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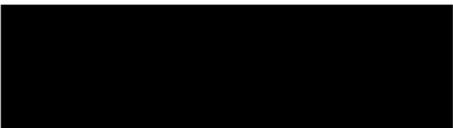


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAY 08 2007  
SRC 06 055 50460

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

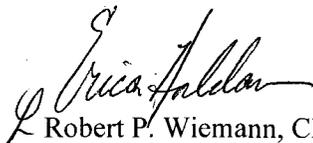
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to  
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

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 immigrant visa 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 Texas that claims to be operating as a wholesale and retail store. The AAO notes that the petitioner's two lease agreements restrict the company's leased premises to use as a dollar store. The petitioner seeks to employ the beneficiary as its president and general import manager.

The director denied the petition concluding that the petitioner had not demonstrated that: (1) a qualifying relationship existed between the petitioner and the beneficiary's foreign employer at the time of filing the immigrant visa petition; or (2) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director also observed that without the existence of a qualifying relationship between the foreign and United States entities, the beneficiary could not be deemed to have been employed abroad as the manager or executive of a qualifying organization.

On appeal, counsel for the petitioner contends that the record clearly demonstrates the beneficiary's eligibility for the requested immigrant visa classification. Counsel submits a brief in support of the appeal, as well as copies of documentary evidence previously offered by the petitioner.

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 a qualifying relationship existed at the time of filing between the petitioner 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 Form I-140 on December 9, 2005. In an appended undated letter, the petitioner referenced the beneficiary's foreign employer, [REDACTED] but did not specifically address the relationship between the United States and foreign organizations.

With the initial filing, counsel for the petitioner submitted a notarized "Fact Confirmation Form," on which the beneficiary was identified as the representative of the foreign company, which was noted as having been established on July 1, 1997. It was further represented on the form that following the beneficiary's departure for the United States in September 2000, the beneficiary's brother-in-law, [REDACTED] took over the management of the foreign company and changed its name to Itis Furniture. The beneficiary was identified as holding 50 percent of the ownership in the foreign organization. An accompanying Certificate of Business Registration for Itis Furniture identified the beneficiary's brother-in-law as the company's representative and noted its date of establishment as March 1, 2001. Counsel also submitted a September 23, 2005 Declaration of Ownership, certified by an individual, [REDACTED] who attested to his ownership of 40 percent of [REDACTED] and the beneficiary's ownership of the remaining 60 percent of the foreign organization.

With respect to the United States organization, counsel submitted its articles of incorporation, which authorized the issuance of a total amount of 1,000 shares of stock, and a number two stock certificate, which identified the beneficiary as the owner of 600 shares of stock. On an appended list of shareholders, the beneficiary was again identified as holding a majority interest in the United States company, while two individuals, [REDACTED] were identified as owning equal shares of the remaining 40 percent of stock.

On March 16, 2006, the director issued a request for evidence directing the petitioner to submit the following evidence of its claimed affiliate relationship with the beneficiary's foreign employer: (1) the foreign

organization's articles of incorporation; (2) documentation demonstrating that the name of the beneficiary's foreign employer, ██████████ had been changed to Itis Furniture following the beneficiary's departure; and (3) documentation that the beneficiary's foreign employer has been doing business under the names of Chun-Ji, Itis Furniture, and Noble House, and that all three "are one and the same company".

Counsel for the petitioner responded in a letter dated June 5, 2006. Counsel again provided copies of the Fact Confirmation Form, Certificate of Business Registration, and the petitioner's articles of incorporation. Counsel also submitted a letter, in which the president of ██████████ that it was "[f]ormally known as ██████████ with [the beneficiary] as the president." The certification also appears to address Itis Furniture as a former name of Noble House, however, the full company name has not been translated on the document. *See* 8 C.F.R. § 103.2(b)(3) (requiring that any documentation containing a foreign language shall be accompanied by a full English language translation when submitted to Citizenship and Immigration Service (CIS)).

