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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
SRC 03 260 51557

Office: TEXAS SERVICE CENTER

Date: SEP 16 2005

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:



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.

Eric Haldan

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a corporation organized in the State of Florida in March 2000. It operates a used automobile dealership. The petitioner seeks to employ the beneficiary as its 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.

On December 20, 2004, the director determined that the petitioner had not established: (1) that it had been doing business for one year prior to filing the petition on September 11, 2003; (2) a qualifying relationship with the beneficiary's foreign employer; or (3) that the beneficiary would be employed in a managerial or executive capacity for the United States entity.

On appeal, counsel for the petitioner submits a brief and documentation 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 the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

The first issue in this proceeding is whether the petitioner has established that it has been doing business for one year prior to filing the petition, as required by the regulations.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part: *Doing Business* means the regular, systematic, and continuous provision of goods and/or services by a firm, corporation, or other entity and does not include the mere presence of an agent or office. The regulation at 8 C.F.R. § 204.5(j)(3)(i)(D) requires that the petitioner provide evidence showing it has been doing business for one year when submitting the Form I-140 petition.

The petitioner initially provided its Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Return for 2000 and 2001 as evidence it had been doing business for one year prior to submitting the petition on September 29, 2003. The petitioner also provided its "Salesman Journal" for 2002, a computer generated document listing the price, stock number, and buyer of each automobile sold. The petitioner further provided sales reports and Florida Forms DR-15, Sales and Use Tax Return, for the months of June, July, August, September, October, November, and December of 2000 and copies of sales reports for January, February, March, and April 2001 with a Florida Form DR-15 for the month of March 2001.

On August 31, 2004, the director requested evidence of the business conducted by the United States entity, such as invoices, bills of sale, and product brochures of goods sold or produced by the company from September 2002 to the present.

In a November 18, 2004 response, the petitioner provided its IRS Forms 1120 for 2002 and 2003. It also provided "Sales Journals" for 2003 and for January through August 31, 2004 as well as other documents showing that it continued to conduct business in 2003 and 2004.

On January 10, 2005, the director denied the petition acknowledging the evidence submitted but determining that the petitioner's sales journals were computer printouts and were not supported by evidence that the petitioner had purchased vehicles or had sold vehicles and that the petitioner had not submitted receipts from local repair shops demonstrating its repair of purchased vehicles. The director determined that the petitioner had not established that the United States company was doing business.

On appeal, counsel lists the documentation previously provided and submits actual bills of sale for purchases and sales in 2004.

Counsel's submission of documentation for events occurring in 2004 is noted, however, the issue in this matter is not only the continuation of the petitioner's conduct of business but its conduct of business one year prior to filing the petition. Unlike the director, the AAO finds that the evidence submitted to establish that the petitioner was doing business one year prior to submitting the petition was sufficient. The AAO takes note of the 2002 "Salesman Journal," Florida Forms DR-15, the petitioner's licenses, the 2000, 2001, and 2002 IRS Forms 1120, the IRS Forms 941, Employer's Quarterly Federal Tax Return, and other evidence submitted, demonstrating that the petitioner was a viable concern one year prior to filing the petition. Although the petitioner did not submit copies of statements of bills of sale for purchases and sales and copies of receipts from local repair shops to support the 2002 "Salesman Journal," the AAO finds that a review of the totality of the record demonstrates that the petitioner was doing business for one year prior to filing the petition and continues to do business up to and

including 2004. The director's decision will be withdrawn as it relates to the issue of the petitioner's doing business.

The next issue in this matter is whether the petitioner has established 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 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.

The petitioner initially submitted confusing evidence regarding its ownership and control. The petitioner's IRS Forms 1120 for 2000 and 2001 on Schedule K, Line 5 and the accompanying statement showed that the beneficiary owned 100 percent of the petitioner. The petitioner also attached IRS Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. The petitioner's 2000 and 2001 IRS Form 5472 showed that the beneficiary's foreign employer held at least a 25 percent interest in the petitioner. The petitioner's stock certificate number 1 was issued on March 24, 2000 to the beneficiary's foreign employer in the amount of 700 shares. The petitioner's stock certificate number 2 was issued on March 24, 2000 to an individual [REDACTED] in the amount of 300 shares.

