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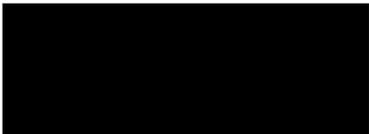
FILE: SRC 05 116 51782 OFFICE: TEXAS SERVICE CENTER Date: APR 05 2007

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 nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president 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, a Texas limited liability company, states that it is engaged in the provision of commercial and residential improvement services. It claims to be an affiliate of Carisa, S.A. de C.V., located in Mexico. The beneficiary was initially granted a one-year period in L-1A status in order to open a new office in the United States, and the petitioner now seeks to extend the beneficiary's stay for three additional years.

The director denied the petition concluding that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity in the United States.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the director's decision was based on erroneous assumptions, and that the director "misinterpreted, misread and misapplied" the statute and regulations. Counsel further contends that the director placed undue emphasis on the size of the petitioning company in determining that the beneficiary would not be employed in a primarily managerial or executive capacity. Counsel submits a brief and additional evidence 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 the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate 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) also 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 managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The sole issue addressed by the director is whether the petitioner established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

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) 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), 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 nonimmigrant visa petition was filed on March 17, 2005. In an appended statement, the petitioner described the beneficiary's proposed duties as president as follows:

He will continue to direct, supervise, and coordinate, with the assistance of a staff. As a key executive/managerial employee, he will continue to be responsible for the operations of the company that includes the supervision and coordination of all the operational activities of the business enterprise.

* * *

The position involves the management of the business enterprise operations including:

- Planning, developing and implementing operations strategy;
- Developing and implementing policies and procedures for company operations;
- Determining mark up percentages necessary to insure profit, based on estimated budget, profit goals and average rate of turnover;
- Developing policies and procedures for procurement of services;
- Coordinating the operations of the company;
- Direct development and preparation of all procurement specifications pertinent to the operational requirements of the company.
- Planning and implementing new operating procedures to improve efficiency and reduce costs;
- Planning, directing, and coordinating the efforts of the company's workforce;
- Establishing schedules to maximize the productivity of the employees and coordinating activities to ensure the highest levels of work performance; and

- Hire, train, and supervise employees.

The petitioner stated on Form I-129 that the company has three employees. The petitioner also submitted an organizational chart depicting the beneficiary as president over a manager ([REDACTED]) who in turn supervises a sales representative [REDACTED] and a customer service employee [REDACTED]. The chart shows that the manager also serves as a project supervisor, with responsibility for managing laborers.

On March 30, 2005, the director issued a request for evidence, in part, instructing the petitioner to submit the following: (1) a list of all duties performed by the beneficiary and the percentage of time spent on each duty; (2) position descriptions for all other current employees, including documentary evidence of their educational credentials; (3) an explanation as to who provides the business's products or services; (4) copies of quarterly wage reports for the past year; (4) evidence that the petitioner employs the "laborers" identified on the organizational chart, including information regarding the positions held, duties performed, number of hours worked, and copies of IRS Forms 1098 and 1099 for 2004 for each worker; and (5) copies of employment agreements/contracts between the petitioner and each of the contract workers.

In a response dated June 21, 2005, counsel for the petitioner provided the following job description for the beneficiary's position:

- 20% Developing and implementing policies and procedures for company operations;
- 20% Determining mark up percentages necessary to insure profit, based on estimated budget, profit goals and average rate of turnover;
- 20% Developing policies and procedures for procurement of services;
- 15% Direct development and preparation of all procurement specifications pertinent to the operational requirements of the company;
- 15% Planning, directing, and coordinating the efforts of the company's workforce, also hiring of employees;
- 10% Establishing schedules to maximize the productivity of the employees and coordinating activities to ensure the highest levels of work performance[.]

