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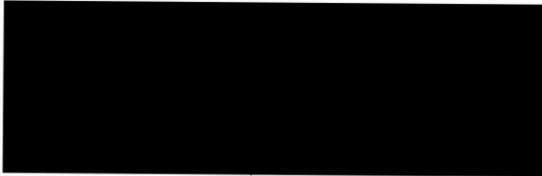
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U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: FEB 22 2007
SRC 06 162 52062

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, 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 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 Delaware that is engaged in the production of specialty chemicals for industry and agriculture. The petitioner seeks to employ the beneficiary as its global development manager.

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

On appeal, counsel for the petitioner contends that the beneficiary's employment in both the foreign and United States entities encompasses managing the essential function of research and development in the companies' specialty products business departments, during which he exercised a wide degree of discretionary authority over the function's day-to-day operations. 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 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.

The petitioner filed the Form I-140 on April 26, 2006. In an attached letter, dated March 23, 2006, the petitioner claimed that the beneficiary's employment as the foreign entity's zone development manager from January 2000 through December 2001 was primarily managerial in nature. The petitioner stated:

In th[e] position [of zone development manager], [the beneficiary] managed the development and implementation of the [research and development] programs for the [specialty products business (SPB)] department in the Asia/Pacific region. He also

coordinated and directed the development function for the company's [s]pecialty products in Australia and New Zealand. In addition, he managed the company's Centre of Excellence for Timber Preservation and provided technical support to the Centre of Excellence for Vector Control.

The director issued a request for evidence on July 25, 2006 requesting a statement from the petitioner addressing the following details of the beneficiary's foreign employment: (1) the beneficiary's job title; (2) the job duties performed by the beneficiary and the amount of time the beneficiary devoted to each task; (3) the employees, including managerial or supervisory employees, who reported to the beneficiary; (4) a brief description of the job duties performed by each of the beneficiary's subordinate employees; (5) the qualifications necessary for the beneficiary's position; (6) the level of authority held by the beneficiary and whether it qualified as a senior level position in the foreign organization; and (7) the employees who performed the sales of the foreign organization. The director also asked that the petitioner specify the beneficiary's position in the foreign company's organizational hierarchy.

Counsel for the petitioner responded in a letter dated September 8, 2006. In an attached letter, dated September 7, 2006, the petitioner outlined the following job duties performed by the beneficiary as the foreign entity's zone development manager:

- Manage product development and regulatory programs for pesticides for Australia & New Zealand to assure continued multiple uses for products while developing safe and governmentally approved products[.]
- Manage safe use of pesticides through implementation of the [sic]
- Manage technical service & support in the Asia/Pacific region (Indonesia, Malaysia, Thailand, China, India, Japan) with broad knowledge of markets, pests, regulatory requirements and business practices.
- Manage and co-ordinate business development within the Asia/Pacific region[.]
- Project management for specific region wide development – Asia/Pacific Region[.]
- Team Leader – Global Center of Excellence for Timber Preservation
- Managed a development budget of \$US1.5 MM

The petitioner noted that the beneficiary's time was allocated among the following responsibilities:

- Product Development (25%)
- Technical Service & support (15%)
- Business Development (30%)
- Project Management (20%)
- Timber Preservation Center of Excellence (10%)

The petitioner explained that in this "mid level" position, the beneficiary possessed the authority to hire and fire his subordinate employee, who occupied the position of market development officer.

In a decision dated October 20, 2006, the director concluded that the petitioner had not demonstrated that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. The director addressed the beneficiary's former employment in a "mid level" rather than senior position, and noted the "vague" description offered by the petitioner of the beneficiary's job responsibilities. The director concluded that the beneficiary did not occupy a senior level position within the foreign company's organizational hierarchy or supervise a managerial, supervisory or professional employee as required by the statutory

definition of "managerial capacity." The director stated that the petitioner had not established "that the beneficiary's primary assignment has been . . . directing the management of the organization nor that the beneficiary has been . . . primarily directing or supervising a subordinate staff of professional, managerial or supervisory personnel, who relieve him from performing non[-]qualifying duties." Accordingly, the director denied the petition.

Counsel for the petitioner filed an appeal on October 30, 2006 claiming that the beneficiary was employed in a senior-level position in the foreign organization during which he managed the essential function of new product development activities for the specialty products business department.

