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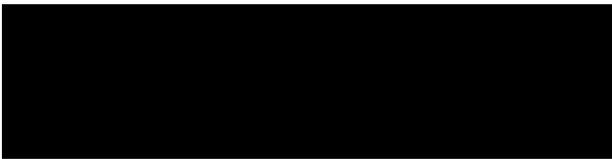


File: SRC 05 030 52375 Office: TEXAS SERVICE CENTER Date: APR 04 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

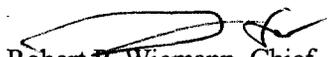
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

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 petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a religious organization, is a Florida non-profit corporation and claims a qualifying relationship with Iglesia de Dios Ministerial de Jesucristo Internacional, located in Bogota, Colombia. The petitioner seeks to employ the beneficiary as its Head Pastor/Executive Minister for a period of three years.<sup>1</sup>

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary would be employed in the United States in a primarily managerial or executive capacity, or (2) that the petitioner and the foreign entity have a qualifying relationship.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a managerial capacity, in that he will supervise and control the work of professional and supervisory employees, and that he will manage a function of the organization. Counsel further contends that the petitioner submitted sufficient evidence to establish that a qualifying relationship exists between the United States and foreign entities. Counsel submits a brief and additional evidence in support of the appeal.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his

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<sup>1</sup> The petitioner notes that it previously filed an L-1A classification nonimmigrant petition on behalf of the beneficiary. The petitioner states that although the petition was approved, previous counsel failed to request a change of status on the beneficiary's behalf, and instead requested that U.S. Citizenship and Immigration Services (USCIS) notify the U.S. Embassy in Panama City, Panama of the approval so that the beneficiary could obtain an L-1 visa and be admitted to the United States. The petitioner states that the U.S. Consulate in Panama denied the beneficiary's application for an L-1 visa due to lack of jurisdiction and advised him to apply in his home country at the U.S. Embassy in Bogota, Colombia. The beneficiary was admitted to the United States as a B1 nonimmigrant on October 30, 2003 and remained in the United States at the time the instant petition was filed on November 15, 2004.

The AAO notes that USCIS records show that the previous petition filed on behalf of the beneficiary (SRC 03 206 51643) was approved on August 6, 2003, with validity dates of August 1, 2003 through August 1, 2006, and that the U.S. Embassy in Bogota was notified by cable or facsimile at the time of the approval. The petitioner subsequently filed a Form I-824, Application for Action on an Approved Petition, on September 5, 2003, in order to request that a separate notification of the I-129 petition approval be sent to the U.S. Embassy in Panama City.

or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in the present matter is whether the petitioner established that the beneficiary will be employed by the United States entity in a managerial capacity. The petitioner does not claim that the beneficiary will be employed in an executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as 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) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or 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.

The nonimmigrant petition was filed on November 15, 2004. On the Form I-129 petition, the petitioner indicated that the U.S. entity employs twelve people, and described the beneficiary's proposed role as Head Pastor/Executive Minister as follows: "Establish parish policies and goals. Implement ministry's vision by coordinating and managing Church operations, ministries and programs. Direct staffing, training, and evaluations of parish personnel. Direct missionary operations. Manage parish administration."

In a letter dated November 10, 2004, the petitioner provided the following description of the beneficiary's proposed duties:

[The beneficiary] will have three principal missions in the United States. First and foremost, he will fill the position of Pastor/Executive Minister of the [petitioner] in Hialeah Gardens, Florida. He will oversee the operations of nine other Iglesia de Dios Churches in the United States under his jurisdiction, and he will direct and manage at least 9 other managerial personnel (Church Pastors). There are currently 11 [churches] under his jurisdiction, including churches in Georgia, South Carolina, Texas, Kansas, etc. Although the Mother Church in Bogota has control over the ordination, hiring, and transfer of clergy members, [the beneficiary] will have complete authority to hire, train, promote and terminate administrative employees. [The beneficiary] will coordinate and direct the Church's U.S. based Missionary Ministry. The Missionary Ministry is a major subdivision of the pastorate, and its purpose is to teach and train missionaries and send them out on national and international missions to preach the Gospels and found new Iglesia de Dios Churches. And finally, [the beneficiary] will serve as Treasurer of the [petitioner] in the U.S.

