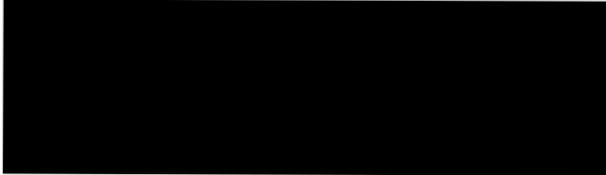


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FILE: LIN 06 150 53033 Office: NEBRASKA SERVICE CENTER Date: **SEP 11 2007**

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:

SELF-REPRESENTED

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

**DECISION:** The Director, Nebraska Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the 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 New York that is engaged in the production and sale of apparel. The petitioner claims to be the subsidiary of the beneficiary's foreign employer, and seeks to employ the beneficiary as its vice-president.

The director denied the petition concluding that the petitioner had not established that: (1) a qualifying relationship existed between the beneficiary's foreign employer and the United States entity; (2) for at least one year in the three years preceding the beneficiary's entrance into the United States as a nonimmigrant, the beneficiary had been employed abroad in a primarily managerial or executive capacity; or (3) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, the petitioner notes its compliance with United States Citizenship and Immigration Services' (USCIS) previous requests for evidence, and contends that the record is sufficient to establish the beneficiary's eligibility for the requested immigrant classification as a multinational manager or executive. The petitioner submits a letter and additional 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's foreign employer and the United States entity share a qualifying relationship.

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 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 April 24, 2006. In an attached letter, dated February 28, 2006, the managing director of Saiwan Knitters Limited, the beneficiary's claimed foreign employer<sup>1</sup>, represented the petitioning entity as the foreign company's subsidiary. The petitioner did not submit documentary evidence at the time of filing corroborating its claim of a parent-subsidiary relationship between Saiwan Knitters Limited and the petitioning entity.

In a May 30, 2006 request for evidence, the director directed the petitioner to submit documentary evidence of a qualifying relationship between the United States entity and the foreign entities Saiwan Knitters Limited and Success Eagle Limited. The director requested that the petitioner submit evidence of Success Eagle Limited's ownership, as well as copies of the petitioner's stock ledger and issued stock certificates.

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<sup>1</sup> The petitioner represents the beneficiary as an employee of Saiwan Knitters Limited since January 2003 and as "tak[ing] charge" of an affiliated company, "Success Eagle Limited" in October 2003. As will be discussed in greater detail, it is unclear whether the beneficiary was employed by Success Eagle Limited immediately prior to the beneficiary's transfer to the United States as an L-1A nonimmigrant. Regardless, based on copies of Saiwan Knitters Limited's organizational minutes submitted on appeal, the petitioner has demonstrated a parent-subsidiary relationship between Saiwan Knitters Limited and Success Eagle Limited.

The petitioner responded in a letter dated August 10, 2006, in which it identified Saiwan Knitters Limited as the parent company of the petitioning entity. The petitioner explained that as a matter of good business practice and to avoid a conflict of interest with other companies, it was Saiwan Knitters Limited's "policy to set up the affiliated company to do business in different areas or markets," thus resulting in the formation of Success Eagle Limited and the petitioning entity. As evidence of the claimed parent-subsidiary relationship between Saiwan Knitters Limited and the petitioning entity, the petitioner submitted copies of: (1) the United States company's filing receipt and certificate of incorporation; (2) a certificate of authority associated with the petitioner's bank account identifying [REDACTED], the majority shareholder of Saiwan Knitters Limited, as the petitioner's president; (3) four deposit receipts dated April through July 2004 reflecting the petitioner's receipt of funds transferred from [REDACTED] and Saiwan Knitters Limited; and (4) a May 2006 bank statement reflecting transfers made by the petitioner to Saiwan Knitters Limited and Success Eagle Limited.

In a February 21, 2007 decision, the director concluded that the petitioner had failed to demonstrate the existence of a qualifying relationship between the United States entity and the beneficiary's foreign employer. The director recognized that the beneficiary had been employed by Saiwan Knitters Limited since January 2003, and subsequently commenced employment with Success Eagle Limited prior to his transfer to the United States as a B-1 visitor in July 2004. The director noted that with respect to the relationship between the three companies, the petitioner had not submitted the requested stock ledger or stock certificates, and stated: "Thus, this portion of the relevant corporate relationships [sic] has not been established." The director further concluded that the petitioner had not established the ownership of Success Eagle Limited. Consequently, the director denied the petition.

