

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



B4

FILE: [REDACTED]
EAC 04 053 52220

Office: VERMONT SERVICE CENTER

Date: FEB 21 2007

IN RE: Petitioner: [REDACTED]
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)

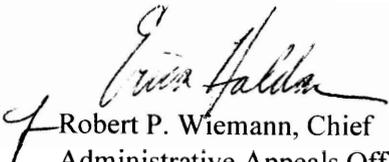
ON BEHALF OF PETITIONER:



PUBLIC COPY

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, Vermont 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 corporation organized under the laws of the State of New York that is engaged in the import and sale of leather goods. The petitioner seeks to employ the beneficiary as its president.

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

On appeal, the petitioner's present counsel contends that the director's denial was based on a misinterpretation of the petitioner's employee records and financial documents, in which he improperly questioned the veracity of the offered documentary evidence. 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):

* * *

(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 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-

- (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 Form I-140 on December 12, 2003, noting the beneficiary's position as president over the ten-person United States company. In an appended December 11, 2003 letter, the petitioner's prior counsel stated that the beneficiary would be "the top executive in charge of business operations in the United States," during which he would "make the day[-]to[-]day decisions for the company," establish a subordinate staff to sell the petitioner's products, and "re-evaluat[e] current daily business operations procedure." Counsel noted that the beneficiary's initial principal responsibilities included locating additional office and warehouse space and implementing a subordinate workforce comprised of sales and distribution managers and administrative personnel.

Counsel submitted a copy of a December 5, 2003 letter, in which the petitioner compared the beneficiary's position in the United States company to that occupied by the beneficiary in the foreign entity, explaining that the beneficiary maintains "full oversight and control" over the company's departments, and holds the authority to delegate tasks, and hire and fire employees. With respect to the beneficiary's proposed employment, the petitioner stated:

It is anticipated that within the first year of [the beneficiary's] full-time oversight of the US business operations [the beneficiary] shall purchase a warehouse of 50,000 square feet and will hire [an] additional sales manager and add to the staff of sales employees to sell and market the leather foods and finished products of the parent company directly to additional US and Canadian vendors. In New York[,] [the beneficiary] will also have the sole discretion to hire and fire all staff in the United States to distribute the products from Mainland China. . . . Upon his arrival, [the beneficiary] will not be handling the actual sales and distribution and shipping of the products, but will oversee the business expansion, daily operations and its expansion goals. At all times in the United States[,] [the beneficiary] will act as the top executive and [p]resident of [the petitioning entity] and all company employees will answer to him for guidance and for company procedures and business plan formulations.

Further, as necessary as the operations in the United States increase[,] [the beneficiary] will hire the services of affiliated company independent professionals such as accountants, [and] public relations specialists to assist the company in its product sales ventures. After his arrival in the United States to lawfully work, all managers and contractors will be required to meet and work with [the beneficiary] on a regular basis to assure that business is being conducted in the best possible and efficient manner. As [president] of [the petitioning entity,] [the beneficiary] will be responsible for daily administration and oversight of the investment and distribution and sales operations in the United States, including the final decision on advertising, investments, promotions and product-line offerings of the United States company. . . .

In a second letter, also dated December 5, 2003, the petitioner outlined the following job duties to be performed by the beneficiary in his capacity as general manager and president:

- Set the policies and procedures of the company for the present and future as determined by himself as the [g]eneral [m]anager/[p]resident and as a member of the parent company[']s [b]oard of [d]irectory [sic]. Will include decisions to increase/decrease company employees and implementing the corporation's operating goals and policies, including desired expansion of importing of goods into/out-of the US in accordance with [the] parent company[']s objectives. This will include being consulted with by [sic] other staff and having final authority to approve travel destination product-line expansions. His implementation of company goals will also include the review of possible subordinate support staff increases and the possibility of hiring even some independent contractors as salespersons to work for the company in areas not originally anticipated to be covered by the company's staff. Unilaterally has authority to revise policies in response to worldwide economic conditions, banking currency exchanges and demand for products. 2-5 hours per week

