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Office: CALIFORNIA SERVICE CENTER

Date: OCT 12 2006

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IN RE:

Petitioner:

Beneficiary:



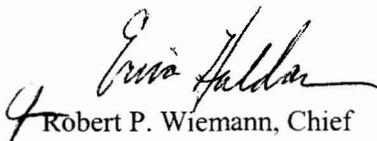
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the petition for an immigrant visa. Following an overseas investigation performed in connection with the beneficiary's I-485 Application to Adjust Status, the director revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant visa 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 California that is engaged in providing international trading services. The petitioner seeks to employ the beneficiary as its president.

The director revoked approval of the immigrant visa petition concluding that the petitioner had not demonstrated that: (1) at the time of filing, a qualifying relationship existed between the foreign and United States entities; or (2) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner claims that CIS failed to consider "the complete evidence" submitted by the petitioner. Counsel challenges the director's findings, and submits a brief and additional 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.

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).

The AAO will first address the issue of whether the petitioner established a qualifying relationship between the foreign and United States entities.

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.

The petitioner filed the instant petition on October 25, 1995. In an appended letter, dated October 5, 1995, the petitioner's former counsel claimed the existence of a parent-subsidary relationship between the foreign and United States entities, stating that the petitioner is wholly owned by the beneficiary's foreign employer. In the accompanying documentation, counsel provided: (1) a July 28, 1999 resolution adopted by the petitioner's directors acknowledging a transfer of stock in the amount of 510 shares to the foreign entity and 490 shares to [REDACTED] (2) stock certificate numbers two and three identifying the foreign entity and [REDACTED] as the owners of 510 and 490 shares of the petitioner's stock, respectively; and (3) a stock transfer ledger reflecting the above-noted transfers, as well as an initial issuance of 1,000 shares of stock to [REDACTED]

The director issued a Notice of Intent to Revoke on July 9, 2005, noting that an interview and overseas investigation performed by the United States Embassy in Monrovia, Liberia in connection with the beneficiary's I-485 application revealed evidence that the beneficiary did not qualify for the requested classification. The director stated that despite providing stock certificates identifying the foreign entity and [REDACTED] as shareholders, the record failed to demonstrate that the foreign entity owned the United States company. The director stated that the petitioner had not presented evidence that the foreign entity had furnished money in exchange for its purported stock ownership. The director further referenced an overseas INS investigation which revealed that the foreign company had ceased operating in 1990, the year during which the beneficiary arrived in the United States as a nonimmigrant and five years prior to filing the instant immigrant visa petition. The director asked that the petitioner submit documentary evidence, such as original wire transfer receipts and bank statements reflecting monies transferred by the foreign entity to the United States company and a copy of its Notice of Transaction Pursuant to Corporations Code Section 25102(f) identifying the petitioner's total offering amounts.

The petitioner's present counsel responded in a letter dated August 4, 2005 claiming that the foreign entity has continued operating in Liberia since the initial filing, and referencing copies of certificates of registration for the years 1999 through 2002. As addressed by the director in his decision, the AAO notes that the certificates of registration for the years 1999 and 2000 identify the foreign business' name as "State Trading Import/Export Company," while the subsequent certificates identify the foreign business as "State Trading Corporation," which is the name reflected on the company's articles of incorporation.¹ Counsel also provided the petitioner's corporate tax returns for the years 1995 through 2004, which identify the foreign entity as the owner of 51 percent of the petitioner's stock. Counsel explained that due to a civil war in Liberia from 1989 through 1996, which resulted in looting, many of the documents pertaining to the Liberian business were lost.

In a decision dated February 14, 2006, the director revoked approval of the petition concluding that the petitioner had not demonstrated that a qualifying relationship existed between the foreign and United States entities at the time of filing. The director acknowledged that the petitioner had submitted a stock certificate and stock transfer ledger identifying the foreign entity as a majority owner of the United States company, but stated that these two documents, without additional evidence, are not sufficient to establish the purported parent-subsidary relationship. The director stated that the petitioner had failed to establish that "the foreign entity actually contributed the cash funds to purchase common stock as prescribed in the articles of