In a November 21, 2006 appellate brief, counsel contends that the beneficiary was employed in a primarily managerial capacity as the foreign entity's zone development manager. Counsel addresses the beneficiary's role in managing a "major function" of the foreign organization, the product and business development function, explaining that the beneficiary "was responsible for managing the research and development budget for all of [the foreign entity's] pesticide development projects for Australia, New Zealand, India, Indonesia, Philippines, China and Singapore," as well as establishing the budgets, sales and profitability goals, and registration timelines for new products. Counsel states that the beneficiary's responsibilities included traveling throughout Australasia "negotiating and concluding laboratory and related service contracts, prioritizing resource use and representing [the foreign entity's] interests with government regulators in these key countries."

Counsel challenges the director's observation that the beneficiary managed only one employee while employed in the overseas company. Counsel states that as the manager of the foreign entity's product and business development function, the beneficiary managed and directed twelve research and development employees in the foreign entity's affiliates in New Zealand, India, Indonesia, Malaysia, Philippines, China and Singapore and six outside consultants. Counsel notes examples of the beneficiary's management of the product and business development function, such as his organizing and chairing a regional research and development meeting, and his role in the World Health Organization's certification of "bifenthrin," an insecticide developed by the foreign entity. Counsel emphasizes the beneficiary's management of a "multifunctional team" comprised of chemists, toxicologists and regulatory specialists in the foreign entity's application to the World Health Organization for permanent specifications for bifenthrin, and submits a copy of the World Health Organization report. Counsel states that during his overseas employment, the beneficiary also directly managed a market development officer, who was "largely responsible for implementing the research [and] development program as established by the [beneficiary]," and possessed authority to sign and terminate "contracts with consultants that provided regulatory, biological testing and legal services."

As additional evidence of the beneficiary's purported qualifying employment in the foreign entity, counsel submits organizational charts for affiliate companies in Japan, China, India, Indonesia, Bangladesh, and Philippines, highlighting the individuals in each company who were managed by the beneficiary. Counsel also submits an affidavit from an "HR business partner," describing the beneficiary's former position as including the following "activities":

1. Supervises and provides technical leadership to a staff of scientists/engineers and is responsible for the recruitment, training, and motivation of subordinates.
2. Applies intensive and diverse knowledge of principles and practices in areas of assignment and related fields.

3. Independently makes decisions on problems and methodology issues and secures necessary resources.
4. May represent the organization in forums and conferences within an area of expertise, or address an issue currently being discussed within the work group.

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).

The petitioner has not documented through a comprehensive description of the beneficiary's job duties that the beneficiary primarily managed the foreign company's essential product and business development function. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary is managing an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed, i.e. identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. 8 C.F.R. § 204.5(j)(5). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *manages* the function rather than *performs* the duties related to the function.

Initially, the petitioner stated that the beneficiary managed the development and implementation of research and development programs for the foreign company's specialty products business in Asia and the Pacific region. The petitioner, however, did not explain with specificity the "research and development programs" or address who was responsible for devising the specific programs. The petitioner's subsequent statement in response to the director's request for evidence explained only that the beneficiary devoted a cumulative 55 percent of his time to the company's product and business development programs for Asia and New Zealand. Although requested, the petitioner's limited and vague September 7, 2006 response failed to describe the function managed by the beneficiary while employed in the foreign entity or the job duties performed by the beneficiary with respect to this essential function. The petitioner's unsupported claims that the beneficiary coordinated the business and product development and regulatory programs for a specific region serviced by the foreign entity are simply not sufficient to meet the regulatory standard of "clearly describ[ing] the duties to be performed by the [beneficiary]." *Id.* The actual duties themselves 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).

Similarly, the job description offered on appeal falls short of corroborating the claim that the beneficiary primarily managed the essential product and business development function. The petitioner offered only general claims with respect to its product and business development function and the beneficiary's related job responsibilities, and did not identify the specific tasks involved in developing the company's business or products. 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? Again, the actual duties themselves will reveal the true nature of the employment. *Id.* at 1108.

