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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

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Office: TEXAS SERVICE CENTER

Date:

MAR 31 2006

SRC 05 049 51105

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

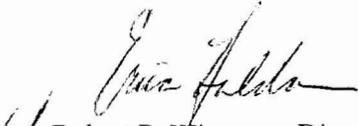
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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, Texas Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) upon certification from the director. The AAO will affirm the decision of the director.

The petitioner filed the instant immigrant 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 an organization operating in the State of Georgia as a trade and investment promotion agency of the Republic of Korea. The petitioner seeks to employ the beneficiary as its director.

The director denied the petition concluding that the petitioner had not demonstrated that: (1) the beneficiary had been employed abroad in a primarily managerial or executive capacity for the requisite amount of time prior to his transfer to the United States; (2) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity; (3) the United States entity has been doing business for at least one year prior to filing the immigrant petition; (4) the foreign company has been doing business; and (5) the petitioner has the ability to pay the beneficiary's proffered annual salary of \$60,000.

The regulation at 8 C.F.R. § 103.4(a)(5) allows the director to certify a case to the AAO for review. In accordance with the regulation, the director properly provided the petitioner with notice of the certification and an opportunity during which to rebut the director's findings. The AAO notes that no additional evidence has been submitted by the petitioner. Therefore, the record will be considered complete.

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 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 AAO will first consider the issue of whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity for at least one year within the three years prior to his admission into the United States as a nonimmigrant.

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

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

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

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

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) Directs the management of the organization or a major component or function of the organization;
- (ii) Establishes the goals and policies of the organization, component, or function;
- (iii) Exercises wide latitude in discretionary decision-making; and
- (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the instant petition on December 10, 2004 requesting the beneficiary's employment as the director of its seven-person staff. In an appended letter, dated November 30, 2004, the petitioner stated that the beneficiary had previously been employed as the foreign company's director, and referenced an attached resume. The beneficiary's resume indicated that he has worked for the foreign entity since June 1981 until the

present. In an additional statement from the foreign company's human resources director, the beneficiary's positions during the three years prior to his transfer to the United States were identified as: (1) investment management team from October 12, 2000 through February 28, 2001; (2) marketing promotion team from January 1, 2002 through September 30, 2002; and (3) director of the petitioning entity from October 1, 2002 through the present.¹

In a request for evidence dated May 4, 2005, the director asked that the petitioner provide a "definitive statement" of the job duties performed by the beneficiary in the foreign company, including his position title, the percentage of time spent on each task, the number of subordinate employees supervised by the beneficiary, and a brief description of the job duties performed by each subordinate worker, as well as their education level.

Counsel for the petitioner responded in a letter dated July 28, 2005, noting that the foreign entity employs 634 employees, of which 307 are employed in Korea. Counsel noted that approximately 90 percent of the foreign organization's workers have earned a bachelor's degree. Counsel described the "pyramid-shaped staffing level" of the foreign entity, stating that the staffing levels from the highest to lowest are: director general, director, manager, deputy manager, and staff. In an August 1, 2005 letter from the foreign organization, the beneficiary's overseas position was described as follows:

As director, [the beneficiary] spent 35% of this time on Product Marketing, 25% on Business matchmaking, 10% on Market Research, 10% on Exhibitions, 10% on Investments, 5% on e-commerce, and 5% on Business inquiries.

[The beneficiary] was in charge of supervising 6 subordinate officers. The six officers were the Deputy Director, General Manager, Marketing Specialist 1, Marketing Specialist 2, and the Market Researcher.

In a decision dated October 4, 2005, the director concluded that the petitioner had not demonstrated that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity. The director stated that the job description for the beneficiary's overseas position was "vague and general in scope," and failed to identify the managerial or executive tasks performed by the beneficiary on a daily basis. The director, referencing the foreign entity's organizational chart, also noted that the petitioner had not submitted evidence identifying the employees supervised by the beneficiary.

The director further noted an inconsistency in the beneficiary's dates of employment overseas. The director addressed a discrepancy in the time the beneficiary was purportedly employed by the foreign entity as a "director," stating that the beneficiary's I-485 application indicates the beneficiary lived in the United States from September 1997 through September 2000, while the petitioner indicated in its November 30, 2004 letter that the beneficiary was employed by the foreign entity during this time. The director noted the petitioner's failure to clarify the inconsistency. The director stated that "[it is] not clearly established that from September 1999 to September 2002, the beneficiary worked at the foreign company in a managerial or executive capacity for at least one year." Consequently, the director denied the petition.

