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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 01 2005
WAC 99 203 51601

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[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, California Service Center, initially approved the employment-based visa petition. Upon subsequent review, the director reopened the matter on his own motion and denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of California in August 1991. It imports, exports, sells, and distributes beauty care products and hairbrushes. It seeks to employ the beneficiary as its general manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director initially approved the petition. Upon subsequent review, including information obtained in a response to a request for evidence in conjunction with the beneficiary's I-485, Application to Register Permanent Residence or Adjust Status, the director questioned whether the petitioner had established: (1) a qualifying relationship with the beneficiary's foreign employer; (2) the beneficiary's managerial or executive capacity for the petitioner; (3) that it was doing business; and (4) its ability to pay the beneficiary the proffered wage.

The director improperly issued a Service Motion to Reopen and Request for Evidence instead of a Notice of Intent to Revoke Approval. However, the petitioner had notice of the director's intent and did respond to the director's request for evidence. The director ultimately determined that the petitioner had not established (1) a qualifying relationship with the beneficiary's foreign employer; or (2) that the beneficiary would be employed in a primarily managerial or executive capacity for the petitioner.

On appeal, counsel for the petitioner asserts that the director abused his discretion in denying the petition. Counsel asserts that the beneficiary is a multinational executive for a qualifying business.

Section 203(b) of the Act states in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> * * *
>
> (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

Citizenship and Immigration Services (CIS) regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed. *See* 8 C.F.R. § 245.1(a). If the beneficiary of an approved visa petition is no longer eligible for the classification sought, the director may seek to revoke his approval of the petition pursuant to section 205 of the Act, 8 U.S.C. § 1155, for "good and sufficient cause." Notwithstanding the CIS burden to show "good and sufficient cause" in proceedings to revoke the approval of a visa petition, the petitioner bears the ultimate burden of establishing eligibility for the benefit sought. The petitioner's burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

Moreover, by itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet its burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, *supra* (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

In this matter, upon review of the evidence in the record, and the inconsistencies contained therein, the director correctly questioned whether the petition's approval was correctly issued. The director provided notice of his concerns that the approval had been improper and provided the petitioner an opportunity to respond. The director concluded that the petitioner's response failed to establish a qualifying relationship between the petitioner and the beneficiary's foreign employer and failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity.

The first issue in this proceeding is whether the petitioner has established a qualifying relationship with the beneficiary's foreign employer. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

> *Affiliate* means:
>
> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
>
> (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.
>
> *Multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.
>
> *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.

In a July 8, 1999 letter appended to the petition, the petitioner stated that its parent company's shareholders owned the petitioner. The petitioner indicated that it had issued shares to establish ownership as:

	40 percent
	20 percent
	20 percent
	20 percent

The petitioner indicated that the parent company was owned as follows:

	50 percent
	17.5 percent
	17.5 percent
	15 percent

The petitioner also provided copies of four stock certificates it had issued to confirm the percentage ownership outlined for the petitioner above. The petitioner's 1997 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, on Schedule K did not indicate that the owners of the petitioner were foreign or that the petitioner was part of a subsidiary or affiliated group. The petitioner's 1998 IRS Form 1120 on Schedule K indicated that at the end of the 1998 tax year an individual, partnership, corporation, estate or trust owned 50 percent of more of the petitioner's stock and referenced an explanation attached as statement four. The petitioner's statement indicated that [redacted] owned 100 percent of the petitioner. Similarly, on Schedule E of the IRS Form 1120, the petitioner indicated that [redacted], as an officer of the petitioner, owned 100 percent of the petitioner. The petitioner's 1999, 2000, 2001, and 2002 IRS Forms 1120 submitted in response to the director's request for evidence continued to indicate that [redacted] owned 100 percent of the petitioner.

The director observed the inconsistencies in the record and concluded that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence and that any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies, citing *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The director concluded that the petitioner had not established the claimed parent/subsidiary relationship between the petitioner and the foreign entity.

On appeal, counsel for the petitioner asserts that [redacted] owns 100 percent of the petitioner and owns and controls 58 percent of the foreign entity. Counsel also provides a document titled "Proxy Voting Authorization" that is dated January 3, 2000. Two individuals, [redacted] and [redacted] indicate by signature that [redacted] is authorized to exercise their rights regarding their shares of the foreign entity. Counsel asserts that sufficient nexus of ownership and control exists between the parent and subsidiary companies to establish a qualifying business relationship.

Counsel's assertion is not persuasive. 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.

In this matter, the petitioner has provided inconsistent evidence of its ownership and control, as well as inconsistent evidence regarding the control of the foreign entity. The petitioner provides stock certificates showing that four individuals own its outstanding shares. However, the petitioner's IRS Forms 1120 show that one individual owns 100 percent of its outstanding shares. Counsel does not rectify this inconsistency on appeal, but rather continues to assert that one individual owns 100 percent of the petitioner. As the director observed, 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 at 591-92.

