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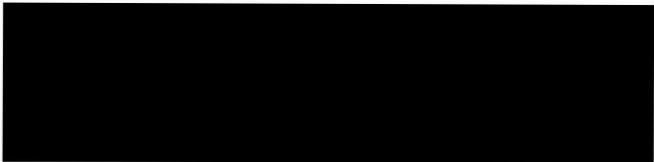
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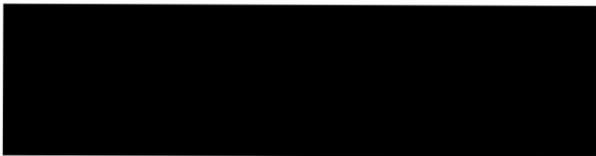
Petitioner:

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John H. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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, a Florida corporation established in 2004, operates a pizza restaurant and deli. The petitioner seeks to employ the beneficiary as its president.

The director denied the petition on October 10, 2007 on three separate and independent grounds. The director determined that the petitioner had not established: (1) that the beneficiary would be employed in a primarily managerial or executive capacity for the United States petitioner; (2) that the beneficiary was employed abroad in a primarily managerial or executive capacity; or (3) that the U.S. company has a qualifying relationship with the beneficiary's previous foreign employer.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded it to the AAO for review. Counsel for the petitioner asserts that additional evidence submitted in support of the appeal is sufficient to establish the petitioner's and beneficiary's eligibility. The petitioner submits a letter and voluminous documentation in support of its claims.

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

- (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

\* \* \*

- (C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

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

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

statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

The first issue in this proceeding is whether the petitioner established that the beneficiary will be employed in a primarily managerial or executive capacity for the United States entity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

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

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as 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 immigrant petition electronically on March 8, 2007. On May 31, 2007, the director issued a request for evidence (RFE) advising the petitioner that it had failed to submit any of the required

supporting evidence. The director instructed the petitioner to submit "evidence that clearly establishes eligibility for the classification sought." The director advised that the petition would be denied if the submitted evidence did not clearly establish eligibility for the classification sought.

The petitioner's response to the RFE was received on June 27, 2007. In a letter dated June 11, 2007, the petitioner stated that the beneficiary's duties as president of the company are as follows:

- Establish goals for the development and growth of the corporation, develop new strategies based on market analysis (30%)
- Negotiate contracts with vendors and service providers (20%)
- Analyze and decide major commercial, financial and administrative issues of the corporation (30%)
- Meet with General Manager to analyze results and overall business activities (20%)

The petitioner provided an organizational chart for the U.S. company which purports to depict the company's structure as of January 2007. The chart identifies the beneficiary as president, [REDACTED] as general manager, [REDACTED] as production supervisor, [REDACTED] as sandwich maker/clerk, [REDACTED] as pizza maker, and two drivers who are identified as subcontractors. The petitioner also included a second organizational chart depicting its anticipated structure "within the next two years." The chart includes a pizza assistant, pasta cook, order dispatcher, and an additional driver. At the time the petition was filed in March 2007, the petitioner stated on Form I-140 that it employed five (5) workers.

The petitioner submitted payroll records for the period between January 1, 2007 and February 15, 2007. The payroll documents confirmed the employment of the individuals named on the organizational chart. However, the records show that all four subordinate employees worked between 16 and 24 hours per week during this period, earning between \$7.00 and \$12.00 per hour.

The director denied the petition on October 10, 2007, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity. In denying the petition, the director noted that the beneficiary and the company's production supervisor appeared to be the only full-time employees of the company, based on the petitioner's Forms W-2 for 2006.<sup>1</sup> The director therefore determined that, given the petitioner's staffing levels, the beneficiary would not primarily perform the claimed managerial duties, but instead would be required to spend a majority of his time on the day-to-day functions of the business.

On appeal, the petitioner asserts that the beneficiary performs primarily managerial and executive duties and does not devote a majority of his time on day-to-day functions. In a letter dated November 5, 2007, the petitioner explains that the beneficiary directs the management of the petitioner, establishes its goals and policies, exercises authority for major decision making, and delegates the day-to-day operations of the

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<sup>1</sup> The AAO notes that the production supervisor was not among the four employees who received a Form W-2, Wage and Tax Statement, from the petitioner in 2006. The employees paid in 2006 were the beneficiary (\$28,500), [REDACTED] (\$4,137), [REDACTED] (\$7,092), and [REDACTED] (\$812).

business to "other executive managerial qualified employees." The petitioner notes that the "primary element" of the beneficiary's duties is managing subordinate executives and managers and coordinating "corporate operations." The petitioner claims to have eight employees as of November 2007 and states that the company is divided into retail and wholesale departments. The petitioner briefly describes the staffing of each department, noting that the wholesale department was launched in 2007. Finally, the petitioner notes that its retail staff's salaries appear to be low because they earn \$3.30 per hour, plus tips.

