

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



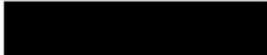
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B4



FILE:



Office: TEXAS SERVICE CENTER

Date:

JUL 11 2006

SRC 04 800 25211

IN RE:

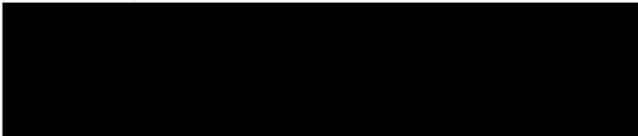
Petitioner:



Beneficiary:

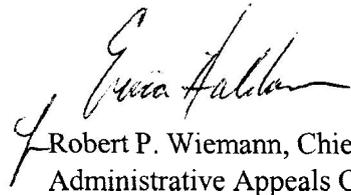
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
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 AAO will dismiss the appeal.

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of Florida that is operating as a languages school. The petitioner seeks to employ the beneficiary as its vice-president.

The director denied the petition concluding that the petitioner had not demonstrated that: (1) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity; or (2) at the time the priority date was established, the petitioner had the ability to pay the beneficiary's proffered wage.

On appeal, counsel for the petitioner challenges the director's findings. Counsel submits a brief and documentary evidence 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 or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

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

The first issue in this proceeding is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

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

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

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

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

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

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

The petitioner electronically filed the instant immigrant petition on May 27, 2004. In a subsequently submitted "copy" of the Form I-140, the beneficiary's position in the United States entity was identified as vice-president, in which the beneficiary would possess "[f]ull responsibility for the direction, coordination, operation and planning of [the petitioning entity and its United States subsidiary, Headway Language Center (Headway).]" In a February 23, 2004 letter submitted by the petitioner in support of the immigrant petition, the petitioner provided the following job description of the beneficiary's proposed position:

[The beneficiary], as a Vice-President, is making an effort to develop operations in the United States. He has had a key role in the expansion plans of [the petitioning entity], creating Headway and developing plans of operation in [a] new location in Florida. At least in 80% of his work time, he has performed the professional duties below described:

- Direction of the company's operation and management, including financing and investments;
- Definition [sic], development and establishment of operation in new areas in Florida;
- Negotiations and approval of contracts with suppliers and customers;
- Hiring of staff;
- **Defining and managing** the strategic vision of the organization;
- Coordination of the distribution of services in the United States;
- Management and review of the [sic] both companies' accounting and financial database systems;
- Acquired new clients;
- **Defining and establishing** goals, policies and strategic vision of the organization;
- General administration affairs of the company.

[The beneficiary] has been working for [the petitioning entity] in the United States since March 2002. His continuing presence is essential to bring [the petitioner's] expansion effort to a successful conclusion, since he makes critical decisions about various factors such as those above listed. He will continue the project of the company growth. He is currently in the negotiation's [sic] process to acquire one new possible site for Headway. He also is implementing [the petitioner's] specific control procedures to ensure that its services are [being] properly offered, and is making critical decisions about various factors such as allocation of resources, level of operation, pricing, etc.

The director subsequently issued a request for evidence, dated August 17, 2005, asking that the petitioner submit a "definitive statement" of the beneficiary's employment as a manager or executive, and addressing the following factors: (1) the title of the beneficiary's position; (2) his salary; (3) the job duties to be performed by the beneficiary and the percentage of time that he would spend on each; (4) the subordinate employees that would report to the beneficiary, as well as a description of each worker's position, including job titles and duties; (5) the qualifications necessary to hold the beneficiary's position; (6) whether the beneficiary would function at a senior level in the petitioning entity; and (7) who would provide the petitioner's services. The director also asked that the petitioner provide an organizational chart of its staffing, specifically identifying the beneficiary's position.

Counsel for the petitioner responded in a letter dated October 12, 2005, noting the parent-subsidary relationship between the petitioner and Headway, and explained that the beneficiary "works and will continue to work" for Headway. In an attached job description, the petitioner stated that it "desires to maintain [the beneficiary] as a permanent employee in the position of Director at Headway Language Center." The petitioner provided a list of job responsibilities comparable to the above-outlined list, but omitted the responsibility of acquiring new clients. The petitioner also indicated the approximate amount of time the beneficiary would spend on each responsibility.