¹ The minutes from a November 12, 1997 meeting held by the foreign corporation indicate an intent to re-register the company's name as "States Trading Import and Export Company," yet the record does not contain documentation confirming the name change with the appropriate Liberian authorities. Nor does the petitioner explain why subsequent certificates of registration contain "States Trading Corporation," the foreign entity's former name.

incorporation." The director also noted the inconsistencies previously addressed with respect to the name depicted on the foreign certificates of registration, and stated that the evidence did not "substantiate that the foreign entity is still a qualifying foreign entity." The director also addressed counsel's claim that the foreign entity was originally established as a sole proprietorship, owned by the beneficiary. The director stated that if the beneficiary owned the foreign entity, he would no longer possess control over the organization as he is in the United States and not in Liberia. Consequently, the director revoked approval of the petition.

Counsel for the petitioner filed an appeal on March 6, 2006. In an appended appellate brief, counsel states that the foreign entity's initial purchase of the petitioner's stock occurred in May 1990, four months prior to the beneficiary's entrance into the United States. Counsel explains that because the transactions were originated with the Liberian company, the documentation related to the transfer of monies was destroyed during the country's civil war. Counsel references the petitioner's 1991 and 1992 income tax returns as evidence that "clearly proves that [the foreign entity] through [the beneficiary] continued to finance the operation in the United States."

Counsel challenges the director's findings that the foreign entity is a sole proprietorship, and that the beneficiary relinquished control of the organization when he departed from Liberia to the United States. Counsel states that the beneficiary's foreign employer was formed as a corporation and is presently registered in the name of its resident manager, who is a Liberian national. Counsel explains that the foreign organization needed to create "a Liberian front," holding itself out as a Liberian company in order to avoid the harassment typically incurred by foreign-owned companies. Counsel states that despite being registered in the name of its resident manager, the foreign entity is majority owned by the beneficiary, who "holds control over all final decisions" and "still communicates with the Board of Directors regularly."

Counsel submits on appeal: (1) the foreign organization's articles of incorporation; (2) the minutes from a November 12, 1997 meeting held by the foreign organization noting the company's intent to create a "home front" by re-registering the company's name as "States Trading Import and Export Company" with "Elizabeth Tamba" as its managing director, and transferring 210 shares of the beneficiary's stock in the corporation to [REDACTED] and [REDACTED] in the amounts of 90 shares and 120 shares, respectively; (3) three of the foreign entity's issued stock certificates; and (4) four wire transfer receipts reflecting the beneficiary's receipt of monies in May 2003, April, October and December 2004, and May 2005 from banks in Liberia and London.

Upon review, the petitioner has not demonstrated that a qualifying relationship existed 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 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. 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 did not clarify the claimed ownership of the United States entity. The petitioner's former counsel claimed that the petitioner is wholly owned by the foreign entity. Stock certificates and the petitioner's stock transfer ledger, however, represent the foreign entity as one of two shareholders in the United States corporation. 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).

Regardless of the inconsistency, the record does not demonstrate that the foreign entity furnished consideration in exchange for its purported majority ownership interest in the petitioning entity. The petitioner's stock transfer ledger reflects the foreign entity's purported purchase of 510 shares of stock for \$1,020 on July 28, 1990. Although specifically requested by the director, the record is devoid of documentary evidence, such as bank statements, wire transfer receipts, cancelled checks, or bank deposit receipts, that the foreign entity paid \$1,020 to the petitioning entity. The petitioner's 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).

The AAO recognizes that as a result of the civil war in Liberia, documentation related to the foreign entity may have been destroyed. However, it is reasonable to expect that the petitioner would have bank statements and financial records available to corroborate the claim that the petitioning entity received monies from the foreign entity in exchange for the issued stock. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). As noted above, evidence of the means by which the foreign entity acquired its purported stock ownership is relevant to determining whether the critical element of ownership has been established for a qualifying relationship. 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)).

Additionally, it is questionable whether the foreign entity was operating in Liberia in 1995, the period during which the instant immigrant visa petition was filed. While the petitioner presented a July 1995 certificate of registration for the foreign entity, the remaining certificates reflect its registration in 1999 through 2002. Letters in the record from the beneficiary's brother in Monrovia, Liberia, the location of the foreign business, suggest that during 1991 through 1997 the foreign entity ceased operations due to the loss of utilities and damage caused by the country's civil war. Also, counsel acknowledges on appeal that vandalism throughout Monrovia caused the foreign entity to close in 1990 and again in 1996. Other than the 1995 certificate of registration, which reveals only that the foreign entity existed on paper, there is no documentary evidence that the foreign corporation resumed its business operations during 1991 through 1996. If, in fact, the foreign entity was inactive at the time the visa petition was filed, this would preclude a finding that the two companies had a qualifying relationship as of the date of filing.