In a July 12, 2006 decision, the director determined that the petitioner had not demonstrated the existence of a qualifying relationship between the United States entity and the beneficiary's foreign employer. The director stated that the petitioner had not clearly established the ownership of ██████████ the beneficiary's foreign employer, or that ██████████ Itis Furniture and Noble House "are one and the same company." The director stated that the Fact Confirmation Form and Declaration of Ownership "are not official documents that have been registered with the Korean government and thus are not legal documents." The director concluded that the discrepancies related to the beneficiary's foreign employer precluded a finding of how the foreign organization was owned at the time of filing. Consequently, the director denied the petition.

Counsel for the petitioner filed a timely appeal on August 14, 2006 claiming that the petitioner had established the existence of a qualifying relationship between the foreign and United States entities. In a subsequently submitted appellate brief, counsel challenged the director's disregard of the Fact Confirmation Form, which counsel emphasizes is a sworn and notarized statement from the representative of Itis Furniture, and the Declaration of Ownership in establishing the foreign entity's ownership. Counsel states that the Fact Confirmation Form establishes the beneficiary's ownership of 50 percent of Itis Furniture, and that the Declaration of Ownership demonstrates that the beneficiary is the owner of 60 percent of the organization Noble House. Counsel states that the documents also certify "that Noble House is the same entity as with Itis Furniture and Chun-Ji Industry." With respect to the evidence provided, counsel further states:

The change of ownership and designation of ownership interest between companies and between individuals within a company are most commonly facilitated by the company's internal documents such as sales contract, stock transfer agreement, resolutions and minutes. The business owners are not required to file the company's internal documents with the appropriate Korean government. The only Korean government document which may be verified by its registration is Certificate for Business Registration (See Exhibit 1). Whether certain two companies are related or co-exited [sic] would not be noted on a Certificate for Business Registration (see Exhibit 1).

Exhibit one referenced by counsel is the previously submitted Certificate for Business Registration for Itis Furniture, on which Young-Jae Lee is identified as the representative of the company.

Upon review, the petitioner has not established the existence of a qualifying relationship between the United States company and the beneficiary's foreign employer at the time of filing.

To establish a qualifying relationship under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e. a United States entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

The petitioner attempts to demonstrate a qualifying affiliate relationship between the United States corporation and the beneficiary's foreign employer by representing the beneficiary as the majority owner of the United States and foreign organizations. The present record suggests that the beneficiary is a majority shareholder of the United States company. However, with respect to the ownership of the foreign organization, the record contains numerous unexplained inconsistencies that preclude a finding of a qualifying affiliate relationship between the United States corporation and the beneficiary's foreign employer.

The petitioner claims that since the beneficiary's departure from Korea in September 2000, the name of the beneficiary's foreign employer has changed from [REDACTED] to Itis Furniture, and finally to its present name, [REDACTED]. The petitioner represented in the Fact Confirmation Form that the beneficiary continued to own 50 percent of the foreign company after its name change to Itis Furniture. The separate Declaration of Ownership, however, identified the beneficiary as owning 60 percent of "[REDACTED]." As discussed by the director, the record does not clarify the name of the foreign organization, the beneficiary's purported ownership interest in the overseas company, or whether the beneficiary's foreign employer continued to exist following the beneficiary's transfer to the United States.

In order to establish eligibility for classification as a multinational manager or executive for immigrant visa purposes, the petitioner must establish that it maintains a qualifying relationship with the beneficiary's foreign employer; the foreign corporation or other legal entity that employed the beneficiary must continue to exist and have a qualifying relationship with the petitioner at the time the immigrant petition is filed. 8 C.F.R. § 204.5(j)(3)(i)(C). Here, it is unclear whether the petitioner is representing the beneficiary's foreign employer as continuing to do business in Korea under two different names following the beneficiary's transfer to the United States, or whether Itis Furniture and [REDACTED] are consecutive successors to the beneficiary's foreign employer. In either instance, the limited record does not demonstrate that the beneficiary's foreign employer continues to operate in Korea under its original name, or as Itis Furniture, or as [REDACTED].

