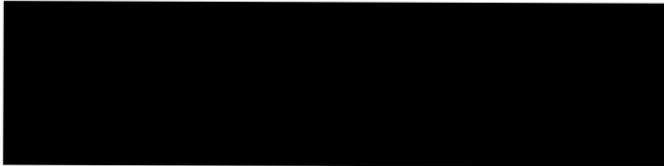


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



B4

FILE: [REDACTED]
SRC 06 255 50916

Office: TEXAS SERVICE CENTER Date:

SEP 11 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the immigrant 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 Nevada. The petitioner did not identify its specific business operations in the United States, but a submitted business contract identifies the petitioner as a manufacturer and supplier of hospital uniforms, gowns, formal wear, and sportswear. In contrast, a proposal enacted by the foreign entity addressed the beneficiary's authority to "supervise any food related business/es in the United States." The petitioner seeks to employ the beneficiary as its operations/finance manager.

The director denied 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.

On appeal, the petitioner challenges the director's finding, claiming that as an "employee/owner [the beneficiary] belongs to the executive management," and would be employed by the United States entity in a primarily managerial or executive capacity. The petitioner submits a brief statement 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.

The issue in this proceeding is 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.

The petitioner filed the Form I-140 on August 25, 2006 noting the beneficiary's proposed employment in the position of operations/finance manager, during which she would hold the following responsibilities:

To set-up office and apply all the necessary permit/licenses to start operation in Los Angeles, CA. Will manage the whole operation in the designated area. She will handle all financial operational matters, oversees [sic] daily operations, has full discretion to [sic] the

hiring and firing of employees. She will handle all budgetary cost. [She] [w]ill coordinate with the Head Office in the Philippines

In an attached letter, dated August 18, 2006, the petitioner provided the following additional description of the beneficiary's proposed job duties in the United States entity:

- [S]et-up a branch in Los Angeles and apply all the necessary permits and licenses needed to start the operations/business as mandated by law.
- [C]oordinate and report any business development to the Board of Directors in [sic] a monthly basis all budget related issues.
- [C]reate specific budgetary planning to all the company's franchising ventures.
- [R]eview and sign all contracts related to franchising.
- [A]ct as the overall head of the organizational structure in the Los Angeles branch.
- [I]mplement all workers' benefit packages.
- [E]nforce all disciplinary measures and sanctions of the employees under her supervision.
- [A]nalyze all financial reports submitted for accuracy before presenting it to the Board.
- [R]esponsible in [sic] hiring and firing of employees.
- [A]pprove budget for promotions and sign all cash disbursements.
- [R]esponsible for growth and development of mid-level managers.
- [A]ccountable for productivity goals, sales and revenue growth.
- [R]esponsible for daily management and productivity of department.

Aside from all the duties and responsibilities mentioned above, she will provide leadership by delegating and empowering associates, recognizing and rewarding diversity and communicating openly with the team. As well as manage the financial reporting process to the Board of Directors, which will include monthly flash and actual reporting requirements, annual budget, quarterly forecasts and annual mid-range plan. She will also be responsible for the consolidation of actual budgets/forecasts which includes consolidated presentation packages for Senior Management.

In addition, she will be responsible for ensuring that reporting and planning practices comply with company policy and will be responsible for partnering with operational senior management in developing business/financial models as required. Moreover, she will be expected to streamline the accounting and system processes specifically related to overall responsibilities as outlined above.

The petitioner did not submit additional evidence of the beneficiary's position in its organization or of its staffing levels, but noted on the Form I-140 that the beneficiary was one of two workers employed by the petitioner.

On November 13, 2006, the director issued a request for evidence, in which she instructed the petitioner of the need to examine its description of job duties in order to determine the managerial or executive employment of the beneficiary, and directed the petitioner to submit the following evidence with respect to this issue: (1) a detailed organizational chart of the United States entity depicting "the names, job titles and specific job duties of the beneficiary and the employees directly managed by the beneficiary"; (2) copies of

the petitioner's Internal Revenue Service (IRS) Forms W-2 issued during 2005; (3) a copy of the petitioner's 2005 federal income tax return; and (4) copies of its quarterly tax reports.

