause" and the revocation of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals (BIA) has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590. Notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984). Here, the director had good and sufficient cause to issue the notice of intent to revoke.

The first issue in this proceeding is whether a qualifying relationship existed between the foreign and United States entities at the time of filing the immigrant petition.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

Affiliate means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual:

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

* * *

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

With the initial filing on November 19, 2001, the petitioner submitted a letter, dated November 12, 2001, identifying itself as the branch of the beneficiary's foreign employer in Venezuela. Despite the petitioner's failure to submit documentary evidence of the purported qualifying relationship, the director approved the petition on September 17, 2002.

In a notice of intent to revoke, dated July 7, 2005, the director noted the petitioner's failure at the time of filing to demonstrate a qualifying affiliate or subsidiary relationship between the foreign and United States entities. The director asked that the petitioner submit the following information regarding the ownership of the two companies: (1) a list of the owners of both the foreign and United States companies; (2) an explanation of who controls each company; (3) "[p]ersuasive documentary evidence" of how the stock of each organization was acquired, including evidence of consideration furnished to each company in exchange for stock ownership; and (4) a copy of the petitioner's stock ledger or share register. The director noted that additional relevant evidence would include the company's stock purchase agreements, subscription agreements, corporate by-laws, minutes from relevant shareholder meetings, and other documentation referencing the acquisition of stock ownership.

Counsel for the petitioner responded in a letter dated August 4, 2005, explaining that at the time the petition was filed, the foreign entity owned fifty percent of the petitioner's stock. An individual, [REDACTED] who was identified on accompanying documentation as the company's president, was represented as owning the remaining fifty percent stock interest in the company. Counsel submitted stock certificates numbers one and two identifying the foreign entity and [REDACTED] as owners of 1,000 shares of stock each in the petitioning entity. Counsel explained that the petitioner had not prepared a corporate stock registry or ledger, yet attested to the petitioner's issuance of only two stock certificates since its incorporation. Counsel submitted the minutes from a board of director's meeting held September 18, 2000, in which the petitioner's directors assigned "full responsibility for all type of business activities on behalf of the corporation" to the beneficiary as the company's executive director. An attached mercantile registry noted that the beneficiary was a majority shareholder in the foreign corporation.

In her August 15, 2005 decision to revoke approval of the petition, the director concluded that a qualifying relationship did not exist between the foreign and United States companies at the time of filing. The director stated that despite the purported fifty-fifty ownership of the petitioning entity, the petitioner had not indicated which shareholder controlled the organization. The director addressed the petitioner's failure to demonstrate control on the part of either the foreign company or [REDACTED] or equal control and veto power by

both parties, and noted that the record does not contain documentation of either party's authority over the organization. Consequently, the director revoked approval of the petition.

In a letter submitted on appeal, dated September 17, 2005, the petitioner contends that at the time of filing, "the petitioning company had total veto power and authority for the direct management of the operations." The petitioner references a September 14, 2005 letter from its attorney², in which counsel "comment[s]" on the foreign entity's ownership and control of the petitioner. The petitioner's "business attorney" stated that since the petitioner's incorporation on July 11, 2000, the foreign entity has owned fifty percent of the organization. Counsel referenced a September 18, 2000 board of directors meeting, during which the beneficiary "was given complete control over the US corporation . . . as its Executive Director." Counsel stated:

It is clear from the records that since the incorporation of the US corporation . . . that the Venezuelan corporation [REDACTED] has been a 50% owner of the stock of the US corporation . . . and that the Venezuelan corporation has owned 100% of the stock since January 1, 2005.³ Since the Venezuelan corporation owned at least 50% of the stock in the US corporation . . ., the Venezuelan corporation had veto rights to the operations of the business. It is also clear that since the September 18, 2000 Board of Directors meeting, the Venezuelan corporation by and through its ownership of 50% of the stock and by and through [the beneficiary], it had the direct legal right and authority to direct the management and daily operations of the US corporation.

Upon review, the petitioner had not demonstrated the existence of a qualifying relationship between the foreign and United States entities at the time of filing.

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.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual

² The AAO notes that the petitioner's "business attorney" referenced herein is not the attorney of record who represented the petitioner in its filing of the instant petition.

