



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

MAR 19 2014

OFFICE: TEXAS SERVICE CENTER

FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner is a Virginia corporation engaged in “management, consulting, investment,” and it seeks to employ the beneficiary as vice president. 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 immigrant petition, finding: (1) the petitioner failed to establish that the beneficiary’s employment abroad was within a qualifying managerial or executive capacity; and, (2) the petitioner failed to establish that the beneficiary’s proposed employment with the U.S. entity would be within a qualifying managerial or executive capacity.

On appeal, counsel for the petitioner states that that the “petitioner has submitted substantial documentation” establishing that the beneficiary was employed abroad in an executive capacity. Counsel asserts that the issue of whether the beneficiary was employed abroad for one year in a managerial or executive capacity was already resolved when the beneficiary obtained L-1A status. In addition, counsel states that the record establishes that the beneficiary has been “exclusively performing executive duties in the petitioning entity since 2006.” Counsel submits a brief and 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 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.

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) 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.

II. MANAGERIAL OF EXECUTIVE CAPACITY WITH THE FOREIGN COMPANY

A. Facts

The petitioner stated on the Form I-140 that the beneficiary was employed by the foreign company in the position of Director.

The petitioner submitted a letter from the president of the beneficiary's employer abroad that stated the duties performed by the beneficiary as Director were as follows:

[The beneficiary] oversees and manages Accounts, Finance, Sales and Operations departments. [The beneficiary] has been a very successful management executive. He takes decisions on hiring as well as firing of the managers. He coordinates activities by scheduling work assignments, setting priorities, and directing the work of subordinates. He evaluates and verifies manager's performance through the review of completed work assignments and work techniques. He operates at a senior level. He directs and participates in the development, interpretation, evaluation, and recommendation of goals, policies, procedures, and rules for the effective operation of the company. He has broad authority in company's decision making process. He has complete authority over departmental managers. He receives only general supervision from the company president.

In response to the director's request for evidence, the beneficiary's employer abroad submitted a letter from the president, stating that it was a gas substation and "suppliers and distributors of gasoline and other automotive oils/lubricants." The president stated that the beneficiary's primary role fell into "five broad categories: Shape and develop departmental strategy and organization; Advise the companies Partners on strategic business development and key corporate planning issues that relate and impact the operations of the company; Lead managers to evaluate and take actions that are consistent with the company's overall strategy; and, set goals and policies tailored to each department." The president also stated that the beneficiary

“oversaw the work” of three managers: an Accounts Manager, a Logistics and Operations Manager, and a Sales Manager.

The petitioner also submitted an organizational chart for the foreign company. The chart indicated a President who supervised three directors, one of which was the beneficiary’s position. The beneficiary supervised three managers who each had one or two employees under their supervision

The director sent a Notice of Intent to Deny (NOID), requesting a detailed job description of the beneficiary’s specific tasks on a normal business day including the percentage of time spent on each task when employed by the foreign company.

In response, the petitioner stated that although the foreign company is a gas station, it is not the same as operating a gas station in the U.S. The petitioner stated that “besides general day-to-day petroleum production distribution, we also supply gas, petrol and diesel to many smaller dealers, and at our location we had exclusive contracts with big distributors of many types of consumer products.”

The petitioner also submitted a new description and percentage breakdown of the duties performed by the beneficiary with the foreign company as follows:

[The beneficiary] oversaw and managed Accounts, Finance, Sales and Operations. He took decisions on hiring as well as firing of the managers. He coordinated activities by scheduling work assignments, setting priorities, and directing the work of subordinates. He evaluated and verified manager’s performance through the review of completed work assignments and work techniques. He directed and participated in the development, interpretation, evaluation, and recommendation of goals, policies, procedures, and ruled for the effective operation of the company. He had broad authority in company’s decision making process. He had complete authority over managers. He received only general supervision from the company president.