While the petitioner provided a copy its organizational chart, the beneficiary was not identified as an employee. Rather, the beneficiary was included on an organizational chart depicting the staffing levels of Headway, and was identified as its "school director" and "director of studies." Consistent with the staff represented on Headway's organizational chart, the beneficiary's subordinate employees were identified by the petitioner in its November 8, 2005 statement as an "academy coordinator-ESL/Portuguese teacher" and the

"registrar secretary." The petitioner noted on the same statement that in the position of director, "[the beneficiary] has a high authority senior level [position], reporting directly to superiors and has total control of Headway's operations." The AAO notes that while the petitioner submitted payroll records for workers employed during 2002 through 2005, employee records for May 2004, the relevant period to be considered herein, were not provided.

In a decision dated December 12, 2005, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Following a review of the salaries paid to the petitioner's employees, the director concluded that "the majority" were working on a part-time basis, and as a result, the petitioner "[did] not need a full[-]time executive to manage part time employees and to make decisions regarding the company." The director also stated that the record did not demonstrate "that the beneficiary's primary assignment has been or will be directing the management of the organization [or] that the beneficiary has been or will be primarily directing or supervising a subordinate staff of professional, managerial, or supervisory personnel, who relieve him from performing non-qualifying duties." Consequently, the director denied the petition.

Counsel for the petitioner filed a timely appeal on January 12, 2006 contesting the director's findings. In a subsequently submitted appellate brief, dated February 6, 2006, counsel contends that the record demonstrates the beneficiary's proposed employment in a primarily qualifying capacity. Counsel states:

Since 2003, [the beneficiary] has been working as an executive for [the petitioning entity], by operating the subsidiary, Headway, and directing and managing the financial and marketing activities, as well as the international operation as described in the exhibit 1 attached¹, for Headway.

Counsel restates the outline of job responsibilities previously provided by the petitioner in its February 23, 2004 and October 12, 2005 letters, stating that at least 80 percent of the beneficiary's time would be devoted to these responsibilities. Counsel contends that the named job responsibilities demonstrate that the beneficiary would be employed in a primarily managerial or executive capacity.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

The AAO first notes the inconsistency in the petitioner's true position, as well as his prospective employer in the United States. The petitioner noted in both its February 23, 2004 letter and "copy" of its Form I-140, that the beneficiary would occupy the position of vice-president of the petitioning entity. The evidence, however, submitted by counsel in response to the director's request for evidence and on appeal identifies the beneficiary as the director of Headway. The petitioner has not clarified the position in which the beneficiary would be employed or the beneficiary's place of employment². Moreover, both the petitioner and counsel offered the

¹ The AAO notes that the documentation submitted on appeal is not identified by exhibit number, and the record does not contain a supplemental job description submitted on appeal, as suggested by counsel.

² Based on counsel's claim that the beneficiary would be working as the director of Headway, the issue of whether the beneficiary would be employed by the petitioner as an executive or manager is moot. The regulations suggest that the *petitioning entity* is the beneficiary's "prospective employer," not a separate United States organization that may be related to the petitioner as an affiliate or subsidiary. *See* 8 C.F.R. §

same list of proposed job responsibilities for the individual positions of vice-president and director. 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).

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 AAO again notes the petitioner's failure to specifically identify where the beneficiary would be employed. As a result, the beneficiary's employment in the United States is exceptionally vague, as it is unclear which company the petitioner is claiming the beneficiary would direct and manage, or whose goals the beneficiary would establish.³ Case law dictates that a petitioner's blanket claim of employing the beneficiary as a manager or executive without a description of how, when, where and with whom the beneficiary's job duties occurred is insufficient for

204.5(j)(5) (stating that "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"). Here, however, counsel suggests that the prospective employer would be Headway. As the beneficiary would not be employed by the petitioning entity, the AAO need not consider or address the issue of the beneficiary's employment capacity. If the beneficiary is to be employed in the United States by Headway, the immigrant visa petition should have been filed by Headway as the petitioner. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Because the petitioner initially represented the beneficiary as its vice-president, however, the AAO will address the issue of whether the beneficiary would be employed as a manager or executive.

³ The statutory definitions of "managerial capacity" and "executive capacity" refer to an assignment within an organization in which the employee either manages the organization or directs the management of the organization. See §§ 101(a)(44)(A) and (B) of the Act. Section 101(a)(28) of the Act defines "organization" as follows: "The term 'organization' means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanent or temporarily associated together with joint action on any subject or subjects." The statutory definition of an organization would not ordinarily include a partially owned corporation that is an entity separate and distinct from the petitioning organization. However, the petitioner may provide evidence to establish that the petitioner's and the petitioner's partially owned entity are either permanently or temporarily associated through controlling ownership, contract, or other legal means. Accordingly, a beneficiary's claimed managerial or executive duties that relate to a partially owned entity may be considered in certain instances for purposes of an immigrant visa petition. The beneficiary's employment in a partially owned United States entity and the job duties related to the proposed employment must be thoroughly described such that the beneficiary's position as a manager or executive is clearly supported by the record. See 8 C.F.R. § 204.5(j)(5). In the instant matter, the beneficiary was initially represented as a manager or executive of the petitioning entity. The petitioner subsequently identified the beneficiary as an employee of its subsidiary and noted a different subordinate staff, without submitting concrete evidence of what job duties the beneficiary would perform in either organization. The numerous unexplained discrepancies in the beneficiary's employment in the United States prevent the AAO from considering the beneficiary as a manager or executive of the petitioner's subsidiary.

establishing employment in a primarily managerial or executive capacity. *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).