The following is a list of duties and projected percentage of time spent on each duty:

1. Plan, develop and establish policies and objectives of parish, pastorate an [sic] Missionary Ministry, (20%);
2. Review activity reports and financial statements prepared by Office Manager and Accountant to determine progress and status in obtaining Church objectives, and revise objectives and plan in accordance with current conditions (10%);
3. Evaluate performance of managerial employees (subsidiary Church pastors) compliance with established policies and objectives of the Church, and contributions in attaining objectives, (20%);
4. Direct and coordinate formulation of programs to provide funding for new or existing operations to maximize return on investments and to increase contributions, (10%);
5. Travel to manage and evaluate Pastorate and maintain and evaluate installations (10%);
6. Report to President and Board of Directors, (5%);
7. Conduct religious worship and perform other spiritual functions... (25%).

The petitioner submitted an organizational chart depicting the beneficiary as executive minister based in Hialeah Gardens, Florida, and supervising an administrative assistant and church secretary. The chart also indicates that the beneficiary will supervise a total of nine pastors located in four other Florida cities, as well as in New Jersey, New York, California, "Texas & Kansas," and "Georgia & South Carolina." The chart shows that each pastor supervises an administrative staff. The petitioner provided a second organizational chart depicting its worldwide "Ecclesiastical Government." On this chart, the beneficiary is identified as "missionary ministry," "treasurer," and "head pastor," and the names of four Florida-based pastors are listed under his name. Seven other pastors appear on the organizational chart, including those based in Houston, New York and New Jersey, Atlanta, South Carolina, Connecticut, California, and Kansas, but their positions are not shown as under the beneficiary's supervision.

On December 7, 2004, the director issued a request for evidence. In part, the director instructed the petitioner to submit an organizational chart for the U.S. company, specifying the beneficiary's position within the organizational hierarchy, as well as the names, job titles and duties of the employees the beneficiary will supervise.

In a response dated March 5, 2005, the petitioner submitted a new organizational chart, also depicting the church's worldwide structure. The chart is similar to the one previously provided, but shows five pastors under the beneficiary's position as "Head Pastor – Miami," including pastors located in Tampa, Bradenton Orlando/Jacksonville, and West Palm Beach/St. Lucie. The chart also depicts an individual identified as "Pastor English" under the beneficiary's supervision, and a vacant position for a pastor located in Margate, Florida. As on the previously submitted organizational chart, many pastors are shown in positions lateral to that held by the beneficiary. The beneficiary is also identified as holding the positions of treasurer, "Head Pastor USA," and "Mission Ministry." The petitioner did not provide a list of the job titles and job duties for the beneficiary's subordinates, as requested by the director.

The director denied the petition on June 20, 2005, concluding that the petitioner had failed to establish that the beneficiary would be employed in a qualifying managerial or executive capacity. The director observed that the submitted documentation showed that the beneficiary would supervise other pastors, but noted that the beneficiary's subordinates had not been shown to be employed in a managerial, supervisory or professional capacity. The director determined that although the beneficiary would exercise discretion over the petitioner's day-to-day operations, he would also "perform much of the activity," and would not supervise professional employees.

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in a managerial capacity. Counsel asserts that although the beneficiary will be employed as a first-line supervisor, the employees he will supervise are professionals. Counsel states that the legacy Immigration and Naturalization Service has already ruled that the position of Pastor or Minister is considered a profession, and asserts that the U.S. Department of Labor's *Occupational Outlook Handbook* and *Dictionary of Occupational Titles* indicate that members of the clergy are professionals.