The petitioner filed a timely appeal on March 22, 2007, and subsequently submitted a letter, dated May 2, 2007, challenging the director's finding. As evidence of the purported qualifying relationship, the petitioner referenced an organizational chart submitted for Saiwan Knitters Limited, which depicted Success Eagle Limited and the petitioning entity as subsidiaries of Saiwan Knitters Limited. The petitioner contends that this evidence in connection with Success Eagle Limited's company registry and the petitioner's receipt and certificate of incorporation are "self-explanatory of the relationship between Saiwan [Knitters Limited], Success Eagle [Limited] and [the petitioner]." As additional evidence, the petitioner submits copies of the minutes from board of directors meetings held by Saiwan Knitters Limited, which address the formation of Success Eagle Limited and the petitioning entity. Specifically, in a December 23, 2003 organizational meeting, [REDACTED], also known as [REDACTED], was named as the sole owner of the petitioning entity.

Upon review, the petitioner had not established the existence of a qualifying relationship between the United States entity and the beneficiary's foreign employer.

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.

Based on the claims and evidence submitted for review in the instant matter, it appears that the petitioner is suggesting the existence of an affiliate relationship between Saiwan Knitters Limited and the United States entity based on [REDACTED] majority ownership of Saiwan Knitters Limited and purported sole ownership of the petitioner. Here, however, the limited documentary evidence offered by the petitioner does not establish that the petitioning entity shared a qualifying relationship with either Saiwan Knitters Limited or Success Eagle Limited. Although specifically requested by the director, the petitioner neglected to submit copies of its issued stock certificates or stock ledger, evidence that, as noted above, is especially relevant to establishing the claimed qualifying relationship between Saiwan Knitters Limited and the petitioning entity. 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 additional evidence provided and relied upon by the petitioner on appeal, while probative, is not sufficient to establish that the petitioner is the subsidiary or affiliate of Saiwan Knitters Limited. The organizational chart depicting Success Eagle Limited and the petitioner as subsidiaries of Saiwan Knitters Limited is not corroborative of an affiliate or subsidiary relationship as it was merely prepared by the petitioner as an illustration of the purportedly related companies. Again, the petitioner has failed to incorporate with the organizational chart such relevant and substantiating evidence as stock certificates or a stock transfer ledger. Additionally, the funds transfer receipts relied upon by the petitioner, which reflect transfers from [REDACTED] and Saiwan Knitters Limited in April through July 2004 to the petitioner, are merely suggestive of a relationship between the two companies and [REDACTED] but do not confirm Sin [REDACTED] "original funding" of the United States entity or his purported ownership and control. The AAO notes, in particular, that of the four transfer receipts, only one originated with [REDACTED]. Moreover, the monies transferred during April through July 2004 amount to \$109,940, approximately \$34,700 less than the \$144,681 worth of common stock reported on the petitioner's 2003 and 2004 federal income tax returns. Furthermore, while listed as a stockholder on the petitioner's New York tax return, [REDACTED], purported ownership is not acknowledged by the petitioner on Schedule K of any of its federal income tax returns.

Taken as a whole, the above noted deficiencies undermine the petitioner's claim of a qualifying relationship between Saiwan Knitters Limited and the United States entity. Moreover, the petitioner has not provided sufficient evidence of [REDACTED] purported ownership and control of the petitioning entity. 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)). Absent relevant documentary evidence, the AAO cannot determine whether a qualifying affiliate or subsidiary relationship existed between Saiwan Knitters Limited and the United States entity at the time of filing the immigrant visa petition. Accordingly, the appeal will be dismissed.

The second 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.

