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Office: NEBRASKA SERVICE CENTER

Date: JUL 26 2006

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

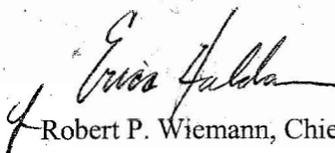
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

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, Nebraska 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 Washington that is engaged in the import and export of seafood. The petitioner seeks to employ the beneficiary as its president and chief executive.

The director denied the petition concluding that the petitioner had not demonstrated that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity or would be employed by the United States entity in a primarily qualifying capacity.

On appeal, counsel for the petitioner claims that as the vice-president of the foreign entity and the "senior executive" of the United States company, the beneficiary has been and would be employed in a primarily managerial or executive capacity. Counsel contends that the record, which counsel notes the petitioner supplemented with additional evidence both in response to the director's request and on appeal, sufficiently describes the job duties performed by the beneficiary in his former and present positions. Counsel submits a brief and additional 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 was employed by the foreign 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.

Counsel for the petitioner filed the instant immigrant petition on June 16, 2005. In the appended documentation, which included a letter from the petitioner dated May 2, 2005, an organizational chart of the foreign company, and an employee list, the beneficiary's position in the overseas company was identified as vice-president, second in the corporate hierarchy to the president. The beneficiary's job duties were identified as directing the company's management and supporting the president. The attached organizational chart reflected six subordinates, including a director, an accounts manager, domestic sales manager, trading

manager, and two assistant managers.<sup>1</sup> A brief statement of the responsibilities held by each employee was provided on the attached employee list.

On August 22, 2005, the director issued a request for evidence noting that the petitioner had not offered evidence documenting the job duties performed by the beneficiary in the foreign entity. The director asked that the petitioner submit "a detailed, comprehensive description of the beneficiary's duties abroad," including an allocation of the amount of time the beneficiary spent on each task. The director also requested that the petitioner identify the positions and job duties performed by the beneficiary's subordinates, as well as a "sample weekly work schedule."

Counsel responded in a letter dated October 26, 2005, noting that the beneficiary had been employed by the foreign entity in the position of vice-president from April 16, 1998 through December 31, 2001. In an appended statement, the job duties associated with the beneficiary's former position were outlined as follows:

1. He oversaw and led its business activities including directing the formulation and implementation of business plan and strategy, working with broad latitude and independence and reporting only to the President.
2. He managed the daily operations of [the foreign entity] which included personnel development and general management, hiring and firing decisions, giving general directions to managers.
3. He managed the finances of the company, which required him to analyze the cash flow of the business, negotiate with banks for extensions and increase of credit lines and financing of particular transactions, made final decisions on all major contracts.
4. Lastly, he was responsible for developing and maintaining good working relationship and resolving material disputes with seafood customers, suppliers, shipping lines and warehouses.

Counsel also submitted a list of the positions held by the foreign entity's eight employees, which was obtained from the company's website, and certificates of employment identifying the beneficiary as the company's vice-president from April 1998 through December 2001.

In a decision dated December 5, 2005, the director concluded that the petitioner had not demonstrated that the beneficiary had been employed by the foreign entity in a primarily managerial or executive capacity. The director stated that the "extremely broad" job description offered by the petitioner did not identify the job duties performed by the beneficiary in the foreign company. The director noted deficiencies in such statements as "'managed' or 'was responsible' for tasks" that had been offered by the petitioner in support of the beneficiary's employment as a manager or executive. The director further noted the petitioner's failure to provide the requested job descriptions for the employees supervised by the beneficiary. Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on January 6, 2006. In his attached appellate brief, counsel focuses predominantly on the beneficiary's position in the United States, yet contends that the job duties performed by the beneficiary while employed by the foreign entity are sufficiently detailed. Counsel notes that the

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<sup>1</sup> In contrast, the petitioner stated in its May 2, 2005 letter that the foreign entity employed at least fifteen full-time workers.

