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U.S. Citizenship and Immigration Services

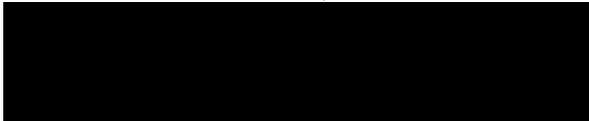
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File: WAC 04 223 51681 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2006**

IN RE: Petitioner:
Beneficiary:



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:



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, 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 an L-1A 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 California corporation engaged in the provision of international freight forwarding, warehousing and customs clearance services. The petitioner claims that it is the parent company of the beneficiary's foreign employer, Zen Continental (Tianjin) Enterprises Co., Ltd., located in China. The petitioner seeks to employ the beneficiary as its operation manager for a two-year period.

The director denied the petition concluding that the petitioner did not establish (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; or (2) that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner contends that the evidence submitted was sufficient to establish that the beneficiary will be employed in an executive or managerial capacity. Counsel contends that, contrary to the director's findings, the position description is sufficiently detailed and represents duties "normally" performed by senior managerial personnel. Counsel does not address the issue of the beneficiary's qualifying employment with the foreign entity. Counsel submits a brief in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, 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 within three years preceding the beneficiary's application for admission into the United States. 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. Finally, counsel contends that the beneficiary's organizational structure is sufficiently complex to support the beneficiary in a position that is primarily managerial.

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 first issue in the present matter is whether the petitioner established that the beneficiary will 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), defines the term "managerial capacity" as 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) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or 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), defines the term "executive capacity" as 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 nonimmigrant visa petition was filed on August 10, 2004. In an appended letter dated May 6, 2004, the petitioner described the beneficiary's proposed duties in the United States as follows, noting its need for "an experienced, senior executive officer":

[The beneficiary] will fill the position of Operation Manager. In this position, he is responsible for supervising and directing the outbound shipping operation, supervising the staff in coordinating and consolidating cargo and freight forwarding to the ports in China, negotiating with the corporate clients for long term shipping service contracts, reviewing and approving service package pricing. Also he will formulate short and long range business objectives, devise business policy and approve business plans; further, to direct development of the shipping networking in China and other Asian countries.

The director issued a request for evidence on September 2, 2004, in part instructing the petitioner to submit a more detailed description of the beneficiary's proposed duties in the United States, including the percentage of time the beneficiary will allocate to each of his job duties. The director indicated that the petitioner should be specific, indicate exactly who the beneficiary will supervise, and provide job titles and position descriptions for his proposed subordinates. The director also requested an organizational chart for the U.S. company identifying the names of all current executives, managers, and supervisors, the number of employees within each department, and the names and job titles of all of the beneficiary's subordinates. Finally, the director requested a brief description of job duties, educational level, annual salaries/wages, and immigration status for all employees who would work under the beneficiary's supervision.

In a response dated December 1, 2004, the petitioner attached a statement providing the same job description recited above, and noted that the beneficiary will spend "70% of work time in supervising lower staff; 30% engaged in long term business planning and development."

The petitioner submitted an organizational chart for the U.S. company's Los Angeles office, which identifies a total of seventeen positions. The chart indicates that the beneficiary will report to a vice president, who will in turn report to the company's president. The chart does not provide the requested names and job titles of the beneficiary's subordinates, but indicates that he will supervise "administration (staffing 2)," "shipping operation (staffing 4)," and "customs clearance (staffing 1)."

The petitioner also provided an employee list for the Los Angeles office which lists seventeen employees by name and job title, along with their educational level, immigration status, and monthly wages. The petitioner indicated that its employees include a president, two vice presidents, a manager/personnel, two import supervisors, two import clerks, an export supervisor, an export clerk, a sales employee, a customer service employee, an accounting manager, three accounting clerks, and a "VP Assistant." The petitioner also indicated that thirteen of its employees possess bachelor's degrees. The petitioner did not provide the requested job descriptions for the beneficiary's proposed subordinate employees, nor did it identify these employees by name and job title.

The director denied the petition on December 31, 2004, concluding that the petitioner had not established that the beneficiary would be employed in a qualifying managerial or executive capacity. The director observed

that the initial description of the beneficiary's duties was vague and generalized, and noted that the petitioner failed to submit a more detailed description in response to the director's specific request for such evidence. The director found that the position description was "too broad and nonspecific" to convey any understanding of the actual duties of the proffered position and included "no quantifiable definitions" for the beneficiary's broad responsibilities.