The record, as presently constituted, fails to explain the beneficiary's purported employment as a function manager. The job descriptions, taken as a whole, are not sufficient to specifically explain the beneficiary's role in managing the foreign company's product development function. The petitioner makes blanket claims that the beneficiary "exercised authority over the day-to-day operations of pesticide research and development" and "managed and directed [the] research and development staff" in the foreign company and seven affiliates, yet neglected to identify the daily operations of the research and development departments. The petitioner also failed to explain the daily managerial tasks performed by the beneficiary in his purported management of the twelve employees, as well as outside consultants, or document how the research and development of the foreign entity's products was performed by someone other than the beneficiary. The organizational charts of the foreign entity's affiliates, on which the petitioner highlighted the names of employees purportedly managed by the beneficiary, are not probative of the beneficiary's claimed managerial authority over the product development function. The petitioner merely mentions eleven employees in five related organizations and asserts that they were managed by the beneficiary, yet no discussion was offered as to the beneficiary's purported relationship with the affiliates' personnel, or the employees' role in the foreign company's product development, or the specific tasks performed by each with respect to developing the products.

Additionally, other than broadly mentioning two meetings and a research program coordinated by the beneficiary, the petitioner did not account for how the beneficiary purportedly managed the research and development of pesticide projects for eight countries, including Australia. The AAO notes that the World Health Organization Report, offered by the petitioner as evidence of the beneficiary's involvement in the company's application for certification of bifenthrin, does not identify the beneficiary as a participant or contributor to the report. The petitioner merely asserts that the beneficiary "managed the development and implementation of the [research and development] programs for the [specialty products business] department in the Asia/Pacific region," without specifically accounting for the performance of the related research and development. Absent an explanation of the employees' roles and specific responsibilities with respect to the research and development of the foreign entity's products, the beneficiary's purported employment as a function manager remains undocumented. 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)).

Also, the petitioner has not accounted for the beneficiary's purported management over the company's business development function. The beneficiary is represented as managing and directing the company's business development in the Asian-Pacific region. Yet, based on counsel's claims that the beneficiary negotiated laboratory and service contracts and represented the company to government regulators in "key countries," it appears that the beneficiary was responsible for promoting, or "developing," the foreign company's business. Other than highlighting two market development employees and a business development manager on the organizational charts that reflected staffing in the Indonesian, Indian, Bangladesh and Filipino companies, there is no evidence that the responsibility of developing the foreign company's business with respect to its pesticides was performed by someone other than the beneficiary. The AAO emphasizes that the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary *managed* the function rather than *performed* the duties related to the function. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Boyang, Ltd. v. I.N.S.*, 67 F.3d 305 (Table), 1995 WL 576839 (9th Cir, 1995)(citing *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988)).

The job responsibilities assigned to the beneficiary's subordinate, a market development officer, support the observation that the beneficiary was not relieved from personally performing the business development function. According to the petitioner, the market development officer was responsible for implementing product development and registration plans, and providing technical support to customers, distributors and the sales teams. The AAO notes that none of the market development officer's responsibilities address a role in developing the company's business. Also, although mentioned in the market development officer's job description, the petitioner has not specifically identified a "sales team" of the foreign company.

Moreover, as noted by the director, the petitioner has not established that the beneficiary was supervising or controlling the work of managerial, supervisory or professional employees. § 101(a)(44)(A)(ii) of the Act. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involved supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See id.* Based on the petitioner's representations, the beneficiary's direct subordinate in the foreign entity was not managing or supervising lower-level employees. Also, the limited description of the position of market development officer precludes a finding that the beneficiary's sole subordinate was employed as a professional. *See Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966) (stating that the term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor).

Furthermore, as discussed above, the petitioner has not offered evidence to support its claims that the beneficiary supervised or controlled the managerial employees noted on the organizational charts of the foreign entity's affiliates. The AAO recognizes the affidavit of Noreen Klitus from Innova Solutions, which was submitted to corroborate the beneficiary's former employment in a managerial capacity. In the affidavit, Ms. Klitus, whose exact relationship with the foreign or United States entities is not clarified, identified the beneficiary as managing the foreign company's affiliates' research and development staff, which, based on the "Hay Group" job description¹, were comprised of scientists and/or engineers. Again, the limited record precludes a finding that the beneficiary exercised managerial authority over personnel in affiliated companies. Moreover, the petitioner has not offered evidence explaining the positions held by the employees in the affiliated companies or establishing their claimed employment as scientists or engineers. 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. Accordingly, there is insufficient evidence to demonstrate that the beneficiary's former employment satisfied each of the statutory criteria of "managerial capacity."

Based on the above 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.

In his October 20, 2006 decision, the director observed that the beneficiary would not be performing job duties that are primarily managerial or executive in nature during his employment in the United States entity.

