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U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 041 54176 Office: VERMONT SERVICE CENTER Date: FEB 23 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

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


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized under the laws of the State of New Jersey and is engaged in the import and sale of health and beauty instruments. The petitioner claims that it is a branch of the beneficiary's foreign employer, located in Sialkot, Pakistan. The petitioner now seeks to employ the beneficiary as its president for an additional two years.

The director denied the petition concluding that the petitioner had not demonstrated: (1) a qualifying relationship between the beneficiary's foreign employer and the petitioning organization, as required in section 101(a)(15)(L) of the Act; and (2) that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, counsel claims that a qualifying relationship exists between the two organizations as a result of the beneficiary's "operating control" over the foreign entity and his ownership of 60% of the United States corporation. Counsel also contends that the petitioning organization "is of a sufficient size and financial stature to justify the continued L-1A managerial employment of the beneficiary." Counsel submits a brief and documentary evidence in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a management or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The AAO will first address the issue of whether a qualifying relationship exists between the foreign and United States entities as required in the Act at section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term “qualifying organization” and related terms as follows:

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

- (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
- (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien’s stay in the United States as an intracompany transferee; and,
- (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *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.

(L) *Affiliate* means

- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
- (2) 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.

The petitioner filed the nonimmigrant petition on November 19, 2002 noting that the U.S. company is the branch of the beneficiary's foreign employer as a result of the beneficiary's ownership of 40% of the foreign entity and 60% of the United States entity.

The director issued a request for evidence dated January 23, 2003 and subsequently resent the notice to the petitioner on April 28, 2003 and May 29, 2003 due to a change in the petitioner's original address. In his request, the director asked that the petitioner provide evidence establishing the existence of a qualifying relationship between the foreign and United States entities, including stock certificates, stock ledgers, or other documentary evidence demonstrating ownership and control.

The petitioner's former counsel responded in a letter dated June 24, 2003, stating that the petitioning organization is wholly owned by the beneficiary as the sole shareholder. As evidence of ownership of the United States entity, counsel submitted: (1) the petitioner's articles of incorporation authorizing the petitioner to issue 500 shares of common stock; (2) a stock certificate, dated March 28, 2001, identifying the beneficiary as "100% share holder" of the petitioner's 500 authorized shares of stock; (3) the petitioner's stock transfer ledger naming the beneficiary as the stockholder of the original issuance of 500 shares of stock in the petitioning organization; and (4) the petitioner's year 2002 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, in which the beneficiary is identified as the sole shareholder of the United States organization.

With regard to the foreign entity, counsel provided a partnership deed, dated May 14, 1998, naming the beneficiary and three individuals as partners. Section eleven of the agreement indicates that the beneficiary holds a 40% interest in the profits of the partnership, and the remaining three partners hold interests in the amount of 25%, 25%, and 10%.

In a decision dated August 11, 2003, the director determined that the petitioner had not demonstrated the existence of a qualifying relationship between the beneficiary's foreign employer and the United States entity. The director noted that the record indicates that the beneficiary owns a 40% interest in the foreign partnership and a 60% interest in the petitioner's issued stock. The director stated that because the beneficiary holds only a 40% interest in the foreign partnership, he does not have control of the business. The director further stated

"[w]ithout control over both the parent and subsidiary, a qualifying relationship does not exist." Consequently, the director denied the petition.

New counsel for the petitioner filed an appeal on September 5, 2003. In a subsequently submitted brief, counsel claims that a qualifying affiliate relationship exists "by virtue of the fact that the beneficiary has operating control of the affiliated foreign entity and owns 60% of the shares of stock of the US Petitioner." Counsel states:

The Beneficiary has operating control of the foreign entity. He is responsible for all fiscal and partnership-related decisions, and his partners allow his vote to trump their's [sic] in all operating matters. Further, due to his operating control, he formally runs the company and is viewed as the majority owner of the company. Moreover, the Beneficiary owns 40% of the foreign entity, and his son owns 10%, so they collectively own 50% of the company. Enclosed herewith as Exhibit 3 please find a statement of interest held in the foreign entity, which also discusses the Beneficiary's powers of control over the foreign entity.