Counsel further asserts that the director's statement that the beneficiary's subordinates would not be supervising other employees is "not entirely accurate." Counsel states that the beneficiary supervises nine

pastors in their respective parishes, and that each pastor supervises a subordinate staff including at least one secretary and one bookkeeper. Counsel acknowledges that the subordinate staff members are volunteers, but emphasizes that they are nevertheless managed by the pastors and should be considered employees. Counsel asserts that the beneficiary supervises his own administrative staff, as well as nine pastors who in turn supervise, direct and control their own subordinate staff, and thus he supervises and controls the work of other supervisory, professional, or managerial employees pursuant to section 101(a)(44)(A)(ii) of the Act.

Finally, counsel asserts that the beneficiary meets the criteria for managerial capacity because he "functions at a senior level within the organization or with respect to a function managed." Counsel states that the beneficiary is solely responsible for managing and directing the petitioner's U.S.-based missionary ministry and therefore functions at a senior level with respect to this function. Counsel further asserts that the beneficiary manages all U.S.-based finances as treasurer for the church in the United States, noting that "he is in control of the receipt, disbursement, banking, protection and custody of all funds, securities and financial instruments." Therefore, counsel concludes that even if the beneficiary did not supervise professional and supervisory employees, he can be deemed a "function manager" pursuant to section 101(a)(44)(A)(ii) of the Act.

In support of the appeal, the petitioner submits copies of 2004 IRS Forms W-2, Wage and Tax Statement, for nine employees identified as pastors on the petitioner's organizational chart, and a letter from the petitioner's bank indicating that the beneficiary has been the treasurer of the account since March 2002.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary would be employed in a managerial or executive position.

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. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

While the petitioner has consistently indicated that the beneficiary's position will be in a managerial capacity, the description of the beneficiary's duties is general. It is not possible to determine from the description provided whether the beneficiary's duties are primarily managerial duties or whether the beneficiary's time will be devoted primarily to non-managerial functions associated with his role as pastor of his assigned parish and the day-to-day financial and administrative functions of the organization's U.S. operations. The position description provided, considered within the context of the totality of the record, does not sufficiently demonstrate that the beneficiary's primary tasks will be the high-level responsibilities that are specified in the definition of managerial capacity. *See* section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A).

Although the beneficiary provided a breakdown of the percentage of time the beneficiary will devote to each of his assigned areas of responsibility, none of his duties have been described with sufficient specificity to establish his eligibility for the benefit sought. The petitioner indicates that the beneficiary will devote 20 percent of his time to "plan, develop and establish policies and objectives of parish, pastorate and Missionary Ministry." The petitioner provided no further explanation regarding the extent or scope of the beneficiary's

authority or any specific policies or objectives to be developed in the proposed role. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

The petitioner stated that the beneficiary would devote an additional ten percent of his time to "review activity reports and financial statements prepared by Office Manager and Accountant." The petitioner has not established that it employs an office manager or an accountant to prepare these reports, and it is thus unclear how the beneficiary will perform this claimed supervisory function over office and accounting functions. While counsel asserts on appeal that some of the petitioner's workers are unpaid volunteers, the AAO can not assume that volunteers hold the referenced positions of office manager and accountant, or that volunteers will be responsible for assisting the beneficiary with these tasks. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Similarly, the petitioner stated that the beneficiary would devote 10 percent of his time to "direct and coordinate formulation of programs to provide funding for new or existing operations, " but failed to describe the actual duties associated with "coordinating formulation" or indicate who would carry out non-managerial tasks associated with implementing these programs. The petitioner's brief statements that the beneficiary would formulate financial programs or review financial statements do not sufficiently identify the beneficiary's daily managerial tasks.

The petitioner further indicated that the beneficiary will allocate 25 percent of his time to conducting religious worship and performing other spiritual functions, duties which are clearly not managerial in nature. However, as the beneficiary is the only pastor assigned to his parish, it is not clear, based on a review of the totality of the record, how he could reasonably devote twice as much time to developing policies and supervising other pastors as he would to his role as the pastor for his own parish. Further, the AAO notes that although the petitioner repeatedly emphasized that the beneficiary will perform three major functions, including management of the "Missionary Ministry" and the role of treasurer for the U.S. based churches, the petitioner's description of the beneficiary's duties barely references either of these "principal missions" or the specific duties assigned to the beneficiary in these roles, which calls into question the accuracy of the percentages assigned to each job duty. Overall, the breakdown of the beneficiary's duties is overly vague and appears to represent an incomplete depiction of the beneficiary's proposed role in the United States.

