

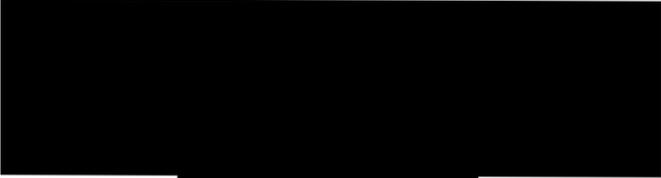


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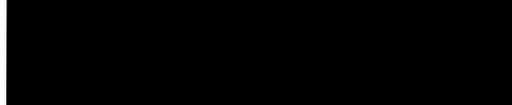
Office: CALIFORNIA SERVICE CENTER

Date: JUN 28 2006

WAC 04 249 53379

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, California 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 California that is operating as a supplier of portable digital video disc players. The petitioner seeks to employ the beneficiary as its vice-president.

The director denied the petition concluding that the petitioner had not demonstrated the existence of a qualifying relationship between the foreign and United States entities. In his analysis of the instant matter, the director focused on whether the beneficiary's foreign employer furnished consideration in exchange for its purported interest in the petitioning entity.

On appeal, the petitioner's present counsel contends that the beneficiary's foreign employer is the parent of the petitioning organization. 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 issue in this proceeding is whether a qualifying relationship exists between the United States company and the beneficiary's foreign employer.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

*Affiliate* means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity;

\* \* \*

*Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The petitioner filed the instant petition on September 14, 2004. In an appended letter, dated August 30, 2004, the petitioner explained that the beneficiary's foreign employer is the parent of the United States company as a result of its ownership of 51 percent of the petitioner's issued stock. As supporting evidence, the petitioner's former counsel submitted a chart identifying three shareholders of the petitioning entity – the beneficiary's foreign employer, as well as a Chinese corporation and a corporation based in California. Their respective ownership interests were identified as 51 percent, 39 percent and 10 percent. Counsel provided three stock certificates, numbered one through three, and the petitioner's stock transfer ledger, both of which reflected the issuance of stock in the above-named amounts to the three companies on June 12, 2001. Counsel further submitted the petitioner's California Notice of Transaction Pursuant to Corporations Code Section 25102(f), filed on January 30, 2002, which identified the petitioner's total value of securities as \$500,000.

On July 23, 2005, the director issued a request for evidence, asking that the petitioner submit the following evidence establishing a qualifying relationship between the foreign and United States entities: (1) original wire transfers, canceled checks, deposit receipts, and bank statements reflecting monies transferred by the beneficiary's foreign employer in exchange for its purported ownership of 510 shares of the petitioner's stock; (2) Security and Exchange Commission Form 10-K, Annual Report, identifying the petitioner's subsidiaries and the percentage of ownership; (3) copies of the petitioner's board of director's meetings addressing its shareholders and the interests held by each; (4) the petitioner's articles of incorporation; and (5) a list of the petitioner's stockholders and the percentages of ownership. The director instructed that the petitioner should demonstrate that the foreign entity paid for the petitioner's stock, particularly if the monies were transferred from a source other than the beneficiary's foreign employer. The director stated that the petitioner should "explain the source and reason for receiving such funds and provide the names of all account holders depositing these funds and their affiliation to the foreign or U.S. company."

The petitioner's former counsel responded in a letter dated October 11, 2005. In an attached letter bearing the same date, the petitioner addressed the funding of the United States organization by the beneficiary's foreign employer. The petitioner explained that in order for the beneficiary's foreign employer, a Chinese

corporation, to transfer monies within the allotted time period<sup>1</sup>, the Chinese corporation "borrowed \$100,000 from one of its Hong Kong customers," [REDACTED], which transferred the funds to the petitioner through a United States agent. The petitioner submitted "declarations" from the president of the beneficiary's foreign employer and from [REDACTED] United States agent, attesting to the transfer of funds on behalf of the beneficiary's foreign employer from [REDACTED] to the petitioning entity. The petitioner stated that [REDACTED] "loan" to the foreign entity "was later offset [by] a [transfer] of goods from [the foreign entity] to [REDACTED]." As evidence of the transaction, the petitioner submitted: (1) bank statements for the months of June and July 2001 reflecting two separate deposits made by [REDACTED] and [REDACTED] president in the amounts of \$50,000 each into the United States agent's savings account and subsequent withdrawals for the same amount; (2) copies of two \$50,000 cashier's checks issued to the petitioning entity; (3) copies of the petitioner's June and July 2001 bank statements reflecting the cumulative deposit of \$100,000 in its checking account; and (4) an August 7, 2001 commercial invoice for goods in the amount of \$130,000 shipped from the beneficiary's foreign employer to Shinco International.