The petitioner also provides an expanded description of the beneficiary's duties in the United States, as follows:

Products and Distributors: Participation of world fairs, conventions and expos, such as IAAPA, CONDEX, etc. – Due to Corporate Policy, no effort is measured on client contact, due to their benefit that we exist. For this reason it is dedicated in this segment almost 39% of his time per month. This is not counting on international trips, being that these are effected each four months. . . . Percentage of time spent with products and distributors – 39% of month spent.

Clients and Home Corporation: External contacts meetings with companies, client prospecting over video conferencing, marketing research and conversation. Market research based on the products. These visits can be done in the corporation or externally. Generally they occur externally.

Information Update – Daily gathering of world and economic events and its relationship to our market, new upcoming products and upcoming companies – this is done through reading trade periodicals . . . . Percentage of time spent with Client and Home Corporation – 30% of month spent.

Supervision of Internal Operations: Organizing and listening to feedback from dept heads in relation to daily appointments. Information meeting with dept heads, and inquiry on performance, and delays. Verification of Projects, goals revision of deadlines. Informal verification of financial corporate situation. . . . Marketing research is effected on the acquisition of new products to define products, etc. Also responsible for the legal workings along with the corporate attorney to deal with contracts, terms of acquisitions, etc. . . . The rest of the operational duties of are [sic] to oversee the all aspects of the wholesale and retail process. He correlates and supervises that all department heads have each sector functioning to its highest functionality. He is also the one whom does quarterly evaluations on each employee. Implement and control the corporate policy to monitor procedures and objective adjustments to the operational part of the company. It is approximate that 10% of his time in the Corporation is used on the above explanation. Percentage of time spent with products and distributors – 31% of month spent.

In support of the appeal, the petitioner submits an updated organizational chart which depicts a total of 15 employees, including a retail general manager, production supervisor, two production staff, one chef, two

drivers, a wholesale director, a sales manager, a marketing manager, two sales contractors, a marketing contractor, and an advertising contractor. Only five of these staff, including the beneficiary, were depicted on the organizational chart submitted in response to the RFE. The petitioner provides copies of its IRS Forms 941, Employer's Quarterly Federal Tax Return for the first two quarters of 2007. In the first quarter, the petitioner reported having two employees during the pay period that included March 12, 2007. The petitioner reported five employees during the second and third quarters of 2007. The petitioner also submits a payroll summary for the period from January 1, 2007 through November 2, 2007.

Upon review of this documentation, the AAO notes that [REDACTED] previously described as the petitioner's General Manager, and currently identified as the retail general manager, worked 210 hours in 2007 and earned only \$2,520. The evidence suggests that he likely did not work for the company after March 2007. Likewise, employees [REDACTED] a and [REDACTED] each worked only 170 hours during 2007, and also appear to have left the company sometime around the time the petition was filed, although the petitioner claimed to employ them as of June 2007. None of the other employees on the petitioner's new organizational chart, including the entire wholesale department, were claimed to be employed at the time the petition was filed, nor did the petitioner identify these employees when responding to the RFE. The petitioner has not documented any payments to the claimed contract employees in the retail or wholesale departments.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary will be employed in the United States 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).

Prior to the adjudication of the petition, the petitioner provided only a general outline of the beneficiary's responsibilities that failed to specify the actual managerial or executive duties he would perform on a day-to-day basis. For example, the petitioner initially indicated that the beneficiary would devote 30 percent of his time to establishing goals and developing strategies based on market analysis, and an additional 30 percent of his time to analyzing and deciding "major commercial, financial and administrative issues." The petitioner did not describe the beneficiary's goals, indicate who would actually perform the market analysis for the company, or define what would constitute a "major" commercial, financial or administrative issue within the context of the petitioner's retail pizza business. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner also indicated that the beneficiary devotes 20 percent of his time to negotiating contracts with vendors and service providers. Without additional explanation regarding the nature of these responsibilities and the specific duties performed, the AAO cannot determine that these tasks would amount to anything more than purchasing the restaurant's food and supplies, duties that could not be considered managerial in nature. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual

duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

The AAO acknowledges that the petitioner has submitted a lengthier description of the beneficiary's duties on appeal in an attempt to establish that he will be employed in a primarily managerial or executive capacity. The AAO notes, however, that rather than expanding upon the previously submitted description, the petitioner has provided a completely different breakdown of the beneficiary's duties that bears almost no resemblance to the earlier description submitted. For example, the petitioner now indicates that the beneficiary devotes 39 percent of his time to participating in "world fairs, conventions and expos," 30 percent of his time to market research and information gathering, and 31 percent of his time supervising "internal operations." The new job description also appears to reflect the beneficiary's duties within the petitioner's current operating structure, as there are references made to the company's "wholesale operations." A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U. S. Citizenship and Immigration Services (USCIS) requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Accordingly, the AAO will confine its analysis of the beneficiary's job duties to the description submitted in response to the director's RFE. As discussed, that description was insufficient to establish that the beneficiary's duties will be primarily managerial or executive in nature.

The definitions of executive and managerial capacity each have two separate parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Here, while the AAO does not doubt that the beneficiary would exercise the appropriate level of authority over the company as its president, the evidence of record does not establish that he would primarily perform managerial or executive duties.

When examining the managerial or executive capacity of a beneficiary, USCIS reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

Upon review of the record in this matter and as discussed further below, the petitioner has not established that the beneficiary's duties and those of his claimed subordinates elevate the beneficiary's position to a primarily managerial or executive position. The petitioner's staffing at the time of filing was claimed to include the

beneficiary as president, a general manager, a production supervisor, one sandwich maker/clerk and one pizza maker. The petitioner claims that the "non-managerial staff" earn only \$3.30 per hour, plus tips, thus their salaries appear lower than expected for full-time employees. In fact, the petitioner's payroll records clearly show that its non-salaried staff earned between \$7.00 and \$12.00, and their salaries are low because they work only 16-24 hours per week. Again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Furthermore, as noted above, three of the staff members depicted on the petitioner's original organizational chart appear to have ceased employment with the company during the month in which the petition was filed. This conclusion is based on the petitioner's Form 941 for the first quarter of 2007, in which the petitioner reported having only two employees as of March 12, 2007, and based on the minimal number of hours worked by the general manager, the pizza maker, and the sandwich maker/clerk during 2007. As of March 8, 2007, the date on which the petition was filed, it appears that the beneficiary and the production supervisor may have been the only employees working in the petitioner's restaurant. At most, the petitioner employed the beneficiary as president and four part-time subordinates. Although two of these employees have been given managerial or supervisory job titles, the petitioner has failed to establish that the beneficiary's subordinates are supervisors, managers, or professionals. Instead, the record indicates that the beneficiary's subordinates perform the actual day-to-day tasks of operating the pizza restaurant and deli. The petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial under the statutory definition.

Pursuant to section 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C), if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, USCIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9<sup>th</sup> Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). It is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

At the time of filing, the petitioner was a three-year-old company engaged in operating a retail pizza restaurant and deli that also offers delivery and catering services. The petitioner claimed to employ five employees at the time of filing, but, based on the payroll documentation provided, may have employed only the beneficiary as president and a part-time production supervisor. At most, the petitioner employed the beneficiary, the part-time production supervisor, one part-time pizza maker, one part-time sandwich maker

and a part-time general manager. The petitioner has claimed to employ drivers on a contract basis, but has failed to provide any documentary evidence supporting this claim. 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)). Even if all four subordinates were working at the time the petition was filed, it is evident that three of them left the company soon thereafter. The petitioner reasonably requires someone to make pizzas and sandwiches, order inventory and supplies, operate a cash register, clean and maintain the restaurant, deliver orders to customers, market and advertise the restaurant, and perform the day-to-day administrative and financial tasks associated with operating any business. The petitioner has not established that a subordinate staff composed of one to four part-time employees could reasonably relieve the beneficiary from performing these non-qualifying tasks, such that he could primarily focus on performing managerial or executive duties.

The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. *See* sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. A review of the totality of the record fails to establish that the petitioner has a reasonable need for the beneficiary to perform primarily managerial or executive duties at its current stage of development.