The few documents presented by the petitioner as evidence of the existence of the beneficiary's foreign employer do not demonstrate that [REDACTED] Itis Furniture, and [REDACTED] are one and the same company. The AAO notes that the taxpayer identification number reflected on Itis Furniture's Certificate for Business Registration is different from [REDACTED] business identification number, which is noted on its supplemental valuation of taxation standard, thus suggesting two different overseas companies operating as separate businesses. Similarly, [REDACTED] address, as reflected on sales invoices, is different from the address provided for Itis Furniture on its Certificate of Business Registration. With respect to [REDACTED] Industry, the original name of the beneficiary's foreign employer, the record does not contain corporate documents, such as filings for its incorporation or taxes, or sales invoices, which would provide information relevant to determining whether the organization continues to operate under a new name. As a result of the numerous unexplained discrepancies, the AAO cannot determine whether the beneficiary's foreign employer

continues to operate in Korea, or whether the beneficiary's overseas employment was with a qualifying entity. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the event that the beneficiary's foreign employer no longer exists in Korea, the beneficiary's employment in the foreign entity is not considered employment with a qualifying entity for the purposes of this immigrant visa classification, and it cannot be found that the beneficiary is seeking "to continue to render services to the same employer or to a subsidiary or affiliate thereof."

Even if the beneficiary's foreign employer was deemed to be doing business in Korea under the name of Itis Furniture and currently as [REDACTED] the record does not corroborate the petitioner's claim that the beneficiary holds a majority interest in the foreign organization, or that the United States and foreign organization are affiliates. The beneficiary is represented as having owned 50 percent of Itis Furniture and as currently owning 60 percent of [REDACTED]. Other than the notarized fact confirmation form and declaration of ownership, the petitioner has not offered any documentary evidence of the beneficiary's interest in the foreign organization. As noted by the director, the submitted documentation is not sufficient to establish the beneficiary as a majority stockholder, particularly when unresolved discrepancies in the beneficiary's purported ownership interest exist, as in the instant matter. Again, the petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. As conceded by counsel on appeal, relevant evidence of a stockholder's interest in a corporation "[is] most commonly facilitated by the company's internal documents such as sales contract[s], stock transfer agreement[s], resolutions and minutes," none of which have been submitted herein as evidence of the foreign organization's ownership. 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)). The record as presently constituted does not establish whether the beneficiary owns and controls the foreign organization as a majority shareholder.

Based on the foregoing discussion, the petitioner has failed to demonstrate the existence of the purported qualifying affiliate relationship between the foreign and United States organizations. Accordingly, the appeal will be dismissed.

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

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

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

- (i) Manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

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

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

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

The petitioner noted on the Form I-140 that the beneficiary would be employed as the general import manager of the five-person United States company during which he would "[administer] company policies, procedures, functions, and activities of the corporation to acquire knowledge of all phases of the corporation including import and export activities within established long and short-range activities." In an appended letter, the petitioner expressed its intent to employ the beneficiary to "oversee, direct and develop our organization," and "hire and fire employees." An attached statement further described the beneficiary's position as including such responsibilities as negotiating with foreign suppliers and recommending foreign business sources. The petitioner also offered an organizational chart of the United States corporation on which the beneficiary was identified as both the president and general import manager and his subordinates were noted as occupying the positions of administrative assistant, retail/sales manager, assistant manager, marketing assistant, administrative clerk, and sales associates. The petitioner submitted a statement briefly outlining job responsibilities held by the beneficiary's subordinate staff.