The petitioner has also submitted evidence on appeal that the control of the foreign entity changed January 3, 2000, when two individuals and authorized to vote their shares. However, the record does not show that either or owns an interest in the foreign entity. Thus, not only is the proxy agreement entered into sometime after the petition was filed, the record does not establish that the individuals who signed the proxy agreement have an interest in the foreign entity. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). 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).

A combination of individual shareholders is not a single entity, so that the group may claim majority ownership of a company, unless the group members are legally bound together as a unit within the company by voting agreements or proxies. In this matter, four individuals own the petitioner as evidenced by the petitioner's issuance of stock, and four or more individuals own the foreign entity. No one individual owns a majority interest in both the petitioner and the foreign entity, establishing control of both companies. The petitioner and the foreign entity are not owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity. Absent documentary evidence such as voting proxies to establish a controlling interest, the petitioner has not established that the same legal entity or individuals control both entities. Thus, the companies are not affiliates as both companies are not owned and controlled by the same individuals in approximately the same proportion. Based on the evidence submitted, it is concluded that the petitioner has not established that a qualifying relationship exists between the U.S. and foreign organizations.

The second issue in this proceeding is whether the petitioner established that the beneficiary would be employed in a managerial or executive capacity for the petitioner.

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.

In a July 8, 1999 letter accompanying the petition, the petitioner stated that the beneficiary was "essentially unsupervised, except by the parent company and the petitioner company's president and vice president." The petitioner indicated that the beneficiary's "duties is entail [sic] directing the overall management and control [of the] enterprise." The petitioner stated that the beneficiary's essential duty "included participating in the establishing of policy and goals."

The petitioner stated that the beneficiary:

> Utilizes information system on performance and a reward system for recognizing department chiefs as well as sales representatives and delivery men [sic] who made progress toward goals.
>
> Represents the unique concerns and requirements of the international operation to parent company and provides significant contributions in the formulation of strategic product plans to ensure that the business and strategic policies are effectively incorporated into our international business activities.

> Focuses on how our company competes within its industry for customers. Concerns amount of advertising, direction and extent of research, product changes, new-product design, equipment and facilities, and expansion or contraction of product lines.
>
> Exercises wide latitude in discretionary decision-making, subject only to supervision by the our [sic] executive and the parent company's executive officers and board of directors.
>
> As a general manager, [the beneficiary] is responsible for managing and controlling the company including hiring, firing, promoting and demoting personnel.
>
> Exercis[es] complete discretion over the company's day-to-day office operations: [The beneficiary] has four (4) chief officers, purchase/sales, import/export, shipping/delivery, and customer service, directly reporting day-to-day operations to her.
>
> (Bullets added.)

On February 1, 2001, in conjunction with the beneficiary's I-485, Application to Register Permanent Residence or Adjust Status, the director requested a copy of the petitioner's organizational chart describing its managerial hierarchy and staffing levels. The director requested that the petitioner show all employees of the business on the chart and include the names, numbers, educational degrees, and brief job descriptions of all the employees under the beneficiary's supervision.

In an April 4, 2001 response, the petitioner provided its organizational chart showing the beneficiary reporting to the president. The chart also showed an acct/customer service representative, a secretary, and an import manager under the beneficiary's supervision. The chart also identified two sales representatives and a warehouse person under the supervision of the import manager. The chart listed a sales director, who supervised independent sales representatives, on the same tier as the beneficiary.

The petitioner also provided a list of its employees with brief job descriptions. The petitioner indicated that the beneficiary: "Directs the overall management, controls of the sales activities, establishes company policies and goals, participates in hiring, firing, promoting and demoting personnel, and exercises wide discretion over the enterprise's day to day [sic] office operation." The petitioner indicated that the individual in the position of acct/customer service was responsible for accounts receivable and payable; the individual in the position of secretary was responsible for invoicing, sales orders, and providing secretarial duties to the president; the individual in the position of import manager was responsible for controlling sales activities and imports, training sales representatives, and was the petitioner's Southern California regional sales representative; the two sales representatives were regional sales representatives in Southern and Northern California; and, the individual in the warehouse position was responsible for warehouse control, product shipping and receiving.

On March 13, 2003, the director requested a more detailed description of the beneficiary's duties in the United States. The director also requested the petitioner's California Forms DE-6, Employer's Quarterly Wage Report for the last two quarters of 1999. The petitioner provided the same organizational chart submitted in April 2001, except for the deletion of the sales representative whose sole responsibility had been listed as

regional sales representative in Southern California. The petitioner also provided essentially the same list of employees and job descriptions. The petitioner's California Form DE-6 for the third quarter of 1999 confirmed the employment of the beneficiary, the individuals in the positions of acct/customer service, secretary, import manager, warehouse clerk, and Northern California regional sales representative.