¹ Part Three of Form I-140 indicates that the beneficiary was last admitted to the United States on November 4, 2003 as an A2 nonimmigrant.

Upon review of the petition and evidence, the petitioner has not demonstrated that the beneficiary was employed by the foreign 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 petitioner's extremely vague job description of the beneficiary's employment in the foreign entity fails to identify the capacity in which the beneficiary was employed or the associated job duties. The petitioner does not clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. 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. The petitioner must demonstrate that the beneficiary's responsibilities will meet the requirements of one or the other capacity. Here, the petitioner represented in its November 30, 2004 letter that the beneficiary was employed as the foreign entity's director. Following the director's request for a "definitive statement" of the beneficiary's overseas position, the petitioner submitted a brief outline of seven job responsibilities, yet neglected to identify any of the associated managerial or executive job duties. Absent an additional comprehensive job description of the tasks specifically related to the beneficiary's former position, the AAO cannot conclude that the beneficiary's responsibilities of product marketing, business matchmaking, market research, exhibitions, investments, e-commerce and business inquiries establish employment in a primarily qualifying capacity. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In addition to the limited job description, the organizational charts submitted to substantiate the beneficiary's role overseas as a manager or executive complicate the instant analysis of the beneficiary's employment capacity. In its August 1, 2005 statement, the foreign entity indicated that as the director of the foreign corporation, the beneficiary supervised six subordinate officers, including the deputy director, general manager, marketing specialist 1, marketing specialist 2, and a market researcher. The organizational chart submitted with Form I-140 identified three divisions subordinate to the beneficiary, which were comprised of six employees, three of whom were identified as a manager, marketing specialist, and deputy director. A second organizational chart subsequently submitted by the petitioner in its response to the director's request for evidence did not identify the beneficiary's position in the foreign entity or even the division in which he was employed. The inconsistent and limited evidence in the record fails to clearly identify the subordinate employees managed or supervised by the beneficiary. This information is relevant to satisfying the statutory requirement that the beneficiary supervise or control the work of other supervisory, managerial or professional employees. *See* section 101(a)(44)(A)(ii) of the Act. Without an accurate outline of the beneficiary's lower-level employees, the AAO cannot conclude that the beneficiary meets this statutory requirement. Additionally, this information is essential to determining whether the beneficiary was supported by a staff sufficient to allow him to perform duties in a primarily managerial or executive capacity. 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)).

The record does not support a finding that the beneficiary was relieved from performing non-qualifying tasks related to the foreign company's business. Based on his limited job description, the beneficiary spent

approximately 65 percent of his time on such non-qualifying tasks as marketing, market research, attending exhibitions, performing e-commerce, and performing business inquiries. The petitioner has not defined the specific job duties associated with these job responsibilities. However, its representations indicate that the beneficiary was personally performing the above-outlined non-managerial and non-executive tasks operational tasks. As the petitioner has not provided a job description of the tasks performed by the beneficiary's purported subordinate staff, the AAO cannot conclude that the beneficiary was relieved of these non-qualifying duties. 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 addresses the director's reference to the inconsistent dates of the beneficiary's employment with the foreign entity. While the beneficiary's Form I-485, Application to Register Permanent Status or Adjust Status, indicates that the beneficiary lived in the United States from September 1997 through September 2000, additional evidence in the record demonstrates that the beneficiary, while in the United States, was working for a branch of the foreign entity. As a result, this issue need not be further addressed.

Based on the foregoing discussion, the petitioner has failed to demonstrate that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. Accordingly, the director's decision will be affirmed and the petition will be denied.

The AAO will next consider whether the beneficiary would be employed by the United States organization in a primarily managerial or executive capacity.