- Will run the daily operations of the business and making all routine discretionary decisions associated with operating the leather goods importing business, including, but of course not limited to arranging for the presentation of company travel services and time-share product lines to current and potential clients throughout the United States. This will include review of the progress of contacting present customers by the sales staff to inform them of new product lines, changes in current product availability. Will also deals [sic] with customer executives or managers to set pricing, negotiate sales terms and reviews [sic] purchase orders made by [s]ales [a]ssociates to assure profitability. Will reviews[sic] activity reports and financial statements prepared by accountants and internal financial personnel to determine progress and status in sales and marketing. Will review company objectives in response to current market/economic conditions. 12-18 hours per week
- Will plan and develop public relations for the company including the resolution of any and all disputes between company's representatives and customers, banks, if necessary. In order to assure customer satisfaction with the leather goods products offered by the company, he will correspond with customers[,] executives[,] or representatives when the need arises. Will dictate these duties to the subordinate managers, as necessary, but when questions arise as to issues or purchases that the staff cannot handle he will answer these issues in order to attain company objectives. Will coordinate the work of all present and future salaried employees in order to ensure that corporate quality and satisfaction goals are being achieved, including internal record keeping. 3-6 hours per week.
- Will oversee and supervise all employees of [the petitioning entity] by calling and monitoring all staff meetings for managers and employees. Will make sure that the managers know exactly what is expect of them and their staff and that all jobs are getting done according to the company policies and business plan and then will evaluate the performance of the employees and departments. Will assure that the entire company and those working under the staff, possibly as subcontractors/sales persons, are will acquainted with all present and future company policies, objectives and operating procedures, including chain of command. 6 hours per week.
- Will function as the connection with Mainland Chinese parent company [] to make sure that leather product information is properly generated to them for sales orders and to make sure that the leather bags, belts, wallets and other merchandise can [be] produced and the length of time for production[,] the prices and the shipping arrangements are satisfactory to the customer. He will deal directly with the parent company's production and sales managers to follow-up on all orders sold by the United States company. If there are problems with the orders he will trouble shoot the problems. 3-6 hours per week.
- Will analyze company budgetary issues and sales projections submitted by sales persons to determine the need for additional funding for marketing the leather products in the United State and North American markets. Will authorize company annual budget and establish precisely how the funds will be spent and distributed amongst the different departments in the U.S. in order to ensure the profitability. Will set investment and monetary policies for United States company to achieve optimum returns. 1-3 hours per week.

- Will confirm the sales orders made by sales persons in terms of pricing and other important sales terms to guarantee revenues and profits. Will agree with sales persons on possible introduction of new leather products for profitable sale. Will inspect financial reports as generated by sales persons on a monthly basis and accountants on a quarterly basis to see condition of company. Will assure that the present customer accounts will be controlled and managed in the most efficient, and profitable manner as possible in accord with all company and requirements and the specific requirements of the account. 6 hours per week
- Will generate plans selling and distributing the company leather goods via suggestions from sales staff and customer feedback in an effort to expand product lines and increase share. Will approve all such marketing plans prior to putting them in place. Will speak with customer executives regarding quality of the leather products manufactured by the parent company and sold by the United States company to make sure that corporate quality and satisfaction goals are met. 4 hours per week.
- Will deal with United States company accountants, attorneys and bank officials that assist in operations of the United States business. Will assure that all necessary state, local and federal government authorities are given complete, timely and courteous access to company facilities and information upon request. 1-3 hours per week.
- Will attend and/or appoint the company sales representatives to attend all necessary leather goods-related trade shows in which the company is interested, meetings with purchasing agents for large customers. 1-3 hours per week.