petitioner provided the foreign entity's organizational chart reflecting that the beneficiary was "second in command" to the company's president, as well as a "description of job duties" and a list of the foreign entity's staff. Counsel challenges the director's finding that the job description of the beneficiary's former position was vague, stating that the responsibilities "were self-explanatory and did not need further elaborations." Counsel states that "by definition [the term manager] has general duties and responds to the various needs of the organization," and contends that Citizenship and Immigration Services (CIS) must be willing to accept "a certain level of generality in the job description of a manager." As additional evidence, counsel submits a letter from the beneficiary further defining the four job responsibilities named above. As the beneficiary's statement is part of the record, it will not be repeated herein.

Upon review, the petitioner has not demonstrated that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity.

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). In the instant matter, it was not until the appellate stage that the petitioner offered more than a vague and general outline of the job responsibilities held by the beneficiary in the foreign entity. The regulation at 8 C.F.R. § 204.5(j)(3)(ii) states that in appropriate cases, the director may request additional evidence of eligibility for the requested classification. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The AAO notes that the director requested "a detailed, comprehensive description of the beneficiary's duties abroad," as well as the proportion of time devoted to each task, and further stated that "[t]he statement should not rely on broad language." If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Based on the evidence available to the director at the time of his review, the petitioner has not demonstrated that the foreign company employed the beneficiary in a primarily managerial or executive capacity. The brief job description fails to identify the specific managerial or executive job duties performed by the beneficiary as the company's vice-president. Despite counsel's suggestion on appeal, CIS cannot be expected to speculate the actual managerial or executive job duties associated with overseeing the foreign entity's business activities, "directing the formulation and implementation of business plan and strategy," managing the "daily operations" and finances, or "developing and maintaining good working relationship[s]." 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 did 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 AAO notes that the petitioner also neglected to respond to the director's request for an allocation of the amount of time the beneficiary would spend on each of the named responsibilities. Additionally, rather than addressing the job duties performed by the beneficiary's subordinate staff and their "sample weekly work schedule," the petitioner submitted a list of employees from the foreign entity's website which merely identified each worker's position. This information is relevant to determining the beneficiary's true role within the foreign company. The 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 addition to the lack of evidence pertaining to the responsibilities held by the foreign entity's personnel, the record contains an inconsistency in the number of workers employed, and consequently, the positions occupied. Specifically, the petitioner noted in its May 2, 2005 letter that the foreign entity employed more than fifteen full-time workers. The foreign entity's organizational chart, however, reflects eight employees, including the beneficiary. Again, this evidence is germane to understanding the true nature of the position held by the beneficiary in the foreign entity, and whether the foreign entity employed a staff sufficient to support the beneficiary in a primarily managerial or executive capacity. 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).

Based on the foregoing discussion, the petitioner has not demonstrated that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The AAO will next address the issue of whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

The petitioner noted on the Form I-140 that the beneficiary would be employed as the president and chief executive of the four-person United States company. In an appended letter, dated June 9, 2005, counsel addressed the job responsibilities associated with the beneficiary's proposed position, stating:

[The beneficiary] is responsible for the day-to-day management of all employees and the various contract employees. He is responsible for the hiring and firing of employees and for overseeing their activities. . . .

The Beneficiary is in charge of all financial matters including setting a budget, setting financial targets, arranging financing in large transactions, and giving directions to accountants and contract employees. He works independently and is not supervised. He only reports to the President of [the foreign entity] in Korea and to the Board of Directors of the parent company. He also negotiates major contracts with vendors.

In its May 2, 2005 letter, also submitted with the immigrant visa petition, the petitioner addressed essentially the same job responsibilities as those mentioned by counsel, and further noted the use of brokers and third-party inspectors in the seafood industry "to perform specific duties for particular jobs." The petitioner stated that the beneficiary utilized "such parties and obtains reports from such parties regarding the quality and quantity of seafood items . . . and gives directions to such parties regarding shipping, prices and other terms." The petitioner also noted the beneficiary's daily communications via electronic mail with the foreign entity's domestic sales and trading managers.