The director further noted that the job description for the beneficiary's proposed position was identical to a description for an "International Shipping Manager - Outbound" position submitted by the petitioner in connection with another L-1A petition (WAC 04 220 53962). The director noted "the language in each description is exact in its vagueness and generalization, and the petitioner does not attempt to provide specific duties of the respective positions." The director concluded that "simply submitting a statement broad and general enough to encompass any number of distinct positions does not meet the burden of proof in these proceedings."

Accordingly, the director found the evidence of record insufficient to establish that the beneficiary will be primarily managing the organization or a department of the organization, or that he will be primarily supervising an essential function or a subordinate staff of professional, managerial or supervisory personnel who would relieve the beneficiary from performing non-qualifying duties.

On appeal, counsel for the petitioner asserts that the petitioner's description of the offered position "is in compliance with the regulatory requirement as for the specificity and is the normally [sic] the job duties a senior managerial personnel [sic] will perform." Counsel argues that the description submitted conveys "precisely what a senior managerial personnel [sic] should do in managing the operation," and asserts that routine duties such as preparing shipping documents, reviewing import and export documentation, and preparing customs documentation are "generally delegated to subordinate staff, which are mostly college-educated professional level workers."

Counsel further argues that "[i]t is unrealistic to require the petitioner to 'quantify' the specific job duties as stated in the Service denial notice." Counsel asserts that the duties of senior managerial personnel "are generally interactive, he exercises wide latitude in discretionary decision-making, it is unrealistic to calculate how much time to spend on a specific matter; the senior manager interacts with lower managers and supervisors, he may handle multiple matters at the same time." Counsel further claims that "an attempt to quantify specific matters handled by senior managerial personnel will not be precise or realistic, therefore, to require such an attempt is unreasonable and not required by the L regulations."

With respect to the director's observations regarding an identical position description submitted with a different petition for a different position within the U.S. company, counsel asserts that the beneficiary's proposed position and the "International Shipping Manager - Outbound" position are in different departments, with one position responsible for domestic shipping and one responsible for international outbound shipping. Finally, counsel cites several unpublished decisions to stand for the proposition that a small- or medium-sized company may support an L-1A manager or executive.

Counsel's assertions are not persuasive. Upon review of the petition and supporting evidence, the petitioner has not established that the beneficiary will serve 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. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

In the instant case, counsel refers to the beneficiary as both an "executive officer" and "senior manager," and therefore suggests that the beneficiary will serve in both an executive and managerial capacity. To sustain such an assertion, the petitioner must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive duties under section 101(a)(44)(B) of the Act, and the statutory definition for managerial duties under section 101(a)(44)(A) of the Act. At a minimum, the petitioner must establish that the beneficiary is primarily employed in one or the other capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii).

As observed by the director, the petitioner's vague description of the beneficiary's duties does not clearly depict an individual primarily engaged in the high-level tasks associated with the statutory definitions of managerial and executive capacity. For example, the petitioner stated that the beneficiary will "supervise and direct the outbound shipping operation" but failed to identify the specific managerial or executive tasks this responsibility entails on a day-to-day basis. The petitioner further indicated that the beneficiary will negotiate with corporate clients for long-term shipping service contracts and "direct development of the shipping network in China and other Asian countries." Without further explanation these responsibilities suggest that the beneficiary may be directly involved in promoting and selling the petitioner's services to new and existing clients, rather than directing others to do so. 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). 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).

The petitioner also stated that the beneficiary will "formulate short and long range business objectives, devise business policy and approve business plans." While these responsibilities are couched in the language of the statutory definition of "executive capacity," the petitioner did not further explain the beneficiary's areas of responsibility with respect to planning and policy-making or explain how this responsibility would be shared with the petitioner's two vice presidents and president, who would reasonably be expected to oversee the company's overall objectives and policies. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Finally, the petitioner stated that the beneficiary would "supervise staff in coordinating and consolidating cargo and freight forwarding," but provided no information regarding the number of subordinates or the types

of positions they would hold, and thus did not establish that the beneficiary's subordinates would include managerial, supervisory or professional employees. A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. *See Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

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.