In support of the beneficiary's purported employment as the foreign entity's manager or executive, the petitioner submitted with the Form I-140 a letter, dated February 28, 2006, in which the managing director of Saiwan Knitters Limited attested to the beneficiary's qualifications and prior work experience. The beneficiary was identified as having occupied the position of senior executive in the foreign entity since January 2003, and in October 2003 having assumed the responsibility "to take charge of our divisional/affiliated company," Success Eagle Limited. The managing director stated that during the

beneficiary's overseas employment, and prior to his entrance into the United States in January 2005<sup>2</sup>, the beneficiary held the following responsibilities:

To sit in the Executive Team to do the research and advise the [t]op management in planning the company roadmap for future business expansion and allocation of resources and etc.. In addition, [the beneficiary] was assigned to oversee and manage a divisional/affiliated company namely Success Eagle Limited, which was established since October, 2003 with the primary mission for looking into business opportunit[ies] for different scenario[s] other than OEM contract manufacturing such as Trademark Licensing and Joint Venture Partnership and etc. In the course of exercising his responsibilities and duties, [the beneficiary] was fully competent to perform his professional duties as described above.

In an attached affidavit, the beneficiary's work experience with the foreign entity was described in essentially the same manner as that provided above.

On May 30, 2006, the director issued a request for evidence noting that the offered job description was too vague to determine whether the beneficiary occupied a primarily managerial or executive position in the foreign entity. The director asked that the petitioner "describe the [job] duties in much greater detail," and incorporate in the job description the amount of time the beneficiary spent performing each task. The director also requested that the petitioner distinguish between the tasks performed by the beneficiary while employed at Saiwan Knitters Limited and those performed by the beneficiary in connection with his employment at Success Eagle Limited. The director further directed the petitioner to submit organizational charts depicting the staffing levels and the beneficiary's position in the two foreign companies.

The petitioner responded in a letter dated August 10, 2006, explaining that during the beneficiary's employment with Saiwan Knitters Limited, the beneficiary "was assigned to establish and finally incorporated the company of Success Eagle Limited in December, 2003." With respect to the "details of the job description," the petitioner referenced the previously offered job description that is cited above. The petitioner attached an organizational chart of the foreign entity that depicted the company as consisting of a sales and a manufacturing division, which were comprised of four and three companies, respectively. An appended statement indicated that the foreign company's staffing included: a senior director; five directors, including the beneficiary; an accountant; a merchandising manager; a designer; a head production coordinator; and twelve employees who performed clerical, technical and shipping functions. On a separate organizational chart of Success Eagle Limited, the beneficiary was identified as the company's director.

In a decision dated February 21, 2007, the director concluded that the petitioner had not demonstrated that the beneficiary was employed abroad in a primarily managerial or executive capacity. The director restated the offered job description, concluding that it was "too vague" and contained "insufficient detail" to conclude that the tasks performed by the beneficiary in either Saiwan Knitters Limited or Success Eagle Limited were primarily managerial or executive in nature. The director also focused on the beneficiary's responsibility in

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<sup>2</sup> The record indicates that the beneficiary entered the United States on July 11, 2004 on a B-1 visa. USCIS subsequently approved an L-1A nonimmigrant visa petition filed by the petitioner on behalf of the beneficiary for a term beginning on January 17, 2005. The petitioner represented on the Form I-140 that the beneficiary entered the United States on July 11, 2005 as an L-1A nonimmigrant intracompany transferee.

Success Eagle Limited of "looking into new business opportunities," and stated that the beneficiary's role in "[d]eveloping leads for future work" would not be considered a managerial or executive responsibility. Consequently, the director denied the petition.

The petitioner filed a timely appeal on March 22, 2007, and subsequently submitted a letter, dated May 2, 2007, in support of the appeal. In the letter, the petitioner noted its compliance with requests made by USCIS for evidence establishing the beneficiary's eligibility for classification as a manager or executive, and challenged USCIS' finding that the job description of the beneficiary's overseas employment was too vague. The petitioner stated:

During the tenure in the Executive Team of Saiwan, besides the responsibility in the business side, [the beneficiary] was also taking charge of the factory management duties in the factory of Saiwan Knitter Co. As a matter of fact, the production manager in the factory was under [the beneficiary's] direct supervision. [The beneficiary's] high caliber in this capacity could be reflected by the formerly submitted Affidavit[s] of the Managing Director of Saiwan and himself.

