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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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FILE:

[REDACTED]  
LIN 08 009 51962

OFFICE: NEBRASKA SERVICE CENTER

Date: NOV 30 2009

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:

[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.

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).

  
Perry Rhew

6 Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a limited liability company organized in the State of Connecticut. It seeks to employ the beneficiary as its production manager. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition based on four independent grounds of ineligibility: 1) the petitioner failed to establish the ability to pay the beneficiary's proffered wage; 2) the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer; 3) the petitioner failed to establish that the beneficiary was employed abroad in a qualifying managerial or executive capacity; and 4) the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity.

On appeal, counsel disputes all four grounds for denial and provides a brief statement as well as a statement from the petitioner's chief financial and accounting advisor 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 and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who are coming to the United States to work for the same entity, or its affiliate or subsidiary.

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

The first issue in this proceeding is whether the petitioner established its ability to pay the beneficiary's proffered wage at the time of filing. The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

At Part 6, Item 9 of the Form I-140, where the petitioner was asked to provide the beneficiary's weekly wages, the petitioner indicated that the beneficiary would be compensated \$4,000 per week, which is approximately \$208,000 annually. The record was supplemented with the petitioner's 2005 tax return and the beneficiary's 2006 IRS Form W-2 wage and tax statement in support of the petition. As this documentation was insufficient to establish the petitioner's ability to pay the beneficiary's wage as of August 13, 2007, the priority date, the director issued a request for additional evidence (RFE) dated August 8, 2008, instructing the petitioner to provide documentation, such as the petitioner's latest annual report, tax return, or audited financial statement establishing its ability to pay the beneficiary's proffered wage from the priority date and continuing forward. The petitioner was also asked to provide the beneficiary's most recent pay voucher and her 2007 Form W-2.

The petitioner responded, submitting the requested W-2 statement and the beneficiary's personal tax return for 2007, both of which showed that the beneficiary was compensated \$114,405 the year the petition was filed. The petitioner also provided its 2007 tax return as well as the beneficiary's pay stub for the two-week time period from August 1-August 15, 2008, which showed that the beneficiary's gross pay was \$4,640.65, which translates to approximately \$120,656 on an annual basis.

In a decision dated September 22, 2008 the director denied the petition concluding that the submitted documentation failed to establish that the beneficiary had the ability to pay the beneficiary's proffered wage of \$208,000 at the time of and continuing beyond the filing of the petition.

On appeal, counsel asserts that the director's decision was in error, claiming that the director doubled the beneficiary's salary and failed to consider the compensation amounts shown in the beneficiary's W-2 statement and her personal tax return. Additionally, the petitioner provided a letter dated October 14, 2008 from its chief financial and accounting advisor, who referred to the net income amount appears on Schedule M-1 of the petitioner's 2007 tax return as well as the total amount of officer compensation on the same return. It is noted, however, that neither counsel nor the petitioner's financial advisor acknowledged the considerable difference between the wage the beneficiary was actually compensated and the amount that appears in Part 6, Item 9 of the Form I-140, which represents the beneficiary's proffered wage.

Despite the beneficiary's six-figure salary, the above regulations impose upon the petitioner the burden of providing evidence to establish that at the time of filing the petition, it was able to pay the beneficiary the wage indicated in the Form I-140. While the AAO further notes that the petitioner is under no obligation to actually pay the proffered wage upon filing the petition, the petitioner must nevertheless establish that it had the ability to pay that wage at the time of filing such that it would commence paying the beneficiary that wage upon approval of the petition. In the present matter, the petitioner has failed to meet its burden.

As discussed above, in determining the petitioner's ability to pay the proffered wage, U.S. Citizenship and Immigration Services (USCIS) will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, while the petitioner clearly employed the beneficiary at the time of filing, the beneficiary was compensated a salary that was below the proffered wage. Therefore, the beneficiary's salary at the time of filing cannot be considered *prima facie* evidence of the petitioner's ability to pay the proffered wage.