The petitioner identified the beneficiary's subordinates as an office manager ([REDACTED]) a part-time field supervisor [REDACTED], and a sales person [REDACTED]. The petitioner stated that the office manager administers human resources programs, manages the company's finances, manages all staff, coordinates schedules to maximize the productivity of the employees, negotiates with suppliers and contractors, and maintains office equipment and supplies. The petitioner noted that the part-time field supervisor is responsible for establishing and managing relationships with contractors, developing quality control strategies, motivating and organizing the "team," formulating profit and loss reports on accounts and projects, and meeting with customers or potential customers to discuss "needs and desires for developing a schedule." Finally, the petitioner stated that the sales person is responsible for managing sales calls, contracts, design of remodeling projects, bids and proposals, developing sales goals and marketing strategies, formulating service orders and reports, formulating profit and loss reports on new projects, and interviewing clients at the beginning and end of projects to address concerns and guarantee customer satisfaction.

The petitioner submitted a copy of its IRS Form 941, Employer's Quarterly Federal Tax Return, for the first quarter of 2005, which confirms the employment of three workers as of the date the petition was filed. The petitioner provided copies of four Forms W-2, Wage and Tax Statement, for 2004, along with seven Forms 1099-MISC, Miscellaneous Income, for payments made to contract laborers.

The petitioner also submitted a list of ten contractors and identified each individual's area of specialization. The petitioner noted that the sub-contractors are paid according to a pre-arranged percentage of the value of the service to be provided, and not by the hour, and that they "work under their own schedule," according to a start date and a finish date established by the U.S. company. The AAO notes that the individual originally identified on the petitioner's organizational chart as a customer service employee appears on the petitioner's list of contractors as a provider of wallpapering and painting services.

The petitioner also submitted employment agreements for [REDACTED] and [REDACTED]. According to the agreements, each employee was hired to perform: "All duties related to remodeling, construction, painting and general handyman services related to commercial and residential buildings, homes, structures and properties in general." The employment agreements show that [REDACTED] were hired in May and July 2004, respectively, at an hourly wage of \$8.00, while [REDACTED] was hired in December 2004 at an hourly wage of \$6.00.

The director denied the petition on September 1, 2005, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director noted the discrepancy between the petitioner's claimed staffing levels and its quarterly tax return, which indicated that the company employs only three, rather than four, employees. The director further noted that the petitioner failed to submit its quarterly wage reports in their entirety, thus it had not demonstrated which employees were actually employed as of the date of filing. The director further found, upon review of the subcontractor agreements, Form 1120, and Forms 1099, that the contract employees "were not functioning as employees of the petitioner's company." The director determined that it appeared the contract workers were only employed on a few occasions.

In addition, the director found no evidence demonstrating that either of the beneficiary's subordinates would function in a professional, managerial or supervisory capacity, or that the petitioner had a sufficient staff at the end of the first year of operations to relieve the beneficiary from having to perform non-qualifying duties. The director concluded that the beneficiary has been and would be engaged primarily in performing the functions of the business rather than performing primarily managerial or executive duties.

On appeal, counsel for the petitioner addresses each of the director's observations regarding the submitted evidence. Counsel asserts that "there are no inconsistencies in the number of employees of the petitioning entity." Counsel notes that the company employed four employees in 2004, and in 2005, the salesperson left the company and was replaced by [REDACTED] a shareholder of the company who performs the sales and marketing but does not yet receive a salary. Counsel further contends that the director should not have relied on wages paid to the petitioner's contractors in 2004 to determine that the petitioner only utilizes their services on an occasional basis. Counsel states that the petitioner did not start operating until "months after" March 2004, and thus the Form 1120 and Forms 1099 did not reflect a full year of wages paid to the employees or contractors. Counsel asserts that, contrary to the director's findings, the petitioner does in fact require the services of a part-time supervisor, and that the company employs an increasing number of

subcontractors as its business expands. Counsel further objects to the director's determination that the contractors should not be considered employees of the company, noting that the petitioner's office manager and field supervisor are directly involved in selecting sub-contractors for specific assignments and monitoring their work.

With respect to the beneficiary's employment capacity, counsel asserts that "the Service is not taking into consideration the nature, needs and function of the petitioning entity when determining whether the beneficiary is or not an executive." Counsel suggests that the director has a "stereotype" of the type of entity which requires a manager or executive, yet fails to take into account that the beneficiary performs executive duties that are "adjusted to the needs of a Residential and Home Improvement Business." Counsel cites several unpublished AAO decisions to stand for the proposition that a beneficiary may serve in a managerial or executive capacity even if he is the only employee of a company. Counsel asserts "the Service is using a narrow interpretation of the Act, federal regulations, and legal precedence [sic] when asserting that a few number of employees can not perform the company's day-to-day operations to the point that the President of the company must deviate from his duties so that he is not "primarily" performing executive level duties."