The record does not contain a letter from the petitioner responding to the director's request for evidence, however, additional evidence appears to have been submitted in response to the director's notice. The limited evidence submitted with respect to the beneficiary's proposed employment in the United States includes the minutes from a February 28, 2006 special legislative meeting held by the foreign entity in which the beneficiary was recommended to occupy the position of operations manager for international affairs of the United States company and authorized "to open[,] franchise or supervise food related business/es in the United States." In an attached March 3, 2006 resolution, the foreign entity approved the beneficiary's authority "to transact and deal with business/es in order to further enhance [the petitioner's] operations." The record is devoid of any additional evidence of the beneficiary's proposed employment in the United States.

The director issued a decision on February 21, 2007, in which she concluded that the petitioner had failed to establish the beneficiary's employment in a primarily managerial or executive capacity. The director considered the outline of the beneficiary's job duties, and concluded that they do not fall within the statutory definitions of "managerial capacity" and "executive capacity." The director noted that the beneficiary would be one of two employees and that the petitioner had indicated a zero balance in gross and net income on the Form I-140, and concluded that "it is questionable as to [whether] the beneficiary would devote the majority of time to performing primarily managerial or executive job duties." The director further determined that the petitioner had not "established that the beneficiary would be relieved from personally performing non-qualifying tasks by [a] subordinate staff." Consequently, the director denied the petition.

The petitioner filed the instant appeal on March 20, 2007, contending that following a review of the record the director erroneously concluded that the beneficiary would not be employed as a manager or executive. In an attached statement, the petitioner addresses additional job duties of the beneficiary, including "planning, financial management, branching out and reporting to annual meetings of the Corporation" The petitioner states: "[T]he Beneficiary is the person delegated by the Board of Officers to perform such tasks and there is no [sic] any other person more qualified for this position other than the Beneficiary as she is holding [sic] this executive position for more than 8 years in their branch abroad." The petitioner further contends that the beneficiary's role as an "employee/owner" of the petitioning entity establishes her employment in "executive management" and in a primarily managerial or executive capacity.

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.

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 job descriptions offered by the petitioner do not clarify the position to be held by the beneficiary in the United States entity or her proposed employment capacity. The AAO first notes that the petitioner did not identify its business purpose or operations in Los Angeles, the proposed work location of the beneficiary. This lack of clarification inhibits the analysis of how the beneficiary would be functioning in the United States entity, as it is unclear what type of "operation" the beneficiary would be managing or what daily functions are associated with the petitioner's business. Likewise, the job responsibilities outlined in the petitioner's August 18, 2006 letter are ambiguous as it is unclear what tasks the beneficiary would perform in

the "business development" or "daily management" of the petitioning organization. Case law dictates that a petitioner's blanket claim of employing the beneficiary as a manager or executive without a description of how, when, where and with whom the beneficiary's job duties occurred is insufficient for establishing employment in a primarily managerial or executive capacity. *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).

Additionally, due to the limited evidence provided with respect to the petitioner's staffing levels, many of the beneficiary's proposed job responsibilities are not plausible. The petitioner represented on the Form I-140 that the beneficiary would be one of two employees in the United States. The record suggests that the petitioner may have an office in the State of Nevada that is occupied by the company's president, presumably the other United States worker. Although requested, the petitioner neglected to address its staffing levels or provide evidence, such as an organizational chart, IRS Forms W-2, or its quarterly wage reports. This information is especially relevant to the analysis of the beneficiary's employment capacity, as a large portion of the beneficiary's purported managerial or executive authority is based on the supervision of a subordinate staff. Specifically, the petitioner asserted in its August 18, 2006 letter that the beneficiary would: "act as the overall head of the organizational structure"; "enforce all disciplinary measures and sanctions of the employees under her supervision"; implement employees' benefit packages; hire and fire employees; assist in the growth and development of mid-level managers; delegate responsibilities to associates; "communicat[e] openly with the team"; and oversee the daily management and productivity of the organization's departments. 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). 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. 582, 591 (BIA 1988).

