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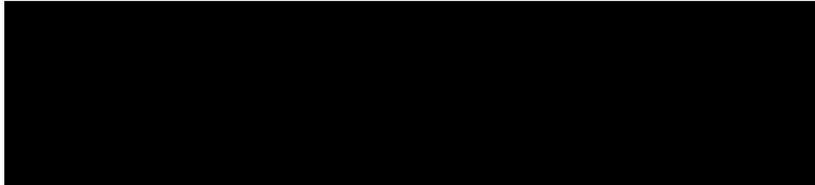
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

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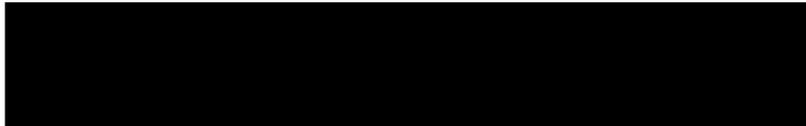
**APR 06 2010**

EAC 04 030 51655

IN RE:

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, initially approved the employment-based immigrant visa petition, and ultimately revoked the approval of the petition following the issuance of a notice of intent to revoke. 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 Pennsylvania limited liability company, states that it is engaged in television production and broadcasting. The petitioner claims to be the U.S. subsidiary of [REDACTED] a Turkish company engaged in television broadcasting that employed the beneficiary overseas. The petitioner seeks to employ the beneficiary as its chief executive officer.

The director approved the employment-based immigrant petition on March 16, 2004. Subsequently, based on a response from the beneficiary in relation to his Form I-485, Application to Register Permanent Residence or Adjust Status, U.S. Citizenship and Immigration Services (USCIS) found it did not appear that the beneficiary had been employed in the capacity described in the petition. On February 27, 2007, the director issued a Notice of Intent to Revoke the approval of the petition (NOIR) on the grounds that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. Upon receiving no response from the petitioner, the director reissued the NOIR on June 13, 2007.

After reviewing the petitioner's response to the second NOIR, the director revoked the approval of the petition on April 2, 2008. The director found that the petitioner failed to provide evidence that the petitioner employs any staff other than the beneficiary. The director concluded that, in the absence of other personnel, it is likely that the beneficiary has been and will be primarily performing non-qualifying duties in his position in the United States.

On appeal, counsel for the petitioner asserts that the director erred in determining that the beneficiary's duties did not meet "managerial standard" because the company did not employ other staff. Counsel contends that the beneficiary qualifies as a function manager. Counsel further asserts that the beneficiary does supervise other employees. Counsel submits additional evidence in support of the appeal.

## **I. The Law**

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.

Following approval of an immigrant or nonimmigrant petition, the director may revoke approval of the petition in accordance with the statute and regulations. Section 205 of the Act, 8 U.S.C. § 1155 (2005), states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition."

Regarding "good and sufficient cause" and the revocation of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals (BIA) has stated:

*In Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

As a preliminary point, the AAO stresses that, in this proceeding, the petitioner must establish that the petitioner and beneficiary were eligible for the benefit sought at the time the instant petition was

filed on November 10, 2003. 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). Further, federal regulations affirmatively require an alien to establish eligibility for an immigrant visa at the time an application for adjustment of status is filed or when the visa is issued by a United States consulate. 8 C.F.R. § 245.1(a), 22 C.F.R. § 42.41. The petitioner bears the ultimate burden of establishing eligibility for the benefit sought, and that burden is not discharged until the immigrant visa is issued. *Tongatapu Woodcraft of Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984).

The sole issue addressed in the revocation decision is whether the petitioner established that 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.

## II. Facts

The immigrant visa petition was filed on November 10, 2003. The petitioner stated on Form I-140 that the beneficiary would serve as chief executive officer of the U.S. company, which claimed to employ eight persons. In a letter dated September 20, 2003, the petitioner described the beneficiary's duties as follows:

- Direct day-to-day operations of all units of our business;
- Direct the performance of two senior managers;
- Execute contracts on behalf of the company;
- Develop large scale, strategic engagements with new and existing clients;
- Formulate and supervise implementation of strategic plans in order to ensure the achievement of business development and financial goals;
- Direct all of the financial and cost accounting aspects of the company operations;
- Negotiate lines of credits with banks and private lenders;
- Assess, design, and implement changes in corporate strategies on the basis of reports provided by managers;
- Oversee the development of daily broadcast schedules;
- Oversee marketing and placing STV products to cable television operators who broadcast programming to targeted consumers;
- Oversee development and approve financial proposals and budgets for program development, for production of program content, for marketing and placement to cable television operators, and for promotions to targeted viewing audiences;
- Direct work of outside professionals, such as attorneys, auditors, and certified public accountants.