Daily Duties:

Discuss sales, operations and accounting reports with manager to address any discrepancy when compared to projections and past history. (25%)

Discuss any corrective actions in terms of delivery of petroleum or payment situations. (15%)

Schedule work assignment of managers based on work shifts and staffing. Discuss priority items on tasks list for them. (15%)

Study the petroleum market and opportunities and pitfalls and plan any course of action and strategy as required. (20%)

Plan and draft (new and changes to) company goals, policies and procedures. (10%)

Communicate with management any critical issues and plan of action. (5%)

Communicate with government agencies, local businesses, vendors, suppliers and/or dealers (10%).

In his decision, the director noted that the petitioner did not establish that the beneficiary was employed abroad in a managerial or executive capacity. On appeal, counsel for the petitioner states that the petitioner has submitted substantial documentation establishing that the beneficiary was employed abroad in an executive capacity. Counsel also states that this issue "was already resolved by the USCIS when his status was changed from B-2 to L-1A and he was granted his new L-1A status."

B. Analysis

In general, when examining the executive or managerial capacity of a given position, USCIS reviews the totality of the record, starting first with the petitioner's description of the beneficiary's job duties. The regulation at 8 C.F.R. § 204.5(j)(5) expressly states that the petitioner must provide a job offer that clearly describes the job duties the beneficiary would be required to perform. Additionally, the beneficiary's job description will be considered in the context of other relevant information, including the qualifying entity's organizational hierarchy, the nature of the business operation, and the number of employees the entity has during relevant time periods. When considering the beneficiary's former employment abroad, the focus is on the job duties the beneficiary performed for one year during the three years prior to his entrance to the United States to work for same employer or an affiliate, parent, or subsidiary of the beneficiary's proposed employer in the United States.

Due to the overly general information included in the percentage breakdown, the AAO is unable to gain a meaningful understanding of how much time the beneficiary spent performing qualifying tasks versus those that would be deemed non-qualifying while employed by the foreign company.

For instance, in describing the beneficiary's position with the foreign company, the petitioner stated that the beneficiary "oversees and manages Accounts, Finance, Sales and Operations departments;" "takes decisions on hiring as well as firing of the managers;" "coordinates activities by scheduling work assignments, setting priorities, and directing the work of subordinates;" "discuss sales, operations and accounting reports with manager to address any discrepancy when compared to projections and past history; and, "discuss any corrective actions in terms of delivery of petroleum or payment situations." The beneficiary's position description

is too general and broad to establish that the preponderance of his duties were managerial or executive 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 sufficient details about 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).

Furthermore, the job description includes several non-qualifying duties such as the beneficiary would "communicate with government agencies, local businesses, vendors, suppliers and/or dealers" and, "study the petroleum market and opportunities and pitfalls and plan any course of action and strategy as required." The petitioner did not state that the beneficiary would supervise subordinates that would handle the market research, and contract negotiations. It appears that the beneficiary is performing duties inherent in operating a business rather than supervising subordinate employees who perform these duties. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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. 593, 604 (Comm. 1988).

In the present matter, the petitioner provided an extensive organizational chart of the foreign company. The chart indicated three directors, seven managers, and a large staff. It is not clear why a gas station would require so many directors and managers. The petitioner explained that this gas station is not like a gas station in the United States as it also supplies "gas, petrol and diesel to many smaller dealers, and at our location we had exclusive contracts with big distributors of many types of consumer products." However, the foreign company did not provide any contracts or information to explain the work the foreign company does above and beyond selling gas. In addition, the organizational chart does not indicate any cashiers or clerk positions for running the gas station. In addition, the petitioner did not provide any evidence that the positions listed on the organizational chart are actually employed by the foreign company, such as employee names, paystubs, payroll journal or tax returns. The petitioner has not provided sufficient evidence of the organizational structure of the foreign company and thus, it is impossible to determine if the beneficiary was employed in an executive capacity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner asserts on appeal that since USCIS approved an L-1A change of status petition that had been previously filed on behalf of the beneficiary, the issue of whether the beneficiary had been employed abroad in a managerial or executive capacity was already reviewed and accepted. The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute error on the part of the director. The AAO is not required to approve

applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. MANAGERIAL OR EXECUTIVE CAPACITY IN THE UNITED STATES