The Beneficiary owns 60% of the United States entity. He has a majority stake in the US entity. Thus, the Beneficiary has control over the foreign entity as well as the US entity, and common control exists.

In an attached letter, dated September 8, 2003, a partner of the foreign entity stated:

[The beneficiary] has all this [sic] [p]owers and he is authorized to do all [s]uch actions regarding to [sic] the operation of the [c]ompany. He has authority to [h]ire & fire the staff and workers in the [c]ompany. He is also an active [p]articipant in the day[-]to-day operations and [is] responsible to [sic] control [the petitioner's] branch office in [the] United States.

The partner noted that the beneficiary's ownership interest of 40% in combination with his minor son's interest of 10% enabled the beneficiary to have a controlling interest in the partnership of 50%. The partner further noted that the remaining two partners each held a 25% interest in the partnership.

Upon review, the petitioner has not demonstrated that a qualifying relationship exists between the beneficiary's foreign employer and the petitioning organization.

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 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., supra.* 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. § 214.2(l)(3)(viii). 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.

In the instant matter, the petitioner has not clearly demonstrated ownership of the petitioning organization or the foreign entity. With regard to the petitioning organization, the AAO acknowledges the documentation submitted by the petitioner's former counsel in response to the director's request for evidence identifying the beneficiary as the sole shareholder of the 500 shares of stock issued by the petitioner. However, both the petitioner and the petitioner's new counsel claim in the nonimmigrant petition and on appeal that the beneficiary's actual interest in the United States entity is 60%. As neither the petitioner nor new counsel submit any documentation supporting this claim, the record remains ambiguous as to the beneficiary's correct ownership interest. The AAO recognizes that according to either claim, the beneficiary holds a majority interest in the United States entity. However, the petitioner is still under the obligation 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). Absent documentation or an explanation clarifying the inconsistent claims in ownership, the AAO cannot determine the beneficiary's interest in the petitioning organization.

The record also fails to demonstrate that the foreign partnership is owned and controlled by the beneficiary. The petitioner submitted one piece of controlling documentary evidence, the partnership agreement, indicating that the beneficiary owns 40% of the foreign partnership. The remaining evidence submitted by the petitioner's new counsel on appeal fails to establish the beneficiary's ownership and control of the foreign entity. Specifically, counsel neglects to submit any corporate documents or agreements between the foreign partners confirming his claim that the beneficiary "is responsible for all fiscal and partnership-related decisions," or that the beneficiary's "partners allow his vote to trump their's [sic] in all operating matters." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Additionally, the record is devoid of documentary evidence such as voting proxies or agreements authorizing the beneficiary to combine his 40% interest in the partnership with his son's 10% interest resulting in a

collective 50% interest in the partnership. The September 26, 2003 letter submitted by the foreign entity's partner fails to specifically identify any agreements, wherein the beneficiary is transferred a majority interest in the partnership. Moreover, the letter itself is not reliable as it is signed by only one of the organization's four partners. The separate partnership agreement, which appears to be the sole controlling and reliable document with regard to ownership interests, clearly identifies each partner as holding a minority interest in the partnership. As noted previously, absent valid agreements to vote in concert so as to establish a controlling interest, it cannot be determined that the beneficiary has ownership and control of the foreign partnership. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Moreover, the petitioner has not provided documentation related to Pakistani law substantiating its claim that the beneficiary has control over his son's 10% interest in the foreign partnership. In immigration proceedings, the law of a foreign country is a question of fact that must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). In addition, the petitioner has not submitted evidence that the beneficiary's son is in fact a minor. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Absent this essential documentation, the AAO cannot confirm the petitioner's claim of the beneficiary's 50% collective interest in the foreign partnership.