Regardless, the limited job description offered by the petitioner fails to address the specific managerial or executive job duties to be performed by the beneficiary. For example, the petitioner provided broad statements that the beneficiary would direct finances and investments, develop the business in new locations in Florida, hire staff, negotiate contracts, manage the accounting and financial database systems, define the goals and policies, and perform "general administration affairs of the company." The petitioner did not identify the specific tasks associated with each of the named job responsibilities, particularly with respect to the "general administration affairs of the company," the management of the company's accounting and financial systems, or the development of business in new locations, all of which are relevant to distinguishing the beneficiary as a manager or executive. Nor did the petitioner explain why the beneficiary's responsibility of negotiating contracts with suppliers and customers would be managerial or executive in nature. The AAO cannot determine from the vague job descriptions what managerial or executive job duties the beneficiary would perform on a daily basis. 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. *Id.* at 1108.

The AAO notes that despite the director's request for a "definitive statement" of the beneficiary's role as a manager or executive, the petitioner submitted a list of job duties comparable to that initially provided for her review. The petitioner's failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The AAO further notes that counsel also submits the same outline of job duties on appeal without providing further clarification as to how the beneficiary's purported role in the United States would be in a primarily managerial or executive capacity. Counsel stresses in his appellate brief that eighty percent of the beneficiary's time would be devoted to the above-outlined job responsibilities; yet, due to the limited record, the AAO cannot determine what managerial or executive tasks the beneficiary would be primarily performing. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

When analyzing a beneficiary's employment capacity, the AAO may also consider the petitioner's staffing levels. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. In the instant matter, however, the petitioner has not provided a clear representation of its staffing levels. In its February 23, 2004 letter, the petitioner stated that in addition to the beneficiary, it employed six workers for "office and administrative support." However, of the six employees noted by the petitioner in its February 23, 2004 letter, two were identified on its subsequently submitted organizational chart⁴, while one was identified on the organizational chart of Headway. The remaining three employees

⁴ The AAO notes that one of the employees originally identified by the petitioner as working in office and administrative support was identified on its organizational chart as its director. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to

were not named on the organizational charts of either the petitioner or Headway. Due to the inconsistent evidence in the record, the AAO cannot determine whether the beneficiary would be supported in a primarily managerial or executive position by a sufficient subordinate staff. Again, the petitioner did not clearly identify the beneficiary's role in the United States, particularly with respect to which organization, the petitioning entity or Headway, the beneficiary would be working. Despite the petitioner's request to employ the beneficiary as its vice-president, the record suggests that the beneficiary would actually be employed by Headway, and thus would be directing a staff separate from the petitioner's, which holds positions different from those workers employed by the petitioner. Without clarification as to where the beneficiary would be employed and which employees the beneficiary would direct, the AAO cannot conclude that the beneficiary would occupy a primarily managerial or executive position in the United States.

As stressed above, the petitioner's failure to clarify the record restricts the AAO's analysis of the instant issue. Absent relevant evidence as to where the beneficiary would be working and which employees the beneficiary would direct, the AAO cannot determine the scope of the beneficiary's employment in the United States or his job duties. The unexplained inconsistencies prevent a finding that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The AAO will next address the issue of whether at the time of establishing the priority date the petitioner demonstrated its ability to pay the beneficiary his proffered wage.

The regulation at 8 C.F.R. § 204.5(g)(2) states:

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

The petitioner indicated on the Form I-140 that the beneficiary would receive an annual salary of approximately \$42,000. In the accompanying documentary evidence, the petitioner provided Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, reflecting wages in the amount of \$22,750.00 paid to the beneficiary from Headway. The petitioner also submitted the following evidence: (1) copies of paychecks issued by Headway to the beneficiary during the months of October, November and December 2003; (2) its 2002 financial statements; (3) the year 2003 IRS Form 1120, U.S. Corporation Income Tax Return, for Headway; and (4) its income tax returns for the years 2001 and 2002.