The petitioner further explained in its October 11, 2005 letter that following the initial transfer of \$100,000, "[the beneficiary's foreign employer] still owed \$155,000 of stock capitals to [the petitioner]." As a result, the petitioner explained, the petitioning entity agreed to accept a shipment of goods in the amount of \$177,500 from the foreign entity. The petitioner stated "[t]he \$155,000 stock capitals were offset from the purchasing price of the goods." The petitioner submitted an August 27, 2001 invoice reflecting \$177,500 worth of goods shipped from the foreign entity to the petitioner. The petitioner also provided an October 3, 2005 resolution in which the petitioner's current board of directors acknowledged that the previous board of director's had determined that it was in the petitioner's best interest to accept the goods from the foreign entity "in lieu of the remaining consideration of the 510 shares that [the foreign entity] promised to pay." The resolution referenced a copy of the written consent approved by the prior Board, but noted that the resolution had not been signed. The petitioner submitted a copy of the August 27, 2001 unsigned resolution, stating that "there is no doubt that the Board of Directors has previously adopted the above resolutions." The petitioner again provided for the record its California notice of transaction and articles of incorporation.

In a decision dated December 14, 2005, the director concluded that the petitioner had not demonstrated the existence of a qualifying relationship between the foreign and United States entities.<sup>2</sup> Specifically, the director stated that "it has not been shown that the foreign entity owns the U.S. entity." The director referenced the documentary evidence submitted by the petitioner, but concluded that there is insufficient evidence to establish that the foreign entity "actually contributed funds to purchase the petitioner's stock." The director focused on the anticipated amount of consideration to be received by the petitioner for its issued stock, which, according to the stock transfer ledger and June 12, 2001 minutes amounted to \$500,000. The

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<sup>1</sup> The petitioner stated that "[d]ue to strict foreign currency policies in Mainland China, it was impractical for [the beneficiary's foreign employer] to directly wire such payment to the petitioner" by the end of July 2001, the date for fulfilling "the petitioner's initial capital needs."

<sup>2</sup> In addition to other findings made by the director, the director concluded that the information contained on Schedule E of the petitioner's 2001 through 2003 tax returns conflicted with the shareholders identified on the petitioner's issued stock certificates. The director, however, misread the tax returns, which in fact identified an officer of the petitioning entity as devoting 100 percent of his time to the business, rather than as owning 100 percent of the petitioner's stock. The AAO acknowledges counsel's discussion on appeal regarding the director's misinterpretation of the petitioner's tax returns.

director noted that, in contrast, the petitioner reported common stock in the amount of \$200,000 in its 2001 through 2003 tax returns. The director noted that the inconsistencies had not been clarified for the record. The director also addressed the use of an intermediary to circumvent Chinese currency laws and transfer monies to the petitioner, and questioned "the integrity of the submitted evidence." The director stated that the petitioner had not shown through sufficient evidence the purported difficulty in directly transferring funds from China to a United States company, and noted that the declaration from the foreign entity's president was not sufficient. Consequently, the director denied the petition.

The petitioner's present counsel filed a timely appeal on January 13, 2006. In an attached appellate brief, counsel addresses the discrepancy between the amount of common stock initially identified by the petitioner on such corporate documents as its stock transfer ledger, and the value reported on its income tax returns. Counsel states:

At the time of the [p]etitioner's incorporation, the total capital amount committed by the three shareholders was \$500,000. However, the initial paid-in capital was \$200,000. The [p]etitioner's bank statements also showed \$200,000 as its seed capital. That is why the equity of common stock on the Petitioner's tax returns showed \$200,000. The shareholders intended to contribute additional \$300,000 when the business necessitated additional capital contribution. Fortunately, after active operation for a period of time, the initial \$200,000 paid-in capital proved to be sufficient to run the business due to one shareholder's, [the foreign entity's], liberal payment terms for supply of goods to the [p]etitioner. There were no business reasons for the shareholders to contribute additional capital. As a result of [the foreign entity's] willingness to finance the [p]etitioner's purchase of goods, [the foreign entity] kept its initial capitalization at \$100,000, which constituted 50% of the [p]etitioner's total capital and 50% of the outstanding securities of the [p]etitioner.