A. Facts

The record shows that the petitioner filed the Form I-140, stating that the petitioner is engaged in "management consulting, investment," claiming 15 employees and a gross annual income of \$623,352.00. The petitioner stated that the job offered to the beneficiary is vice president and the job duties include the "management of accounting, finance, sales, marketing, administration and operations department."

In a letter of support, the petitioner explained that it has management contracts with four clients and "as per the consulting and management contracts we are in charge of selection, retention and supervision of employees, independent contractors and other professionals." The petitioner submitted four management agreements between the petitioner and separate companies whereby the petitioner will provide management and consulting services.

The petitioner provided the following explanation of the duties to be performed by the beneficiary as vice president for the petitioner:

- 1) Supervising a team of general managers who manage Finance, Marketing, and Operations & Administration and Information Technology departments.
- 2) Complete managing the responsibilities of major operations in the United States which include the following:
 - a) Supervising a team of top management personnel who manage the business operations of [the petitioner] in the United States.
 - b) Providing key strategic management discretionary directives for the business operations to stay ahead in the business.
 - c) Manage finance, accounts policies and marketing strategies.
 - d) Set guidelines for accounting, financial and marketing management.
- 3) Communicate company's financial status to top management and implement management recommendations regarding accounting and finance.

- 4) Makes hiring, discharging and promotion decisions for the Finance, Marketing, and Operations & Administration, and Information Technology Departments.

The petitioner's organizational chart shows the beneficiary as vice president who in turn supervises a general manager of accounting and finance; a general manager of sales and marketing; a general manager of operations and administration; and, a general manager for information technology. Under the four managers, the other employees include a financial manager, accountant, bookkeeping clerk, sales and marketing manager, business development manager, sales/customer services staff, administrative assistant, human resources, administrative clerk, and network administrator. The petitioner also provided a brief job description for each position. The organizational chart does not indicate the names of the employees for each position.

In response to the request for evidence, the petitioner stated that the beneficiary's executive/managerial duties are evident from following areas of responsibility: Human Resource Management Policy; Marketing Strategy; Policy on Internal Controls, Financial Reporting, Document Retention and Auditing; Quality of Work Policy. The petitioner also provided additional duties to be performed by the beneficiary as follows:

- Makes hiring, discharging and promotion decision for the Finance, Marketing, and operations & Administration, and Information Technology departments.
- Provide direction for the company management regarding the staffing, customers, budget, company's assets and all other resources to make the best use of them and increase the company's profitability.
- He will design, develop and implement the strategies which consist of setting up goals and policies for this company, in the most cost effective and time efficient manner.
- He will have complete authority in making decisions. He plays authoritative leadership role for an organization and fulfills a motivational role for his management team and workers in addition to his more office-based work. He motivates and mentors members of the management team. Lead the company and develops the corporate culture for the organization. Received only general supervise from company's president.
- Provide direction to general managers on managing every aspect of the business.
- Ensuring that the Business is properly licensed and registered with the appropriate local, State and Federal authorities
- Creation of corporate objectives and company policies for operations.
- Formulating and implementing the company's marketing plans and advertising strategies including promotion of the businesses to the surrounding area.