In her August 15, 2005 request for evidence, the director asked that the petitioner submit evidence of its ability to pay the beneficiary's proffered wage, including such documentation as the petitioner's 2004 income tax return, IRS Form 941, reflecting the quarterly taxes paid by the petitioner for its salaried employees, IRS Forms W-2 and W-3 issued to all employees for the year 2004, and IRS Form I-9.

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 his October 12, 2005 response, counsel for the petitioner addressed the petitioner's ability to pay, noting that during the year 2003, the beneficiary had received \$39,000 from Headway. Counsel referenced the attached Form W-2 reflecting compensation in the amount of \$39,000 paid to the beneficiary by Headway in 2004. Counsel also submitted 2004 tax returns for both the petitioning entity and Headway, as well as employee records and Forms W-2 issued by both the petitioner and Headway.

In his December 12, 2005 decision, the director concluded that the petitioner had not demonstrated its ability to pay the beneficiary's proffered wage at the time the priority date was established. The director referenced the petitioner's 2004 income tax return, noting that the petitioner reported approximately \$5,700 in paid wages and did not realize a positive net income during the year. The director also noted that a deficiency in the wages paid to the beneficiary in 2003 as compared to the proffered salary. Consequently, the director denied the petition.

On appeal, counsel for the petitioner explains that the beneficiary's salary is not paid by the petitioner, but rather by Headway. Counsel references Headway's 2004 income tax return as evidence of its ability to pay the beneficiary's proffered salary. Counsel disputes the fact that the director did not consider Headway's income tax return in her analysis of the petitioner's ability to pay.

Upon review, the petitioner has not demonstrated its ability to pay the beneficiary's proffered salary. The AAO stresses that the statute and regulations require that the beneficiary's "prospective United States employer" demonstrate its ability to pay the proffered wages. As discussed above, the "prospective United States employer" is deemed to be the petitioner, as opposed to a separate United States company, particularly in light of the information contained in Part Five of the petitioner's Form I-140, which identifies the petitioner as the employer. Therefore, counsel's suggestion that Headway has the ability to pay the beneficiary's proffered salary is misplaced. The AAO will not consider the financial documentation of Headway in the instant analysis.

In determining the petitioner's ability to pay the proffered wage, CIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, the petitioner did not establish that it had previously employed the beneficiary. As previously addressed, the beneficiary's Form W-2 for the year 2003 was issued by Headway.

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

petitioner to "add back to net cash the depreciation expense charged for the year." *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. at 537; *see also Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054.

As the petition's priority date falls on May 27, 2004, the AAO must examine the petitioner's tax return for 2004. The petitioner's IRS Form 1120 for calendar year 2004 indicates that the petitioner did not realize net income, presenting rather a negative figure of 1,113. As noted by the director, the petitioner paid \$5,765 in salaries and wages for the year 2004, none of which was compensation paid to the beneficiary, and did not pay any compensation to its officers. The petitioner could not pay a proffered wage of \$42,250.

Finally, if the petitioner does not have sufficient net income to pay the proffered salary, the AAO will review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as the AAO is satisfied that the petitioner's current assets are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage. Based on the information contained in Schedule L of the petitioner's income tax return, the petitioner does not have net current assets available to pay the beneficiary's proffered salary. The petitioner has not demonstrated its ability to pay the beneficiary's proffered wage at the time the priority date was established. Consequently, the appeal will be dismissed.

Beyond the decision of the director, the record does not demonstrate that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. Counsel stated in his October 12, 2005 letter that the beneficiary was the company's director of international operations. However, the limited job description, which included such vague responsibilities as establish "plan of operations," define the company's "strategic vision," goals and policies, "[g]eneral administration," and "[i]nvestment and expansion research," does not identify the specific managerial or executive tasks related to the beneficiary's former position. Again, 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. at 1108. The AAO notes that the petitioner has not identified on the foreign entity's organizational chart any employees directed by the beneficiary, or in particular, any subordinate workers who would have relieved the beneficiary from performing non-managerial or non-executive operational or administrative tasks of the organization. Absent a comprehensive description of the beneficiary's role as a manager or executive in the foreign entity, the AAO cannot conclude that the beneficiary is eligible for the requested immigrant classification. For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The AAO recognizes the beneficiary's previously approved L-1A nonimmigrant petition. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant 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). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 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. Because CIS spends less time reviewing I-129 nonimmigrant petitions than 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, 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. The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. Based on the lack of evidence of eligibility in the current record, the director was justified in departing from the prior nonimmigrant petition approval and denying the immigrant petition.

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.