The petitioner stated that two senior managers -- the deputy director and the senior producer -- report directly to the beneficiary. In addition, the petitioner reported that other employees include a programming director, a film director, a sale/purchases manager, and an administrative assistant. The petitioner described the job responsibilities of these employees as follow:

**Deputy Director:** Oversees the performance of Sales/Purchase Manager and Administrative Assistant. Organizes marketing campaigns to promote STV products and services. Selects target audiences that are most likely to view STV. Hires advertising agencies. Prepares purchase budgets for Executive Director's approval. Oversees office preparation.

Oversees the performance of Programming Director and Film Director. Oversees the development of content concepts and supervises adaptation of recorded programs to the needs of target audiences. Supervises acquisition and production of content programming. Approves scripts and prepares production budgets for Executive Director's approval. Assures compliance with the shooting schedule.

**Programming Director:** Primary facilitator for producers. First point of contact with potential access TV producers. Provides orientation on rules, certification, and necessary agreements, schedules initial training class, etc. Designs, implements and teaches basic training classes. Responsible for maintenance of equipment, lighting, etc. Assists with studio productions

**Film Director:** Writes scripts and directs the filming of original programs.

**Sale/Purchases Manager:** Responsible for selling our products and purchasing equipment and necessary supplies to assure uninterrupted operation of our company.

**Administrative Assistant:** Responsible for all administrative/secretarial assistance.

On the basis of the information provided in the Form I-140 and supporting documentation, the director approved the immigrant petition on March, 16 2004. The AAO notes that the supporting documentation did not include any evidence of salaries or other remuneration paid to the beneficiary or his claimed subordinates.

On February 27, 2007, the director issued an NOIR on the grounds that the petitioner had not established that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. The director advised the petitioner that based on a response from the beneficiary in relation to his Form I-485, it did not appear that the beneficiary had been employed in the capacity described in the petition, and the director called into question the validity of the job offer. The director noted that there are discrepancies in the beneficiary's pay statements that were submitted in response to a request for further evidence (RFE), issued on October 13, 2006, in connection with the beneficiary's Form I-485. The discrepancies include checks issued out of sequence with the corresponding pay dates. Based on these discrepancies, the director observed that it appears that the beneficiary's employment began or resumed after USCIS issued the RFE, and not at the time the I-140 petition was filed. In the NOIR, the petitioner was instructed to submit the following additional documentation:

- IRS certified copies of the petitioner's complete Internal Revenue Service (IRS) Form 941 for the most recent six quarters, Form W-3 transmittal summary, all Forms W-2, Form 1096 summary, and all Forms 1099.
- If the company has used contractors, submit evidence documenting the number of contractors utilized and duties performed.

- IRS certified copies of the petitioner's U.S. federal income tax returns, with all schedules and attachments, for the years 2004, 2005, and 2006.

Upon receiving no response from the petitioner, the director reissued the NOIR on June 13, 2007.

In a letter dated July 9, 2007 responding to the NOIR, the petitioner addressed the discrepancies in its payroll records. The beneficiary, writing on behalf of the petitioner, explained that the company did not put him on payroll until the 4<sup>th</sup> quarter of 2006, when it began to earn profits. The beneficiary explained that the discrepancies in the payroll records were caused by a miscommunication between the company and the payroll administrator regarding the start date of the payroll. The petitioner also submitted a letter dated June 27, 2007 from its accountants, [REDACTED] who confirmed that when the petitioner engaged them in 2006, they recommended that the beneficiary be put on payroll at that time, since the company had begun to earn profits.

The petitioner submitted its Pennsylvania Unemployment Compensation Quarterly tax forms UC-2, UC-2A, and UC-2B for the first quarter of 2007. These forms all indicate that the beneficiary was the petitioner's sole employee at that time. The petitioner also submitted the petitioner's IRS Forms 1120, U.S. Corporation Income Tax Return, for the years 2004, 2005 and 2006. In all three years, the petitioner did not report any amount of salaries and wages paid. Only in 2006 did the petitioner report compensation of officers in the amount of \$16,200. The petitioner also submitted the beneficiary's 2006 Form W-2, which reflects wages received by the beneficiary in the amount of \$16,200.

The petitioner submitted no documentation relating to any contractors.