In attached translated copies of the foreign entity's meetings of its board of directors, the beneficiary is identified as concurrently serving in the positions of senior executive of Saiwan Knitters Limited and "market explorer," during which he would explore the United States market in order to expand the customer base of Saiwan Knitters Limited and locate new sale opportunities. According to the minutes from the board of director's meetings, the beneficiary was appointed to the position of "market explorer" or "senior administrator" in April 2003, and that in September 2003, the beneficiary was assigned the position of director of the newly formed company, Success Eagle Limited.

The petitioner also submitted a copy of a December 30, 2004 affidavit from the managing director of Saiwan Knitters Limited, which included the same job description for the beneficiary as that provided above.

Upon review, the petitioner has not demonstrated that the beneficiary was employed abroad 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 definitions of executive and managerial capacity have two parts. First, the petitioner must show that the beneficiary performs the high level responsibilities that are specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Here, the limited evidence offered by the petitioner with respect to the beneficiary's foreign employment precludes a finding that the beneficiary was employed abroad in a primarily managerial or executive capacity. The AAO first notes that notwithstanding the director's request, the petitioner did not clearly distinguish the beneficiary's employment with Saiwan Knitters Limited and Success Eagle Limited or describe his purported concurrent role as senior executive and director of both organizations. Based on the information contained in the copies of Saiwan Knitters Limited's organizational minutes that were submitted on appeal, it appears that the beneficiary assumed employment with Success Eagle Limited in September or October 2003; however, it

is unclear whether the beneficiary also continued to work for Saiwan Knitters Limited. This ambiguity hinders the instant analysis, as it is unclear how and where the beneficiary was employed prior to his transfer to the United States as a nonimmigrant. 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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regardless, the petitioner offered the same vague job description for the beneficiary's foreign employment in either organization, which falls significantly short of establishing his former overseas employment in a primarily managerial or executive capacity. As evidence of the beneficiary's managerial or executive foreign employment, the petitioner repeatedly relied on its statements that the beneficiary researched future business opportunities, advised Saiwan Knitters Limited's "[t]op management," and determined the allocation of resources. With respect to Success Eagle Limited, the petitioner originally suggested that the beneficiary held only a limited role in the company that was restricted to its establishment. Yet, as discussed above, documentation subsequently submitted by the petitioner represented the beneficiary as the director and employee of Success Eagle Limited. No additional evidence was submitted describing the responsibilities held by the beneficiary in connection with the position of director of Success Eagle Limited. Similarly, the petitioner has not resolved these deficiencies with its additional statements on appeal that the beneficiary was "[in] charge of factory management duties" and supervised the factory manager. 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).

The AAO notes the petitioner's failure to submit additional evidence of the beneficiary's purported overseas managerial or executive employment despite the director's request "to describe the duties in much greater detail." Additionally, the petitioner neglected to provide an allocation of the amount of time the beneficiary spent performing tasks in Saiwan Knitters Limited or Success Eagle Limited. Again, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Moreover, other than a brief reference to the beneficiary's supervision of the factory maintained by Saiwan Knitters Limited, the petitioner did not submit detailed evidence on appeal of the beneficiary's purported overseas employment as a manager or executive. Rather, the petitioner merely challenged the director's finding, stating that "[t]he position of [the beneficiary] in Hong Kong was not vague at all." 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.

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

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

On the Form I-140, the petitioner noted the beneficiary's proposed employment as vice-president of the five-person United States company, during which he would "take charge of Sales & Marketing and the coordination with the production in China and others as specified in the attached affidavit of intended

employment executed by the Office Manager of the Petitioning U.S. Company." In the referenced April 10, 2006 affidavit, the petitioner's office manager described the beneficiary's responsibilities as follows:

To take charge of the Sales & Marketing and the coordination with the production in China. Most important of all was to negotiate and finalize licensing agreements and sales contract under the authorization of the parent company. On daily basis, [the beneficiary] has overseen and supervised all sales activities such as to explore new customers, manage existing customers, work with merchandiser and designer of the department stores on the next collection so and so. To monitor the teleconference with China production on regular basis to review the manufacturability and confirm the costing of any new design as well as to ensure all designs would be produced in a timely manner that coincides with sales.

The petitioner noted that under the beneficiary's leadership, the United States company's revenue increased from \$640,000 in 2004 to over \$2 million in 2005.

In an appended affidavit of work experience, the beneficiary described his proposed employment in the same terms as those outlined above.