As an alternate means of determining the petitioner's ability to pay, the AAO will next examine the petitioner's net income figure as reflected on the federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). In *K.C.P. Food Co., Inc. v. Sava*, the court held the Immigration and Naturalization Service (now USCIS) had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than on the petitioner's gross income. 623 F. Supp. at 1084. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. Finally, there is no precedent that would allow the petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. at 537; *see also Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054.

As the petition's priority date falls on August 13, 2007, the AAO must examine the petitioner's 2007 tax return. The petitioner's net taxable income in 2007 amounted to \$27,161. Even when that net income figure is combined with the beneficiary's 2007 gross income of \$114,405, the sum of those two amounts is still below the proffered wage of \$208,000.

Finally, if the petitioner does not have sufficient net income to pay the proffered salary, the AAO will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. Using the formula discussed herein, the petitioner's year-end current assets as shown in the 2007 Schedule L amounted to \$630,087 while its year-end current liabilities for the same tax year amounted to \$849,550.

Accordingly, in light of the petitioner's Form I-140 and the above analysis of the submitted documentation, the AAO cannot conclude that the petitioner has established its ability to pay the beneficiary's proffered wage. On the basis of this initial conclusion, this petition cannot be approved.

Next the AAO will determine whether the petitioner has established that a qualifying relationship exists between the beneficiary's foreign and proposed U.S. employers.

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

*Affiliate* means:

- (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
- (B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

\* \* \*

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

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

In the present matter, the petitioner has submitted four share certificates all dated January 1, 2000. Certificate nos. 3 and 4 show that [REDACTED] and [REDACTED] each owns 49 shares. Certificate nos. 5 and 6 show that [REDACTED] and [REDACTED] each owns 1 share. The petitioner did not provide certificates one and two, thereby precluding USCIS from being able to determine whether additional shares were issued aside from the 100 shares represented in certificates three through six. The record also contains a shareholder list dated August 23, 2004, naming the above four individuals as the petitioner's four shareholders. Contradicting this evidence, the petitioner's 2007 tax return at page 26 contains the shareholder summary, which indicates that certificate no. 1 issued 49 shares to [REDACTED] giving him 49% ownership interest of the petitioner; certificate no. 2 issued 1 share to [REDACTED] giving her 1% ownership interest of the petitioner; and certificate no. 3 issued 50 shares to [REDACTED] giving him 50% ownership interest in the petitioner.

It is noted that the information contained in the 2007 tax return is inconsistent with the shareholder list and share certificates discussed above. 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).

With regard to the foreign entity's ownership, the record contains the director's report and accounts for the 2007 year-end. Although the document indicates that the foreign entity issued 100 out of 10,000 authorized shares, the record was not supplemented with documentation identifying the individual(s) to whom the shares were issued.

On appeal, counsel generally disputes the director's conclusion with regard to the issue of a qualifying relationship. However, he fails to present an argument explaining which documents on record specifically establish that a qualifying relationship exists. Nevertheless, the record has been supplemented with additional documentation, including the foreign entity's articles of association, which includes a list of the shareholders

and number of shares owned.<sup>1</sup> The document indicates that [REDACTED] and [REDACTED] each owns 49 shares of the foreign entity and that [REDACTED] owns the remaining two shares. The petitioner also provided an untitled document executed on October 30, 2000 naming [REDACTED] as the two sole owners of the petitioner. The document was executed for the purpose of having each shareholder relinquish one percent of his total ownership interest and disburse that one percent to each of [REDACTED] and [REDACTED] thereby leaving each of the original owners with 49% ownership interest. It is noted that the petitioner did not provide the relinquished certificates nos. one and two showing [REDACTED] and [REDACTED] with their respective original ownership interests. It is further noted that the petitioner still has not resolved the inconsistency between the ownership scheme described in the stock certificates and the ownership scheme depicted in the petitioner's 2007 tax return. *See id.*

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.