The director revoked the approval of the petition on April 2, 2008, concluding that the petitioner had not established that the beneficiary would be employed in the United States in a managerial or executive capacity. The director noted the lack of evidence of salary or wages paid to any employee other than the beneficiary and concluded that the evidence indicates that the beneficiary is the sole employee of the organization. The director observed that the record shows the petitioner generated a total of \$519,860 in gross sales in 2006 while employing only the beneficiary. In the absence of any evidence of sales or administrative staff, the director concluded that it is likely that the beneficiary must perform sales and administrative duties, and therefore cannot be performing primarily in a managerial or executive capacity.

On appeal, counsel for the petitioner asserts that USCIS erred in determining that the beneficiary's duties do not meet "managerial standard." Counsel claims that the beneficiary is a "functional manager [sic]" whose duties include "contract negotiation, budget setting and control, as well as supervision of outside professionals." Counsel further claims that, in any case, the beneficiary does supervise subordinate staff, as demonstrated by a new job description and organizational chart submitted on appeal. Counsel further asserts that the beneficiary has succeeded in growing the company and, correspondingly, his salary has increased from \$16,200 in 2006 to \$72,000 in 2007.

In support of counsel's assertions, the petitioner submitted an undated document entitled "Management and Projected Organisational Chart." The document purports to describe the "initial five full-time position," and lists the beneficiary as "executive director." The beneficiary's position is described as follow:

1. Overseeing the development of daily broadcast schedules;
2. Marketing and placing STV to cable television operators who broadcast programming to targeted consumers;
3. Building awareness of STV in the targeted viewing audience;
4. Developing and managing the cost revenue budget for program development, for production of program content, for marketing and placement to cable television operators, and for promotions to targeted viewing audiences.

[The beneficiary] will have full authority to hire and dismiss personnel, direct and oversee the management of the office, purchase needed equipment, negotiate lease agreements and other contracts on behalf of the company, and make such decisions as are required for the successful start-up and ongoing operation of STV in the United States. He will make regular reports to the Chairman of the Board of STV . . . He has the same wide range of discretionary authority over the personnel and management of the US branch as he currently exercises in his current position as Director of Programming and Technical Operations of STV.

The document briefly describes the duties of four other employees – a vice executive director, a studio director/engineer, a programming director, and an administrative assistant. The names attached to these positions are different from those in the job descriptions submitted with the initial petition. The organizational chart also indicates that the petitioner expects to fill three more positions in the following two years, including a producer, a cameraman, and a sales specialist.

Counsel also submitted a copy of the beneficiary's Form W-2 for 2007 showing \$72,000 in wages received for the year and copies of contracts and invoices to demonstrate ongoing business operations of the petitioner.

### **III. Analysis**

Upon review of the record, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity as of the date the petition was filed.

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 regulation at 8 C.F.R.

§ 204.5(j)(5) requires the petitioner to submit a clear description of the job duties to be performed by the beneficiary in the petitioning entity.

At the outset, the AAO will address the issue of the existence of personnel other than the beneficiary in the U.S. company. The AAO notes that the petitioner has made inconsistent claims throughout the record regarding the number and positions of its staff. The petitioner stated on the Form I-140 filed in November 2003 that it has eight employees in total. In its September 2003 letter, the petitioner stated that it has six other employees in addition to the beneficiary, including a deputy director, a senior producer, a programming director, a film director, a sale/purchases manager, and an administrative assistant.<sup>1</sup> In the undated "organizational chart" submitted on appeal in April 2008, the petitioner described an "initial" staff of five persons, including the beneficiary as "executive director" rather than "chief executive officer," a vice executive director, a studio director/engineer, a programming director, and an administrative assistant, all different individuals from those described in the 2003 letter. The petitioner has not provided any clarification for these disparate accounts regarding its personnel. 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. at 591-92. 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.*

Of greater significance to this analysis is the absence of evidence that the petitioner actually has any employee on staff other than the beneficiary. As the director noted, there is no evidence in the record that the U.S. company has paid any wages or compensation to any employees or contractors other than the beneficiary from the time the petition was filed in 2003 up to the issuance of the director's decision to revoke the approval of the petition. The petitioner submitted no documentation reflecting wages or compensation paid to employees by the petitioner in 2003. The petitioner's tax return for the years 2004 and 2005 show no wages or compensation paid to any employee or officer. Its tax return for 2006 shows \$16,200 in compensation to officers, the same amount that was reported on the beneficiary's Form W-2 for that year. The petitioner later submitted the beneficiary's Form W-2 for 2007, but did not submit a tax return, or any other documentation showing wages or compensation paid to any other employees, for that year. In the NOIR, the director requested Forms W-2 for all employees and evidence documenting contractors used by the company. However, the petitioner did not provide such documentation, nor did the petitioner explain whether such documentation existed, or why it would not be available.