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 show 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). The test is basic to ensure that a person not only has the requisite authority, but that a majority of his or her duties are related to operational or policy management, not to the supervision of lower-level employees or the performance of other non-managerial or non-executive duties.

In the instant matter, the petitioner has failed to show that non-qualifying duties will not constitute the majority of the beneficiary's time. The provided job descriptions do not allow the AAO to determine the actual tasks that the beneficiary will perform such that they can be classified as managerial or executive in nature. Therefore, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Because the petitioner's breakdown of the beneficiary's job duties does not encompass all of his claimed responsibilities, the description does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. Contrary to the common understanding of the word "manager," the statute plainly states that 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)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

The petitioner claims that the beneficiary will manage nine other pastors in the United States, and asserts that each of these pastors is employed in both a professional and supervisory capacity. As noted above, the petitioner initially submitted one organizational chart showing the beneficiary supervising all U.S. pastors, and one that shows the beneficiary over four pastors in Florida, and in a position that is lateral to the church's pastors located in Houston, New York/New Jersey, Atlanta, Kansas and San Francisco. 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).

Furthermore, although specifically requested by the director, the petitioner opted not to submit job descriptions for the beneficiary's proposed subordinates. This information would have been particularly helpful, as the organizational charts do not clearly depict the beneficiary's level of authority, nor is it evident to what extent his duties differ from those of other pastors employed by the petitioning organization in the United States, particularly those who appear to be employed lateral to the beneficiary in the organizational hierarchy. Further, the AAO will not consider the beneficiary's claimed subordinates to be employed in a professional or managerial capacity based solely on their job titles and the petitioner's unsupported assertion that each supervises unpaid volunteers. 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)). Finally, even if the AAO were to conclude, *arguendo*, that the beneficiary does in fact supervise professional or managerial employees, the petitioner represented such duties as requiring only 30 percent of the beneficiary's time, and thus he cannot be considered to be employed primarily in a managerial capacity based on this duty alone.

The AAO will next turn to counsel's argument that the beneficiary qualifies for L-1A classification as a "function manager," based on his management of the petitioner's treasury function, and as manager of the U.S.-based "Missionary Ministry." 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 in managing the essential function, 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. See 8 C.F.R. § 214.2(l)(3)(ii). 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. 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. *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)). In this matter, the petitioner has not provided evidence that the beneficiary manages an essential function.

As discussed above, the petitioner has not identified the beneficiary's specific duties in relation to either the treasury function or the "Missionary Ministry" function, or the percentage of time he would devote to such duties. For this reason alone, the AAO cannot conclude that his primary duties would be managerial duties related to one or both functions. 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). With respect to the treasury function, although the petitioner included an accountant on its organizational chart, the petitioner has not indicated that the beneficiary supervised this employee, provided evidence of his employment, or provided a description of the accountant position. The beneficiary will not be deemed to manage the treasury function absent evidence that someone other than the beneficiary performs the day-to-day tasks associated with the function or a description of his actual day-to-day duties in relation to this function. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Similarly, with respect to the missionary ministry function, the petitioner mentioned that the purpose of the division is "to teach and train missionaries." As the petitioner has not indicated that anyone will assist the beneficiary with this function, it is reasonable to conclude, and has not been shown otherwise, that he will be performing the function, rather than performing management duties related to the function. Although a function manager is not required to directly supervise employees, in such a situation, the AAO recognizes that other employees carry out the functions of the organization, even though those employees may not be directly under the function manager's supervision. The fact that the beneficiary is the only employee responsible for the treasury and missionary ministry functions is insufficient to elevate his proposed duties to the level of managerial capacity.