The director observed that the description of the beneficiary's duties paraphrased portions of the definitions of managerial and executive capacity. Upon examination of the petitioner's organizational chart, the director determined that the petitioner had not established the need for several managers and had not established that the beneficiary would not assist with the petitioner's day-to-day non-supervisory duties. The director determined that the petitioner had not established that the beneficiary would be supervising professional employees and had not established that the beneficiary would be a functional manager. The director concluded that the record did not demonstrate that the beneficiary had been or would be employed in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner asserts: that the beneficiary clearly satisfies the definitions of both a manager and an executive; that a sole employee may be a manager or executive; and, that the number of employees is not determinative. Counsel claims: that the beneficiary personally manages the accounting/customer service department, the secretary, the import department, and the sales department; that the beneficiary controls and supervises the work of other supervisory and managerial employees, and manages an essential function within the organization; that the beneficiary has authority to hire and fire, and functions at a senior level within the petitioner; and, that the beneficiary supervises four department directors who are professionals. Counsel also contends that the beneficiary sets and adjusts business policy, evaluates, collects, and analyzes market trends, oversees U.S. sales goals, and supervises U.S. operations and activities with the claimed parent company. Finally counsel argues that CIS abused its discretion by failing to consider the relevant qualifying factors establishing the petitioner's eligibility. Counsel also submits an October 3, 2003 statement from the petitioner, describing the beneficiary's supervision of the petitioner's four departments.

Counsel's assertions are not persuasive. 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).

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). A petitioner must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *See* 8 C.F.R. § 204.5(j)(5). A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. A petitioner must establish that a beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager if it is representing the beneficiary is both an executive and a manager.

The petitioner initially provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the

beneficiary's duties include "directing the overall management and control enterprise," and "participating in the establishing of policy and goals," and "managing and controlling the company including hiring, firing, promoting and demoting personnel." General statements that paraphrase the statutory definitions of managerial or executive capacity are not sufficient. 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 indication that the beneficiary is involved in advertising, research, product changes, and new product design intimates that she is involved in marketing and promoting the petitioner's product. The petitioner does not provide sufficient detail of the beneficiary's activities relating to the petitioner's marketing activities to determine whether the beneficiary's tasks are executive or managerial or whether the beneficiary is carrying out the marketing tasks. 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. 593, 604 (Comm. 1988). Further, the petitioner has not provided evidence of employees who carry out marketing duties, other than the beneficiary. 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).

The petitioner does indicate that the beneficiary supervises four individuals. The petitioner's description of the duties of each of the individuals does not establish that the primary task of these individuals is to supervise or manage other employees. The acct/customer service representative appears to be the accounts receivable and payable clerk. The secretary prepares invoices and sales orders and performs secretarial tasks for the company's president, not the beneficiary. Although the import manager is shown to supervise two sales representatives and a warehouse clerk he is also listed as the Southern California sales representative. The record shows that when the petition was filed, the petitioner employed only one sales representative for Northern California; it appears as such that the import manager's primary task would have been as regional sales representative for Southern California.

Likewise, the description of the beneficiary's subordinates' duties does not include tasks that comprise professional duties. 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). In the instant matter, the petitioner has not, in fact, established that an advanced degree is actually necessary, for example, to perform the sales, bookkeeping, or secretarial tasks performed by the beneficiary's subordinates.

CIS reviews the totality of the record, including descriptions of a beneficiary's duties and 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, when examining the managerial or executive capacity of a beneficiary. An individual whose duties encompass duties of a first-line supervisor will not be considered to be acting in a managerial capacity merely

by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. The petitioner has not submitted sufficient evidence to establish that the beneficiary's subordinates hold professional positions. As observed above, 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 at 190.

The totality of the record does not support a conclusion that the beneficiary's subordinates are primarily supervisors, managers, or professionals; instead the beneficiary's subordinates perform the basic tasks of operating an import/export firm. The beneficiary's actual duties relating to the petitioner's personnel are first-line supervisory duties. The petitioner has not provided an organizational structure substantiated by the record sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisory role.

Counsel's implied assertion that the beneficiary is a function manager is also not persuasive. 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. In this matter, the petitioner has not provided evidence to demonstrate that the beneficiary manages an essential function.

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* section 101(a)(44)(C), 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). Further, 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.* The petitioner has not established that the beneficiary's assignment was or would be primarily managerial or executive. The petitioner has not submitted evidence on appeal to overcome the director's decision on this issue.

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.