U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 15 2007

LIN 06 068 51982

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, Chief
Administrative Appeals Office

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

The petitioner filed the instant immigrant visa petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a foreign corporation organized under the laws of Korea that maintains a registered office in the State of California for the purpose of providing aircraft and cargo handling services from its airport service office in [redacted] Alaska. The petitioner seeks to employ the beneficiary as its supervisor of aircraft maintenance and control.

The director denied the petition concluding that the petitioner had not demonstrated that: (1) the petitioner and the beneficiary's foreign employer enjoyed a qualifying relationship at the time of filing the immigrant visa petition; (2) the beneficiary was employed by the foreign company in a primarily managerial or executive capacity; (3) the beneficiary would be employed by the United States organization in a primarily managerial or executive capacity; or (4) the petitioner had the ability at the time of filing to pay the beneficiary's proffered annual salary of $67,200.

On appeal, counsel for the petitioner contends that Citizenship and Immigration Services (CIS) misconstrued evidence provided in support of the beneficiary's eligibility for the requested visa classification and failed to consider "alternate documents provided." Counsel submits a brief and additional documentary evidence in support of the appeal.

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

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

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

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a

statement, which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The first issue in the instant proceeding is whether the United States and foreign organizations enjoyed a qualifying relationship at the time of filing the immigrant visa petition.

To establish a qualifying relationship under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e. a United States entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

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

> *Affiliate* means:
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> (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;
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> * * *
>
> *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.

The petitioner filed the Form I-140 on February 10, 2006, yet failed to provide specific documentary evidence of a qualifying relationship between the foreign and United States organizations. The few documents provided by the petitioner, including a dispatch order for the beneficiary to commence working in the United States and a letter titled "Work Statement of the Regional Passenger Service Office, [redacted]," suggest that the petitioner is an office of the foreign Korean company authorized to do business in the United States.

The director subsequently issued a request for evidence, dated March 15, 2006, directing the petitioner to "explain the nature of [the] corporate relationship [between the foreign and United States entities]." The director requested copies of the petitioner's articles of incorporation, stock certificates, and stock transfer ledger, as well as any additional evidence establishing the existence of a corporation relationship.

Counsel for the petitioner responded in a letter dated June 2, 2006 and submitted copies of the following: (1) a "magazine" documenting the history of the overseas company, [redacted] which, although not specifically

explained by counsel, is represented on a copy of the company's website page[1], as operating under the corporate name of the beneficiary's foreign employer; (2) an organizational chart identifying the petitioning entity as a regional office of the beneficiary's foreign employer; (3) [redacted] website identifying the petitioner as a United States office offering cargo services; (4) a page from the foreign entity's website identifying the petitioner as one of its airport service offices in the United States; (5) a June 4, 2006 copy of the petitioner's registration on the California Business Portal as an active company with its jurisdiction in Korea; and (6) the foreign entity's business and financial summary as provided by Reuters[2].

In a July 17, 2006 decision, the director concluded that the petitioner had not demonstrated the existence of a qualifying relationship between the foreign and United States organizations. The director noted that a portion of the documentary evidence offered by counsel in response to his request for evidence pertained to [redacted] Cargo, whose relevance to the instant matter was "not clear." The director outlined the additional documents printed from the foreign entity's website and with respect to the petitioner's registration in California. The director stated that while it is possible that the petitioner is a branch office of the foreign entity, the record "falls short" of establishing the requisite qualifying relationship. Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on August 27, 2006, claiming that Citizenship and Immigration Services (CIS) misunderstood the relationship between the foreign and United States entities. In a subsequently submitted appellate brief, dated September 12, 2006, counsel contends that the petitioner "is affiliated with the foreign entity." As evidence of the qualifying relationship, counsel references the above-outlined documents, as well as the foreign entity's Statement and Designation by Foreign Corporation, which counsel incorrectly suggests is the petitioner's articles of incorporation in the State of California, and which identifies its principal executive office as being in Seoul, Korea, the same location as the foreign entity's offices.

Upon review, the petitioner has demonstrated that the foreign and United States entities enjoyed a qualifying relationship at the time of filing the immigrant visa petition.

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 the 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.

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[1] website is identified as A copy of the company's website page was included in counsel's response to the director's request for evidence.