In an additional letter submitted with the petition, dated April 21, 2005, the foreign company's president noted that the beneficiary "is completely in charge of our U.S. operation." He stated:

[The beneficiary] is not supervised by anyone in the U.S. His duties include contracting with suppliers and with fishing and transportation vessels. He alone is responsible for making all financial decisions and personnel decisions regarding our U.S. operations. He would not be granted such an authority if we did not have full trust and confidence in his abilities. As an example of the types of contracts that he is authorized to execute, we are enclosing samples of contracts negotiated and entered into by [the beneficiary].

The company's president recognized the three employees supervised by the beneficiary, stating that "[they] cannot perform all the functions [of the petitioning entity]," and noted that the foreign entity "performs some of the [petitioner's] routine functions." He further explained the customary use of agents in the fishery business "to perform much of the routine functions such as inspecting the merchandise, providing samples and verifying payment terms," and indicated that the agents are paid a "sales fee" for their services. The foreign entity's president stated that the beneficiary "is in charge of hiring such agents, negotiating their fees and directing their services."

The petitioner submitted an organizational chart of the United States company identifying the beneficiary's three subordinate employees as occupying the positions of sales department general manager, inspector, and accounting manager. An attached personnel list included a brief statement of the job responsibilities held by each employee.

In his August 22, 2005 request for evidence, the director noted that the statements offered by the petitioner with respect to the beneficiary's proposed position were not sufficient to establish his employment as a manager or executive. The director asked that the petitioner submit "a detailed, comprehensive description" of the beneficiary's job duties in the United States, as well as the amount of time he would devote to each task. The director also asked that the petitioner identify the positions held by its remaining three employees and each worker's job duties, including a "sample weekly work schedule."

In his October 26, 2005 response, counsel attached the following statement from the petitioner describing the beneficiary's job duties:

[The beneficiary] supervises other employees, has authority to hire and fire staff for the office, and makes budgeting and purchasing decisions. General categories of job functions, an estimate of the percentage of time spent on each function, and specific job duties are as follows:

Office Management – 35%

- Evaluate employees' performance to promote or demote.
- Evaluate and adjust the employees' duties and wages.
- Determine quarterly and yearly bonuses.
- Evaluate and negotiate office lease.
- Evaluate employees' benefits.
- Make final decision on all major purchases for the office.

Business Management – 35%

- Determine annual budget including projecting income and expenses.
- Manage cash flow; final review of purchase and sales and its profitability.
- Research and develop new seafood products for various countries.
- Oversee all contracts of sales and purchases.
- Oversee lines of credit, negotiate extensions or increases with banks.

Marketing – 25%

- Oversee and maintain the relationship with seafood customers, suppliers, shipping lines and warehouses by personal contact.

Foreign Entity Management – 5%

- Receive and evaluate daily reports from [the foreign entity's] staff.
- Advise on major decisions with [the foreign entity's] president.
- Evaluate monthly profit and loss statements of [the foreign entity].

Counsel also submitted a list of the job duties performed by the petitioner's employees, whose positions, incidentally, were identified by the petitioner as sales and purchasing manager, in-house accountant/administrator, and field manager.

In his December 5, 2005 decision, 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. The director noted an insufficiency in the job description offered by the petitioner, stating that the petitioner had not identified the specific job duties associated with the beneficiary's responsibilities. The director also concluded that the beneficiary would not be supervising managerial or professional employees. The director stated that while the beneficiary's subordinate workers hold managerial titles, "the duties of the positions do no[t] reflect managerial duties, nor does it appear that the duties are those of professional employees." The director further stated that the petitioner had not demonstrated that "the current reasonable needs of the organization would support a managerial or executive position." Consequently, the director denied the petition.