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)). Further,

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<sup>1</sup> It is noted that in the 2003 letter, the petitioner indicated that its deputy director is an individual named [REDACTED] which is also the name of the beneficiary's daughter, who would have been nineteen years old in 2003. The record contains no other information regarding the deputy director, thus it cannot be ascertained whether they are the same individual.

failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Absent any proof that the petitioner has other employees in addition to the beneficiary, it must be assumed that such personnel do not exist as the petitioner claimed.

Counsel correctly asserts on appeal that the absence of a subordinate staff alone should not render the beneficiary ineligible for the benefit sought. A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C).

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)). Furthermore, it is appropriate for CIS 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).

In this matter, aside from raising doubt regarding the credibility of the petitioner's claims overall, the lack of evidence of a staff under the beneficiary's direction impacts the determination of whether the beneficiary would actually be functioning in a primarily managerial or executive capacity, as claimed. In the job description submitted along with the initial petition, the petitioner depicted the beneficiary as "directing" and "overseeing" much of the company's operations. For example, the beneficiary is said to "direct day-to-day operations of all units of our business"; "direct the performance of two senior managers"; "direct all of the financial and cost accounting aspects of the company operations"; "oversee the development of daily broadcast schedules"; "oversee marketing and placing STV products to cable television operators who broadcast programming to targeted consumers"; "oversee development and approve financial proposals and budgets"; and "direct work of outside professionals, such as attorneys, auditors, and certified public accountants."

The claim that the beneficiary "directs" and "oversees" these aspects of the company's operations implies that the beneficiary has subordinates who carry out the underlying tasks under his direction. Absent a subordinate staff, it is reasonable to conclude, as the director did, that the beneficiary himself would be required to perform the underlying marketing, sales, and administrative tasks and other day-to-day operations of the company, such as duties related to the production of television programming. It would be unreasonable to reach any other conclusion based on the evidence presented, and neither the petitioner nor counsel has submitted any new evidence in this proceeding that would overcome this conclusion. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a

managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). The fact that the beneficiary manages a business, regardless of its size, does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of sections 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987).

Counsel further asserts on appeal that the beneficiary qualifies as a "functional manager [sic]." The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary manages the function rather than performs the duties related to the function. Again, 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.

In this case, counsel suggests that the beneficiary should be considered a function manager because his "duties and/or responsibilities include contract negotiation, budget setting and control, as well as supervision of outside professionals (*i.e.*, accountant, attorney)." Counsel also claims that "like many top executives," the beneficiary's duties include "setting the company's goals and policies, negotiating lucrative contracts, and VIP networking." Counsel provides no clear basis for these claims, and no indication as to what proportion of the beneficiary's time is devoted to managing these claimed "functions" of the petitioning organization. Without documentary evidence to support these claims, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, as discussed above, the record does not establish that the beneficiary has been or will be performing *primarily* managerial or executive duties within the U.S. company. Although a function manager is not required to directly supervise subordinate employees, the petitioner must still demonstrate that someone other than the beneficiary is available to perform the day-to-day, non-managerial functions associated with operating the petitioner's business.

In light of the foregoing, the AAO finds that the director correctly concluded that the petitioner has failed to establish that the beneficiary has been or will be employed in the United States in a primarily managerial or executive capacity, as required by section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). Accordingly, the appeal will be dismissed.

The AAO further finds that the record as presently constituted is insufficient to establish that the petitioner has a qualifying relationship with the beneficiary's foreign employer. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity. See section 203(b)(1)(C) of the Act. 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 U.S. 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.

Although the petitioner claims to be a subsidiary of STV, the beneficiary's foreign employer, the record contains no documentation to support this claim. In fact, evidence of the ownership of the U.S. company is found only in the company's tax returns for the years 2004 through 2006, all of which state that the U.S. company is 100% owned by the beneficiary. The June 2007 letter from the petitioner's accountant also confirms that the "100% shareholder [of the U.S. company] is [REDACTED] [REDACTED]. The petitioner has provided no explanation for this inconsistency in the evidence regarding its ownership. Again, 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. at 591-92. Further, the record does not appear to contain any evidence of the ownership of the foreign entity.

As such, the AAO is unable to determine, based upon the record, that the petitioner has a qualifying relationship with the beneficiary's foreign employer, as required under section 203(b)(1)(C) of the Act.

#### **IV. Conclusion**

Based on the foregoing discussion, the AAO finds that the director's notice of revocation was properly issued for "good and sufficient cause," and that the revocation of the petition approval was warranted. See *Matter of Ho*, 19 I&N Dec. at 590. Accordingly, the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. 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); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows 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 at 1043.

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.