[2] Reuters is identified as an "international multimedia news agency," providing world news with respect to business, investing, technology, headlines, and personal finance. *See* Reuters, *available at* www.reuters.com, (accessed on May 4, 2007).

The record demonstrates that the petitioner is operating in the United States as a branch office of the foreign entity. When a foreign company establishes a branch in the United States, that branch is bound to the parent company through common ownership and management. *See Matter of Schick*, 13 I&N Dec. 647, 649 (Reg. Comm. 1970). A branch that is authorized to do business under United States law becomes, in effect, part of the national industry. The foreign entity's corporate documentation, as well as the petitioner's registration as a foreign business and its IRS Forms W-2, demonstrates that the petitioner is offering airport services in Anchorage as an office of the overseas company. Accordingly, the director's decision with respect to this issue will be withdrawn.

The second issue in this proceeding is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means an assignment within an organization in which the employee primarily-
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> (i) Manages the organization, or a department, subdivision, function, or component of the organization;
>
> (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
>
> (iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
>
> (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

> The term "executive capacity" means an assignment within an organization in which the employee primarily-
>
> (i) Directs the management of the organization or a major component or function of the organization;
>
> (ii) Establishes the goals and policies of the organization, component, or function;
>
> (iii) Exercises wide latitude in discretionary decision-making; and

(iii) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner noted on the Form I-140 that the beneficiary would occupy the position of supervisor of aircraft maintenance and maintenance control, and provided his "nontechnical" job description as: checking aircrafts and maintenance on a daily basis; reporting problems; servicing the aircrafts with fuel or oil; and controlling "[m]aintenance & [m]anpower." The petitioner did not provide additional evidence of the beneficiary's purported managerial or executive employment in the United States.

In his March 15, 2006 request for evidence, the director asked that the petitioner submit a detailed description of the beneficiary's proposed job duties, including an allocation of the amount of time the beneficiary would dedicate to performing each task. The director also requested a detailed copy of the petitioner's organizational chart identifying the organization's departments, as well as the department in which the beneficiary would be employed, the employees supervised by the beneficiary, and a description of the employees' job duties. The director further asked that the petitioner submit copies of its Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, issued by the petitioner for each of its employees.

In her June 2, 2006 response, counsel provided the following list of the "management duties" performed by the beneficiary on a daily basis:

1. Before [a]ircraft departs from [o]riginal [d]eparture station, contact [m]ain [b]ase [m]aintenance [c]ontrol in Korea and receives preflight information.

2. Once [a]ircraft has departed from the departure station, keep monitoring the [a]ircraft's status with office computer which is equipped with [redacted]etwork system.

3. [Two] hours prior to the aircraft arrival, check the aircraft status with ACARS (Arinc [C]ommunication Addressing and Reporting System).

4. If any aircraft defects are reported from [the] [m]ain [b]ase or from the [a]ircraft, deliver the work order to the [g]round [h]andling [c]ompany; Swissport, Supervisor to prepare for [m]aintenance work.

5. [Thirty] minutes prior to the [estimated time of arrival] of the aircraft, give a briefing to the [g]round [h]andling Swissport[3] [a]ircraft [m]aintenance [m]echanic about the aircraft status and TCC (Transit Check Card).

6. After aircraft arrived in [redacted] cross check and receive any irregularity of the aircraft from the arrival flight crews.

7. If any aircraft defects are found after the aircraft arrival, give instruction to the Swissport [m]aintenance to repair the problem.

[3] The petitioner submitted a Standard Ground Handling Agreement identifying [redacted] as the handling company for the petitioner at the [redacted]

8. Reconfirm the TCC (Transit Check Card) completed by Swissport [m]echanic.

9. Order and confirm the [a]ircraft fueling with the fuelers.

10. Check the aircraft cleanliness; contact Swissport [c]abin [s]ervice if not cleaned properly.

11. Confirm the [m]eal [l]oading status with Catering Service Agent.

12. Secure and maintain the [a]ircraft [s]ecurity at all the [sic] time.

13. Release the [a]ircraft [l]og after all documents are cleared by U.S. [g]overnment agency and [m]aintenance works [sic] are [sic] completed.

14. Contact and confirm the [a]ircraft status with [c]ockpit [c]rew using [a]ir-to-[g]round [c]ompany [r]adio after [a]ircraft take off.