Counsel further contends that the director ignores "that the definitions of executive and managerial capacity prior to IMMACT 90 contained an exclusion for individuals who spent a substantial proportion of their time actually participating in the production of the product or service marketed by the employer," but that this exclusion has been omitted. Counsel suggests that the director "capriciously determined" the number of employees the petitioner requires to perform the day-to-day operations of the business. Counsel concludes that the petitioner has provided "sufficient and ample evidence" that the beneficiary's job duties will be in an executive capacity.

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary will be employed 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(1)(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 in either an executive or a managerial capacity. *Id.*

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). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower-level employees or the performance of the duties of another type of non-managerial or non-executive position.

The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. See 52 Fed. Reg. 5738, 5739-40 (Feb. 26, 1987) (noting that section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive"). While the AAO does not doubt

that the beneficiary exercises discretion over the petitioner's day-to-day operations and has the appropriate level of authority, the petitioner has failed to show that his duties will be primarily in a managerial or executive capacity.

Although the petitioner has provided a breakdown of how the beneficiary's time will be divided among his various responsibilities, the job description provided is too ambiguous to convey any understanding of what tasks the beneficiary will perform on a day-to-day basis. For example, the petitioner indicated that the beneficiary would devote a total of 40 percent of his time to "developing and implementing policies and procedures," but failed to elaborate as to any specific policies developed or why this responsibility would continue to require the largest portion of his time now that the company has been established. Similarly, the petitioner indicated that the beneficiary would allocate 20 percent of his time to determining "mark up percentages" but did not explain the specific tasks involved, or how this duty would require such a large proportion of his time on a day-to-day basis. The petitioner further indicated that the beneficiary would spend 15 percent of his time to "direct development and preparation of all procurement specifications," but neither explained to what "procurement specifications" it was referring, nor identified who on its staff actually prepares such specifications. Overall, these responsibilities, which purportedly require 75 percent of the beneficiary's time, provide little insight into the nature of the beneficiary's daily duties. 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 provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Moreover, the director specifically advised the petitioner that the initial position description submitted, which included a list of ten vaguely defined duties, was insufficient to establish his employment in a primarily managerial or executive capacity. In response, the petitioner simply re-submitted the same job description, with the exception of four job duties that were deleted, and assigned the above-referenced percentages to them. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position. 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)).

Without a comprehensive description of the beneficiary's duties upon which to rely, the director reasonably reviewed the petitioner's staffing levels to determine whether the record as a whole supported the petitioner's claim that the beneficiary would be employed in a primarily executive capacity. Beyond the required description of the job duties, CIS reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

As noted by the director, the record contains numerous inconsistencies regarding the number of employees at the time of filing and their actual roles within the company. At the time of filing, the petitioner stated that it had three employees and submitted an organizational chart depicting four employees filling the positions of president, manager/field supervisor, customer service, and sales representative. In response to the director's request for evidence, submitted in June 2005, the petitioner indicated that the person originally identified as a sales representative is a part-time field supervisor, and that the individual previously identified as a customer service employee is actually a contract laborer who provides wallpapering and painting services. The petitioner also identified [REDACTED] as the company's sales representative on the organizational chart submitted in June 2005, but now on appeal counsel states that this employee left the company in 2004, while another individual has been performing the sales representative's duties without receiving a salary "since 2005." Counsel states that there is no discrepancy, yet fails to explain why the petitioner claimed to employ [REDACTED]—six months after he left the company, and failed to clarify the above-noted discrepancies regarding its staffing. Finally, the AAO notes that the employment agreements submitted for each of the petitioner's current and previous payroll employees indicate that they were hired to perform "all duties related to remodeling, construction, painting and general handyman services," not the duties of an office manager, a sales representative, and a field supervisor.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). When a petition includes numerous discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. 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).