¹ On appeal, counsel describes the Hay Group as "a global management consultancy that serves as a definitive source for compensation information related to the chemical industry both in the United States and throughout the world." In her affidavit, Noreen Klitus stated that the petitioner's "system of evaluation and classification of jobs is consistent with the Hay Chemical Industry survey."

The director's decision, however, does not specifically address the beneficiary's proposed position in the United States organization. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

On appeal, counsel contends that the beneficiary would be employed by the petitioner in a primarily managerial or executive capacity.

The record does not establish that the beneficiary's employment in the United States organization would be primarily managerial or executive in nature.

The petitioner noted on the Form I-140 and in its March 23, 2006 letter that the beneficiary would occupy the position of global development manager in the United States company, and provided the following description of his proposed position:

[The beneficiary's] duties here are the management and coordination of research of new product development activities for the Specialty Products Business. He provides guidance to all entomological programs with the SPB global program, including preservation, professional and consumer activities. He manages commercial development activities of insecticides in the termite, GHP, T&O and consumer market segments. He coordinates research and development activities and planning necessary to develop new products and expand the company's labels. He evaluates new active ingredients for the Solutions Provide Strategy Group. He prepares, tracks and manages the development of budget and performance forecasting for the SPB department. Furthermore, he establishes and manages field research and development trials and integrates the product stewardship and responsible care codes of APG into new products and expanded labels.

[The beneficiary] has operated on a senior level with respect to the company's essential function of managing and coordinating research of new product development activities for the SPB department and he has exercised discretion over the day-to-day operations of that function. He regularly attends management meetings of the company and exercises a wide degree of discretionary decision[-]making and receives only general supervision from higher level executives.

In a September 8, 2006 statement submitted in response to the director's request for additional evidence of the beneficiary's proposed employment capacity, the petitioner noted the beneficiary's proposed position as director – product acquisitions & licensing, and identified his related job duties as:

- Strategic planning
- Identify product leads for potential acquisition or in house licensing and maintain prioritized list
- Direct and lead support team allocated to prioritized opportunity.
- Negotiate terms and finalize contracts for product acquisition and licensing (Regional or Global opportunities)
- Identify, develop and maintain relationships with key contacts in third party organizations.

- Identify innovative applications and sustainable solutions using proprietary and third party active ingredients.

The petitioner further explained that the beneficiary's essential function in the United States entity is to "[lead] [the] product acquisition and licensing function which is [the] key element of the Agricultural Product Groups (APG's) growth strategy."

On appeal, counsel contends that the beneficiary's proposed employment in the position of director – product acquisitions & licensing is primarily executive in nature. Counsel describes the function of product acquisition and licensing as the expansion of the petitioner's product lines "through acquisitions, licensing and strategic alliances," and states that as the director, the beneficiary would be "directly responsible for planning and implementing [the] expansion of the [agricultural product group's] global product lines." Counsel explains that in the position of director – product acquisitions & licensing, the beneficiary is the "public face" of the petitioning entity and is responsible for negotiating the "key elements" of acquisition and licensing contracts and establishing the acquisition and licensing goals.

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 inconsistent job titles offered for the beneficiary's proposed employment in the United States company preclude an understanding of the capacity in which the beneficiary would be employed. In its response to the director's request for evidence, the petitioner offered a new job title for the beneficiary's proposed employment and added new job responsibilities that do not appear to be related to the beneficiary's original position as global development manager.

The petitioner initially represented the beneficiary as managing the company's research programs related to the development of its specialty products business. However, in the petitioner's September 8, 2006 job description and on appeal, the beneficiary's job responsibilities are centered on the company's acquisition and licensing of new products, tasks that were not formerly addressed in the beneficiary's job description. Moreover, the beneficiary's title was changed from global development manager to director - product acquisitions and licensing, which further resulted in a change in the beneficiary's proposed employment from "managerial capacity" to "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).

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. 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). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence and on appeal did not clarify or provide more specificity to the original duties of the position, but rather identified a new position and added

new duties to the job description. 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).

The original job description offered for the beneficiary's employment is not sufficient to determine whether the beneficiary would be employed in a primarily managerial or executive capacity. The petitioner made general statements of the beneficiary purported management of research programs for the company's specialty products business without specifically explaining the function or its day-to-day operations. 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. For this additional reason, the petition will be denied.

The AAO recognizes that Citizenship and Immigration Services (CIS) previously approved two L-1A nonimmigrant visa petitions filed by the petitioner for the benefit 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, 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).

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.