³ The record indicates that on January 1, 2005, [REDACTED] transferred his 1,000 shares of stock in the petitioning entity to the foreign corporation.

control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 364-365. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

The petitioner has not resolved the inconsistent references in the record regarding the issue of who controlled the petitioning entity at the time of filing. The petitioner and its business attorney contend on appeal that the foreign entity "had veto rights to the operations of the business." However, the petitioner's business attorney also represented in his September 14, 2005 letter that the beneficiary, as the petitioner's executive director, has "complete control over the US corporation." The accompanying minutes from the petitioner's September 18, 2000 board of directors meeting indicate that the beneficiary has "full responsibility for all type of business activities on behalf of the corporation." The petitioner's inconsistent statements regarding control of the United States company prevents a finding that the foreign entity possessed *de facto* control through its ownership of fifty percent of the corporation. Rather, the minutes from the September 18, 2000 meeting, as well as counsel's interpretation of the authority granted to the beneficiary, indicate that the foreign entity was restricted in its purported control of the petitioner's administration and operations. 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 independent and objective evidence resolving the above-addressed discrepancies.

Additionally, the record does not contain documentary evidence of the means by which the purported stock interests in the petitioning entity were obtained. Despite the director's request for evidence in her notice of intent to deny, the petitioner failed to provide documentation of the consideration furnished in exchange for each party's purported stock ownership, such as wire transfer receipts, deposit slips, and bank records showing withdrawals from the accounts of the foreign entity and Fernando Montes and deposits into the petitioner's bank account. As addressed above, the submitted stock certificates, by themselves, are not sufficient to demonstrate the critical element of ownership. 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). Accordingly, the AAO cannot conclude that the foreign entity had ownership and control of the petitioning entity. The petitioner has failed to establish the existence of a qualifying relationship between the two organizations at the time of filing. For this reason, the appeal will be dismissed.

The AAO will next consider the issue of whether the beneficiary would be employed by the United States entity in a primarily 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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; 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.

On Form I-140, the petitioner requested employment of the beneficiary in the position of general manager, stating that he would be engaged in the international technical sales and administration of the company. The petitioner noted on the immigrant petition the employment of one worker. As the petitioner did not provide a detailed description of the beneficiary's proposed position, the director requested additional evidence in a notice dated April 20, 2002. Specifically, the director asked that the petitioner explain "how the primary part of the beneficiary's duties in the United States are within the 'executive' and 'managerial' capacities" as defined in the Act at §§ 101(a)(44)(A) and (B). The director asked that the petitioner include a description of the beneficiary's job duties in the United States organization and the employees supervised by the beneficiary, as well as their job duties.

The petitioner responded in a letter dated May 15, 2002, describing the beneficiary's "broad" job duties as follows:

[The beneficiary] establishes the multinational business goals and projection of the company, manages the organization and provides all technical guidance as needed, has global latitude in decision making, contacts potential suppliers for products and machinery; identifies potential users, in the U.S. and abroad, according with [sic] the characteristics of their plant operations and goods manufactured and decides on pricing policy. Representing our company, [the beneficiary] regularly attends to meetings and conferences of specific associations mainly related with the Food industry. The permanent presence of our company in the U.S., through a branch office, provides innumerable advantages when contacting multinational suppliers and expediting forwarding of goods to our customers. With only general supervision from stockholders, in his managerial/executive bulk capacity [the beneficiary] subcontracts outside services such as freight forwarding, computer consulting, warehousing for stocking goods for small size orders and, when development of business activities demands for, hiring and supervising professional and/or managerial personnel.

The petitioner explained in the same letter that it utilizes subcontractors when necessary, and noted that it receives support "from the internal organization of related companies, which, most of times, are more than willing to provide right on time samples, proforma quotations, freight estimates, etc. whenever possibilities of concrete business deals come up."

On July 7, 2005, the director issued a notice of intent to revoke approval of the petition. The director stated that information obtained from the beneficiary's interview to adjust status indicated that the beneficiary "runs the entire U.S. company." The director noted doubt in the beneficiary's employment in a primarily managerial or executive capacity, and asked that the petitioner provide a description of the beneficiary's daily job duties and the amount of time to be spent on each. The director addressed the purported contractors used by the petitioner for outside work, and asked that the petitioner submit copies of work contracts, which would demonstrate that those other than the beneficiary performed the company's labor and administrative tasks.

