

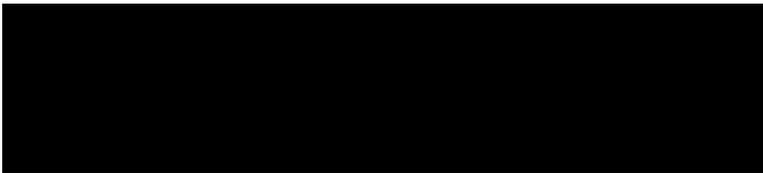
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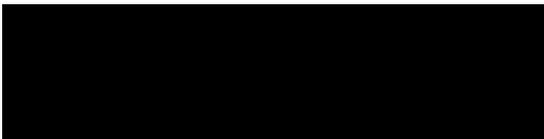


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 24 2006  
WAC 04 170 51201

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

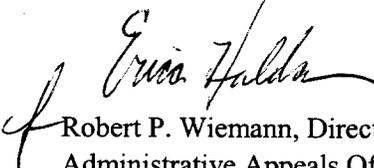
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to  
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the employment-based 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 California in September 2001. The petitioner markets and sells metallized and coated films, paper, board, and metallic yarn. It 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.

The director determined that the petitioner had not established that the beneficiary would be employed in a primarily managerial or executive capacity for the United States petitioner.

On appeal, counsel for the petitioner asserts: that the director erred when determining that the beneficiary would not occupy a managerial position; that the director mistook the job duties of an employee supervised by the beneficiary for the beneficiary's job duties; and, the director erred when concluding that the beneficiary's subordinates were not professionals.

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 issue in this proceeding is whether the beneficiary will be employed in a managerial or executive capacity for the United States entity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), 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 a May 17, 2004 letter appended to the petition, the petitioner indicated that the beneficiary as president would spend 50 percent of his time performing general management activities which included overseeing overall operations and setting policies and procedures for:

- Professional staff management, hiring and firing employees;
- Business development, marketing and expanding the organization by effectively marketing metallized and coated film, yarn and boards;
- Directing management staff to coordinate with consultants, customers, vendors and the production center in the Indian company to effectively translate the needs of customers into deliverable products.

The petitioner indicated that the beneficiary would spend 25 percent of his time on financial management which included "[s]etting the budget for expenditure and monitoring the performance and profitability of the company; [s]etting and implementing policies to control overhead costs[.]" The petitioner further indicated that the beneficiary would spend the remaining portion of his time (25 percent) on personnel training which included "[d]evelop[ing] a training program for employees to improve their skills; [h]iring technical consultants, who are industry experts to augment the company's know-how as well as train employees."

The petitioner also provided an organizational chart depicting the beneficiary as president and chief executive officer. The chart showed the positions directly subordinate to the beneficiary as business development manager, finance and strategy manager, and an operations manager's position to be filled June 2004. The petitioner also listed an associate business development manager and six sales engineers (agents) subordinate to the position of business development manager and an administrative associate and independent contractors performing accounting, payroll, cleaning, and forwarding duties subordinate to the position of finance and strategy manager.

The petitioner further provided a list of employees by name and degree and brief description of their job duties for the petitioner. The petitioner indicated that the president, the beneficiary's position, was responsible for profit and loss, made investment decisions, created and managed personnel policy including hiring, strategized the vision for the company's growth including alliances and joint ventures, interacted with industry players, and managed key customer relations; the finance and strategy manager managed financial and corporate issues and assisted the president on joint ventures and alliances; the operations manager, who would join the company in June 2004, managed all operations, the supply-chain, and coordinated with the parent company for supplies; the business development manager managed product and market development, managed and coordinated the sales engineers team, and managed customer relations; the business development associate assisted the manager in business development and coordinated the day-to-day sales activities; the administrative associate fulfilled administrative functions, performed data entry, and performed accounting related activity; and, the sales engineers procured orders on a commission basis, generated product development ideas, developed a customer base in their respective regions, and provided timely feedback on quality issues.