Counsel contends that as a result of the foreign entity's ownership of 50 percent of the petitioning entity, the foreign corporation owns and controls the petitioner, thereby establishing the necessary qualifying relationship.

Counsel also addresses the director's reference to the credibility of the evidence submitted by the petitioner. Counsel notes that "China is notorious for having a stringent foreign exchange control policy," and claims that the process to approve transfers from the beneficiary's foreign employer to the petitioner would have taken several months. Counsel explains that the funds were instead transferred through the foreign entity's Hong Kong affiliate<sup>3</sup> in order "[t]o avoid delay and commence business operation in the United States."

Upon review, the petitioner has not demonstrated the existence of a qualifying relationship between the foreign and United States entities.

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<sup>3</sup> Counsel's reference to the transferor as the foreign entity's "affiliate" conflicts with the prior claim by the petitioner that the transferred money originated from the foreign entity's "customer" in Hong Kong. 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).

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). In the context of this visa petition, ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 364-365. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In the instant matter, the record as presently constituted contains several discrepancies that prevent a finding that the foreign entity furnished consideration in exchange for its purported ownership of 51 percent of the petitioning entity. As addressed above, an important factor in establishing stock ownership is demonstrating the means by which the stock was acquired.<sup>4</sup> While the petitioner submitted several documents that are probative of the consideration furnished by the foreign entity, the record does not contain original wire transfer receipts, which were requested by the director, and are critical to establishing the foreign entity as the transferor of the \$100,000. 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 petitioner represents that the foreign entity transferred goods to Shinco International in exchange for furnishing \$100,000 to the United

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<sup>4</sup> The AAO acknowledges the restrictive laws instituted by the Chinese government in transferring funds from a Chinese corporation directly to a United States entity. The AAO may recognize a qualifying relationship in cases where a third party is used to facilitate the transfer of monies from the Chinese corporation to the United States entity. The petitioner, however, is obligated to provide clear and comprehensive documentation of each stage of the transfer, specifically demonstrating the relationship between the foreign entity and company from where the funds were transferred. As discussed, the record in the present matter is not sufficient to demonstrate the purported parent-subsidiary relationship.

States company. Therefore, in order to establish the foreign entity as the true transferor, the petitioner must show that the transferred monies actually originated with [REDACTED]. The AAO notes that the agent's June through September 2001 bank statement names [REDACTED] president, individually, as the originator of the transferred funds, not Shinco International. While it is possible [REDACTED] president transferred the funds in his corporate capacity and on behalf of the organization, the absence of the original wire transfer receipts prevents such a finding. The record lacks evidence sufficient to demonstrate that the \$100,000 was actually transferred from Shinco International's bank account, and not an individually-held account. Again, this is particularly relevant to establishing the pertinent link between the foreign entity and the petitioning entity.<sup>5</sup>

Regardless of the above-discussed discrepancy, which incidentally focuses on only \$100,000 of the \$255,000 worth of common stock purportedly issued to the foreign entity, the record fails to answer several issues with regard to the remaining \$155,000 due to the petitioner. For example, the petitioner's former counsel claimed that the foreign entity furnished goods in the amount of \$177,000 in exchange for the remaining \$155,000 worth of stock yet unpaid by the foreign entity. On appeal, however, counsel suggests that the petitioner purchased the \$177,000 worth of goods from the foreign entity through a finance agreement with "liberal payment terms." Based on counsel's representations, it would seem that the foreign entity did not in fact render goods in exchange for the remaining \$155,000 due to the petitioner. The petitioner has not clarified this contradiction in the evidence presented, which is critical to determining whether, in fact, the foreign entity furnished consideration for the balance of its purported stock purchase. 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). Counsel's additional statement on appeal that the foreign entity's purported \$100,000 deposit in the petitioning entity "constituted 50% of the [p]etitioner's total capital and 50% of the outstanding securities of the [p]etitioner" also suggests that the foreign entity's did not furnish consideration for the \$155,000 due to the petitioner.