In response, the petitioner's counsel submitted a letter, dated August 4, 2005, stating that as the "chief decision-maker," the beneficiary "renders the professional services in food technology provided by [the petitioner] and manages the petitioner's outsourced staff. Counsel submitted a job description for the beneficiary, which restated essentially the same job responsibilities as those described above, and added:

Basically, the overall daily duties of [the beneficiary] as a professional Food Technologist serving as liaison between [the petitioner] and [the foreign entity] include the following:

- Through the managers of Sales and Exports departments of manufacturers and [the foreign entity], follows up with current situation of portfolio of established customer domestic and overseas.
- Analyzes reports from Sales and Administration managers of manufacturers and [the foreign entity] on new orders and arrival in order of recent shipments to customers' operation plants.
- Analyzes reports and attends communications from Sales manager of [the foreign entity], Transit and Purchasing Department managers of customers, Forwarding

companies managers and Customs Service managers about new regulations on exports, paperwork and issue of required documents for exports/imports worldwide.

Approximate percentage of time: 25%

- Attends meetings and communications with management executives of worldwide manufacturers with the production capacity and meeting quality requisites looking forward to establish representation agreements in order to offer their products to potential customers domestically and overseas.

Approximate percentage of time: 15%

- Analyzes reports and communication from Technical Services manager of [the foreign entity], R&D and QC managers from manufacturers and customers related with technical matters involving the products been merchandised worldwide.
- As required, establishes contact with international government regulatory organizations such as Food and Drug Administration, U.S. Department of Agriculture, European Directorate for Quality, in order to ensure compliance with their requirements.

Approximate percentage of time: 15%

- Supervises and analyzes reports and communications of personnel in both final users and manufacturers departments such as Management, technical staff, Credit, Sales, Manufacturing, Regulatory, Logistics, Shipping, Accounts payable, etc. and managers of freight forwarders companies according with the day to day needs of customers.

Approximate percentage of time: 25%

- Keeps update with technical information and new trends and products in the Food Industry, Pharmaceutical and related field. Assists to conferences and business meetings in order to maintain the necessary professional relations with the business community

Approximate percentage of time: 20%

The petitioner submitted a statement addressing its use of outside labor, explaining that, unlike a company engaged in manufacturing, its business activity does not necessitate "an unnecessary costly overhead." The petitioner acknowledged a need for administrative personnel in the event that it expanded its operations, but stated that presently, it utilizes contracted help as well as the support staff of companies with which it does business. The petitioner attached six statements from the beneficiary, as the company's general manager, attesting to "verbal agreements" between the petitioner and outside companies for services related to its computer system, web page design, freight forwarding, and warehouse rentals.

In the accompanying August 4, 2005 letter, counsel challenged the director's notation that the beneficiary would perform the business functions of the petitioning entity. Counsel stated that due to an "overlap" in operations of the petitioner and its suppliers and purchasers, "the respective employees of those companies perform functions to assist the petitioner, both in effecting the brokering of sales and in providing support services from these sales." Counsel states that ultimately, the beneficiary is managing the personnel of the petitioner's buyers and sellers, and of the foreign entity.

The director subsequently revoked approval of the petition in a decision dated August 15, 2005. The director addressed the verbal agreements described by the petitioner for its use of outside workers, and noted that only one agreement had purportedly been in effect at the time of filing. The director stated that as the sole employee of the petitioning entity, and with the limited evidence substantiating the use of outside contractors, it appeared that the beneficiary would likely perform the administrative tasks of the United States organization. Consequently, the director revoked approval of the petition based on the petitioner's failure to demonstrate that the beneficiary would be employed in the primarily managerial or executive capacity.

On appeal, the petitioner stresses the beneficiary's "executive" role in relation to the company's manufacturers, forwarders, customers, and the foreign entity. The petitioner states "the respective employees of those companies perform functions to assist the petitioner, both in carrying out the brokerage of sales and in providing support services for these sales." The petitioner contends that without the beneficiary's "executive guidance," the company would not maintain the "necessary coordination to provide on time response to the requirements of the customer." The petitioner again emphasizes that its purported use of subcontractors and outside workers is sufficient for the successful operation of the petitioning entity, and notes that it is not yet necessary for the petitioner to directly employ additional workers to perform clerical functions.

The petitioner addresses the director's note that only one of the six verbal contracts for outside work was in effect at the time of filing. The petitioner contends that following its acknowledgement of the filing date and a review of its records, three of the contracts were actually formed prior to the date of filing on November 19, 2001. The petitioner also "mention[s]" the use of a part-time employee during January 2001 through November 2002 for assistance in locating an office and furniture, and for performing "other administrative tasks."