On Form I-140, filed on December 10, 2004, the petitioner requested employment of the beneficiary as its director, during which the beneficiary would "[o]versee all operations of [the] Atlanta office." In its attached November 30, 2004 letter, the petitioner provided the following job description for the beneficiary's proposed role in the United States entity:

[The beneficiary] will plan, develop, and establish policies and objectives to encourage investment and trade between the US and South Korea. He will direct and coordinate business contacts and develop other relevant policies and procedures implementing the overall objective of [the petitioning entity]. [The beneficiary] will also oversee exhibitions, business matchmaking, and trade missions.

The petitioner submitted an organizational chart, identifying the following six positions subordinate to the beneficiary: deputy director, manager, two marketers, a researcher, and a receptionist. The petitioner also provided copies of checks paid to three employees as compensation for work completed in July through September 2004, and a copy of a one-month independent contractor agreement ending August 21, 2004.

In her May 4, 2005 request for evidence, the director asked that the petitioner submit a "definitive statement" of the beneficiary's proposed employment, in which the petitioner would address the following: (1) the beneficiary's job title; (2) a list of all job duties to be performed by the beneficiary; (3) the percentage of time the beneficiary would spend on each task; (4) the number of subordinate employees supervised by the beneficiary; and (5) a brief job description for the beneficiary's lower-level employees, as well as their educational levels. The director also asked that the petitioner submit evidence of its staffing levels, including

Internal Revenue Service (IRS) Form W-2 for all workers employed in 2004 and IRS Form 941, Quarterly Tax Report, for each quarter in 2004.

Counsel responded in a letter dated July 28, 2005, submitting the following job description for the beneficiary:

At the U.S. office, [the beneficiary] will be keeping the same position he held at [the foreign entity]. As the Director, half of [the beneficiary's] time will be spent on product marketing and business matchmaking. The rest of his time will be allocated amongst market research, exhibitions, investments, e-commerce, and business inquiries.

[The beneficiary] will initially be in charge of supervising 6 subordinate officers. The first two are the Deputy Directors. Deputy Directors hold college degrees. The first Director is in charge of Marketing and Investment and Promotions. The second Director is in charge of Market Research and General Affairs. Below the Deputy Directors are the Managers. The managers are also college graduates, and operate in the following areas: Products & Buyer Research, Investment Promotion, General Affairs and Market Research. A further breakdown of these employees, along with their names and compensation, is attached.

An attached organizational chart identified the petitioner's staffing levels as outlined above, also noting the existence of four lower-level managers. In response to the director's request for quarterly tax returns, the petitioner explained that as a non-profit government funded organization, the petitioning entity was not subject to tax in the United States.

In her October 4, 2005 decision, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director stated that the "vague and general" job description failed to "convey an understanding of the beneficiary's purported managerial or executive duties on a daily basis." The director noted that the petitioner had also failed to provide a description of the job duties performed by the beneficiary's lower-level employees. The director further noted inconsistencies in the petitioner's two organizational charts, stating that the positions on either chart are different. The director also questioned why two of the beneficiary's lower-level employees would be earning a higher salary than the beneficiary. Consequently, the director denied the petition.

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 petitioner has not clarified whether the beneficiary would be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. 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. The petitioner must demonstrate that the beneficiary's responsibilities will meet the requirements of one or the other capacity. The petitioner has not satisfied this essential element.

The petitioner's limited description addressing seven broad job responsibilities to be held by the beneficiary fails to specify his associated managerial or executive job duties. It is unclear from the petitioner's brief statement what qualifying tasks the beneficiary would perform in relation to his responsibilities of product marketing, business matchmaking, market research, exhibitions, investments, e-commerce, and business inquiries. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The AAO notes that despite the director's request for a "definitive statement" of the beneficiary's job duties, the petitioner provided an equally vague outline as that submitted in its initial November 30, 2004 letter. The petitioner's failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

A review of the petitioner's staffing levels does not provide clarification as to the beneficiary's position in the United States organization. Nor does it demonstrate that the petitioner employs a staff sufficient to support the beneficiary in a primarily managerial or executive capacity. As noted by the director, the petitioner's two organizational charts contain conflicting information regarding the positions subordinate to the beneficiary. The chart submitted at the time of filing notes the employment of a deputy director, manager, receptionist, researcher and two marketers, while the subsequently submitted chart identifies two deputy directors, and four managers. The AAO notes that the revised organizational chart supplemented two new workers who were not identified on the previous chart, and amended the position titles held by three of the petitioner's workers. As a result of these inconsistencies, the AAO cannot determine the petitioner's true staffing level at the time of filing. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Additionally, as noted by the director, the petitioner's one-line statements describing the subordinate positions fail to render the requested description of each employee's job duties. This information is essential to determining whether the beneficiary was supported by a lower-level staff sufficient to perform the non-qualifying operational and administrative functions of the business. Again, 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).