The petitioner's arguments on appeal are primarily based upon an alleged expansion in the petitioner's business to include wholesale operations. While the petitioner appears to have added two to three salaried positions to its staff as of November 2007, 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. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, the petitioner has not documented that it employed more than two to three employees to operate its retail operations as of November 2007, and thus has not established how the beneficiary would be relieved from performing non-qualifying duties associated with operating its restaurant.

Based on the foregoing discussion, the petitioner has not presented sufficient evidence to establish that the beneficiary's duties for the petitioner will be in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

The next issue in this proceeding is whether the petitioner established that the beneficiary was employed by the foreign entity in a managerial or executive capacity for at least one year within the three years preceding his entry to the United States as a nonimmigrant. *See* 8 C.F.R. § 204.5(j)(3)(i)(B).

As noted above, the petitioner did not submit any supporting evidence in support of its electronically-filed petition, and was later requested to provide all required supporting evidence to establish the beneficiary's eligibility for the requested visa classification.

While the petitioner responded to the director's RFE, the petitioner did not provide any evidence with respect to the beneficiary's employment capacity with the foreign entity. Consequently, the director denied the petition, in part, based on the petitioner's failure to satisfy this element of eligibility.

On appeal, the petitioner submits a letter dated November 1, 2007 from the foreign entity's accountant, who indicates that the beneficiary served in the position of "general manager and partner director" for the Brazilian company, [REDACTED] from September 15, 1995 until January 20, 2006. The beneficiary's duties are described as follows:

[The beneficiary] performed . . . the [f]unctions of complete [a]dministration of the [c]orporation, elaborating all the [m]anagement [m]atters, [c]onscription, [m]arket [a]nalysis, [m]arketing and [f]inancial strategies, such as market and [f]inancial [a]nalyzation [sic], plans of action, representation of the company with government departments, purchases with international suppliers, and overseeing other executives and departments heads with their general management attributions of the company's day-to-day functions.

The foreign entity also provided pay stubs for the beneficiary for the period from January 1, 2005 until December 31, 2005. The petitioner explains in its letter dated November 5, 2007 that the foreign entity is involved in "international visual communications and international business development," noting that the company has expanded into the business of food distribution. The petitioner indicates that the foreign entity has eight employees.

The petitioner provides an organizational chart for the foreign entity which identifies a president who supervises a "tech manager" and an administrative manager. The chart shows that the tech manager supervises an advisor, a stage designer, a project designer, and two subordinate staff, while the administrative manager supervises an accountant, two administrative assistants, and outside services consisting of financial, legal, and marketing service providers. The chart does not identify the position of "general manager" that was previously held by the beneficiary and therefore appears to depict the company's current staffing levels rather than the staffing levels that existed prior to the beneficiary's transfer to the United States.

The AAO notes that the petitioner's response to the RFE did include limited payroll documentation for the foreign entity, which was limited to pay statements for the month of October 2006. The documentation shows payments to one "manager," [REDACTED], and three employees identified as administrative assistants - [REDACTED] and [REDACTED]. None of these employees are included on the organizational chart submitted by the petitioner on appeal.

Upon review, the petitioner has not submitted sufficient evidence to establish that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity prior to his transfer to the United States.

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 brief position description provided on appeal is vague and non-specific and provides little insight into what the beneficiary actually did on a day-

to-day basis as general manager of the foreign entity. For example, the foreign entity's accountant indicates that the beneficiary was responsible for "elaborating" management matters, market analysis and marketing and financial strategies, representing the company with "government departments," and overseeing "other executives and departments heads" in the management of the company's day-to-day functions. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the AAO must determine based on a totality of the record whether the description of the beneficiary's duties represents a credible perspective of the beneficiary's role within the foreign organization. While the beneficiary's job description indicates that he managed the company through the oversight of "other executives and department heads," the record is devoid of any evidence of the organizational structure that existed within the foreign company during the three years preceding the beneficiary's admission to the United States as a nonimmigrant in August 2005. Thus, while the petitioner indicates that the foreign entity currently employs 8-11 workers, this evidence is not relevant to an analysis of the beneficiary's employment capacity during the 2002 to 2005 period. 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)).

An individual will not be deemed an executive or manager under the statute simply because they have a managerial title or because they "direct" or "manage" the enterprise as a partial owner. As the petitioner's evidence related to the beneficiary's employment with the foreign entity is limited to the vague job description outlined above, the petitioner has not demonstrated that the beneficiary was employed in a primarily managerial or executive capacity with the foreign entity. For this additional reason, the appeal will be dismissed.