- Develops financial and business operating plans and capital expenditure plans that are consistent with the overall strategic positioning of the businesses and contributes ideas for growth and expansion.
- Monitors hotel and motel operations to determine proper strategies with regards to: pricing, quality, marketing, price/value perceptions, customer satisfaction and employee training and development.
- Assists with the development of quality control procedures and ensures procedures are followed.
- Monitors direct report managers' performance standards and provides counseling and training to enhance performance.
- Following up and maintaining operation and labor cost control methods and procedures and meeting the attendance guidelines and adheres to regulatory, departmental and company policies.
- Recruit and hire Management to staff hotel and motel position with "A" players, as well as to maintain a bench for future growth. Day-to-day direct supervision of the general managers and indirect supervision of all other staff; decision marking authority over daily problems brought to him by managers.
- Review and analyze financial statements and the financial corporate documents in order to stay informed of the company's financial situation and progress status.
- Research, identify, and examine other potential business opportunities for acquisition and mergers in order to expand the business.

In response to the director's request for evidence, the petitioner again stated that the petitioner provides management services for five companies that own [REDACTED]. The petitioner also provided Forms W-2 for 2008 for all 57 employees. Most of the employees were paid less than \$7000.00 for the entire year and several were even paid less than \$1000.00.

The director sent a Notice of Intent to Deny (NOID) and noted that although the petitioner stated that it has entered into five agreements with companies to provide management services, all of the documentation submitted by the petitioner related to only one establishment, a [REDACTED] located in [REDACTED] Virginia. In a response letter to the NOID, the petitioner stated that the "management contracts we entered into with the above listed entities, were agreed to, but never fulfilled." The petitioner explained that it owns a [REDACTED] Virginia and in 2008 it "took over operations and began leasing" two other [REDACTED] and [REDACTED] Virginia. The petitioner also stated the following:

Both of the above listed hotels, although not owned by [the petitioner], report full revenue and incur all expenses for operations at these locations. [The petitioner] pays a monthly lease to each owner of those properties, and then handles all aspects of business operations. Once we undertook those significant responsibilities of running all 3 [REDACTED] we were unable to fulfill our commitments to the other companies. The Business Tax Returns for [the petitioner] reflect the increase in revenue when these companies were taken over.

The petitioner also provided two documents entitled, "Commercial Lease Agreement." The first agreement was made on January 1, 2008 between [REDACTED] (Landlord) and the petitioner (tenant). The agreement states that the leased premise is a [REDACTED] located at [REDACTED]. The term of the lease is from January 1, 2008 until December 31, 2008. The second commercial lease agreement is between [REDACTED] (landlord) and the petitioner (tenant). The leased premise is a [REDACTED] located at [REDACTED]. The term of the lease is from April 15, 2008 until April 14, 2009. Both leases are signed by the same landlord, [REDACTED].

The NOID also noted that "a review of the 2009 and 2009 W-2s show that the beneficiary is the only member of the staff that is being paid full-time wages." The petitioner did not respond to this issue.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary's proposed employment with the U.S. entity would be within a qualifying managerial or executive capacity. On appeal, counsel for the petitioner contends that the petitioner provided sufficient evidence to establish that the beneficiary has been employed in an executive capacity. Counsel also states that the "petitioner's 2008 tax return showed gross revenue of \$1,560,228, with a payroll of \$265,018, under the executive leadership of the beneficiary."

On appeal, the petitioner provided additional explanation of the duties to be performed by the beneficiary as follows:

Profit Management Department

- Meets or exceeds budgeted [REDACTED] for the hotel.
- Prepares departmental budget that correctly reflects the hotel's business plan.
- Forecasts occupancy fluctuations and directs selling activities to maximize revenues.
- Knows the hotel's demand segments, sources of business for each, and balances market segments according to supply and demand.
- Knows the principal competition for each market segment and takes advantage of hotel's strengths against each competitor.
- Accurately forecasts occupancy changes based on changing market conditions (additions to supply and demand, etc.)

General Services Department

- Supports guest service as the hotel's driving philosophy.
- Personally demonstrates a commitment to guest service by responding to guests' needs.

Marketing and Sales Department

- Develops/assists with development of the hotel's marketing and sales plan based on the hotel's position and strengths within each market segment.