15. Send aircraft status report to next destination station.

With respect to the beneficiary's specific "daily" job duties, the petitioner provided the following outline:

1. General Duty ([w]ork with [m]ain [b]ase [in Korea] and [m]aintenance [d]ocument management): 5%

2. Maintain and [m]onitoring [sic] [a]ircraft status before and after the aircraft's arrival and departure: 10%

3. Manage the [g]round [h]andling [c]ompany and release the [a]ircraft [l]og after completion of [m]aintenance work and other related work: 50%

4. Self[-]development, research, and study on [a]ircraft system: 30%

5. Others ([m]eeting and [t]raining), etc.: 5%

Counsel provided an organizational chart of the United States organization, depicting the beneficiary as one of six employees subordinate to the office's regional manager, whose position is also referenced throughout the record as station manager. Counsel noted that during the station manager's absence, the beneficiary would manage the station, a responsibility which was identified as including the following tasks:

1. Human [resources] fo[redacted]staffs [sic], such as payrolls [sic], medical benefits, and others[.]
2. Request and receive [a]ircrafts [l]anding [r]ights [p]ermit from U.S. Customs at least 72 hours prior to the aircraft arrival.
3. Accounting, billing and invoicing.
4. Control and order office supplies.
5. Maintain and control office furniture, systems, and etc.

6. Make monthly [d]uty [r]oster.
7. Airport committee & [s]ecurity meeting[.]
8. Monthly [c]argo [r]eport[.]
9. Weekly SCM report to the [h]eadquarter[.]
10. Keep track and [m]aintain A/C containers and pallets.
11. Control and request [c]argo [s]ervice [s]upplies.
12. Cargo [l]og [u]pdate[.]
13. Regularly update the Cargo Standard Operating Procedure for the station.
14. Clear [i]nbound/[o]utbound [c]argo documents through U.S. Customs.
15. Train [g]round [h]andling [s]ervice [a]gents.
16. Meal [t]est/[h]ygiene [a]udit.
17. Monthly Meal Loading Status Report.
18. Catering Item V.S.I.E. Control: All [i]mported catering item must be used within 1 year. Cleared and closed V.S.I.E. with U.S. Customs.

The beneficiary's job description also identified the following outside contractors that would perform the ground handling functions offered by the petitioner: (1) [redacted] aircraft maintenance and ground handling; (2) [redacted], catering; (3) [redacted] Fuel Service Company), aircraft fueling and control; and (4) [redacted] Company, aircraft security. Counsel submitted a copy of a standard ground handling agreement documenting Swissport's role as the petitioner's handling company at [redacted] International Airport, and a trainee roster of [redacted] employees who received maintenance training on the petitioner's airlines. Counsel also provided a copy of a March 24, 2006 letter from [redacted] listing the employees working for the petitioner.

The director concluded in his July 17, 2006 decision that the beneficiary would not be employed by the United States entity in a primarily managerial or executive capacity. The director paraphrased the job description offered for the beneficiary, and recognized the petitioner's use of outside contractors. The director noted, however, that despite his request, the petitioner failed to submit descriptions of each position in the petitioning organization, or its IRS Forms W-2. With respect to the beneficiary's position, the director noted uncertainty as to the beneficiary's additional role as station manager, noting that it is not clear how often the assigned job duties are performed by someone other than the beneficiary. The director further noted the petitioner's failure to respond to his request to provide an estimate of the amount of time the beneficiary would devote to performing "each specific duty." The director recognized that the beneficiary would perform a mix of qualifying and non-qualifying job duties, but noted that the record does not clearly identify the amount of time the beneficiary would devote to those tasks that are managerial or executive in nature. The director also stated that without a description of the other positions in the United States organization, "the record does not clearly establish the nature of the beneficiary's position relative to others at the [redacted] location." Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on August 17, 2006, claiming that CIS misunderstood "the character" of the beneficiary's work in the United States organization. In her September 12, 2006 appellate brief, counsel addresses the beneficiary's proposed employment in the United States, explaining that as one of the petitioner's two senior managers, the beneficiary's position entails supervising "ground handling departments" that service the petitioner's aircraft at the [redacted] Counsel states that the beneficiary's relationship with its subcontractors, such as [redacted] is contractual and provides the beneficiary "the authority to direct the subcontractors and to recommend termination of employment if not

satisfied with their performance." Counsel references an attached August 6, 2006 letter from [redacted] and an August 9, 2006 letter from the petitioner's station manager as evidence of the beneficiary's authority over the contracted employees. In the latter letter, the petitioner's station manager states:

> The duties [the beneficiary] will be expected to perform include supervising and coordinating the activities of the aircraft mechanics and contractors servicing the aircraft according to [the petitioner's] policies and procedures, training employees in [the petitioner's] work methods and procedures including safety training, inspecting mechanic's work to maintain [the petitioner's] standards, requisition materials and supplies when necessary, communicate with control team in Korea regarding flight arrivals and departures, ensure aircraft security at all times, release aircraft log after maintenance [is] complete, confirm aircraft status with cockpit crew after take off. [The beneficiary] will also be expected to attend monthly meetings with contractors, and maintain maintenance manuals and technical notices. He will be responsible for controlling the maintenance parts inventory. [The beneficiary] will also be expected to perform the duties of Station Manager when the Station Manager is absent. These duties include performing human resources duties such as making sure payroll is completed, requesting landing rights permits from US Customs, performing accounting and billing duties, completing monthly cargo report, providing the weekly SCM report to headquarters, maintaining cargo log, and clearing cargo documents through customs among other duties.
>
> The majority of [the beneficiary's] time will be spent on duties which require him to direct, plan, organize, and control the functions of the [petitioner's] Aircraft Maintenance department [in Anchorage].

Counsel also submits a letter, dated August 30, 2006, in which the beneficiary states that 50 percent of his time is spent managing the maintenance crew utilized by the petitioner, which includes providing work orders to the ground crew supervisor, briefing workers on the arrival status of an aircraft and necessary repairs, reviewing "transit check card[s]," "order[ing] and confirm[ing] proper aircraft fueling," ensuring aircraft cleanliness, confirming that meals are loaded onto the aircraft, and maintaining aircraft security. The beneficiary indicates that 30 percent of his time "is spent researching, studying aircraft systems, and self[-]development," in order "to maintain the proficiency of the Maintenance Department." According to the beneficiary, the remainder of his time is spent attending monthly meetings with subcontractors, conducting safety meetings, and corresponding with the foreign entity.

Counsel explains in her appellate brief that because of the contractual relationship between the petitioner and its ground maintenance workers, the petitioner does not have access to the requested IRS Forms W-2 issued to the individual subcontractors.

Counsel submits an organizational chart of the workers employed at the United States entity, as well as a brief description of each employee's job duties. As the job duties of the beneficiary are essentially the same as those already outlined above, the job description on the organizational chart will not be entirely repeated herein.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5).

The definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

The record does not corroborate the petitioner's claim that the beneficiary would primarily "direct, plan, organize, and control the functions" of the petitioner's maintenance control function. 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). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. 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. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function. 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. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)).

In support of the beneficiary's classification as a manager or executive, the petitioner focuses on the beneficiary's responsibility of managing its contracted ground maintenance crew, stating that 50 percent of the beneficiary's time would be dedicated to this managerial task. The AAO acknowledges the petitioner's use of subcontractors that perform such non-qualifying functions of the petitioner's business as servicing, fueling, and securing the aircrafts. The AAO notes, however, that despite the petitioner's claims that the beneficiary would devote approximately 50 percent of his time to supervising the contracted agencies, the record demonstrates that during this time, the beneficiary would also perform such non-qualifying tasks as obtaining materials and supplies, and "controlling the maintenance parts inventory." Neither the beneficiary's original job description nor the petitioner's August 9, 2006 letter segregates these non-managerial and non-executive tasks from the time spent by the beneficiary managing the organization's subcontractors. As a result, the offered job description fails to clarify what proportion of the beneficiary's duties would be managerial in nature, and what proportion would actually be non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Moreover, during the station manager's absence the beneficiary would spend an undocumented amount of time performing in this role. The AAO stresses that despite the managerial title given to the petitioner's station manager, the tasks delineated by the petitioner as being associated with this position are not managerial or executive in nature. Rather, based on the representations made in the beneficiary's job description, as well as in the petitioner's August 9, 2006 letter, the beneficiary would be responsible for personally performing administrative and operational tasks related to the organization's human resources, payroll, financial, trade, and freight forwarding functions. Despite the director's request for "greater detail" of the beneficiary's job duties and the amount of time the beneficiary would dedicate to performing each task,