In his May 30, 2006 request for evidence, the director instructed that the offered job description was too vague to determine whether the beneficiary would be employed in a primarily managerial or executive capacity. The director directed the petitioner to submit a detailed description of the beneficiary's proposed job duties, including an estimate of the amount of time the beneficiary would devote to performing each task. The director further requested an organizational chart of the United States entity identifying the beneficiary in the organizational hierarchy and the names and job duties of the company's employees. The director also asked that the petitioner submit copies of the Internal Revenue Service (IRS) Forms W-2 issued by the company in 2005.

In its August 10, 2006 response, the petitioner emphasized the importance of employing the beneficiary as a "decision maker from the parent company to supervise and direct us to do the business and smooth out the communication with the associates both in Hong Kong and China due to language barrier and technical competence." The petitioner noted that while employed by the United States entity, the beneficiary would be employed in a capacity similar to that of a general manager and operation director. As evidence of "the details of the [proposed] job description" the petitioner referenced the affidavits previously submitted with the Form I-140.

In an attached organizational chart, the petitioner's staffing levels were depicted as consisting of: a president; the beneficiary's position of vice-president; an executive sales director; an account executive; a designer; an office administrator; and, a clerical worker. The AAO notes that this representation is not consistent with the petitioner's original claim on the Form I-140 of employing a staff of five. 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. at 591-92.

The petitioner also submitted copies of its August 4, 2006 and August 11, 2006 payroll summaries and a June 7, 2006 time sheet. The information contained in these documents suggests that of the seven individuals represented as being employed by the petitioner, three were likely employed on a part-time basis.

In his February 21, 2007 decision, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Noting that the petitioner had failed to respond to the director's specific request for more detailed job duties, the director stated that the job description twice offered by the petitioner was too vague to establish the beneficiary's employment in a primarily managerial or executive capacity. The director also noted that the petitioner had not provided the requested description of the tasks to be performed by the other employees of the petitioning entity or documentary evidence, such as IRS Form W-2 or quarterly wage reports, establishing the employment of its clerical worker and account executive. The director determined that the petitioner's operations are not sufficiently complex so as to warrant the employment of its purported seven-person staff. Consequently, the director denied the petition.

On appeal, the petitioner challenges the director's finding that the United States company's organizational hierarchy was not sufficient to support the beneficiary in a primarily managerial or executive capacity. The petitioner explains that the company's president remains in Hong Kong and is not authorized to work in the United States, thus leaving the beneficiary and the executive sales director as the only "[e]xecutive level" personnel employed in the United States. The petitioner also notes the employment of approximately "4 - 5 part-time and freelance workers from time to time." The petitioner further claims its use of outside contractors to perform such "routine" functions as: warehousing, shipping, receiving, storing, and domestic deliveries; sales throughout the United States; receiving and facilitating purchase orders; and management information systems tasks, such as processing orders, shipments, billing, accounting, and inventory.

As additional evidence, the petitioner submits a May 2, 2007 letter, in which the company's sales director identifies the beneficiary as his supervisor and advisor who "is in charge of all the day[-] to[-]day operations in the New York office." He further states:

[The beneficiary] is very experienced and knowledgeable in the garment industry both in the area of production of finished garments and fabrication that is used in the product line. He is well aware of what's achievable not only from the product side but making sure that the finished product can be sold at a profit. Most important of all, since [the beneficiary] is a Senior Executive representative from our parent company in Hong Kong and is a liaison from our New York office to our factory in China. [sic] His communication with Hong Kong and factories in China is always helpful and crucial for me to conclude the deal with my prospective clients. With all due respect and consideration, I strongly believe that [the beneficiary's] continuous leadership in [the petitioning entity] is mandatory and imperative.

The petitioner also submits a copy of its April 13, 2007 payroll register identifying six employees, including the beneficiary. The salaries reflected on the payroll register are consistent with the petitioner's statements that at least three of its employees were employed on a part-time basis on the filing date.

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

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5).