As previously noted, the petitioner has provided a job description that fails to meaningfully convey the amount of time the beneficiary will devote to managerial duties related to the assigned functions. The petitioner's description of the beneficiary's duties cannot be read or considered in the abstract, rather the

AAO reviews the totality of the record when examining the claimed managerial capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees who would relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business. In the case of a function manager, where no subordinates are directly supervised, these other factors may include the beneficiary's position within the organizational hierarchy, the depth of the petitioner's organizational structure, the scope of the beneficiary's authority and its impact on the petitioner's operations, the indirect supervision of employees within the scope of the function managed, and the value of the budgets, products, or services that the beneficiary manages.

Upon review of the record as a whole, the AAO finds insufficient evidence to support the petitioner's assertion that the beneficiary's duties will be primarily managerial in nature. The beneficiary's role as a pastor is clearly not managerial, nor have his duties associated with the petitioner's treasury or missionary ministry functions been shown to be managerial, as the petitioner in this matter has not adequately explained who would relieve the beneficiary from performing the day-to-day operational duties associated with these functions, including training of missionaries and financial tasks. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity. For this reason, the appeal will be dismissed.

The second issue to be discussed in the present matter is whether the petitioner has established that a qualifying relationship exists with the beneficiary's overseas employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See generally* section 101(a)(15)(L) of the Act; 8 C.F.R. § 214.2(l).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

- (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
  - (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
  - (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the

duration of the alien's stay in the United States as an intracompany transferee[.]

\* \* \*

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.
- (K) *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.
- (L) *Affiliate* means
  - (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
  - (2) 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.

The petitioner indicated on Form I-129 that the U.S. entity is a branch of the foreign entity, noting that the parent in Colombia "directs and controls the Churches worldwide through [sic] its Worldwide Ministry [sic] operations. The parish Church in the U.S. is under the direct control and supervision of the Bogota Headquarters." In its letter of support dated November 10, 2004, the petitioner indicated that the U.S. entity was incorporated in Florida in May 1998, and recognized by the Internal Revenue Service as a tax-exempt religious organization. The petitioner further stated:

The Mother Church in Bogota, Colombia exercises complete control over the theology and doctrines of the U.S. subsidiary Church in Hialeah Gardens. The Mother Church controls the U.S. subsidiary's assets. The Mother Church controls the ordination of new pastors and ministers, and controls and directs the transfer of pastors and the appointment of new pastors. Moreover, there is regular sharing and exchange of pastors and other church personnel among [group churches].

In her request for evidence, the director instructed the petitioner to submit documentary evidence to establish the ownership and control of both the foreign and United States entities. The director informed the petitioner that such evidence may be in the form of stock certificates, copies of corporate bylaws/constitutions which clearly

indicate stock ownership, certified affidavits from corporate executives or corporate legal counsel, or copies of published annual reports which indicate affiliates and/or subsidiaries and the percent of ownership held by the parent corporation.

In a response dated March 5, 2005, counsel for the petitioner asserted that church organizations may qualify as parent/subsidiary or as affiliates, pursuant to *Matter of Church Scientology International*, 19 I&N Dec. 593 (Comm. 1988). Counsel asserted: "Whether the Mother Church controls the property, the doctrine, the appointment of clergy in their affiliates are all factors in determining the qualifying control for purposes of the L visa." The petitioner attached the petitioner's by-laws and certificate of affiliation with the Colombian church. Counsel, referencing the by-laws, emphasized that "since the Mother Church, through its International Board, strictly controls ownership of affiliate church property, the establishment of affiliate churches, the revocation of affiliate churches, the election of clergy, the removal of clergy, and church discipline and doctrine, both the Mother Church in Colombia and the affiliate church in the U.S. have the proper qualifying control for purposes of the L-1 visa." Counsel noted that as the petitioner is a church organization and therefore a non-profit corporation, it does not issue stock certificates or certificates of ownership.