- Implements hotel's marketing and sales plan.
- Analyzes and understands the competition's strengths and weaknesses for each market segment and successfully directs marketing activities against each.
- Identifies and maintains constant communications with the hotel's key accounts.
- Actively sells room nights through outside sale calls, telemarketing, tours, etc.
- Actively sells to in-house guests (greeting tours, talking with guests at continental breakfast to surface additional leads, etc.).
- Knows the competition well. In addition, is familiar with all "business" in the market, where that "business" stays and why.
- Uses the resources available in the Brand manual to surface, call on, and track potential business.

B. Analysis

In the present matter, an analysis of the record does not lead to affirmative conclusion that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity.

With regard to the position in the U.S., the petitioner provided a vague and general job description such as the beneficiary will be responsible for "supervising a team of general managers who manage Finance, Marketing, and Operations & Administration and Information Technology departments;" "providing key strategic management discretionary directives for the business operations to stay ahead in the business;" "manage finance, accounts policies and marketing strategies;" "set guidelines for accounting, financial and marketing management;" and, "makes hiring, discharging and promotion decisions for the Finance, Marketing, and Operations & Administration, and Information Technology Departments." It is unclear which specific tasks actually fall within these broad categories and whether the supervisory tasks the beneficiary performed were of a qualifying 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 details about the beneficiary's daily activities. 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 vague and general description of the beneficiary's position does not identify the actual duties performed, such that they could be classified as managerial or executive in nature.

In addition, the petitioner stated that it will provide management services to four clients as evidenced by agreements provided with the initial petition. In response to the RFE, the petitioner continued to state that it would provide services to the companies listed in the agreements. Only in response to the director's NOID, did the petitioner state that the "management contracts we entered into with the above listed entities, were agreed to, but never fulfilled." The petitioner also explained that it could not fulfill the contracts submitted with the petition because the petitioner entered into an agreement to lease three [REDACTED] and handle the management services of the three motels. The petitioner also submitted two lease

agreements indicating that the petitioner is the new tenant of two [REDACTED]. The leases are signed in 2008 when the current petition was filed; thus, it is not clear why the petitioner failed to mention this change in business operations earlier and waited till the response to the NOID. 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. 582, 591 (BIA 1988).

Furthermore, the lease agreements signed by the petitioner are for leases that end on December 31, 2008 and April 14, 2009. There is no evidence that the petitioner renewed these leases and continues to rent the [REDACTED] Virginia. In addition, the petitioner did not provide any agreement to provide management services to the two motels. 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. at 165.

In addition, the petitioner's organizational chart does not reflect an organizational structure of a company that manages motels. The chart indicates a vice president who in turn supervises a general manager of accounting and finance; a general manager of sales and marketing; a general manager of operations and administration; and, a general manager for information technology. The general managers supervise other employees including a financial manager, an accountant, a bookkeeping clerk, a sales and marketing manager, a business development manager, sales/customer services staff, an administrative assistant, a human resources assistant, an administrative clerk, and a network administrator. The chart does not indicate any positions that are typical of a motel operation such as housecleaning, maintenance, front office manager, front office staff, and reservations staff. Furthermore, upon review of the Forms W-2 for the petitioner's employees in 2008, most of the employees received salaries of less than \$7,000.00 for the year, and several received less than \$500.00. It is unclear what positions were held by these employees. The petitioner has not provided sufficient evidence of the organizational structure of the company and thus, it is impossible to determine if the beneficiary was employed in an executive capacity. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Ibid.*

As discussed above, the petitioner has not identified employees within the petitioner's organization, subordinate to the beneficiary, who would relieve the beneficiary from performing routine duties inherent to operating the business. 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 Intn'l.*, 19 I&N at 604. 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. at 165.

In summary, the petitioner has failed to provide sufficient evidence to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; and therefore, the instant petition cannot be approved.

V. CONCLUSION

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.