The director reviewed the vague description provided by the petitioning company and reasonably requested additional evidence regarding the beneficiary's actual duties, the petitioner's organizational structure, and the beneficiary's proposed subordinate employees. When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence submitted with the initial petition did not provide a clear understanding of the petitioner's business or the beneficiary's proposed role within it. CIS will not accept a vague job description and speculate as to what managerial or executive duties the beneficiary may perform.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The petitioner failed to submit the requested evidence in response, and instead re-submitted the same vague job description that was already found to be insufficient by the director. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Contrary to counsel's assertions on appeal, it is not sufficient to provide a broad job description and assert that such duties are "typically" performed by "any" employee at the senior management level. The regulations require a detailed description of the actual duties to be performed by the instant beneficiary as a managerial or executive employee within the context of this petitioner's organization. Nor is it unreasonable for the director to request that the petitioner "quantify" the beneficiary's actual duties and the portion of time he will allocate to them. 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 show 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). Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of providing that his duties are "primarily" managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act. The word "primarily" is defined as

“at first,” “principally,” or “chiefly.” *Webster’s II New College Dictionary* 877 (2001). Where an individual is “principally” or “chiefly” performing the tasks necessary to produce a product or to provide a service, that individual cannot also be “principally” or “chiefly” performing managerial or executive duties. Contrary to counsel’s contention that there is no regulation requiring a percentage of time devoted to each of the beneficiary’s duties, CIS must determine that the beneficiary is primarily engaged in a managerial or executive capacity. To make such a determination it is necessary to require a detailed description of the beneficiary’s duties and the time the beneficiary devotes to these duties. It is especially relevant when several of the beneficiary’s claimed responsibilities do not fall directly under traditional managerial or executive duties as defined in the statute. *See e.g. IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Finally, as noted by the director, the petitioner’s use of identical position descriptions for two distinct positions within its organization raises questions regarding the credibility of the petitioner’s claims regarding both beneficiaries’ duties. The petitioner has not persuasively established its need for two employees to perform exactly the same duties. Although counsel explains on appeal that one manager will be responsible for outbound shipping and one will be responsible for domestic operations, the position descriptions are identical and both descriptions clearly reference “outbound shipping” as the position’s area of responsibility. 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).

The only new information provided in response to the request for evidence was the petitioner’s statement that the beneficiary would devote the majority of his time, 70 percent, to “supervising lower staff” and an organizational chart showing that the beneficiary would supervise two “administration” staff, four “shipping operation” staff, and one “customs clearance” staff. The director clearly and specifically requested that the petitioner identify all employees to be supervised by the beneficiary by name and job title, and provide position descriptions for each employee. The petitioner failed to submit the requested evidence in response. This evidence is critical, as it would assist in determining whether the beneficiary will primarily supervise managerial, supervisory or professional staff, as well as whether the beneficiary’s subordinates would reasonably be able to relieve him from performing non-qualifying duties associated with the “operation” department. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act.

In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that “[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” The term “profession” contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and

study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by the subordinate employee. Although the petitioner provided job titles for its seventeen employees, it is not clear how the employee list corresponds to the organizational chart, and it is impossible to determine which employees would be supervised by the beneficiary. In addition, although the petitioner indicates that the majority of its employees possess bachelor's degrees, the possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not provided the requested job descriptions for the beneficiary's subordinate employees, and therefore it cannot be concluded that any of them would be performing professional duties. Similarly, the organizational chart does not clearly show that the beneficiary would be supervising supervisory or managerial employees. Thus, the petitioner has not shown that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act. 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)). Accordingly, the petitioner has not established that the beneficiary's primary responsibility of supervising lower level employees will be managerial in nature.

The AAO notes that the petitioner has not established that the beneficiary will manage an essential function of the U.S. company. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. See section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). If a petitioner claims that the beneficiary is managing an essential function, the petitioner must identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. In addition, the petitioner must provide a comprehensive and detailed description of the beneficiary's daily duties demonstrating that the beneficiary manages the function rather than performs the duties relating to the function. 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). In this matter, the petitioner has not provided evidence that the beneficiary will primarily manage an essential function.

Whether the beneficiary is an "activity" or "function" manager turns in part on whether the petitioner has sustained its burden of proving that his duties are "primarily" managerial. As discussed above, the beneficiary's primary duty of supervising lower-level personnel, which accounts for 70 percent of his time, has not been demonstrated to be managerial in nature, and thus the petitioner has not met this essential element of eligibility.

On appeal, counsel refers to the beneficiary as "an executive officer" but fails to establish how the beneficiary qualifies as an executive of the petitioning organization. The statutory definition of the term "executive

capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than on the day-to-operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* The beneficiary's job description describes an employee performing primarily supervisory duties, rather than one who would be employed primarily to establish goals and policies or to focus on the broad objectives of the company. Counsel's unsupported statements regarding the beneficiary's executive capacity on appeal are not persuasive. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The petitioner has not established that the beneficiary will be employed by the petitioner in an executive capacity.