In order to establish eligibility for classification as a multinational manager or executive for immigrant visa purposes, the petitioner must establish that it maintains a qualifying relationship with the beneficiary's foreign employer; the foreign corporation or other legal entity that employed the beneficiary must continue to exist and have a qualifying relationship with the petitioner at the time the immigrant petition is filed. 8 C.F.R. § 204.5(j)(3)(i)(C). A multinational manager or executive is one 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." Section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C).

Although the regulations at 8 C.F.R. § 204.5(j)(3)(i)(B) reference beneficiaries who are already employed by the petitioner as nonimmigrants, the fact that the beneficiary is currently in the United States as an employment-based nonimmigrant does not exempt the petitioner from its burden to establish the existence of an ongoing qualifying relationship with the beneficiary's previous foreign employer as of the date the petition is filed. Rather, the regulation at 8 C.F.R. § 204.5(j)(3)(i)(B) simply allows CIS to look beyond the three-year period immediately preceding the filing of the I-140 petition in order to determine whether the beneficiary has the requisite one year of qualifying employment abroad. To construe the regulation as creating an exception that allows L-1A beneficiaries to qualify as multinational managers without a qualifying relationship between the United States and foreign entities would contravene the plain language of the statute. The petitioner must establish eligibility at the time of filing the immigrant visa petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

In this case, any qualifying relationship that may have existed between the petitioner and the beneficiary's foreign employer would have been severed when the foreign company ceased its operations in 1991. Again, there is no evidence in the record demonstrating that in fact the foreign entity was operating at the time the petition was filed. The beneficiary's employment in the foreign entity is not considered employment with a qualifying entity for the purposes of this immigrant visa classification, and it cannot be found that the beneficiary is seeking "to continue to render services to the same employer or to a subsidiary or affiliate thereof." The petitioner's burden of establishing compliance with the criteria outlined in section 203(b)(1)(C) of the Act is not discharged until the immigrant visa is issued. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

Based on the foregoing discussion, the director's revocation of approval of the immigrant visa petition was properly based on "good and sufficient cause. Accordingly, the appeal will be dismissed.

The AAO will next consider the issue of whether the petitioner established that 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.

The petitioner noted on the Form I-140 that the beneficiary would be employed as the president of the four-person United States company. In an attached letter, dated October 5, 1995, the petitioner's former counsel provided the following description for the beneficiary's proposed position:

[The beneficiary] has full authority to handle the local operations, hire/fire staff and establish local policies and procedures as he sees fit.

[The beneficiary] develops, directs and manages the operations of the U.S. business entity. He selects, hires, trains, and supervises staff. He assigns specific job duties, establishes work schedules, and maintains priorities of work to be performed. He establishes and implements corporate goals and policies and prepares short and long term company goals and management policies.

Counsel explained that the petitioner employed three workers "to engage in business management, market survey, product procurement, price negotiation and to make shipping arrangements," and noted that it had secured premises for office space, as well as a showroom.

Counsel submitted an employee list, dated June 30, 1995, which reflected the employment of the beneficiary in the position of president, and two additional employees in the positions of manager and delivery person. An attached state quarterly wage report for the period ending June 30, 1995, which the AAO notes is unsigned, identified the same three employees purportedly employed at this time.

In his July 9, 2005 notice of intent to revoke, the director stated that the job description previously offered by the petitioner was inadequate to determine whether the beneficiary would be employed in a primarily managerial or executive capacity. The director noted that the record did not contain an organizational chart of the staffing levels maintained by the petitioner on the filing date or a description of the positions held by the beneficiary's subordinate employees. The director asked that the petitioner submit: (1) an organizational chart identifying the beneficiary's position, as well as its managerial hierarchy and staffing levels at the time of filing; (2) a detailed description of the job duties performed by the beneficiary during a "typical day"; (3) a brief description of the job duties and educational levels of the employees supervised by the beneficiary; and (4) certified copies of the petitioner's state quarterly wage reports for the fourth quarter in 1995 and the first quarter in 1996. The director noted that the quarterly wage reports should be submitted in a sealed envelope from the California Employment Development Department with a stamp certifying that the documents are true and original.