The director subsequently requested that the petitioner submit a "definitive statement" of the beneficiary's proposed position in the United States company, including: (1) the beneficiary's job title; (2) a list of the beneficiary's proposed job duties, noting the amount of time the beneficiary would devote to each; (3) the managers, supervisors, or employees who would report directly to the beneficiary; and (4) a brief description of the employees' job titles and educational levels. The director requested documentary evidence of the petitioner's staffing levels, including its 2005 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, and quarterly tax reports for each quarter in 2005.

In his June 5, 2006 response, counsel submitted a statement, in which the petitioner identified the beneficiary as its president and general import manager, and outlined the following associated job responsibilities:

- Oversees the activities of the corporate staff, recommending measures to improve performance and increase efficiency. (20%)
- Analyzes financial impacts of risks on the corporation, select appropriate techniques to minimize loss. (10%)
- Establishes, implements, and enforces corporation policies. (10%)
- Negotiates payment terms with suppliers outside of U.S. [m]onitors all import/export activities, recommends prospective suppliers for the corporation. (50%)
- Reviews management reports and confers with management to identify, plan, and develop methods and procedures to obtain greater corporation efficiency. (10%)

The petitioner further noted the beneficiary's authority over the following areas: hiring; firing; salaries; implementing new programs; and approving import and export activities and vouchers exceeding \$5,000.

With respect to its staffing levels, the petitioner again submitted an organizational chart and an employee list, which revealed that two of the petitioner's lower-level employees held dual positions as the retail/sales manager and assistant manager, as well as the marketing assistant and sales clerk.

The director concluded in her July 12, 2006 decision that the petitioner had not established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director stated that the job responsibilities offered by the petitioner are "vague and general in scope," and do not identify "the beneficiary's actual day-to-day duties." The director further noted that although the petitioner identified eight lower-level positions on its organizational chart, only two employees occupy four separate lower-level positions. The director expressed uncertainty as to whether the beneficiary's job duties would be primarily managerial or executive in nature, and determined that the beneficiary would not be primarily employed as a manager or executive. Consequently, the director denied the petition.

In his brief on appeal, counsel noted the descriptions previously offered of the beneficiary's position, which included the beneficiary's "other important roles" of "acquir[ing] knowledge of all phases of the corporation including import and export," making personnel decisions, and approving import and export activities.<sup>1</sup> Counsel challenged that the provided list of "executive" job duties cannot be considered vague or general, stating that each of the listed job duties "conform with" the statutory definitions of "executive capacity" and "managerial capacity." Counsel further stated: "Whether the number of employees is limited or not, the [b]eneficiary's primary role in a managerial or executive function remains unchanged because the [b]eneficiary's supervision and overseeing the daily operation of the company is absolutely vital for the success of the US company."

Upon review, the petitioner has not established the beneficiary's employment in the United States entity in a primarily managerial or executive capacity.

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<sup>1</sup> The AAO notes that on appeal, counsel's discussion of the beneficiary's employment seems to switch between his employment capacity in the United States and the nature of his employment abroad. However, as the job descriptions cited by counsel on appeal reference the beneficiary's employment in the United States entity, they will be considered in the instant issue.

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).

Despite counsel's argument otherwise, the job description offered by the petitioner falls significantly short of identifying the specific managerial or executive job duties to be performed by the beneficiary in the positions of president and general import manager. The outline submitted by the petitioner identifies such broad job responsibilities as overseeing corporate activities, "recommending measures" to improve the company's performance and efficiency, analyzing finances and "risks," and establishing policies. The offered job responsibilities are not sufficient to illustrate what managerial or executive tasks the beneficiary would primarily perform as the president and general import manager of two retail stores. 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).

Additionally, the proposed job duties conflict with the supplemental job description provided by Noble House on its letterhead and submitted by counsel in response to the director's request for evidence. While it is not clear who wrote the referenced letter, Noble House "certif[ied]" the beneficiary's residence in Texas to "explore the U.S. market," and identified his responsibilities as: "looking for a new furniture market (50%);" "managing business partners (30%);" and "in & out of furniture (20%)." These claimed job responsibilities, which are equally as broad as the job duties discussed previously, do not coincide with the earlier referenced job description. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92.