In the present matter, in light of the unresolved inconsistency described above with regard to the ownership of the petitioning entity, the AAO cannot conclude that the U.S. and foreign entities are commonly owned and controlled.

Additionally, although the petitioner seems to be implying that it has an affiliate relationship with the beneficiary's foreign employer, its interpretation of the definition of affiliate at 8 C.F.R. § 204.5(j)(2) is erroneous. In applying part B of the definition of affiliate to immigrant petitions, the AAO has historically required that the *same* group of individuals own and control approximately the same share or proportion of each entity. 8 C.F.R. § 204.5(j)(2). As clearly indicated in the regulation, while it is not required that each individual own the exact same percentage of each entity, it is required that the group of individuals who own each entity, albeit directly or indirectly, be the same. *Id.*; *see also* 8 C.F.R. § 204.5(j)(2) (defining "subsidiary"). It is important the same group of individuals own and control both entities to ensure that both entities are part of the same organization as intended by Congress. Otherwise, USCIS faces a situation in which diversely-held business associations would meet the requirements of a qualifying affiliate relationship, through means "such as ownership of a small amount of stock in another company without control, exchange of products or services, and membership of the directors of one company on another company's board of directors." 52 Fed. Reg. 5738, 5742 (Feb. 26, 1987).

When the definition of affiliate was added to the Code of Federal Regulations in 1987 it read, "[a]ffiliate' means one of two subsidiaries both of which are owned and controlled by the same parent or individual or 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." 52 Fed. Reg. at 5752. Absent majority and thus "de jure" control of the U.S. and foreign entities by a single person, ownership of both entities by the same group of individuals without any "de jure" or "de facto" majority control was already

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<sup>1</sup> See p. 6, Memorandum and Articles of Association of Bookworks (Hong Kong) Company Limited.

considered by USCIS to be a lenient standard. See Memorandum, Richard E. Norton, Assoc. Commissioner, Immigration and Naturalization Service (INS), *Implementation of Final L Regulations*, 1 (Aug. 20, 1987) (copy incorporated into record of proceeding). This less stringent standard was permitted, however, in an apparent attempt to balance business realities with ensuring the intent of Congress as well as the integrity of the multinational executive and managerial immigration provisions. See 56 Fed. Reg. 61111, 61114 (Dec. 2, 1991).

In light of the above, it must be noted that the argument of "de facto" control is only relevant in determining whether an entity is a subsidiary of a parent corporation. More specifically, only the definition of "subsidiary" considers less than half ownership of an entity combined with "in fact" or de facto control of the organization to be a qualifying entity for purposes of an employment-based immigrant petition for a multinational executive or manager. See 8 C.F.R. § 204.5(j)(2). However, the definition of "subsidiary" only pertains to "a firm, corporation, or other legal entity of which a *parent* owns, directly or indirectly, . . . less than half of the entity, but in fact controls the entity." 8 C.F.R. § 204.5(j)(2) (emphasis added). While a parent or parent corporation is considered under the law to be an individual and a person, an individual human being or group of human beings are not considered to be a parent corporation. See generally, *Black's Law Dictionary* 344, 777, 1137, 1162 (7th Ed. 1999) (defining the terms "parent corporation," "individual," "person," and "parent"). As such, only a parent corporation, and not a human being or group of human beings, is permitted to own less than half of an entity, in fact control the entity, and qualify as a "subsidiary" under the regulations. In this matter, as the petitioner and the foreign entity claim to be owned by a group of human beings and not by a common parent corporation, the definition of subsidiary is not applicable, and the implied claim of "de facto" control is irrelevant.