The petitioner's current counsel responded in a letter dated August 4, 2005, and submitted the following description of the beneficiary's "daily duties":

[The beneficiary] oversees and manages the day[-]to[-]day activities of the corporation. He hires and fires all employees. He negotiates and signs all contracts with clients and customers on behalf of the corporation. He meets with corporate clients to negotiate contracts and to take orders. [The beneficiary] negotiates loans, letters of credit, and lines of credit with financial institutions on behalf of the corporation. He handles the payroll, accounts receivable, and accounts payable. He negotiates all imports on behalf of the corporation, conducts negotiations in order to get better prices and to ensure prompt shipments. He represents the corporation with charitable organizations.

As additional documentation of the petitioner's staffing levels, counsel submitted copies of the quarterly wage reports filed by the petitioner for the last quarter of 1995 and the first quarter of 1996. The AAO notes that the reports were not certified by the California Employment Development Department or submitted in a sealed envelope as requested by the director. The petitioner's Employer's Quarterly Federal Tax Return ending on December 31, 1995, the period during which the instant petition was filed, indicates that one worker was employed during this quarter. A corresponding state quarterly wage report identified the

beneficiary as the sole worker employed by the petitioner during this time. The petitioner's 1995 federal and state income tax returns, both of which reflect a cumulative payment of \$36,000 in salaries and compensation to officers, as well as the beneficiary's 1995 personal income tax return, confirm that the beneficiary was the company's sole employee at the time of filing.²

In his February 14, 2006 decision, the director revoked approval of the petition concluding that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director noted that the petitioner had failed to submit such requested documentation as an organizational chart identifying the beneficiary's position within the corporation, and job descriptions for each of the employees supervised by the beneficiary. The director also noted an inconsistency in the information contained on the petitioner's quarterly wage reports. The director noted the relevancy of the omitted organizational chart and job descriptions in determining the beneficiary's proposed employment capacity. The director stated that "[t]he evidence is insufficient to support the claim of [the beneficiary's employment in a] managerial or executive position." Consequently, the director revoked approval of the immigrant visa petition.

In his March 3, 2006 appellate brief, counsel claims that the job description offered by the petitioner is sufficient to establish the beneficiary's role as a manager or executive. Counsel emphasizes the beneficiary's role in maintaining the petitioner's business operations in the United States since 1991, and states that "under the primary management of [the beneficiary,] [the petitioner] achieved sales of nearly one million dollars." Counsel addresses the petitioner's failure to submit an organizational chart, stating that the petitioner's previous attorney neglected to properly respond to the director's request.³ Counsel submits on appeal a current list of the petitioner's employees. As the chart reflects the petitioner's staffing levels at the time of the appeal and not those workers employed at the time of filing, it will not be considered herein. *See Matter of Katigbak*, 14 I&N Dec. at 49 (finding that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts).

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

² The AAO notes that the record contains two state quarterly wage reports for the period ending June 30, 1995. The form initially submitted with the Form I-140 identifies three employees, including the beneficiary, who the petitioner represented as occupying the positions of president, manager and delivery person. As noted previously, the Form DE-6 was not signed or dated by the petitioner. A second signed and dated quarterly wage report for the period ending June 30, 1995, which counsel submitted in response to the director's notice of intent to revoke, identified the beneficiary as the sole employee. The petitioner has not explained the existence of two conflicting quarterly wage reports. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

³ The AAO notes that the petitioner's current counsel was counsel of record at the time of the petitioner's response to the director's notice of intent to revoke.