Regardless of the beneficiary's actual ownership interest in the petitioning organization, the record does not establish that the beneficiary has ownership and control of the foreign partnership. Therefore, the AAO cannot conclude that a requisite qualifying relationship exists between the two organizations. Accordingly, the appeal will be dismissed.

The AAO will next address 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.

The petitioner noted on the nonimmigrant petition that the beneficiary would be employed in the United States company as its president. In an attached letter, dated November 18, 2002, the petitioner's former counsel described the beneficiary's job responsibilities in this capacity as follows:

The above named beneficiary is responsible to [sic] develop strategic planning to promote export to maximum targets of the company. He is sole[ly] responsible for [the] operation of office [sic] with the power of [sic] hire and fire of [sic] office staff. He has to execute the contracts with different entities. He is also responsible to [sic] monitoring the quality of products and services.

The company appointed one Office Manager to handle the business [m]anagement of the organization. He will be responsible to [sic] promote the growth of the business. [The office manager} will be the sole person who will deal with the clients in [the] absence of [the] President of the company. The [c]ompany is also seeking to acquire more person [sic] in the company with growth and expansion of business and sale in the future time to come.

Counsel submitted copies of the petitioner's IRS Form 941, Employer's Quarterly Federal Tax Return, for 2002 confirming the employment of the beneficiary and one additional employee.

In his January 2003 request for evidence, the director asked that the petitioner submit the following evidence related to the beneficiary's employment in the United States entity: (1) a comprehensive description of the managerial or executive job duties to be performed by the beneficiary, including a breakdown of the hours the beneficiary would devote to each task on a weekly basis; (2) an organizational chart of the petitioning organization; (3) complete descriptions of the positions held by other workers employed by the petitioner; (4) a copy of the petitioner's business plan identifying specific dates for each proposed action over the next two years; and (5) photographs of the company's interior and exterior premises.

Included in counsel's June 24, 2003 response to the director's request for evidence was a letter from the managing director of the foreign entity appointing the beneficiary to the position of president of the petitioning organization, the beneficiary's IRS Form 1040A, U.S. Individual Income Tax Return, for the year 2002, copies of the beneficiary's IRS Form W-2, Wage and Tax Statement, and photographs of the United States office. Counsel also submitted the following outline of the beneficiary's responsibilities in the United States organization:

1. The Beneficiary is responsible to develop strategic planning to promote export to maximum targets of the company's goal.
2. Arrange or participate in trade shows and festivals/seminars to introduce the manufacturing products.
3. Responsible to [sic] deal with the customs brokerage to arrange import and shipment of consignments.
4. Hire and fire office staff.
5. Responsible for operation of office management.
6. Daily meeting with wholesalers and distributors [and] clients and negotiate the deal [sic].
7. The Beneficiary is also responsible to [sic] make decision[s] to establish [the] company's policy matter[s].
8. Monitoring the quality of products and services.
9. To execute the contracts with various entities.
10. To make decision[s] and policy of the United States organization and execute the same to obtain the optimum results.

In his August 11, 2003 decision, the director determined that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director noted that the record contained limited documentation explaining the beneficiary's job duties in the petitioning organization, and stated that the little evidence submitted indicated that the beneficiary was primarily responsible for meeting with clients of the company. The director stated "[c]ombining that non-managerial work with the very generalized description of [the beneficiary's] duties fails to establish that he is engaged in primarily managerial level duties." The director also noted that the petitioner failed to demonstrate its employment of a staff sufficient to relieve the beneficiary from performing non-managerial tasks of the business. The director also noted the petitioner's plans to hire additional workers, but stated that as a company operating for more than one year, "[s]ufficient time has already been granted for the petitioner to demonstrate that the company would grow to a size capable of supporting a managerial level position." Consequently, the director denied the petition.