Additional documentary evidence submitted by the petitioner at the time of filing to demonstrate its support personnel will not be considered herein. Specifically, the independent contractor agreement submitted by the petitioner terminated on August 21, 2004, approximately four months prior to the filing of the immigrant petition. The additional work contract submitted by the petitioner for an individual identified as its receptionist terminated on June 30, 1997, or approximately seven years before the time of filing. Moreover, the payroll records for three of the petitioner's workers reflect payments made until September 2004, and therefore do not confirm their employment on December 10, 2004, the date the immigrant petition was filed. A petitioner must establish eligibility at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

Based on the foregoing discussion, the petitioner has not demonstrated that the beneficiary would be employed by the United States organization in a primarily managerial or executive capacity. Accordingly, the director's decision will be affirmed and the petition will be denied.

The AAO will next consider the related issues of whether the petitioner was doing business in the United States for at least one year prior to the filing of the petition and whether the foreign entity has been doing business overseas.

The regulation at 8 C.F.R. § 204.5(j)(2) defines "doing business" as:

[T]he regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office.

In its November 30, 2004 letter, the petitioner described the United States entity as a trade and promotion agency for the Republic of Korea. The petitioner stated that through the foreign Korean company, the petitioner "will promote relations between the US and the Republic of Korea through various activities such as trade information, market research services, and business matchmaking." As evidence of its operations, the petitioner submitted a statement of "business activities" from January 1, 2003 through December 31, 2003 noting its type of activity and contract amount. The petitioner also submitted a statement detailing its services offered during this same time, and bank statements dated January through August 2004.

The director's subsequent request for evidence asked that the petitioner provide the following documentary evidence related to the petitioning entity: (1) articles of incorporation; (2) invoices and bills of sale dated from December 10, 2003 through the time of filing, and product brochures; (3) an explanation of the business activities documents previously submitted with the immigrant petition; and (4) a copy of the petitioner's year 2004 corporate tax return.

In his July 28, 2005 response, counsel explained that the United States organization, as a branch of the foreign entity, is doing business in the United States on behalf of Korean companies. Counsel described the petitioner's role as an intermediary, stating that its activities include performing business negotiations and arranging business meetings between Korean and United States companies. As evidence of the petitioner's business activities in the United States, counsel submitted a letter from the Consulate General of the Republic of Korea in Atlanta, Georgia, dated May 23, 2005, in which the consul described the petitioner's role in serving Korean and United States companies based in the southeastern region of the United States. Counsel stated that since December 2003, the petitioning organization has realized the following achievements:

- Written and posted 170 articles on US-Korean economy on the Korean trade website
- Done 170 cases on Marketing Research
- Supported 50+ Korean companies participat[ing] in U.S. exhibitions
- Found 40 new promising U.S. Companies interested in Korean investment
- Completed 7 cases of inducing investment in Korea
- Arranged 20 cyber business meetings between Korean & U.S. companies
- Supported 10 Korean Business delegations in the U.S.
- Received 200 trade inquiries and provided follow-ups
- Sent 40+ businessmen to Korea to conduct business
- Supported 20+ Korean businessmen visiting U.S. partners
- Organized 5 Investment Relations events
- Conducted daily trade & investment-related consulting services to Korean & U.S. companies asking for assistance.

As additional evidence, counsel submitted a January 31, 1996 letter from the assistant chief of protocol of the United States Department of State, in which he acknowledged the petitioning organization as a "miscellaneous foreign government office." Counsel also provided additional statement of "trade mission" services rendered by the petitioner in January 2004 through July 2005, and a brochure for the foreign entity, in which the petitioner is identified as a trade center of the foreign organization.