On January 28, 2005, the director requested, among other things: (1) a more detailed description of the beneficiary's duties in the United States, including a "typical day" job description; (2) the petitioner's California Form DE-6, Employer's Quarterly State Wage Report, for the second quarter of 2004, the quarter in which the petition was filed; and, (3) the petitioner's organizational chart describing its managerial hierarchy and staffing levels, as of the date of filing the petition which should include the names of all executives, managers, supervisors, and number of employees within each department or subdivision and a list of all employees under the beneficiary's supervision by name, job title, education, and brief description of job duties.

In an April 16, 2005 response, counsel for the petitioner stated that the petitioner employed 12 professional workers including six contractors and that the beneficiary supervised eleven professional individuals. Counsel also added more details to the description of job duties for each of the beneficiary's subordinates. Counsel indicated that the finance and strategy manager, a full-time employee, assisted in the preparation of annual budgets and cash flow projections, managed vendor relations, oversaw preparation and processing of accounts payable, managed customer billing relationships and processed accounts receivable, as well as managing banking relationships, accounts, and customer and sales order reports. Counsel indicated that the operations manager, a full-time employee, coordinated with the parent company for supplies, provided an uninterrupted flow of materials, supplies, and services, managed inventory levels, developed productive working relationships with vendors and retailers, and internal departments, analyzed and negotiated contracts with suppliers, manufacturers and distributors, integrated technology in the supply chain, and scheduled the transportation and logistics of product and service to final destinations. Counsel indicated that the business development manager, also a full-time employee, prepared, reviewed, and managed customer contracts and product pricing, developed and implemented business plans, monitored and supported strategic sales opportunities, communicated product management strategies to the field, established appropriate market pricing, worked with the marketing organization to develop and communicate market intelligence, and developed specific penetration strategies and product opportunities. Counsel indicated that the business development associate, a full-time employee, identified strategic sales opportunities, communicated with the sales engineers, assisted in putting together business and marketing plans, and performed any activities appropriate to sales and business development. Counsel indicated that the administration associate performed accounting related activity, managed office equipment and correspondence filing, performed administrative tasks for the office management, and performed data entry duties.

Counsel indicated that the finance and strategy manager held a master of business administration and engineering degree, the operations manager held a master of business administration, the business development manager held a master's degree, the business development associate held an engineering degree, the administration associate held an engineering degree, and the six contractual sales engineers held bachelor degrees with technical, commercial, and marketing knowledge of the petitioner's industry's products.

Counsel asserted that the beneficiary supervised three managers who in turn supervised other employees and contractors. Counsel claimed that the operations, business development, and finance managers performed complicated tasks including financial management, market research analysis, and business development, tasks that could not be performed by unqualified and untrained personnel. Counsel contended that the tasks performed by the individuals subordinate to the beneficiary were complex in nature, making the positions

professional positions. Counsel submitted copies of electronic mail correspondence between the beneficiary and several contractors for the 2002 and 2003-time period. Counsel indicated that the beneficiary assigned the contractors work and closely supervised their day-to-day functioning and that the electronic mail demonstrated the complexity and specialty nature of the tasks performed by the contractors. Counsel also included a study commissioned by the beneficiary and a non-disclosure agreement and electronic mail from the beneficiary regarding a product development opportunity. Counsel concluded that the evidence provided established that the beneficiary managed a subordinate staff of professional workers who performed duties at a professional level.

Counsel also provided essentially the same job description of the beneficiary's duties and the same organizational chart as submitted with the initial petition. Counsel claimed that the beneficiary occupied a senior level position in the managerial hierarchy overseeing professional people. Counsel also noted that some of the beneficiary's direct subordinates were also managers who oversaw others.