the petitioner failed to clarify how often the beneficiary would assume the role of station manager, or account for the time the beneficiary would dedicate to performing the non-managerial or non-executive tasks associated with this position. This information is critical to determining the capacity in which the beneficiary would be employed, since, based on the petitioner's representations, a cumulative 50 percent of his time would already be spent performing non-qualifying functions such as monitoring aircraft status, performing "general" work maintaining documents with the foreign organization, studying aircrafts, self-development, and training. Absent a clear and credible breakdown of the time spent by the beneficiary performing in the position of station manager, which the AAO again emphasizes, does not appear to be comprised of managerial duties, the AAO cannot determine what proportion of the beneficiary's duties would be managing the ground maintenance agents, or whether the beneficiary would be primarily managing the maintenance control function of the petitioning entity. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

The petitioner further complicates the record by representing many of the above-named tasks of the station manager as also being responsibilities of its general administrator and cargo service manager. For example, in the organizational chart submitted by the petitioner on appeal, the tasks of obtaining landing permits from United States Customs, performing accounting and payroll, and maintaining and controlling the organization's office furniture, are assigned to the petitioner's general administrator, while its cargo service manager is noted as clearing cargo through the United States customs, requesting cargo service supplies, updating and maintaining the monthly cargo log. Furthermore, the station manager's purported responsibility of training its ground handling agents was originally noted as a responsibility of the beneficiary. Accordingly, the specific job duties performed by the beneficiary while functioning as the station manager are not clearly defined by the petitioner. 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).

Counsel alleges on appeal that in denying the requested immigrant visa classification, CIS misconstrued the work performed by the beneficiary. Yet, counsel's representations in her appellate brief fall short of documenting how the director misinterpreted the beneficiary's position, or clarifying the beneficiary's employment in a primarily managerial or executive capacity. The director noted in his decision ambiguity as to the beneficiary's role as station manager and inadequacies in the petitioner's outline of how the beneficiary would spend his time. As discussed above, these deficiencies remain unresolved on appeal. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

Based on the foregoing discussion, the AAO cannot determine whether the beneficiary would be performing in a primarily managerial or executive capacity while employed by the United States entity. The petitioner has not demonstrated the beneficiary's eligibility for classification as a multinational manager or executive. Accordingly, the appeal will be dismissed.

The third issue in this proceeding is whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

With its initial filing, the petitioner submitted a June 7, 2005 Certificate of Employment, certifying the beneficiary's former employment as a manager of the foreign company's maintenance control department. An attached Certificate of Career identified the beneficiary as holding the following positions in the foreign entity since his employment began on May 21, 1992: manager of shop maintenance department; manager of heavy maintenance team; and manager of maintenance control. The petitioner indicated that the beneficiary had occupied the position of manager of maintenance control in the foreign entity from September 1, 2003 through November 1, 2004. An accompanying dispatch order indicated that the beneficiary would depart for his assignment in the United States on June 30, 2004.

In his request for evidence, the director asked the petitioner to submit a detailed list of the job duties performed by the beneficiary while employed by the foreign company, including an outline of the amount of time the beneficiary devoted to performing each task. The director also requested a detailed organizational chart of the Korean company identifying the beneficiary's position, as well as the organization's departments, teams, and employees, and their job titles and job duties. The director directed the petitioner to submit sufficient documentation "to adequately describe the beneficiary's former position abroad."

In her June 2, 2006 response, counsel for the petitioner submitted a copy of the beneficiary's Certificate of Career, which had already been provided for the record. Counsel did not submit additional evidence of the beneficiary's overseas employment.

In his July 17, 2006 decision, the director concluded that the petitioner had failed to establish that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. The director recognized the limited documentation offered in support of the beneficiary's qualifying foreign employment, and noted that the petitioner had failed to submit the requested detailed job description for the beneficiary and his co-workers, or the organizational chart of the foreign entity during the beneficiary's employment. The director concluded that the information contained on the beneficiary's Certificate of Career was insufficient to demonstrate that the beneficiary occupied a primarily managerial or executive position in the foreign entity for at least one year during the three years prior to his entrance into the United States. Consequently, the director denied the petition.