The information contained on the petitioner's California notice of transaction also conflicts with the representations made by the petitioner. On the California Notice of Transaction Pursuant to Corporations Code Section 25102(f), which although dated June 12, 2001 was not filed with the state until January 30, 2002, the petitioner identified the total offering for its common stock as \$500,000. Of particular importance is the fact that the petitioner reported \$500,000 in "money," and did not account for any amount of "consideration other than money." Additionally, the petitioner represented that the purported transfer of goods was completed on August 27, 2001, approximately five months before the notice of transaction was filed. As a result, it would seem that the notice of transaction would reflect the \$155,000 in goods claimed by the petitioner to have been given in consideration for the foreign entity's stock interest. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

The AAO also notes, in particular, that the statements made by counsel on appeal are not consistent with the evidence already provided, and further complicate the record. For example, counsel addresses Shinco

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Because the foreign entity is represented as reimbursing [REDACTED] with a transfer of goods, the petitioner must demonstrate that funds were actually transferred from [REDACTED] on behalf of the foreign entity.

International as the foreign entity's affiliate as opposed to being a customer of the foreign company, as previously referenced by the petitioner. Counsel also notes that the foreign entity's ownership interest in the petitioning entity is 50 percent rather than 51 percent. These inconsistencies, in addition to the above-noted discrepancies, cast doubt on the petitioner's representations and the veracity of the evidence presented. Again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Based on the foregoing discussion, the petitioner has not established the existence of a qualifying relationship between the foreign and United States entities. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not demonstrated that 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.

In its August 30, 2004 letter, the petitioner identified the beneficiary as the foreign entity's export department manager and translator, stating that in this position, the beneficiary "had been responsible for directing and coordinating activities with overseas markets for exporting consumer electronic products, as well as been in charge of export business of [the petitioning entity]." In an attached "certificate of employment," the petitioner further stated that while employed in the positions of export department manager and translator, the beneficiary "[translated] DVD specifications, technical information, advertising materials, and product instruction sheets," and was "[i]n charge of export business for overseas customers" in Thailand, Europe and the United States. The limited job description offered by the petitioner fails to identify any managerial or executive job duties performed by the beneficiary while employed by the foreign entity. 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). In fact, it appears that the beneficiary was responsible for personally performing the non-qualifying tasks of the export department, as he "coordinat[ed]" the export functions with overseas markets. The foreign entity's organizational chart further suggests that the beneficiary was employed in a non-managerial and non-executive capacity, as the beneficiary did not have a subordinate staff to perform the operational and administrative tasks of the department. Additionally, based on the brief job description of the beneficiary's role as the foreign entity's translator, the beneficiary was personally responsible for the "translation of DVD specifications." An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988). The record as presently constituted fails to establish that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. For this additional reason, the petition will be denied.

An additional issue not addressed by the director, is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. In its August 30, 2004 letter, the petitioner provided the following limited list of job duties to be performed by the beneficiary in his position as vice-president: (1) assist the president in the operation of the petitioning corporation, the formation of its policies and its development; (2) communicate with the parent company to implement its policies in the petitioning entity; (3) "directly supervise and manage" the sales and marketing departments; and (4) supervise the operation director. Despite the director's request for a "detailed description" of the beneficiary's position in the United States, the petitioner submitted an equally vague outline, in which it restated the beneficiary's responsibilities of assisting the company's president and establishing policies for future development, and added that the beneficiary would spend forty percent of his time directing "overall sales, marketing and public relations," while supervising the marketing and sales managers. The petitioner's response to the director's request for evidence did not expand upon the role to be held by the beneficiary in the United States. Nor did it clarify or identify the specific managerial or executive job duties to be performed by the beneficiary in his position as vice-president. 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 simply assigning a managerial or executive title to the beneficiary is not sufficient to establish employment in a primarily qualifying capacity. The beneficiary's true position within the United States entity is questionable, particularly in light of the fact that the beneficiary's proposed salary is significantly lower than several of his subordinate employees.<sup>6</sup> Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Based on the present record, the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. 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 that CIS previously approved an L-1A nonimmigrant petition 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 approval does 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**

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<sup>6</sup> Based on the petitioner's state quarterly wage report for the quarter ending June 30, 2004, the marketing manager, director of operations, logistics manager, accounting manager, and accounts receivable employee, all employees subordinate to the beneficiary, are receiving compensation greater than the beneficiary.

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 petition was 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 approval 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).

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.