On appeal, counsel for the petitioner claims that as the "senior executive" of the petitioning entity, the beneficiary would occupy a primarily managerial or executive position. In his appellate brief, counsel contends that "at [a] minimum" the beneficiary would meet the statutory definition of a manager, stating that the beneficiary: (1) manages the organization and exercises full responsibility over the petitioner's day-to-day operations as "the chief executive and the highest ranking officer"; (2) exercises discretion over the petitioner's daily activities; (3) supervises and controls the work of employees and contractors, including seafood brokers and inspectors; and (4) possesses the authority to hire and fire employees of the petitioning entity. Counsel contends that in denying the immigrant visa petition, the director incorrectly focused on the size of the petitioner's staffing levels without considering its reasonable needs. Counsel stresses that the petitioner "uses the services of third-party brokers and inspectors in purchasing and selling seafood products," as well as the professional services of certified public accountants and lawyers.

Counsel challenges the director's finding that the offered job description was insufficient to establish the beneficiary's employment as a manager or executive. Counsel references the petitioner's organizational chart, noting that it reflects the beneficiary's position as the highest-ranking employee in the company, as well as the support letters submitted by the foreign entity and the president of one of the petitioner's suppliers. Counsel claims that the petitioner's response to the director's request for evidence contained detailed job descriptions of the four positions in the United States company. As additional evidence, counsel submits a "specific description" of the job duties performed by the beneficiary in the United States company, which was prepared by the beneficiary himself. In the statement, the beneficiary gives a further explanation of the job duties associated with his responsibilities of managing the petitioner's "office," "business," "marketing" and the "foreign entity." As the beneficiary's statement is part of the record, it will not be repeated herein.

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

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). Counsel suggests on appeal that the AAO should accept "a certain level of generality." The regulations, however, require that the petitioner clearly describe the managerial or executive duties to be performed by the beneficiary. *See* 8 C.F.R. § 204.5(j)(5). Despite the director's request for a "detailed, comprehensive description," the petitioner submitted a vague outline, stating that the beneficiary would evaluate the performances, duties, wages, and benefits of the employees, determine the company's annual budget and cash flow, oversee sales contracts, lines of credit and consumer and supplier relationship, and review reports from the foreign entity. Contrary to counsel's claim on appeal that the offered job description is detailed, it does not adequately explain the daily managerial or executive job duties to be performed by the beneficiary. While counsel supplements the record on appeal with a job description from the beneficiary, it does not appear to address the beneficiary's true employment capacity. For example, the petitioner and the foreign entity's president emphasize the beneficiary's purported managerial authority over third party brokers and inspectors used by the petitioner, yet did not address this relationship in the beneficiary's job description. The responsibility held by the beneficiary with respect to outside agents would appear to be significant considering the claims from the petitioner and foreign entity that the beneficiary would have daily contact with them. 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 establishing employment in a primarily managerial or executive capacity. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The actual duties themselves reveal the true nature of the employment. *Id.*

With respect to the documentation submitted by the petitioner in support of the beneficiary's role as a manager or executive, the AAO notes that although the foreign entity's president referenced "samples of contracts negotiated . . . by [the beneficiary]," none have been provided for review. 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)).

Additionally, the beneficiary's proposed employment in a primarily managerial or executive capacity is questionable due to various inconsistencies in the record. 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.

At the time of filing, the petitioner represented that the beneficiary would manage a general manager, inspector, and accounting manager.<sup>2</sup> Incidentally, in its response to the director's request for evidence, the petitioner changed the job titles of the beneficiary's subordinates to sales and purchasing manager, field manager, and in-house accountant/administrator. It is unclear whether the job responsibilities associated with each position changed, as the petitioner had provided only a brief statement of each position with the initial petition.<sup>3</sup> The AAO notes that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Additionally, throughout the record the petitioner stressed its use of third party brokers and inspectors to perform such "routine functions" as inspecting merchandise, providing samples, verifying payments, and purchasing and selling seafood products. Both the foreign company's president and counsel emphasized that the beneficiary hired and directed the work of agents, including contacting them "to get daily reports on the fishing activity." Despite the numerous references to the beneficiary's management of these agents<sup>4</sup>, the record is devoid of evidence that the petitioner would utilize outside workers to perform these non-qualifying tasks of the business. Neither the petitioner's 2003 or 2004 federal tax return<sup>5</sup> reflects compensation paid for outside labor or independent contractors. Of particular relevance is the petitioner's failure to document payments made by the United States company for a "sales fee," which the foreign entity's president defines as the fee commonly paid in the fishing industry to an agent for services rendered. 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*