Counsel further refers to unpublished decisions in which the AAO determined that the beneficiaries met the requirements of serving in a managerial and executive capacity for L-1 classification even though they were employed by small- or medium-sized organizations. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The AAO has long interpreted the regulations and statute to prohibit discrimination against small or medium size businesses. However, the AAO has also long required the petitioner to establish that the beneficiary's position consists of primarily managerial or executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks. As discussed above, the petitioner has failed to meet its evidentiary burden with respect to describing the beneficiary's actual duties, the duties performed by his subordinates, and the petitioner's organizational structure. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

The second issue in this matter is whether the petitioner established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity.

The petitioner indicated on Form I-129 that the beneficiary has served as the vice general manager of the foreign entity's Qingdao branch since September 2002 performing the following duties:

Responsible for supervising and managing the import and export cargo shipping, business planning and overseeing staff in international cargo transportation. Represents the Company in entering major international cargo shipping agreements with client corporations.

In its May 6, 2004 letter, the petitioner provided the following description:

Under his leadership are approximately 31 employees including managers and shipping account executives. The position is managerial and has full authority of hiring and making major corporate business decisions. Qingdao is a major seaport in Northern China and [the foreign entity's] Qingdao branch handles hundreds of import and export shipments annual [sic] for the industrial and commercial companies, both domestic and international.

In his September 2, 2004 request for evidence, the director instructed the petitioner to submit additional evidence to establish that the beneficiary has been employed by the foreign entity in a managerial or executive capacity. Specifically, the director requested: (1) a more detailed description of the beneficiary's duties abroad, including the percentage of time the beneficiary spends in each of the listed duties; (2) the total number of employees at the foreign location where the beneficiary is employed; and (3) the foreign entity's organizational chart, clearly identifying the beneficiary's position, and listing all employees under the beneficiary's supervision by name and job title. The director also requested a brief description of the job duties and educational levels for all of the beneficiary's subordinates.

The petitioner's December 1, 2004 response to the director's request for evidence included a certificate of employment from the foreign entity, dated November 1, 2004, which provided the following information regarding the beneficiary's foreign employment:

This is to verify that [the beneficiary] joined in August 1999 by the [REDACTED] [REDACTED] as Manager, responsible for managing the Company's international freight forwarding operation. From September 27, 2002 to present, he has been Vice General Manager for the Qingdao Branch of [the foreign entity], responsible for directing and managing the overall operation including business planning, coordinating multiple departments, supervising financial management, import and export shipping, warehousing and transit, negotiating and signing major business agreements, hiring intermediate managerial personnel, and report to the U.S. parent company about the business operation.

The petitioner submitted an organizational chart for the foreign entity which depicts the beneficiary as vice general manager with authority over a branch manager, who in turn supervises a customs department manager, a customer service department manager, an operation manager and finance manager. The chart identifies approximately 30 lower level personnel employed within these four departments, and indicates that the beneficiary reports to the vice president for North China. The organizational chart was accompanied by an

employee list which lists all employees in the Qingdao branch office by name, job title, job function, educational level, and salary.

The director denied the petition, in part concluding that the petitioner had not established that the beneficiary was employed in a qualifying capacity with the foreign entity. The director noted that the petitioner provided minimal documentation describing the beneficiary's position overseas and "simply submits verification claiming the beneficiary has been working for the foreign company in a positions [sic] with managerial titles." The director observed that "assertions or 'verifications' regarding the beneficiary's employment capacity are not sufficient without additional evidence."

On appeal, counsel does not address the director's determination that the petitioner failed to demonstrate that the beneficiary is employed in a qualifying managerial or executive capacity with the foreign entity.

Upon review of the totality of the record, the AAO finds sufficient evidence to establish that the beneficiary is currently employed in a managerial capacity with the foreign entity. The petitioner has consistently identified the beneficiary as the highest-level manager within a branch office staffed by more than thirty employees. The foreign entity's organizational chart depicts at least two layers of subordinate managerial or supervisory employees under the beneficiary who would relieve him from performing non-qualifying first-line supervisory duties, and sufficient lower level personnel who would reasonably relieve the beneficiary from primarily performing the day-to-day operational and administrative tasks of the business. Accordingly, the director's decision with respect to this issue will be withdrawn.

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.