On appeal, counsel contends that the petitioning organization "is of a sufficient size and financial stature to justify the continued L-1A managerial employment of the beneficiary." Counsel states that the petitioner has

"sufficient revenue," and notes that the company achieved approximately \$288,000.00 in sales as of August 31, 2003. Counsel also states that the petitioner presently employs five workers who require the guidance of the beneficiary as a manager. Counsel outlines the beneficiary's proposed responsibilities as including: (1) hiring and firing personnel; (2) training and reviewing employees' performance; (3) managing finances and the corporate books; (4) and meeting with clients for new business. Counsel submits documentary evidence including an organizational chart of the United States entity, the petitioner's quarterly tax returns for the second and third quarters of 2003, bank statements, invoices and purchases, customs documentation, and contracts of sale in support of the appeal.

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 a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the intended United States operation one year within the date of approval of the petition to support an executive or managerial position. In order to qualify for an extension of L-1 nonimmigrant classification under a petition involving a new office, the petitioner must demonstrate through evidence, such as a description of both the beneficiary's job duties and the staffing of the organization, that the beneficiary will be employed in a primarily managerial or executive capacity. There is no provision in Citizenship and Immigration Services (CIS) regulations that allows for an extension of this one-year period. If the business is not sufficiently operational after one year, the petitioner is ineligible by regulation for an extension.

In the instant matter, the petitioner failed to submit relevant evidence demonstrating that one year after the approval of the nonimmigrant petition the petitioning organization would support the beneficiary in a primarily qualifying capacity. Pursuant to the regulation at 8 C.F.R. § 214.2(l)(3)(C), relevant evidence of the petitioner's ability to employ the beneficiary as a manager or executive would include a description of the scope of the petitioning organization, its organizational structure, and financial goals. Although requested by the director, the petitioner neglected to provide a copy of its business plan, which would provide pertinent information related to the petitioner's scope, organizational structure and goals. In its November 18, 2002 letter, the petitioner's limited statement of plans to hire an additional worker according to the growth of the company in no way explains the personnel structure anticipated by the organization in order to employ the beneficiary as a manager or executive. 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 counsel's descriptions on appeal of the petitioner's current staffing and organizational structure, which includes three additional workers than those employed at the time of filing the petition. Counsel claims that the organization requires the presence of the beneficiary as manager. Counsel fails to recognize, however, the requirement that the petitioner establish eligibility for the classification sought at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Counsel's descriptions of the petitioner's present personnel structure are therefore irrelevant to the instant issue and will not be considered.

The petitioner also failed to provide an adequate description of the managerial or executive job duties to be performed by the beneficiary. 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. § 214.2(l)(3)(ii). Here, the petitioner provided general statements that the beneficiary would be responsible for developing the company's strategic planning in order to maximize its goals, hire and fire staff, supervise office management, and make decisions regarding the company's policy matters in order "to obtain optimum results." The petitioner does not define the company's goals or policy matters, or explain what "optimum results" the company is seeking to achieve. The record is also devoid of any explanation of the specific tasks involved in performing strategic planning for the company. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner's job description also reveals that the beneficiary would be involved in the performance of many of the petitioning organization's non-managerial and non-executive operations. Specifically, the petitioner's former counsel indicated in his response to the director's request for evidence that the beneficiary would perform such non-qualifying functions as participating in trade shows, arranging shipments for import and export, negotiating with wholesalers and distributors, monitoring the quality of products, and executing contracts for the company. Though requested by the director, the petitioner did not provide a breakdown of the number of hours the beneficiary would devote to the above-named tasks. Absent this documentation, it is unknown what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). As the beneficiary himself is directly responsible for selling the petitioner's product, representing the company to the public and to clients, negotiating sales, and importing and exporting products, he cannot be deemed to be employed in a primarily managerial or executive capacity. 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. at 604.

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. For this additional reason, the appeal will be dismissed.

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.