Taking into consideration what appears to be a limited subordinate staff, the record, as presently constituted, suggests that the beneficiary would be performing non-managerial or non-executive tasks of the business rather than exercising primarily managerial or executive authority over the business functions. For example, based on the submitted job descriptions, the beneficiary would be responsible for such tasks as: handling "financial operational matters" and "budgetary costs," applying for business permits and licenses, analyzing financial reports, and managing such financial activities as the "monthly flash and actual" financial reports, annual budget, and quarterly forecasts. Absent a subordinate staff to perform the tasks associated with the day-to-day calculation of the petitioner's financial figures and the preparation of financial reports, it is not plausible that the beneficiary would "manage the financial reporting process," the petitioner's finance function, or "the whole operation," as claimed by the petitioner. The petitioner has not demonstrated that the beneficiary would be relieved from personally performing the daily non-qualifying functions of the business. When analyzing whether the beneficiary would be employed in a primarily managerial or executive capacity, it is reasonable for the AAO to consider the lack of a subordinate staff that would perform the non-managerial or non-executive tasks of the business. See *Q Data Consulting, Inc. v. INS*, 293 F.Supp.2d 25, 29 (D.D.C. 2003) (holding that the INS' finding that the beneficiary did not work in a primarily managerial or executive capacity was "bolstered by the absence of evidence that a sufficient 'subordinate staff' will 'relieve her from performing managerial [] duties' "). 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).

Furthermore, the petitioner's blanket claim on appeal that the beneficiary's role as an "employee/owner" of the petitioning entity qualifies the beneficiary for classification as "executive management" is misplaced. The AAO notes that the petitioner has not established the beneficiary as an owner of the United States entity. Regardless, whether the beneficiary is an owner of the petitioning entity is not determinative of whether she would occupy a primarily managerial or executive position. The managerial or executive title assigned by the petitioner to the beneficiary is not, by itself, indicative of the capacity in which the beneficiary would be employed.

Based on the foregoing discussion, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, two additional issues that may be considered together herein are: (1) whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity; and (2) whether the petitioner possessed a qualifying relationship with the beneficiary's foreign employer at the time of filing the immigrant visa petition.

Section 203(b)(1)(C) of the Act states that in the three years prior to the beneficiary's classification and admission into the United States as a multinational manager or executive, the beneficiary must have been employed abroad for at least one year *by the same employer, or a parent, affiliate or subsidiary of the petitioning entity in a primarily managerial or executive capacity*. Likewise, to establish a qualifying relationship under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e. a United States entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

Here, the petitioner states in its August 18, 2006 letter that the beneficiary was employed as the financial/operation manager "of the corporation's subsidiary company in the Philippines as well as [] the treasurer of its overall operations." The petitioner did not identify the name of the "subsidiary company in the Philippines." However, based on the majority of evidence submitted, it appears that the foreign "subsidiary company" is C&F International (Philippines) Inc. In contrast, the record also contains: an organizational chart of C&F International (Philippines) Inc. on which the beneficiary is identified as the operations manager of the Philippine company Quicktronic Enterprise; copies of Quicktronic Enterprise's statements of account bearing the beneficiary's name as the preparer; and copies of purchase orders signed by the beneficiary on behalf of Quicktronics Enterprise. Also, Form G-325A, a supplement to the beneficiary's Form I-485 application to adjust status, indicates that the beneficiary was employed as the supervisor of Quicktronic Enterprise from July 1998 through the date of the filing on April 10, 2006. The above-noted business documents of Quicktronics Enterprise are dated in various months during the years 2003 through 2005. The AAO notes that the petitioner represented on the Form I-140 that the beneficiary entered the United States on March 26, 2006 as a B-1 visitor. As the petitioner did not address the existence of a corporate relationship between C&F International (Philippines) Inc. and Quicktronic Enterprise, or more importantly, the existence of a qualifying relationship between the petitioning entity and the two foreign organizations, the AAO cannot conclude that the beneficiary was employed abroad for the requisite time period as a manager or executive by the same employer, or a parent, affiliate or subsidiary of the petitioning entity.