Accordingly, as the definition of subsidiary is inapplicable to the instant matter, the only remaining means apparently available to the petitioner under which a qualifying relationship could be claimed is that of an affiliate.<sup>2</sup> 8 C.F.R. § 204.5(j)(2). It is noted, again, that only part B of the definition of affiliate provides for a situation in which a group of individuals collectively owns and controls two legal entities. 8 C.F.R. § 204.5(j)(2) (defining the term "Affiliate"). As discussed earlier, the record is unclear as to the number of individuals who own the petitioning entity. As such, it cannot be found that the *same* group of individuals own both corporations as required under part B of the definition of affiliate. See 8 C.F.R. § 204.5(j)(2). Consequently, the petitioner has failed to meet its burden of proof to establish that a qualifying relationship exists between the U.S. and foreign entities.

The two remaining issues in this proceeding call for an analysis of the beneficiary's job duties. Specifically, the AAO will examine the record to determine whether the beneficiary was employed abroad and whether he would be employed in the United States in a qualifying managerial or executive capacity.

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

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<sup>2</sup> It is noted that the petitioner fails to demonstrate that there is majority ownership and control, directly or indirectly, of both companies by any one person as required under part A of the definition of affiliate. See 8 C.F.R. § 204.5(j)(2) (defining the term affiliate). In addition, as the United States entity is not a partnership organized in the United States to provide accounting services, it is also concluded that the petitioner does not qualify under part C of the definition of affiliate. *Id.*

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

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

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

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

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

With regard to the beneficiary's foreign employment, the record contains an undated offer of employment, which includes the following list of job responsibilities assigned to the beneficiary in her position of production manager:

- Assist [the] Production director to manage all production progress on all orders and shipments.
- Assist [the] production Director to prepare preliminary costs and prototypes during product development stages.

- Act as liaison between the company and our printers and suppliers.
- Follow up orders and communicate with printers and suppliers to ensure on-time production and shipment.
- Quality check during [the] production progress.
- Source new printers and components suppliers.
- Gather new product information during book fairs and toy fairs in Hong Kong.

In a supplemental seven-page job description, the petitioner indicated that the beneficiary's job was comprised of three key components—coordination, documentation for product realization, and documentation for office administration. The first component—coordination—required that the beneficiary communicate with the following parties: 1) various management and design staff within the U.S. office; 2) SoftPlay; 3) [REDACTED]; 4) printers/suppliers; 5) the test lab; 6) the inspection house; 7) the forwarder; 8) the accountant in Hong Kong; 9) technical support in Hong Kong; 10) the assistant production manager/production coordinator; 11) the DTP assistant at the Hong Kong office; and 12) the product development manager. It is noted that the petitioner did not explain what "SoftPlay" is or its role within the foreign entity's organizational hierarchy. Similarly, the petitioner provided no information as to [REDACTED] significance or her role within the foreign entity's organizational hierarchy.

The second component of the beneficiary's employment abroad—documentation for product realization—involved the following job duties: 1) creating a master file for the record with the necessary order information; 2) allocating "BCF" orders for processing;<sup>3</sup> 3) assisting the assistant manager and production coordinator in the creation of a job order checklist to help monitor production status; 4) reviewing and approving orders; 5) reviewing all production materials prior to submitting them to be approved by the director in the United States; 6) conducting a press check prior to production; 7) preparing testing forms and testing reports; 8) ensuring that all advanced copies are properly labeled prior to shelving; 9) reviewing invoice for accuracy; and 10) filing the master folder and updating the master file.

The third component—documentation for office administration—involved reviewing leave applications and petty cash claims submitted by the beneficiary's subordinates, reviewing monthly expenses and forwarding the checks for signature by the senior production manager in the United States, annual review of the staff insurance policy, and conducting annual performance reviews of the subordinate staff.