On August 31, 2004, in the request for additional evidence, the director noted these inconsistencies and requested evidence of payment(s) from the beneficiary's foreign employer and [REDACTED] to the United States company for the purchase of the petitioner's stock.

In a November 18, 2004 response, counsel for the petitioner stated that Miguel Bahos did not contribute any capital to the start up of the company so was paid a nominal consideration for the cancellation of his shares.

Counsel also acknowledged that the tax returns were incorrect and asserted that the stock certificates reflected the correct ownership history of the company. The petitioner provided its stock certificate ledger that showed [REDACTED] had transferred his shares to the beneficiary's foreign employer in August 2000. The petitioner also submitted its stock certificate number 1 with the word "void" written on it and its stock certificate number 2 with the word "void" written across it. The petitioner submitted stock certificate number 3 purportedly issued on August 1, 2000 to the beneficiary's foreign employer in the amount of 1,000 shares. The petitioner also included an August 23, 2000 letter of resignation from [REDACTED].

The petitioner further provided an October 4, 2004 letter signed by the petitioner's tax preparer stating that the beneficiary "is an employee and officer" of the petitioner and not a shareholder of the corporation. The tax preparer also attached a copy of page 2 of a 2003 Form 1120 showing on Schedule E, Line 1(d) and (e) that the beneficiary did not hold any stock in the petitioner.

On January 10, 2005, the director observed that because of the inconsistencies in the record, any attempt by the petitioner to clarify the inconsistencies must include documentary evidence from independent sources. The director found that the petitioner's submission of the amended IRS Form 1120 cast doubt upon the truth of the facts asserted and that evidence created after Citizenship and Immigration Services (CIS) points out deficiencies and inconsistencies will not be considered independent and objective evidence. The director determined that the evidence submitted did not establish that the foreign entity had provided the funds to purchase an interest in the petitioner.

On appeal, counsel for the petitioner points out that Schedule E on a corporate tax return is for informational purposes only and does not constitute evidence of ownership. Counsel contends that all documents submitted in support of the petitions for the beneficiary's L-1A intracompany transferee classification have consistently shown that the foreign entity has owned a majority interest in the petitioner. Counsel disputes the director's implication that the petitioner created evidence only after CIS pointed out inconsistencies, in light of the documentation previously submitted in this and other proceedings. Counsel acknowledges that each corporate tax return since 2000 contained conflicting information about the petitioner's ownership and notes that this simply proves the incompetence of the tax preparer and does not prove ownership and control of the petitioner.

Counsel also submits a copy of a cancelled check the petitioner allegedly paid to Miguel Bahos for the purchase of his issued stock. Counsel notes that the check was cashed on August 15, 2000 and was drawn from the petitioner's account. Counsel contends that there was no manufactured evidence in this matter and that the petitioner has consistently represented that the foreign entity owns a majority interest in the petitioner.

Counsel's assertions on this issue are not persuasive. The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and

authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 362. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

Further, the director specifically requested evidence to show that the foreign entity paid for its interest in the petitioner and the petitioner failed to produce this evidence. 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). In this matter, the record contains conflicting evidence as to whether the petitioner comprises an entity separate and distinct from the beneficiary. A corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). The AAO recognizes that stock certificates and stock ledgers are easily manipulated, so that scrutiny of the actual capitalization of the petitioner and any other documentation that would support a petitioner's claim regarding its status is often required. The petitioner has failed to provide evidence of its actual capitalization on two occasions, first when the director specifically requested the evidence and second on appeal, when the petitioner, even with the director's specific determination that the evidence did not establish that the foreign entity had paid for its purchase of the petitioner's stock, failed to provide this evidence. The qualifying relationship remains unsubstantiated on appeal.

The AAO also notes that the petitioner initially provided only stock certificates 1 and 2 in support of the petition filed September 29, 2003. The AAO questions why the petitioner chose not to present stock certificate number 3 allegedly issued in August 2000 when the petition was filed. It is the failure to provide evidence of the petitioner's actual ownership that should have been available when the petition was filed, that call into question the petitioner's later attempts to clarify the petitioner's ownership and control.