Moreover, the petitioner did not submit evidence that the beneficiary occupied a primarily managerial or executive position while employed in the Philippines. The AAO notes that the petitioner neglected to submit evidence in response to the director's request for a description of the "specific job duties" performed by the beneficiary in the foreign entity. 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 two organizational charts provided of the company C&F International (Philippines) Inc. are not sufficient to demonstrate the beneficiary's former employment overseas in a primarily managerial or executive capacity. Considered together, the two organizational charts merely depict the beneficiary as having occupied the positions of treasurer and operations manager and as having supervised an assistant administrative manager and assistant operations manager, but do not provide additional evidence corroborating the employment of subordinate workers or of the employees' related job duties.

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities 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). Additionally, case law dictates that a petitioner's blanket claim of employing the beneficiary as a manager or executive without a description of how, when, where and with whom the beneficiary's job duties occurred is insufficient for establishing employment in a primarily managerial or executive capacity. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The limited record of proceeding does not satisfy these requirements. 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 petitioner has failed to demonstrate that: (1) it possessed a qualifying relationship with the beneficiary's foreign employer; and (2) the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. Accordingly, the petition will be denied for these two additional reasons.

A third issue not addressed by the director is whether the petitioner was doing business in the United States for at least one year prior to filing the immigrant visa petition as required in the regulation at 8 C.F.R. § 204.5(j)(3)(i)(D).

The regulation at 8 C.F.R. § 204.5(j)(2) defines "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.

The record contains documentation of the petitioner's incorporation in the State of Nevada on July 26, 2001, as well as evidence that the petitioner filed its annual list of officers and directors with the State in 2005 and 2006. The petitioner also submitted a copy of a March 15, 2003 contract entered into by the petitioner as a manufacturer and supplier of uniforms and clothing. The contract identifies the petitioner's location as Los Angeles, California. In its August 16, 2006 letter, the petitioner suggests that the beneficiary will organize an office in the State of California. As noted previously, the proposed business operations of the petitioning entity are not clearly defined by the petitioner. Nonetheless, the record is devoid of evidence, such as sales

invoices, receipts, and corporate federal income tax returns, demonstrating that the petitioner engaged in the "regular, systematic, and continuous provision of goods and/or services" in the United States during August 25, 2005 and August 25, 2006, the date on which the immigrant visa petition was filed. The limited evidence offered by the petitioner suggests that the United States company may have been engaged in the supply of hospital garments and clothing during 2003, but does not establish that the petitioner has been doing business for the requisite amount of time during the period in question. 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 petition will be denied.

A final issue not addressed by the director is whether the petitioner demonstrated its ability to pay the beneficiary's proffered weekly wage of \$840 at the time the petition was filed.

The regulation at 8 C.F.R. § 204.5(g)(2) states:

Any petition filed by or for any employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

As mentioned in connection with the issues discussed above, the petitioner neglected to submit documentation related to its business, such as federal income tax returns, annual reports or audited financial statements, which would be essential to determining the company's ability to pay the beneficiary's proffered wage. Moreover, there is no evidence that the beneficiary was previously employed by the petitioner. Absent relevant documentary evidence, the AAO cannot determine whether the petitioner possessed the ability to pay the beneficiary's proposed annual salary of \$43,680. 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. Again, the petition will be denied for this additional reason.

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.