The director denied the petition on June 20, 2005, concluding that the petitioner had failed to establish the existence of a qualifying relationship between the U.S. entity and the beneficiary's foreign employer. The director did not discuss why the submitted evidence failed to establish the petitioner's eligibility.

On appeal, counsel for the petitioner states that the director "did not offer any legal explanation" in support of her conclusion that the petitioner and foreign entity do not enjoy a qualifying relationship. Counsel reiterates the arguments made in response to the director's request for evidence, noting that the petitioner provided a very detailed explanation regarding its ownership and control. Counsel asserts that since the petitioner offered "detailed, compelling and corroborative evidence regarding qualifying relationship and since the Service offered absolutely no explanation to the contrary, it must be concluded there exists a qualifying relationship between [the petitioner] and the Mother Church." The petitioner re-submits a copy of the U.S. entity's by-laws in support of the appeal.

Preliminarily, the AAO notes that 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). In this case, the AAO agrees that the director's decision with respect to this issue amounted to an unsupported conclusion, with no specific reference to the evidence entered into the record. As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Upon review, the petitioner's by-laws and certificate of affiliation with the mother church are insufficient to establish that the foreign and U.S. entities have a qualifying relationship. The director specifically requested evidence of the ownership and control of both the foreign and United States entities. While the AAO acknowledges the petitioner's assertion that certain documentation, such as stock certificates, is not available for a non-profit religious organization, the petitioner provided no evidence to fully explain the scope and extent of the powers of the foreign entity and claimed "Mother Church," and particularly, of the church's

"International Board." Absent such evidence, which might include the foreign entity's by-laws, constitution, resolutions, or other documentation setting forth the powers of the mother church, the international board, and addressing the incorporation of the U.S. church, it cannot be concluded that the relationship between the entities can be considered affiliates, parent-subsidary, or branches of the same organization. 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 by-laws for the U.S. entity place more emphasis on the formation of additional affiliated churches in the United States and do not directly address the formation of the petitioner, a Florida corporation, by the claimed parent entity, or the ultimate powers of the parent entity. Thus, while the AAO finds no clear evidence of ineligibility in the record, there is insufficient evidence to establish the claimed qualifying relationship between the foreign and United States entities. For this additional reason, the appeal will be dismissed.

Beyond the decision of the director, a remaining issue to be addressed is whether the petitioner established that the beneficiary has been employed by the foreign entity in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(iv). The petitioner described the beneficiary's most recent position abroad as "Head Pastor of the Bogota Parish," and noted that, in addition to performing "his religious and spiritual function," the beneficiary had "full responsibility for administrative and financial management of the parish." The petitioner further indicated that the beneficiary was responsible for hiring, firing, recruiting and training staff and "supervising the imparting of Biblical teachings to the congregation by managing the Church's pastors and teachers." This brief description is insufficient to establish that the beneficiary's duties as head pastor of a parish are primarily managerial in nature. The petitioner did not specify how the beneficiary's duties are divided among religious and spiritual functions and the claimed managerial functions, nor did the petitioner specify the number or types of subordinates supervised by the beneficiary in carrying out his administrative, financial and teaching functions.

Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. The petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991).

Furthermore, subsequent to the filing of the petition, the director requested that the petitioner submit an organizational chart for the foreign entity, specifying the beneficiary's position within the organizational hierarchy, as well as the names, job titles, and job duties of the employees the beneficiary supervises. The organizational chart submitted in response to the director's request did not identify the beneficiary's role within the foreign entity. 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). As the petitioner failed to provide a clear description of the beneficiary's actual duties, or evidence of his position within the foreign entity's organizational hierarchy, it has not established that he has been employed by the foreign entity in a qualifying managerial or executive capacity. For this additional reason the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petitioner noted that USCIS approved another petition that had been previously filed on behalf of the beneficiary. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the previous nonimmigrant petition was approved based on the same unsupported 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). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous petition approval by denying the instant petition.

Furthermore, 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 petition 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 the decision. 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.