The petitioner has not provided sufficient evidence that it has a qualifying relationship with the beneficiary's foreign employer. For this reason, the petition will not be approved.

The next issue in this proceeding is whether the petitioner has established the beneficiary's employment is in a managerial or executive capacity for the U.S. entity.

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.

In an undated statement appended to the petition, the petitioner indicated that the beneficiary in the position of president has:

[O]ver the past year managed the establishment of the company and developed its market niche and sales network. The staff members include a Sales Manager, a Salesman, and an Administrative person. [The beneficiary's] continuing responsibilities will focus on the hiring of additional staff, developing sources for vehicles to sell, developing relationships for the business

with local repair facilities to upgrade vehicles purchased for resale; managing all financial relationships of the business including developing sources for financing of its customers, inventory financing for the company, bridge financing, investment and capital reinvestment decision-making and compliance with all taxation requirements. In addition, [the beneficiary] represents the business in local Chamber of [C]ommerce organizations and focuses on business development activities.

The petitioner noted on the Form I-140, Immigrant Petition for Alien Worker, that the petitioner employed four individuals.

On August 31, 2004, the director requested a definitive statement describing the proposed job duties of the beneficiary for the United States entity including: position title; list [of] all duties; percentage of time spent on each duty; number of subordinate managers/supervisors or other employees who will report directly to the beneficiary; and a brief description of their job titles, duties and education level; and, if the beneficiary does not supervise other employees, a specification of what essential function within the organization he manages. The director also requested evidence of the staffing level in the United States and IRS Forms W-2, Wage and Tax Statement, for all employees in 2002 and 2003.

In a November 18, 2004 response, the petitioner provided an October 4, 2004 statement describing the beneficiary's duties as:

[S]olely responsible for all aspects of the company management and operations. He hires and discharges employees, sets policies and procedures, negotiates with outside vendors for the purchase of vehicles for resale, financing terms for the inventory, and financing packages for the customers to encourage sales. [The beneficiary] hired the Sales Manager and General Manager and meets with them weekly to review operations, sales, expenses and monitor company status with analytical comparisons to previous years' activities. [The beneficiary] sets policies with respect to the types of vehicles the company will purchase and how much will be spent to upgrade them for resale. He sets pricing guidelines based upon vehicles cost, repair and potential commission within which the Sales Manager approves final price to the consumer. [The beneficiary] continues to maintain all links with vendors and local repair facilities to ensure the quality of the vehicles he sells. The company also provides financing to qualified customers and [the beneficiary] has set all guidelines within which the Sales Manager must operate in setting financing rates and terms and approval steps to take before accepting a financing contract. [The beneficiary] has sole executive decision-making authority in the United States for business operations. He represents the business at all local chamber of commerce activities and similar marketing and business development efforts. He has sole responsibility for the development of new business and corporate relationships.

Counsel noted that the beneficiary had also represented the company in the purchase of real estate and the relocation of the company. The petitioner noted that the beneficiary spent approximately 30 percent of his time on business development; 30 percent of his time on company administration, including managing all relationships with the foreign entity's management team, providing monthly status reports on overall operations, analyzing

company policies and procedures, and looking for ways to create efficiencies, make changes and generally enhance company profitability; 30 percent of his time on financial management; and 10 percent of his time on sales administration.

The petitioner indicated that the general manager coordinated daily operations, managed all administrative aspects of the business, coordinated the licensing and documentation activities of the operation, set the work schedule in consultation with the sales manager, worked with the outside accountant on tax and financial reporting, filed state documents, and oversaw the work of outside vendors for cleaning, landscaping, and detailing and maintaining the vehicles on the lot.

The petitioner noted that the sales manager managed the activities of the sales staff, ensuring proper training and knowledge of the vehicles, worked with the general manager to ensure staffing when the petitioner was open, managed the movement of vehicles from repair facilities to the business site, approved negotiated prices, assisted sales staff in the course of transactions, and evaluated performance of sales staff.

The petitioner also noted that the petitioner's sales staff changed frequently but that their duties were to sell vehicles.