The director concluded in her October 4, 2005 decision that the petitioner had not demonstrated that it "had been engaged in the regular, continuous, and systematic provision of goods and/or services for at least one year prior to the filing of the petition." The director, noting the insufficiency of the list of business transaction submitted by the petitioner, stated that the petitioner had not submitted documentary evidence confirming "any specific business transactions conducted." Consequently, the director denied the petition.

Upon review, the petitioner demonstrated that it had been doing business for at least one year prior to the time of filing. While the petitioner has not submitted documentary evidence to confirm that it rendered each of the numerous services outlined by counsel in his July 28, 2005 letter, there is sufficient evidence in the record, including the petitioner's service documents, bank statements, and letter from the consulate general, to demonstrate that the petitioner has been engaged in the provision of services in the United States as a trade and promotion agency. In addition, the company brochures for the foreign entity confirm the petitioner's status as a trade center in the United States.

The petitioner has also demonstrated that the foreign entity has been doing business in Korea. While the petitioner did not specifically address the foreign entity's business operations in its November 30, 2004 letter submitted with the petition, the petitioner provided a company brochure of its national investment promotion agency, "Invest Korea," which highlighted the company's operations and role in promoting international investment in Korea.

Following the director's request for additional evidence, counsel, in his July 28, 2005 response, explained that the foreign organization is a "government financed non-profit organization" formed by statute "for the purpose of contributing to the development of the national economy by foreign investment, promoting overseas public relations, and acting as an intermediary between domestic and foreign firms." Counsel further explained that since its establishment in 1962, the foreign organization has developed a network of 91 offices in Asia, the Middle East, Europe and North and Latin America. Counsel noted that the foreign entity has 119 [REDACTED] throughout the world, one of which is the petitioning organization, and stated that the foreign organization "oversees all aspects of each [trade center], and evaluates all their activities with the use of the CRM computer software system." As a government financed non-profit organization, counsel explained the foreign entity does not have articles of incorporation.

With regard to the foreign organization's business activities, counsel stated that the petitioner does not have access to the confidential contracts formed by the foreign entity and Korean companies. Rather, counsel references the organization's brochure and "attached print-outs" as evidence of the company's operations overseas, including a press release dated October 7, 2004 recognizing the foreign organization's receipt of an award for trade promotion.

Upon review, the petitioner has demonstrated that the foreign entity has been doing business overseas. The above-outlined evidence, particularly the organization's brochures, as well as its recent recognition as an

organization promoting trade in Korea and worldwide, demonstrate the foreign entity's "regular, systematic, and continuous provision" of services in Korea. Accordingly, the director's decision with regard to the issue of the United States' and foreign entity's business operations will be withdrawn.

Lastly, the AAO will consider whether the petitioner demonstrated its ability to pay the beneficiary his proffered annual salary of \$60,000.

The petitioner submitted with the immigrant petition copies of its bank statements for months January through September 2004. Following the director's request for evidence of the petitioner's ability to pay the beneficiary's salary, counsel responded in a July 28, 2005 letter stating that "[a]s an entity of the Korean government, Petitioner has access to sufficient finances to fund its activities." Counsel did not supply additional evidence related to this issue.

The director concluded in her October 4, 2005 decision that the petitioner had not demonstrated its ability to pay the beneficiary's proffered salary. The director noted that the petitioner had not provided such documentation as tax returns, annual reports or audited financial statements, which would establish its ability to pay the beneficiary. Consequently, the director denied the petition.

Upon review, the petitioner has not established its ability to pay the beneficiary's proffered annual salary of \$60,000. Other than the petitioner's bank statements, the record contains no evidence of the petitioner's financial status. The petitioner's bank statements, while reflecting average monthly balances ranging from approximately \$38,000 to \$80,000, do not satisfy this requirement, as it is not reasonable to assume that these funds are to be used solely for the purpose of compensating the beneficiary. Regardless, as specified in the regulation at 8 C.F.R. § 204.5(g)(2), evidence of the petitioner's ability to pay "shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements." Additionally, counsel's blanket claim that the petitioner's relationship with the Korean government guarantees its ability to pay the beneficiary will not overcome this requirement. 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 limited record, the AAO cannot conclude that the petitioner has the ability to pay the beneficiary his proffered annual salary. Accordingly, the director's decision will be affirmed. For this additional reason, the petition will be denied.

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 director's October 4, 2005 decision is affirmed. The petition is denied.