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<sup>2</sup> Although the petitioner's "wage detail" statement appended to its March 31, 2005 federal quarterly tax return identifies wages paid to its inspector, his employment with the petitioning entity is questionable. The inspector's resume reflects that he has been employed by Lund's Fisheries, an East Coast company with which the petitioner does business, since October 2002. Additionally, in its response to the director's request for evidence, the petitioner noted that the inspector's general work hours are on "east coast time," thereby underscoring the AAO's note of ambiguity as to his true employer. This discrepancy raises the question of whether the inspector is employed full-time by the petitioner, and likewise whether he would devote more than forty hours a week to performing the non-qualifying tasks of the petitioner's business. 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).

<sup>3</sup> In his December 5, 2005 decision, the director noted a change in the accounting manager's job title to in-house accountant/administrator. Counsel stated in his appellate brief that the job duties for each position "are essentially the same."

<sup>4</sup> In the foreign entity's April 21, 2005 letter, the company's president identified the agency [REDACTED] as performing its inspection services. It is not clear from the record whether the petitioner is also representing [REDACTED] is an agent of the petitioning entity. However, the petitioner has not provided invoices or payment records documenting a business relationship between the United States entity and [REDACTED].

<sup>5</sup> The petitioner did not submit its 2005 income tax return for the AAO's review and consideration in the instant matter.

*California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). This deficiency is significant, as the petitioner claimed that the agents perform a "vital and necessary function" of its business. But for the agents, it is not clear who would be responsible for performing the on-site inspections for the petitioning entity. The AAO recognizes that the petitioner represented in its initial letter that it employed an individual in the position of "inspector," yet subsequently identified him as a field manager. While it appears that the terms "inspector" and "agent" are used by the petitioner interchangeably, there is no indication that the petitioner's field manager should be construed as performing the responsibilities of an independent agent. Moreover, in his April 21, 2005 letter, the foreign entity's president distinguishes the petitioner's four employees from the agents used by the petitioner.

Moreover, the president of the foreign entity concedes in his April 21, 2005 letter that the functions of the petitioning entity cannot be entirely performed by the petitioner's four-person staff. The company's president suggests that the foreign office performs some of the petitioner's "routine functions." This brief statement without further clarification as to the specific tasks performed by the foreign company, as well as evidence documenting the foreign company's role in the daily routine tasks of petitioner's business is not sufficient to demonstrate that the petitioning entity's reasonable needs might plausibly be met through the services of its four-person staff. 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.

The numerous inconsistencies addressed in the foregoing discussion undermine the petitioner's claim that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Additionally, as discussed above, taking into consideration the reasonable needs of the petitioner, as well as its purpose and overall stage of development, the record does not support a finding that the petitioning organization would support the employment of the beneficiary as a manager or an executive. Accordingly, the appeal will be dismissed.

Counsel emphasizes on appeal that CIS has previously approved three L-1A nonimmigrant visa petitions filed by the petitioner on behalf of the beneficiary. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. 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 addition, unless a petition seeks extension of a "new office" petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and CIS normally accords the petitions a less substantial review. *See* 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). Because CIS spends less time reviewing L-1 petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003).

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. The prior nonimmigrant approvals do not preclude CIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory 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). Due to the lack of required evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approvals by denying the present immigrant petition.

Finally, 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).

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

**ORDER:** The appeal is dismissed.