Counsel provided an organizational chart of the United States company, on which the petitioner identified the following managerial positions as being subordinate to the beneficiary: vice general manager of marketing and human resources, vice general manager of design, purchases, imports and warehousing, design manager, purchase manager, import manager, warehouse manager, finance manager, human resources manager, new project development manager, marketing managers of the eastern and western United States, and marketing managers of North America and South America. The AAO notes that the petitioner's representation of employing thirteen managerial employees, one of whom performs as vice general manager of both marketing and human resources, conflicts with its initial claim on the Form I-140 of employing a ten-person staff.

The director issued a notice of action on January 12, 2006 informing the petitioner that the record did not establish that the United States company would employ the beneficiary in a primarily managerial or executive capacity. The director instructed the petitioner to submit evidence reflecting its managerial and personnel structure, including: (1) the number of supervisors the beneficiary would manage; (2) the job titles and job duties of the subordinate employees; (3) the managerial, executive, or technical skills necessary to perform in the beneficiary's position; (4) the amount of time the beneficiary would devote to performing managerial or executive tasks; and (5) the degree of discretionary authority held by the beneficiary in the company's day-to-day operations. The director directed the petitioner to submit its year 2003 Internal Revenue Service (IRS) Forms W-2 and W-3, its federal income tax return from the same year, and its year 2004 payroll roster.

The petitioner's present counsel responded in a letter dated April 5, 2006. In an attached April 3, 2006 letter, the petitioner noted the beneficiary's "managerial" authority over the United States company's logistics, finance and administration, and sales and marketing departments, and contended that he would qualify as an "executive" as a result of his performance of the following job duties:

1. Managing three departments made up of ten (10) managerial and professional employees[;]
2. Supervising and controlling the work of both managerial and professional employees[;]
3. Maintaining the authority to hire, fire, and promote professional and managerial employees; and
4. Exercising absolute discretion over the day-to-day operations and functions of the Logistic, Sales & Marketing, Financial & Administration Departments[.]

In an additional statement, the beneficiary was described as holding the following job responsibilities:

Planning, developing and establishing polities [sic] and objectives of business organization in accordance with board directives and corporation charter (5 hours)

Conferring with company officials to plan business objectives, to develop organizational policies to coordinate functions and operations between divisions and departments, and to establish responsibilities and procedures for attaining objectives (20 hours)

Reviewing activity reports and financial statements to determine progress and status in attaining objectives and reviews objectives and plans in accordance with current conditions (10 hours)

Evaluating performance of managers and executives for compliance with established policies and objectives of [the] firm and contributions in attaining objectives (5 hours)

Counsel provided an "updated" organizational chart of the staffing levels maintained by the petitioner at the time of its response. As the organizational chart reflects changes made by the petitioner to its personnel during the three years since the petition was filed, the staffing levels maintained by the petitioner on the filing date are unclear. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (stating that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts). As the record contains a state quarterly wage report for the third quarter of 2003 only, it is not clear which positions in the petitioning entity were occupied on the date of filing. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In a decision dated August 2, 2006, the director denied the petition concluding that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director stated that despite the documentary evidence offered by the petitioner, the record failed to demonstrate whether the beneficiary "is acting as a bona fide manager or executive per statute." The director expressed ambiguity in the various representations of the petitioner's staffing levels, noting that the number of employees identified on the Form I-140 and the organizational charts differ. Additionally, the director questioned the authenticity of the personnel records offered by the petitioner, noting uncertainty as to whether the compensation paid to the subordinate employees was "commensurate with a full-time managerial or executive position in a major metropolitan retail market."

The director also noted the petitioner's failure to submit a "complete position description" for its employees, or to offer anything more than a description of "general managerial functions" performed by the beneficiary. The director further questioned who was performing the company's sales, as the petitioner had not accounted for the employment of sales representatives, and noted the possibility that the performance of these non-qualifying responsibilities would rest with the beneficiary.