Moreover, because both job descriptions are extremely vague, the true capacity in which the beneficiary would be employed in the United States and his purported managerial or executive job duties cannot be determined. The analysis of the beneficiary's claimed managerial or executive job responsibilities is further complicated by [REDACTED] reference to furniture, while the record suggests that the petitioner was operating only a dollar store at the time of filing.<sup>2</sup> Again, the actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Furthermore, the petitioner represents in its submitted job description that the beneficiary would spend approximately 50 percent of his time negotiating the payment terms of imported and exported items with overseas suppliers, monitoring importing and exporting activities, and recommending suppliers. While the beneficiary is identified as merely *monitoring* the company's importing and exporting, the petitioner did not identify anyone, other than the beneficiary, who would perform tasks specifically associated with this function. None of the petitioner's lower-level employees is engaged in performing the importing and exporting tasks of the United States business. Based on the petitioner's representations, and in light of the petitioner's failure to demonstrate otherwise, it is reasonable for the AAO to conclude that the beneficiary would be responsible for personally performing the non-managerial and non-executive tasks of the petitioner's

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<sup>2</sup> While the record contains invoices and brochures of the business EyeTease, a home furnishings store operated by the petitioner, the certificate under which the petitioner assumed the name "[REDACTED]" was not executed and filed with the State of Texas until June 7, 2006. The accompanying invoices on the letterhead of [REDACTED] are not dated.

import and export function. The AAO notes that 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).

A review of the petitioner's staffing levels in light of its overall purpose and stage of development further demonstrates that the beneficiary would not be employed in a primarily managerial or executive capacity. 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 employed the beneficiary and a three-person subordinate staff, two of whom held dual positions as the company's retail/sales and assistant manager, and marketing assistant and sales clerk. Based on the represented staffing levels, it is implausible to conclude that the petitioner's four-person staff would meet the reasonable needs of the company, which appears to be operating two separate dollar stores, while supporting the beneficiary in a primarily managerial or executive position. The AAO notes that counsel did not resolve on appeal the question of how two employees would perform the non-qualifying job duties of four separate positions without the beneficiary's assistance. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The current record does not demonstrate that at the time of filing the petitioner employed a subordinate staff sufficient to support the beneficiary in a primarily managerial or executive capacity. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Based on the foregoing discussion, the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The director further observed in her July 12, 2006 decision that the beneficiary did not possess the requisite employment abroad in a qualifying managerial or executive capacity.

The absence of a qualifying relationship between the foreign and United States entities precludes a finding that the beneficiary has the requisite one-year of qualifying employment abroad. The regulation at 8 C.F.R. § 204.5(j)(3)(i)(B) requires the beneficiary to have been employed overseas *by the same employer of the petitioner or an affiliate or subsidiary* in a primarily managerial or executive position for at least one year during the three years prior to his transfer to the United States as a nonimmigrant. In other words, CIS is allowed to look beyond the three-year period immediately preceding the filing of the I-140 petition in order to

determine whether the beneficiary has the requisite one-year of qualifying employment abroad. Here, as the petitioner has not established that the beneficiary was employed overseas in a foreign office of the petitioner's, or by the petitioner's affiliate or subsidiary, the AAO need not address whether the capacity in which the beneficiary was employed was primarily managerial or executive in nature. For this additional reason, the petition will be denied.

The AAO acknowledges that CIS previously approved an L-1A nonimmigrant visa petition filed by the petitioner on behalf of the beneficiary. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; see also § 316 of the Act, 8 U.S.C. § 1427. Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also 8 C.F.R. § 214.2(l)(14)(i)(requiring no supporting documentation to file a petition to extend an L-1A petition's validity).

Furthermore, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. *See* 8 C.F.R. § 103.8(d). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. Based on the lack of evidence of eligibility in the current record, the director was justified in departing from the prior nonimmigrant petition approval and denying the immigrant petition.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.