The petitioner provided IRS Forms W-2 for the 2003 year, issued to the beneficiary in the amount of \$30,000 and issued to the administrative/general manager in the amount of \$10,404. The petitioner also provided IRS Forms 1099, Miscellaneous Income, for the 2003 year issued to the individual identified as the sales manager in the amount of \$23,925 and to four other individuals in amounts varying from \$10,078 to \$20,912.

On January 10, 2005, the director denied the petition determining: that the petitioner had provided a vague and general description of the beneficiary's duties; that neither the title or ownership of a business are by themselves indicators of managerial or executive authority; that an employee who primarily perform the tasks necessary to produce the product(s) or provide the service(s) of the organization are not employed in an executive or managerial capacity; and that the petitioner had not established that the beneficiary's subordinates would relieve him from performing non-qualifying duties. The director also noted, based on salaries paid, that the petitioner's general manager either had not worked full-time or had not worked the entire year. The director concluded that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity

On appeal, counsel references the three past approvals of the beneficiary's classification as an L-1A intracompany transferee as evidence that the CIS has determined that the beneficiary's duties are managerial or executive. Counsel notes that the primary functions of the petitioner's business include purchasing vehicles, having them repaired, selling vehicles, and providing financial services to customers and that the business requires personnel management, financial management, inventory management and sales management. Counsel asserts that the director failed to denote the beneficiary's "non-qualifying duties" or demonstrate where in the statute the requirement that the beneficiary be relieved of performing non-qualifying duties is shown. Counsel also lists the elements comprising the definitions of both managerial and executive capacity. Counsel also references goals and policies set and discretionary decisions made by the beneficiary, as well as asserts that the beneficiary as the only member of the company's Board of Directors in the United States receives no supervision from the other

Colombian shareholders. Counsel also contends that the sales manager and the general manager are the individuals responsible for the day-to-day operations of the business and their duties include oversight of the salesmen, meeting with customers, and dealing with local repair facilities; that the beneficiary supervises and controls the work of the general manager and the sales manager as well as the corporate accountant and attorney; has sole authority to hire and discharge all employees; and provides direction to the general manager and sales manager in the conduct of the day-to-day operations. Counsel also contends that the language restricting a first-line supervisor's supervision to professional employees, in order to qualify as a manager, is not found in the regulatory definition of managerial capacity for employment-based immigrant beneficiaries.

Counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The petitioner initially provided a general description of the beneficiary's duties indicating that the beneficiary hired staff, developed sources selling used automobiles, established business relationships with repair facilities, managed the petitioner's finances including developing financing sources for its customers and for the company, made decisions on reinvestment, complied with taxation requirements, and represented the company at the local chamber of commerce. In addition, the petitioner noted that the beneficiary was developing a niche in the market and was developing its sales network. These duties indicate that the beneficiary is involved in establishing the petitioner as a continuing viable concern. The beneficiary is locating sources, promoting the company, and performing the petitioner's public relations in an effort to establish the petitioner's business. The petitioner does not identify other individuals who perform these routine but necessary operational duties. Further, the description suggests that the beneficiary is responsible for complying with the numerous documentary requirements involved in the purchase and resale of automobiles. Although the petitioner indicates that it employs an administrative person, (later identified as the general manager) as the director observed this individual does not appear to be employed full-time. Thus, again the beneficiary would necessarily be involved in performing or supervising compliance with the documentary requirements. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The more specific portions of the petitioner's second iteration of the beneficiary's duties describe the beneficiary's job as negotiating with outside vendors as well as maintaining links with vendors and local repair facilities, financing terms for the inventory, and financing terms for the customers. These duties suggest that the beneficiary is responsible for performing the routine operational tasks associated with buying and preparing the petitioner's goods for sale and for obtaining the necessary financing required to provide the goods for sale. The petitioner reiterates that the beneficiary represents the business at all local chamber of commerce activities and is involved in marketing and business development efforts. Again, this information suggests that the beneficiary is the individual involved in marketing and promoting the petitioner's business.