In reviewing the above job description, it appears that all three of the above described components required the beneficiary to actually perform many of the foreign entity's daily operational tasks and oversee employees who have not been established as being supervisory, professional, or managerial personnel. *See* section 101(a)(44)(A)(ii) of the Act. It is noted that 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

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<sup>3</sup> It is noted that the petitioner did not explain what "BCF" represents. However, based on the petitioner's use of this term it appears that "BCF" is an identifier that is used to classify and organize production orders.

enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

In the present matter, the director properly concluded that the petitioner failed to establish that the primary portion of the beneficiary's time abroad was spent performing job duties within a qualifying managerial or executive capacity. While counsel generally disputes this conclusion on appeal, he provides no argument to support the assertion that the director's decision was erroneous and therefore fails to overcome this basis for denial.

With regard to the beneficiary's proposed employment with the U.S. entity, the petitioner stated at Part 6, Item 3, that the beneficiary would manage the production department, which would involve communication with the head offices and suppliers. In response to the RFE, the petitioner provided a letter dated September 5, 2008 from the company director, who stated that the beneficiary's U.S. employment would involve supervising personnel working out of the Hong Kong office. Additionally, a supplemental job description indicated that the beneficiary would report directly to the U.S. entity's director and maintain hiring and firing authority over employees in Hong Kong as well as recommend similar actions with regard to U.S. employees. The beneficiary would also supervise the production manager, assistant production manager, and production coordinator employed in Hong Kong and attend the international book fair with the company director. The beneficiary's employment would focus on five key components—new development project; sales and marketing; pinpointing and resolving problems regarding project development, production, and pricing; the United Kingdom sales office; and the Hong Kong office.

The first component—new development project—would entail assisting and advising the new development manager, preparing final costs on new projects and prepare the orders, and conducting annual reviews of the Hong Kong office employees to determine salary increases.

The second component—sales and marketing—would entail providing updated cost information; making requests for samples; assisting the sales manager by providing technical advice; preparing pricing information for the book fair; reporting on any production problems; contact the sales manager for order confirmation; and preparing the necessary information to create a job folder.

The third component—trouble shooting regarding development, production, and pricing—would require similar oversight as with the second component. In other words, the beneficiary would follow a project's progress leading up to presentation. She would work out the costs, follow up with her superior with final specification information, and collect the final price quote, schedule and supplier details with the assistance of the Hong Kong office. Lastly, the beneficiary would attend the book fair to assist with the presentation, meeting with the customer, and pricing.

The fourth component—maintaining contact with the U.K. sales office—would require that the beneficiary communicate with the U.K. office to prepare information regarding pricing, production, and scheduling as well as information in preparation for the book fair.

The fifth and final component—the Hong Kong office—would also require that the beneficiary communicate with the personnel in Hong Kong to oversee the production process and help resolve problems, negotiate with suppliers and printers, and generally oversee day-to-day operations to make sure that the production manager keeps track of confirmed and reprint orders for the final printing as well as the delivery schedule.

Similar to the job description provided with regard to the beneficiary's employment abroad, the above five components would require the beneficiary to perform numerous job duties that would be deemed as being outside of the managerial or executive capacity. More specifically, the beneficiary appears to be directly involved with the petitioner's daily operation from her role in the book fair to her continued communication with the suppliers and printers. As previously stated, 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 International*, 19 I&N Dec. at 604. Although some non-qualifying tasks are permitted, any petitioner that plans to employ a beneficiary in a managerial or executive capacity must establish that the non-qualifying tasks are only incidental to the beneficiary's job and do not comprise the primary portion of the beneficiary's time. In the present matter, the petitioner has not provided sufficient evidence to establish that the operational tasks are merely incidental. Moreover, any time spent supervising, directing, or overseeing the work of employees outside of the U.S. entity cannot be considered as being a qualifying managerial or executive duty, as such supervision would not be within the scope of duties being performed directly for the petitioning entity, but rather for a separate entity, regardless of that entity's relationship to the petitioner.

Accordingly, in light of the above analysis, the AAO cannot conclude that the beneficiary was employed abroad or that she would be employed in the United States in a qualifying managerial or executive capacity.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.