Upon review, the petitioner has not established that the beneficiary would be employed by the United States entity in a primarily 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). The AAO notes a discrepancy in the submitted job descriptions and the related job titles assigned to the beneficiary. While the majority of documentation indicates that the beneficiary would be employed as the petitioner's general manager and references the associated job duties, the petitioner stated in its response to the director's notice of intent to revoke that the beneficiary would be employed as a "professional Food Technologist." As a result, the job description and time allocations offered by the petitioner refer to a new position not previously offered to the beneficiary. It is unclear whether the petitioner intended for these job duties to be considered in relation to the beneficiary's proposed role as the general manager. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO notes that a petitioner cannot offer a new position to the beneficiary, or materially

change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

Even if the AAO were to consider the offered job description, the limited description does not identify the specific managerial or executive tasks to be performed by the beneficiary. Based on the petitioner's vague representations, the majority of the beneficiary's time would be spent analyzing "reports" and participating in "communications" with manufacturers and managers of other companies. As the petitioner has not explained the reports to be examined or the purpose of the purported "communications," it is unclear why these tasks should be considered managerial or executive in nature. More importantly, the petitioner does not support its blanket claims that the beneficiary functions as a manager or executive over outside managers and personnel with an outline of the specific associated managerial or executive tasks. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The record fails to support the petitioner's claims that someone other than the beneficiary performs the petitioner's non-qualifying tasks. The petitioner correctly observes that the beneficiary is not required to supervise or direct subordinate employees in order to primarily perform as a manager or executive. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In addition, despite the petitioner's staffing levels, the petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act, and is not performing the non-qualifying functions of the business.

Here, the beneficiary is the sole employee of the company. While the petitioner contends that "respective employees of [other] companies perform functions to assist the petitioner," there is no evidence substantiating this claim. The petitioner repeatedly refers to the support staff of manufacturers, freight forwarders, and the foreign entity, yet does not provide evidence as to how these workers, who are employed by other companies for the purpose of performing their respective employers' functions, are assisting in performing the reasonable needs of the petitioning organization. Absent evidence directly linking the outside staff to the petitioner, and more importantly, demonstrating the beneficiary's managerial or executive authority over non-employees of the petitioner, the AAO is not required to accept the blanket claim that unrelated workers are performing the petitioner's administrative and operational functions, such as sales, bookkeeping, warehouse storage, packaging, and shipping. The petitioner cannot represent that its non-qualifying tasks are performed by employees of outside companies merely because the petitioner is using their services. The record contains insufficient evidence that the beneficiary is relieved from the performing the non-qualifying tasks of the petitioner's business.

This conclusion is further supported by the numerous correspondences in the record between the beneficiary and the petitioner's suppliers and purchasers. Based on the contents of the e-mails offered by the petitioner, the beneficiary personally quoted prices, referenced samples and received requests from purchasers for

information pertaining to the petitioner's products. Additionally, copies of the beneficiary's nametags from exhibition shows identify the beneficiary as an "exhibitor" and "attendee." It appears that the beneficiary's representation of the petitioner at trade shows goes beyond that of a manager or executive, and rather, that the beneficiary would be personally performing the sales of the petitioner. Based on the petitioner's representations, the beneficiary would also be responsible for the non-managerial and non-executive tasks of ensuring the company's regulatory compliance and maintaining registration with the proper regulatory agencies. 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 AAO notes an insufficiency in the verbal agreements offered in support of the petitioner's use of outside contractors. The beneficiary's unsupported statements attesting to verbal agreements with outside contractors and for the work of a part-time employee are insufficient. While the petitioner claims on appeal that several of its work relationships with outside parties were instituted prior to the date of filing, there is no evidence in the record, such as invoices for services or statements of compensation paid by the petitioner, substantiating its claim. 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)).

Based on the foregoing discussion, the AAO cannot conclude that the beneficiary would be employed by the petitioner in a primarily managerial or executive capacity. Accordingly, the revocation of the approval of the immigrant petition is affirmed and the appeal is dismissed.

Beyond the decision of the director, there is no evidence in the record that at the time the priority date was established the petitioner had the ability to pay the beneficiary his proffered salary. An October 21, 2002 letter from the petitioner's purported office manager, whose employment has not been documented by the petitioner, indicated that the beneficiary would receive an annual salary of \$45,000.

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. The record is devoid of evidence referencing the amount of compensation paid to the beneficiary prior to the filing of the petition. The record also lacks documentation, such as the petitioner's corporate tax returns, reflecting the petitioner's financial status, or demonstrating its ability to pay the beneficiary the proposed salary. Absent additional evidence, the AAO cannot conclude that at the time the priority date was established the petitioner had the ability to pay the beneficiary's annual salary of \$45,000. 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. For this additional reason, the approval of the petition will be revoked.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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 dismissed.