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 overly broad and vague descriptions offered for the beneficiary's position as president fail to demonstrate his proposed employment in a primarily managerial or executive capacity. The regulations require that the petitioner provide more detailed job duties than such statements as: "selects, hires, trains, and supervises staff," "assigns specific job duties," "establishes work schedules," "handles the local operations," "implements corporate goals and policies," and "prepares short and long term company goals and management policies." *See* 8 C.F.R. § 204.5(j)(5) (stating that the petitioner "must clearly describe" the managerial or executive job duties to be performed by the beneficiary.) A more detailed job description is especially relevant in this particular case as many of the beneficiary's job duties pertain to his purported supervision of a subordinate staff, which, as discussed above, the petitioner has not proven to employ. 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 additional job description offered by counsel in response to the director's notice of intent to revoke is equally vague and demonstrates that the beneficiary would primarily perform non-qualifying tasks of the organization. Based on the subsequent job description, the beneficiary would perform the following non-managerial and non-executive tasks: negotiate contract prices, loans, and lines of credit, take orders, track shipments, and handle the company's payroll, and accounts receivable and payable. *See* §§ 101(a)(44)(A) and (B) of the Act. The AAO notes that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Moreover, an analysis of the reasonable needs of the corporation in conjunction with its overall purpose and stage of development undermines the petitioner's claim that the beneficiary would be employed in a primarily managerial or executive capacity. 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.

Here, the record demonstrates that the beneficiary was the sole employee of the petitioning entity at the time of filing.⁴ The AAO recognizes that the beneficiary does not have to supervise subordinate personnel in order to be considered a manager or executive. *See* § 101(a)(44)(A)(iii) of the Act. However, the petitioner must

⁴ The AAO recognizes that the petitioner identified a lower-level staff consisting of a manager and delivery person. Additionally, some of the petitioner's April through July 1995 invoices identify an individual other than the beneficiary as the company's sales representative. However, the petitioner's quarterly wage report, as well as its 1995 federal income tax return, which represents that the petitioner did not pay compensation for cost of labor or outside services, demonstrate that the beneficiary was the sole employee of the petitioning entity at the time of filing.

prove that the beneficiary *primarily* performs the high-level responsibilities specified in the statutory definitions of "managerial capacity" and "executive capacity" and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). The petitioner has failed to meet this essential requirement.

In addition to performing the above-named non-qualifying tasks, the record suggests that the beneficiary would also be responsible for personally performing the petitioner's sales, inventory, marketing, and customer service functions. The AAO notes, in particular, the office and showroom premises secured by the petitioner, and the lack of lower-level personnel employed by the petitioner to sell its products. Additionally, invoices dated April through July 1995 identify the beneficiary as the company's sales representative. Clearly, the reasonable needs of the petitioning company would not plausibly be met by the services of the beneficiary only. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. 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. As discussed above, the petitioner has not established this essential element of eligibility.

Based on the above discussion, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. As a result, the director properly revoked approval of the immigrant visa petition.

Beyond the decision of the director, an additional issue is whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity for at least one year during the three years prior to his entrance into the United States as a nonimmigrant. In his October 5, 1995 letter, counsel identified the beneficiary as occupying the position of president in the foreign entity. Counsel did not submit a description of the beneficiary's employment as president. Nor did the director request additional evidence of the beneficiary's foreign employment in his notice of intent to revoke. The record, however, contains an August 29, 2000 letter submitted by the foreign entity in connection with the beneficiary's I-485 Application to Adjust Status, in which the managing director outlined the following "major responsibilities" of the beneficiary as president:

- (a) Oversee & manage day to day activities of the corporation
- (b) Negotiate & sign all contracts with government agencies and local businesses for the supply of stationary on behalf of the corporation
- (c) Negotiate [l]oans, [l]etter[s] of credit, [o]verdraft line[s] of credit with financial institutions
- (d) Supervisor of all imports on behalf of the corporation, and conduct travel overseas in order to negotiate better priced and ensure prompt shipments.
- (e) Corporation [r]epresentative for [c]haritable [o]rganizations such as Indian Association Liberia, Rotary club of Monrovia, Chamber of Commerce, Masonic Lodge, etc.

The AAO notes that the job duties associated with the beneficiary's employment overseas are essentially the same as those provided for the beneficiary's position in the United States company. As discussed above, the overly broad and vague statements used to describe the beneficiary's employment as president are not sufficient to establish that he performed primarily managerial or executive job duties. Again, 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. at 1108. Absent additional evidence describing the managerial or executive job duties performed by the beneficiary while employed as the foreign entity's president, the AAO cannot conclude that the beneficiary occupied a position that was primarily managerial or executive in nature. 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)). For this additional reason, the petition will be denied.

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 approval will be revoked 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.