The third issue and final issue in this matter is whether the petitioner established that the U.S. company has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. 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:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

*Multinational* means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

As noted above, the petitioner submitted initial evidence in response to the RFE issued on May 31, 2007. In a letter dated June 14, 2007, counsel for the petitioner stated that the beneficiary is the sole investor in the U.S. company, and noted that the beneficiary had purchased shares from the company's other, un-named, partner in May 2006. The petitioner also stated in its letter dated June 11, 2007 that, as of May 22, 2006, the beneficiary became the sole owner of the company with "full control of both the foreign and American corporations." In support of this claim, the petitioner submitted the following:

- Articles of Amendment to the Articles of Incorporation for the petitioning company, dated May 17, 2006, amending Article IX to indicate that the beneficiary holds the offices of president, treasurer and secretary.
- Resignation of Director/Officer indicating that [REDACTED] President and Treasurer, and [REDACTED] Vice President and Secretary, resigned their offices on May 17, 2006.
- Corporate Resolution dated May 17, 2006, which references the sale of the petitioning corporation and the resignation of [REDACTED] and [REDACTED]. The resolution refers to an attached Exhibit A containing the Articles of Incorporation and Exhibit B that includes a complete list of the current shareholders and directors, but these exhibits have not been provided.
- Copy of the petitioner's stock certificate #3 issuing 510 shares of stock to the beneficiary on September 6, 2005. The certificate indicates on its face that the company is authorized to issue 1,000 shares with a par value of \$100 per share.
- A partial copy of the U.S. company's 2005 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, which indicates at item G that the company had two (2) shareholders at the end of the tax year.

The petitioner did not submit evidence to establish the ownership of the foreign entity, [REDACTED], although it did provide evidence to show that the entity continues to do business in Brazil.

The director denied the petition, concluding that the petitioner failed to establish that there is a qualifying relationship between the U.S. company and the foreign employer. In denying the petition, the director acknowledged the petitioner's response to the RFE, but found that none of the submitted documentation established the ownership and control of a qualifying foreign entity.

In its letter dated November 5, 2007, the petitioner states that the foreign entity is owned by the beneficiary and his spouse, Patricia Kuzuhara, with each owning 50 percent of the shares in the company. The petitioner states that the foreign entity owns 51 percent of the shares in the U.S. company, while the beneficiary owns a 49 percent interest. In support of these claims, the petitioner submits the following:

- A copy of stock certificate #4 issuing 510 shares of the U.S. company's stock to Office on January 1, 2006.
- A copy of stock certificate #6 issuing 490 shares of the U.S. company's stock to the beneficiary on January 1, 2006.
- Social Contract for the foreign entity indicating that the beneficiary is a 50 percent shareholder in the company.

Upon review, the petitioner has not submitted sufficient evidence to establish that the U.S. and foreign entities have a qualifying relationship.

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.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc., supra*. Without full disclosure of all relevant documents, USCIS is unable to determine the elements of ownership and control.

The record contains inconsistent statements and incomplete documentation regarding the ownership of the petitioning company. As noted above, when responding to the RFE in June 2007, the petitioner stated that the beneficiary is the sole owner of the U.S. company. At that time, the petitioner submitted a stock certificate #3 issuing 51 percent of the shares to the beneficiary in September 2005. On appeal, the petitioner states that the

beneficiary owns 49 percent of the U.S. company while the foreign entity owns 51 percent of the shares. The petitioner provided no explanation as to why it previously indicated that the beneficiary was the sole owner of the company. In support of this new claim the petitioner submits stock certificates #4 and #6, which were, ostensibly, both issued in January 2006 and signed by the beneficiary as president and secretary of the corporation. The record also contains evidence that the beneficiary did not assume the offices of president and secretary until May 2006, four months after the issuance of these stock certificates. 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). 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. *Id.* at 591.

The record does not contain the company's original articles of incorporation, copies of all issued stock certificates, copies of any canceled stock certificates, the stock ledger, or other credible documentation related to the transfer, purchase and ownership of shares. Based on the discrepancies and omissions, the petitioner has not credibly substantiated its initial claim that the foreign and U.S. entities have an affiliate relationship, or its new claim that there is a parent-subsidiary relationship between the two companies. For this additional reason, the appeal will be dismissed.

The AAO acknowledges that USCIS has previously approved two L-1A petitions filed by the petitioner on behalf of the instant beneficiary. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous nonimmigrant petition approvals by denying the instant petition.

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.