The petitioner submitted its California Form DE-6, Employer's Quarterly State Report of Wages Paid to Each Employee, for the second quarter of 2004. The California Form DE-6 showed that the petitioner employed five individuals, including the beneficiary, in the quarter in which the petition was filed. The names of the four individuals listed on the California Form DE-6, in addition to the beneficiary, corresponded to the positions of business development manager, financial and strategy manager, business development associate, and administration associate. The California Form DE-6 showed that the individual in the position of business development manager received \$2,500 in salary for the quarter, the financial and strategy manager received \$2,000 in salary for the quarter, the business development associate received \$1,500 in salary for the quarter, and the administrative associate received \$1,800 in salary for the quarter. The California Form DE-6 did not list the individual in the position of operations manager. The petitioner also provided several sales agency contracts entered into in 2002, 2003, and January 2004 with companies to procure orders for the petitioner's products.

On May 18, 2005, in a poorly articulated decision, the director denied the petition. The director erroneously recited the job description for the petitioner's financial and strategy manager, rather than the job description provided for the beneficiary when determining that the beneficiary's job description did not establish that the beneficiary primarily directed the management of the organization, established the company's policies and goals, exercised wide latitude in discretionary decision-making or maintained autonomy over the petitioner's operations. The director concluded without discussion that it was reasonable to believe, based on the petitioner's organizational chart and employment of two managers and two associates as substantiated by the petitioner's California Form DE-6, that the beneficiary would assist with the day-to-day non-supervisory duties. The director did not clarify what duties he identified as non-supervisory but concluded that the performance of those menial tasks precluded the beneficiary from being considered an executive.

The director also determined that the beneficiary's subordinates could not be deemed professionals because their positions are not so complex as to require individuals with a college degree, thus the beneficiary was at most a first-line manager who would not be supervising professional employees. The director also concluded that the beneficiary was not a "functional manager" because the petitioner had not shown that the beneficiary managed a function rather than performing the petitioner's routine operational activities.

On appeal, counsel for the petitioner asserts that Citizenship and Immigration Services (CIS) based its denial on an erroneous assumption of the beneficiary's job duties. Counsel notes the director's misstatement of the beneficiary's job duties and contends that the director's careless misreading of the petition is gross error. Counsel claims: that the beneficiary occupies a senior level position over professional employees as depicted on the organizational chart provided; that the beneficiary has responsibility for the operations of the company and has authority to hire, promote, and fire employees as substantiated by appointment and promotion letters sent to employees; that the beneficiary has signed contracts on behalf of the petitioner in the capacity of president as substantiated by contracts previously provided; and that the beneficiary oversees managers as well as professional personnel as substantiated by electronic mail containing communications from the beneficiary to the individuals he supervises and directs.

Counsel concludes that the beneficiary's job duties establish that the beneficiary "fulfills the requirement for a managerial/executive function," noting that the beneficiary oversees 12 employees, delegating tasks to managers who in turn oversee others. Counsel contends that CIS has erred in not considering the evidence on record, has misapplied the law, and failed to consider relevant evidence in making its decision.

Counsel specifically contends that CIS has failed to consider the petitioner's reasonable needs when arbitrarily determining that supervising only five employees is insufficient to support a finding of managerial capacity. Counsel points out that the director referred only to the employment of five individuals, failing to consider the petitioner's use of contractors. Counsel encloses evidence of payments to contractors to substantiate the petitioner's use of their services. Finally, counsel asserts that the beneficiary supervises three managers who in turn supervise other employees and contractors and that the beneficiary's subordinate staff is made of professional workers performing duties that are at a professional level.

Preliminarily, the AAO notes that the director's decision was poorly articulated, consisting primarily of conclusory statements and an improperly recited description of the beneficiary's duties. Although the director in this matter failed to adequately discuss the deficiencies in the record, the director did point out the specific issues that indicate the beneficiary's ineligibility for this visa classification. The director determined: that the description of the beneficiary's duties was inadequate, although reciting the wrong description in the body of the decision; that the beneficiary's subordinates did not hold professional positions; and that the petitioner had not established that its organizational structure was sufficient to support an executive or managerial position who could devote the majority of his time to qualifying duties. The AAO finds that the petitioner had adequate notice to prepare an appeal to address these issues and that remanding the matter would serve no useful purpose.

Counsel's assertions are not persuasive. The petitioner does not adequately clarify whether the beneficiary is claiming to be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. The AAO observes that the statute does not contain a position definition for an individual who "fulfills the requirement for a managerial/executive function." A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager.