Despite the petitioner's claims otherwise, the offered job description is not sufficient to establish the beneficiary's purported employment in a primarily managerial or executive capacity. For example, the petitioner's vague statements included the beneficiary's responsibility "[t]o take charge of the Sales & Marketing," coordinate and monitor productions with China, negotiate and finalize licensing and sales agreements, confirm new design costs, and ensure the timely completion of designs. Similarly, with respect to the beneficiary's "daily" tasks, the petitioner asserts such broad responsibilities as supervising the company's sales activities, managing existing customers, and working with merchandisers and designers. The petitioner's general representations as to the beneficiary's managerial or executive authority fail to identify the specific managerial or executive tasks to be performed by the beneficiary as the company's vice-president. Likewise, the beneficiary's "daily" tasks fall short of satisfying the regulatory requirement that the petitioner *clearly describe* the managerial or executive to be performed by the beneficiary. *See* 8 C.F.R. § 204.5(j)(5). 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.

Additionally, the petitioner did not submit evidence of its blanket claim that the beneficiary would also occupy such positions as general manager and operations director. The petitioner makes such allegations in its response to the director's request for evidence, stating only that the beneficiary would hold these positions as a result of his "capability and experience in the garment industry." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner's failure to detail the specific tasks associated with the beneficiary's proposed employment or those performed by the petitioner's employees raises questions as to the veracity of the petitioner's claim to employ the beneficiary as its manager or executive. The AAO notes that although the director requested specific evidence of the beneficiary's proposed employment, the petitioner neglected to provide a more detailed account of the roles held by the beneficiary and the other employees in the petitioning entity. Again, 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).

Specifically, the beneficiary is noted as taking "charge" of the company's sales and marketing functions. The petitioner has neglected to explain the tasks associated with this responsibility; yet, it is reasonable to at least question the beneficiary's managerial or executive role over the company's sales and marketing in light of the employment of an executive sales director, who claims in his May 2, 2007 letter to be "involved in all the aspects of sales and design" and to work with "all the major department [stores]." The AAO notes that despite being subordinate to the beneficiary, the executive sales director receives a monthly compensation of approximately \$800 more than the beneficiary. 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.

Moreover, the record is devoid of evidence corroborating the petitioner's claim on appeal of utilizing outside contractors to perform the routine functions of the United States business. The petitioner identifies twelve businesses that have purportedly been performing its warehousing, sales, purchasing, and management information systems functions, and claims that these organizations sufficiently support the beneficiary in a

primarily managerial or executive capacity. The AAO notes that the petitioner did not address its purported use of outside contractors until the instant appeal and after the director questioned whether the petitioner's six-person staff would warrant the employment of the beneficiary as a manager or executive. Nevertheless, there is no documentary evidence, such as invoices for services or payments rendered by the petitioner, demonstrating that the petitioner used outside organizations to perform its day-to-day business functions. Also, there is limited evidence on the petitioner's federal income tax return for the tax year beginning December 1, 2005 through November 30, 2006 of payments made for the above-named contracted services. Without additional documentary evidence, the petitioner's representations on its tax return of paying approximately \$116,000 and \$28,000 for warehousing and subcontracting expenses, respectively, are not sufficient to corroborate the petitioner's claim of utilizing twelve separate organizations for its warehousing, sales, purchasing, and management information systems functions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The AAO also addresses the staffing levels maintained by the petitioner on the date of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971)(holding that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts). 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.

Here, while the record contains inconsistencies as to the exact number of individuals employed by the petitioner at the date of filing, the April 13, 2007 payroll register submitted on appeal suggests the employment of the beneficiary, an executive sales director, an account executive, a designer, an office administrator, and, a clerical worker. As noted by the AAO and conceded by the petitioner, the beneficiary and executive sales director appear to be the only workers employed by the petitioner on a full-time basis. In light of the part-time status of its remaining four employees, as well as the petitioner's failure to document its purported use of outside contractors, it is questionable whether the company's reasonable needs as a clothing wholesaler might plausibly be met through the services of the beneficiary, the executive sales director, and four part-time employees. The record does not support a finding that the reasonable needs of the petitioning organization would be met while employing the beneficiary in a primarily managerial or executive capacity. Rather, based on what appears to be inadequate staffing levels, it is reasonable to conclude that the beneficiary would likely be personally responsible for performing non-managerial and non-executive tasks of the petitioner's business functions.

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 has 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 appeal will be dismissed.

The AAO acknowledges that USCIS 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. *See* 8 C.F.R. § 103.8(d). 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 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).

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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.