The director also focused on the fact that the beneficiary was not yet employed with the petitioning entity, and stated that "it is not readily apparent that the beneficiary has occupied and will continue to occupy a position in the United States entity that can be deemed managerial or executive in nature." Consequently, the director denied the petition.

Counsel for the petitioner filed a timely appeal on August 31, 2006, claiming that the director's misinterpretation of the petitioner's personnel records and financial documents resulted in an incorrect finding that the beneficiary would not be primarily employed as a manager or executive. In a September 27, 2006 letter, counsel challenges the director's denial, stating that he failed to take into account changes in the petitioner's personnel during the approximately two years from the filing date and its response to the director's request for evidence. Counsel contends that the director's decision is incorrectly based on his examination and comparison of documents filed in December 2003 with documentation relating to March 2006.

Counsel challenges the director's review of the petitioner's quarterly tax returns, stating that "[the director] appears to be confusing the number of employees listed in each Quarterly Form 941 with the number of employees issued a W-2 for a particular year." Counsel explains the possibility that the employees listed on the Form 941 would not coincide with the number of Forms W-2 issued by the petitioner for the same year. Counsel also disputes the director's review of the amount in wages paid by the petitioner during the year 2003. Counsel notes that the petitioner's federal tax return reflects its financials for the fiscal year May 1, 2003 through April 30, 2004, whereas the Form W-3 identifies the wages paid during the 2003 calendar year.

Counsel further contends that the director's consideration of whether the beneficiary is already employed by the petitioner is flawed. Counsel states that "[Citizenship and Immigration Services (CIS)] appears to be suggesting that the [beneficiary] should be able to show that he was paid wages commensurate with an individual in a managerial position during a period he was not authorized to be employed and was not employed." The AAO notes that the issue of whether the beneficiary is employed by the petitioning entity on the date of filing is not relevant to the analysis of "managerial capacity" or "executive capacity." *See* §§ 101(a)(44)(A) and (B) of the Act;

Upon review, the petitioner has not established 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 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. Conversely, if the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

Here, both the petitioner and the petitioner's former counsel represented in their initial letters, as well as the April 3, 2006 letter, the beneficiary's proposed employment as a "top executive" of the United States

company. However, in the same April 3, 2006 response to the director's request for evidence, the petitioner noted the beneficiary's "managerial position" and referenced documentation that would establish the beneficiary's employment "in a managerial capacity." Additionally, throughout the record the petitioner cited criteria from the statutory definitions of "managerial capacity" and "executive capacity" as qualifying responsibilities to be held by the beneficiary. A petitioner may not claim to employ the beneficiary as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. The petitioner has not clarified whether the beneficiary's proposed employment capacity would be primarily managerial or executive. *See* section 203(b)(1)(C) of the Act.

The multiple job descriptions offered by the petitioner fail to explain the beneficiary's proposed employment capacity or his specific managerial or executive job duties. The petitioner initially noted in its December 5, 2003 letter ten job responsibilities held by the beneficiary in his position as general manager and president. Yet, following the director's request for additional evidence, the beneficiary's job responsibilities were reduced to a list of four, on which counsel simply restated criteria of "managerial capacity" and "executive capacity." Specifically, counsel's abbreviated list of job responsibilities included the beneficiary's authority to "[s]upervise and [control] the work of both managerial and professional employees," hire, fire, and promote the staff, exercise "discretion over the [company's] day-to-day operations and functions," and establish the organization's policies and objectives. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Also, as the revised job description offered in response to the director's request for evidence does not comport with the initial December 5, 2003 job description, it does not provide clarification of the beneficiary's position in the United States entity. According to the job description originally submitted by the petitioner, the beneficiary would spend the majority of his time, approximately twelve to eighteen hours per week, making "routine discretionary decisions" pertaining to the operations of the company, responsibilities that the petitioner noted in its response to the director's request for evidence would consume only ten hours of the beneficiary's time. In contrast, based on the beneficiary's revised job description offered in its April 5, 2006 response, the beneficiary would primarily plan business objectives and policies, devoting approximately twenty hours per week to this task. The conflicting job descriptions raise questions as to the tasks to be primarily performed by the beneficiary in the position of general manager/president. The AAO further notes that the petitioner only mentioned the beneficiary's purported employment as general manager in its December 5, 2003 letter, and did not explain his dual role as general manager and president in its subsequent responses to the director's request for evidence or on appeal. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO notes that despite the director's observation in his August 2, 2006 decision of a deficient description of the beneficiary's employment, counsel did not offer on appeal an additional explanation of the beneficiary's managerial or executive job duties. 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).