When examining the managerial or executive capacity of a beneficiary, CIS reviews the totality of the record, including descriptions of a beneficiary's duties and his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy. Upon review of the record in this matter and as discussed further below, the petitioner has not established that the beneficiary's duties and those of his claimed subordinates elevate the beneficiary's position to a primarily managerial or executive position.

The AAO observes that the record is inconsistent on a material issue. The petitioner shows on its organizational chart and in the description of the business development manager's job duties that the business development manager coordinates the sales engineers team. On appeal, counsel for the petitioner indicates that the beneficiary oversees the contractors (sales engineers) and assigns their duties. The petitioner's electronic mail substantiates that the beneficiary is the individual discussing the petitioner's products and coordinating the sale of the petitioner's products with third party contractors. The electronic mail suggests that it is the beneficiary who is responsible for the oversight and management of the petitioner's commissioned sales agents. Further, the salaries of the individuals employed as the business development manager and the finance and strategy manager show that these individuals were employed intermittently or part-time when the petition was filed, contrary to the petitioner's claim that these individuals were employed full-time. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, the AAO observes that the record does not establish when the operations manager was hired.<sup>1</sup> The record does not contain evidence establishing that the operations manager was, in fact, hired in June 2004. 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)). Thus, the AAO must conclude that the beneficiary would necessarily be performing the non-qualifying duties of the operations manager, such as obtaining supplies, materials, managing inventory, working with vendors and retailers, negotiating contracts, and arranging the logistics of transportation, when the petition was filed. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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<sup>1</sup> The record contains a letter to an individual with the same name as the operations manager identified on the employee list, proposing employment to begin in September 2002 for a total of 15 hours per week. The petitioner's California Form DE-6 for the fourth quarter of 2002 confirms the part-time or intermittent employment of this individual during that time period. This information is inconsistent with the petitioner's organizational chart showing that the operations manager position will be filled in June 2004, after the petition was filed.

Further, the petitioner's descriptions of the beneficiary's duties and the duties of the finance and strategy manager contain overlapping detail. For example, the beneficiary spends 25 percent of his time on financial management, including setting the budget, maintaining profit and loss, and implementing policies to control cost; while the finance and strategy manager also manages the company's finances and corporate issues, and assists with the annual budget and cash flow. The petitioner has not adequately delineated the duties of the beneficiary and the finance and strategy manager so that the actual duties associated with each position are clearly defined.

The above inconsistencies and omissions undermine the petitioner's implicit claim that the beneficiary is relieved from performing primarily supervisory duties. Contrary to counsel's contention, the record does not establish that the beneficiary's subordinates' positions require individuals with knowledge, not merely skill, of an advanced type in a given field. When evaluating whether the beneficiary manages professional employees, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. Upon review of the position descriptions of the beneficiary's part-time or intermittent subordinates, the position descriptions do not contain sufficient detail to conclude that the positions require professional degrees. For example, the finance and strategy manager assists in preparing budgets, is involved with vendor relations, processes accounts receivable and payable, and handles banking relationships and sales orders reports. This description is general and does not clarify how performing the duties requires an individual with an advanced degree rather than an individual who has basic skills at performing operational tasks. Likewise, the duties of the petitioner's business and development manager involve contact with customers, identifying sales opportunities, establishing pricing and other strategies. Again, this is a broad position description that does not sufficiently define how the duties of the position require an individual with a bachelor's degree rather than an individual with sales and marketing skills. Although the petitioner indicates on its organizational chart that both the finance and strategy manager and the business development manager manage or oversee subordinate employees, the job descriptions for these "managers" do not include any supervisory duties. The descriptions provided do not adequately delineate how the part-time or intermittent employment of these individuals relieves the beneficiary from performing primarily supervisory duties.

The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. In the present matter, the totality of the record does not support a conclusion that the beneficiary's subordinates are supervisors, managers, or professionals. Instead, the record indicates that the beneficiary's subordinates intermittently perform the actual day-to-day tasks of operating the company. The petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial or executive under the statutory definitions.