Although the petitioner later indicates that the beneficiary sets policies with respect to the types of vehicles purchased, the petitioner has described the beneficiary as the individual who carries out these policies. Similarly, it is the beneficiary who sets the purchase price and approves the final price and financing for the customer. Although the beneficiary has ultimate responsibility for the profit and loss of the used car dealership, the petitioner has not adequately established that the beneficiary's performance of his various

duties comprise primarily managerial or executive duties. At most, the beneficiary's duties suggest that the beneficiary is the individual actually performing tasks associated with the ongoing operational tasks and performing the duties of a first-line supervisor of non-professional employees.

The AAO acknowledges counsel's enhancement of the beneficiary's duties and emphasis on the beneficiary's establishing goals, policies, and guidelines in the purchase, repair, and sale of the petitioner's products. However, the petitioner fails to persuade that the petitioner has sufficient personnel to provide the petitioner's services, without the beneficiary's performance of non-qualifying duties. In this matter, the petitioner has established that the beneficiary is relieved from acting as the car salesman on the lot. The petitioner employs a salesman/manager and intermittent salesmen to perform this essential duty. However, the beneficiary, with the part-time assistance of an administrative clerk (later identified as the general manager) purchases the used cars, works with banks and underwriters in obtaining financing, maintains relationships with local repair facilities, and markets and otherwise promotes the petitioner's product and services. These duties are not traditionally managerial or executive duties and the petitioner has not provided evidence that it has sufficient staff to relieve the beneficiary from performing the routine operational and administrative duties necessary to continue the petitioner's operations.

Counsel's assertion that the "general manager" and the sales manager are the individuals responsible for the day-to-day operations of the business is not substantiated in the record. The descriptions of both the sales manager and the general manager's duties are not sufficient to establish that either of these positions are *primarily* managerial, supervisory, or professional positions. 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. As noted above, the petitioner has not established that the "general manager" is employed full-time. The description of the "general manager's" includes the duties of a part-time administrative clerk and the sales manager duties show only that he is the senior and permanent salesman on staff.

The AAO acknowledges that the regulatory definition of managerial capacity for employment-based immigrant beneficiaries does not include a restriction that first-line supervisors must supervise professional employees to be considered managers. However, the statute in this matter found at section 101(a)(44)(A)(iv) of the Act contains this element within the definition of managerial capacity. Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). Upon review of the entire record in this matter, the beneficiary's oversight of the "general manager" and the sales manager is that of a first-line supervisor of non-professional employees, and thus is not a managerial duty.

Counsel's implication that a beneficiary's performance of non-qualifying duties is not precluded by statute is not persuasive. The AAO acknowledges that the performance of some non-qualifying duties will not preclude a beneficiary from a recognized managerial or executive capacity. However, the AAO has long required the petitioner to establish that a beneficiary's position consists of *primarily* managerial and executive duties and that the petitioner has sufficient personnel to relieve the beneficiary from performing operational and administrative tasks a majority of the time. In the present matter, the petitioner has not established the basic eligibility requirement in this matter, that the beneficiary is *primarily* performing managerial or executive duties. In *Matter of Church Scientology Int'l*, the AAO observed that an employee who primarily performs the tasks necessary to

produce a product or to provide services is not considered to be employed in a managerial or executive capacity, focusing on the statutory requirement that a beneficiary "primarily" perform in a managerial or executive capacity. The word "primarily" is defined as "at first," "principally," or "chiefly." *Webster's II New College Dictionary* 877 (2001). Where an individual is "principally" or "chiefly" performing the tasks necessary to produce a product or to provide a service, that individual cannot also "principally" or "chiefly" perform managerial or executive duties.

Counsel's assertion that past approvals of the beneficiary's classification as an L-1A intracompany transferee is evidence that the CIS has already acknowledged that the beneficiary's duties are managerial or executive is not persuasive. Although the statutory definitions for managerial and executive capacity are the same for both the immigrant and nonimmigrant classification, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

In addition, it must be noted that many Form I-140 immigrant petitions are denied after CIS approves prior nonimmigrant Form I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing Form I-129 nonimmigrant petitions than Form I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

Furthermore, the AAO is not bound or estopped by the previous decisions of the service center director. 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).

Finally, each petition is a separate record of proceeding and receives an independent review. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The record does not contain evidence that the beneficiary has been or will be employed in a primarily managerial or executive capacity. The petitioner has failed to offer sufficient evidence or argument to overcome the director's determination on this issue.

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.