On appeal, counsel claims that the beneficiary's former position in the foreign entity is comparable to his employment as a manager in the United States. As evidence of the beneficiary's overseas employment in a qualifying capacity, counsel references the beneficiary's August 30, 2006 letter and the petitioner's August 9, 2006 letter, both of which were submitted on appeal and address the beneficiary's foreign job duties as having been "very similar" to those performed in the United States. The beneficiary noted that unlike in the United States, his ground handling crew was employed by the foreign entity rather than subcontracted, and he did not assume the responsibilities of the station manager. Counsel further offered on appeal organizational charts reflecting the beneficiary's positions during his employment with the foreign entity and clarifying the beneficiary's dates of employment overseas.

Upon review, the petitioner has not demonstrated that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

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 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).

In the instant matter, the director notified the petitioner of deficiencies in the record with respect to the beneficiary's foreign employment, and requested specific evidence of his purported managerial or executive position overseas. Counsel essentially neglected the director's request, providing only a copy of a previously submitted document. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. Consequently, the appeal will be dismissed.

The fourth issue in this proceeding is whether the petitioner demonstrated at the time of filing its ability to pay the beneficiary his proffered annual salary of $67,200.

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

> Any petition filed by or for any employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by [CIS].

In her June 2, 2006 response to the director's request for evidence, counsel for the petitioner submitted copies of the beneficiary's year 2005 IRS Form W-2, of which two were issued to the beneficiary during this period, indicating that the beneficiary received approximately $62,000 in compensation.

The director subsequently concluded in his July 17, 2006 decision that the petitioner had not demonstrated its ability to pay the beneficiary's proffered wages. The director questioned why the beneficiary had received two separate IRS Forms W-2 from the petitioner during 2005, and noted that the beneficiary's salary during 2005 was approximately $5,000 less than his proposed salary. The director recognized that the petitioner had offered financial documentation for the foreign entity, but instructed that the regulations require that the proposed United States employer have the ability to pay the beneficiary's annual salary. The director stated that the petitioner had failed to submit the requested copies of its 2004 and 2005 income tax returns. Accordingly, the director denied the petition.

On appeal, counsel addresses the beneficiary's receipt of two Forms W-2 during 2005, explaining that the beneficiary's employment in the United States was originally considered temporary, thus, as a non-United

States citizen, the beneficiary did not initially incur deductions for social security taxes and Medicare. Counsel also states that during 2005, the beneficiary was being compensated at a rate less than his proposed salary. As evidence of the petitioner's ability to pay the beneficiary's proposed salary, counsel references: a 2002 and 2003 import and export trade report documenting "substantial trade" between the foreign entity and the United States; the foreign entity's April 1, 2004 company register confirming that the company is engaged in the tourism, real estate and hotel business; a June 1, 2006 financial report of the foreign organization from Reuters; and years 2000 through 2006 annual reports for the foreign entity. In a subsequent letter, dated January 7, 2007, counsel for the petitioner submitted copies of the foreign entity's December 31, 2005 financial statement.

Upon review, the petitioner has not demonstrated its ability to pay the beneficiary's proffered wages at the time of filing.

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner did not establish that it had previously employed the beneficiary at the proposed salary.

In the present matter, where the petitioner is a United States office of the foreign entity, it is appropriate to consider the financial documentation submitted with respect to the foreign corporation. Although not specifically documented, it is likely that the foreign corporation employs more than 100 workers. In this instance, the petitioner may submit a statement from the foreign entity's financial officer attesting to the company's ability to pay. However, the petitioner has not offered a declaration of its ability to pay, or other requisite documentation, such as federal tax returns or audited financial statements. With respect to the foreign entity's annual reports and income statement, both documents depict the organization's financials in Korean Won, which is not probative of the petitioner's ability to pay the beneficiary's salary of $67,200. *See* 8 C.F.R. § 103.2(b)(3). 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)). Absent additional documentation, the AAO cannot determine whether the petitioner has the ability to pay the beneficiary's proffered wages. For this additional reason, the appeal will be dismissed.

Counsel notes in a January 7, 2007 letter that immigrant visa petitions filed by [redacted] on behalf of managers "holding exactly the same position that [the beneficiary] holds in [redacted] Alaska . . . were approved [by CIS] without any problem." It must be emphasized that each petition filing is a separate proceeding with a separate record; each petition must stand on its own individual merits. *See* 8 C.F.R. § 103.8(d). There is no evidence to establish that the facts of the instant petition are analogous to those in the petitions filed by [redacted] Furthermore, it is absurd to suggest that CIS justify the denial of the present petition with the purported approvals of unrelated I-140 petitions.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.