Moreover, a review of the petitioner's staffing levels with respect to its overall purpose and stage of development does not corroborate the petitioner's claim that the beneficiary would be employed in a primarily managerial or executive capacity. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization.

As addressed by the director, the AAO stresses ambiguity in the petitioner's staffing levels at the time of filing. While the petitioner represented on the Form I-140 a staff of ten, its December 31, 2003 quarterly tax return indicates the employment of five workers in the quarter during which the instant petition was filed. Also, the organizational chart originally filed with the immigrant visa petition identified fourteen employees. The petitioner has not offered a clear depiction of its staffing levels and the specific lower-level positions occupied by employees on the filing date. 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). The AAO again notes that the "updated" organizational chart submitted in response to the director's request does not clarify the company's organizational hierarchy for the relevant period in question. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (stating that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts).

Nevertheless, based on the petitioner's claim of ten employees, if the AAO were to consider the workers employed during the third quarter of 2003 as employees during the fourth quarter as well, the record would suggest the following subordinate staff: vice general manager of marketing and human resources, vice general manager of design, importing, purchases, and warehousing, design manager, purchase manager, import manager, warehouse manager, marketing manager of the Eastern United States, marketing manager of North America, finance manager, and a marketing manager of South America, who worked on a contractual basis. The AAO notes that the amount of wages paid to the design, purchase and finance managers during the third quarter of 2003 suggests employment on less than a full-time basis. Additionally, except for the two vice general managers, none of the remaining managerial employees are supervising any lower-level employees.

Based on the above-outlined organizational hierarchy, which the AAO again emphasizes has not been conclusively established by the petitioner, it is questionable whether the beneficiary would be supported in a primarily managerial or executive capacity. The petitioner's claim that the beneficiary "would be responsible for daily administration and oversight of the investment and distribution and sales operations in the United States, including the final decision on advertising, investments, promotions and product-line offerings of the United States company" is undermined by its deficient lower-level staff. For example, the petitioner has not accounted for the performance of its advertising, product development or promotions functions. In fact, the petitioner's December 5, 2003 letter suggests that the beneficiary would personally "plan and develop public relations for the company," "set pricing, [and] negotiate sales terms," as well as act ensure the production and shipping of products in his role as a liaison between the United States company and the foreign entity's production department. While the initial organizational chart identified a new product development section manager, there is no documentary evidence confirming his employment. Moreover, it is questionable whether the petitioner's part-time finance manager, who the petitioner represented on its organizational chart as handling its taxes, company accounts, salary calculations, accounts payable and receivable, and price assessments, would also be available to perform its investment function. Doubt cast on any aspect of the

petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

The petitioner's additional claim that the beneficiary would "not be handling the actual sales and distribution and shipping of the products" is also undermined by its failure to account for the employment of a manager for the western United States and a manager of new product development, positions that were identified on the original organizational chart but not shown to have been occupied on the filing date. 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)).

Based on the foregoing discussion, the petitioner has not demonstrated the beneficiary's proposed employment at the time of filing in a primarily managerial or executive capacity. Despite the deficient record clarifying the beneficiary's specific managerial or executive job duties, the AAO stresses the petitioner's failure to demonstrate the organizational hierarchy maintained at the time the petition was filed. Accordingly, the appeal will be dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.