The record does not substantiate that the petitioner employed sufficient personnel to relieve the beneficiary from performing the non-qualifying duties of a first-line supervisor of non-professional positions of the sales engineers and the individuals employed in part-time or interment positions. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner

must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

Finally, the petitioner provides an overly broad description of the beneficiary's duties. 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 answer a critical question in this case: What does the beneficiary primarily do on a daily basis? 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 director requested a more detailed description of the beneficiary's duties including a "typical day" description. The petitioner failed to provide a response to this request. 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).

Counsel correctly observes that 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). In addition, the AAO acknowledges that the director should have more articulately discussed the beneficiary's duties and how the description failed to establish that the beneficiary's duties would be primarily managerial or executive. However, the totality of the record in this matter raises questions regarding the legitimacy of the beneficiary's position. Upon review, the description of the beneficiary's duties, the petitioner's type of business when the petition was filed, the petitioner's organizational chart, and the absence of evidence confirming the employment of individuals other than in a part-time or intermittent capacity, cast doubt on the legitimacy of the petitioner's offer of employment in a managerial or executive capacity.

Further, 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). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.* If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In this matter, the AAO finds that the petitioner's description of the beneficiary's duties does not show a realistic relationship with the nature of the petitioner's business and the necessary number of personnel hours to operate the company's business.

Furthermore, to establish that the reasonable needs of the organization justify the beneficiary's job duties, the petitioner must specifically articulate why those needs are reasonable in light of its overall purpose and stage of development. In the present matter, the petitioner has not explained how the reasonable needs of the petitioning enterprise justify the beneficiary's performance of the pragmatic duties of overseeing service personnel or performing the administrative and operational tasks necessary to supervise and sell the petitioner's products. Again, 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. Furthermore, the reasonable needs of the petitioner will not supersede the requirement that the beneficiary be

"primarily" employed in a managerial or executive capacity as required by the statute. See sections 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner cannot excuse a beneficiary who spends the majority of his time on non-qualifying duties.

Upon review of the totality of the record the petitioner has not provided evidence that it employs a sufficient number of employees (whether part-time or full-time) to relieve the beneficiary from performing primarily non-qualifying duties. The statute continues to require that an individual "primarily" perform managerial or executive duties in order to qualify as a managerial or executive employee under the Act. 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. In this matter, when the petition was filed, the record demonstrates that the beneficiary performed primarily non-qualifying duties, including the duties of a first-line supervisor over non-professional employees.

The facts provided in this matter, including the description of the beneficiary's duties, the lack of evidence substantiating the employment of sufficient personnel to relieve the beneficiary from performing operational and administrative tasks, the description of the beneficiary's subordinates' duties, and the nature of the petitioner's business when the petition was filed do not establish the beneficiary's eligibility for this visa classification.

On review, the petitioner has not presented sufficient evidence to establish that the beneficiary's duties for the petitioner will comprise primarily executive or managerial duties. For this reason, the appeal will be dismissed.

The AAO acknowledges that CIS approved other petitions that had been previously filed on behalf of the beneficiary. With regard to the similarity of the eligibility criteria, the AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. See §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, 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 general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. Accordingly, 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).

Moreover each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. *See* 8 C.F.R. § 103.8(d), 8 C.F.R. § 103.2(b)(16)(ii). The approval of a nonimmigrant petition does not guarantee that CIS will approve an immigrant petition filed on behalf of the same beneficiary. As the evidence submitted with this petition does not establish eligibility for the benefit sought, the director was justified in departing from previous nonimmigrant approvals by denying the immigrant petition.

In addition, if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross 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. 1988). It would be absurd to suggest that CIS 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).

Further, 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). The petitioner has not provided evidence or argument on appeal sufficient to overcome the director's decision.

Finally, the AAO observes that as the director was justified in departing from the previous nonimmigrant approvals in this matter; the director should review the previous nonimmigrant approvals for revocation pursuant to 8 C.F.R. § 214.2(l)(9)(iii).

The petition will be denied for the above stated reason. 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.