Thus, while it appears that the petitioner employed the beneficiary, [REDACTED] at the time the petition was filed, and utilized the services of contracted laborers, the discrepancies catalogued above raise serious doubts regarding the actual employment capacity of the beneficiary's subordinates. Further as noted by the director, the petitioner did not provide sufficient evidence of wages paid to its employees during the quarter in which the petition was filed, and the AAO cannot determine whether the employees worked on a full-time or a part-time basis. The petitioner has not submitted evidence on appeal to cure this deficiency. Based on the evidence submitted, it appears that the beneficiary's subordinate employees worked on a part-time basis in 2004, as they earned total wages of \$4,618 and \$3,672, respectively, over a six-month period. The total wages paid during the first quarter of 2005 are essentially the same as those paid during the last quarter of 2004, thus suggesting that the beneficiary's subordinates continued to be employed on a part-time basis at the time of filing.

Although the beneficiary is not required to supervise personnel, if it is claimed that the beneficiary is employed in a managerial capacity based on his supervisory duties, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. The petitioner claims that the beneficiary supervises one office manager and one field supervisor, however, as noted above, the employment contracts for these claimed employees suggests that they in fact perform the services of the company. Further, even if one or both of these employees does perform supervisory duties, the petitioner has indicated that the beneficiary devotes only approximately 15 percent of his time to

supervising subordinates. The petitioner is still required to demonstrate that the beneficiary's duties as a whole are primarily managerial or executive. The fact that the beneficiary supervises one part-time supervisory employee is insufficient to establish that the beneficiary will be primarily performing managerial duties.

Counsel correctly observes that a company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

Moreover, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require CIS to examine the organizational structure and staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. There is no provision in CIS regulations that allows for an extension of this one-year period. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

At the time of filing, the petitioner was a one-year-old remodeling and construction services company which employed the beneficiary as president, and two employees who are claimed to work as an office manager and a part-time field supervisor. As discussed above, the terms of the employment contracts submitted for these employees raise serious questions regarding their actual duties, and the evidence submitted does not establish that either of the beneficiary's subordinates was employed on a full-time basis. Although counsel now claims on appeal that the petitioner has employed an unsalaried sales representative throughout 2005, the petitioner's earlier indication that two different individuals in fact filled this role casts doubt on the petitioner's claim. Again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. At most, it appears that the beneficiary's subordinates would provide the general contracting and remodeling services of the company, and perhaps some administrative and clerical tasks. The petitioner has not established that it employed anyone to perform the duties of the sales representative, who is claimed to be responsible for handling sales calls, bids and proposals, designing remodeling projects, formulating service orders, and performing customer-service related tasks. Therefore, it is reasonable to assume, and has not been shown otherwise, that the beneficiary, as the petitioner's sole full-time employee, would be responsible for directly marketing and selling the company's services, devising marketing plans, contacting advertisers, and performing any customer service tasks. The record does not demonstrate that these duties would be incidental to the beneficiary's claimed managerial or executive responsibilities.

Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude him from functioning in a primarily managerial or executive role. 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 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 and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks. Moreover, to establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not established the basic eligibility requirement in this matter, that the beneficiary is primarily performing managerial or executive duties.

Additionally, counsel observes that Congress omitted the language that discussed individuals who produce a product or provide a service from the Immigration Act of 1990 and asserts that this is a clear indicator that such individuals are not precluded from qualifying as multinational managers or executives. However, the AAO will not draw this conclusion based solely on an omission. Despite the changes made by the Immigration Act of 1990, the statute continues to require that an individual "primarily" perform managerial or executive duties in order to qualify as a managerial or executive employee under 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 "principally" or "chiefly" perform managerial or executive duties. Counsel submits no evidence in the form of congressional reports, case law, or other documentation to support his argument. Accordingly, counsel's unsupported assertions are not persuasive on this point.

Counsel further refers to several unpublished decisions in which the AAO determined that the beneficiary met the requirements of serving in a managerial and executive capacity for L-1 classification even though he was the sole employee or the manager of a small company. 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 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. There is no provision in CIS regulations that allows for an extension of this one-year period. In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. For this 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.

ORDER: The appeal is dismissed.