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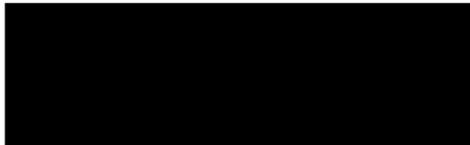
U.S. Department of Homeland Security
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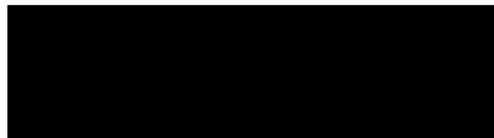
File: SRC 06 084 50070 Office: TEXAS SERVICE CENTER Date: APR 04 2007

IN RE: Petitioner:
Beneficiary:



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 extend the employment of its executive director/president 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 Florida corporation, states that it operates a janitorial/cleaning service business. The petitioner claims that it is a subsidiary of Helen Empreendimentos Imobiliarios Ltda, located in Brazil. The petitioner has employed the beneficiary since January 2005 and now seeks to extend his status for three additional years.

The director denied the petition concluding that the petitioner did not establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity.

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 primarily managerial or executive position, noting that due to the nature of the U.S. company's business activities, the majority of the day-to-day functions are outsourced to independent contractors. Counsel submits a brief and documentary 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 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 sole issue addressed by the director is whether the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

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

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

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

The nonimmigrant visa petition was filed on January 20, 2006. In a letter dated January 6, 2006, the petitioner provided the following description of the beneficiary's proposed duties:

[The beneficiary] will serve as the President and Executive Director of the Tampa, Florida-based operation. He will direct all operations of the U.S. corporation and will be in charge of hiring and firing employees and independent contractors (the latter are more common in this line of work). In addition, he will be in control of all financial matters and will engage in the financial management of the U.S. corporation.

The petitioner stated that the U.S. company has three employees and 58 independent contractors. The petitioner provided an employee list identifying the beneficiary and two part-time employees, as well as a "1099 Summary" for 2005, listing 58 individuals. The petitioner also submitted copies of its IRS Forms W-2, Wage and Tax Statements, for 2005, indicating that the company paid wages of \$22,500 to the beneficiary, \$4,200 to another employee, and \$500 to the third employee.

On March 16, 2006, the director issued a request for evidence, instructing the petitioner to submit the following: (1) a current organizational chart for the U.S. entity, including the names, job titles and a detailed job description for each employee; (2) a more specific description of the day-to-day duties of the beneficiary's position and the percentage of time spent on each duty; and (3) copies of the petitioner's state and federal quarterly wage reports for 2005, and, if applicable, copies of Forms 1098 and 1099 evidencing the use of contracted employees.

In a response dated June 5, 2006, the petitioner provided the following description of the beneficiary's duties as "vice president":

The Vice President of the company is responsible for the general management of the business in the United States. He visits suppliers, participates in meetings for closing of contracts, negotiates contracts, researches new suppliers, and attends exhibits and conventions in the Tampa Bay Area.

The Vice President meets and confers with the employees whenever needed to discuss ongoing business and financial matters, conferences are held, on average, once a month when the Vice President visits individual job sites. The Vice President will visit preferred customers for straightening relations/problems-solving, to establish sales strategies, visit potential clients, negotiate and renegotiate special supplying contracts, etc.

The Vice President will divide [sic] the rest of his time supervising the company's business, meeting with the General Manager, occasionally his subcontractors and the outside service companies for problem-solving, discuss sales and marketing strategies, verify sales and approve expenses, decide new expenditures, hiring of new employees, review employees' performances with the general manager, decide salary increases. The Vice President also meets with the accountant and with bank manager [sic] to discuss cash flow, capital investments, financial needs, etc. The Vice President meets with the general manager for problem solving, emergencies, and decisions beyond the general daily routine. The Vice President approves by signature any extra expense not previously approved by contract, or

general purchase order. He also reviews company's internal policies, and monitors quality and procedures for adjusting the company goals whenever needed, according to the market.

The petitioner also provided the following breakdown of how the beneficiary allocates his time among various responsibilities:

Approve and authorize all accounts receivables and payables	7.5%, 3 hours/week
Approve and authorize all purchases	5%, 2 hours/week
Approve and authorize all shipments	10%, 4 hours/week
Approve and authorize any capital infusion or outlays. . .	2.5%, 1 hour/week
Approve and authorize payroll	2.5%, 1 hour/week
Approve budgets and general expenses	2.5%, 1 hour/week
Approve final inventories	7.5%, 3 hours/week
Define and authorize the purchase of operating assets . . .	2.5%, 1 hour/week
Develop, coordinate and approve all marketing activities	5%, 2 hours/week
Establish and oversee the operating structure	15%, 6 hours/week
Establish high level, market entry sales call[s] . . .	2.5%, 1 hour/week
Guide and direct organization to achieve. . . budgets	12.5%, 5 hours/week
Look for future opportunities, strategic partners & growth areas	15%, 6 hours/week
Random site/location visits to monitor quality & workmanship	10%, 4 hours/week

The petitioner submitted an organizational chart depicting the beneficiary as vice president, supervising a part-time office manager, a part-time general supervisor, and an outside accountant. The chart also shows a general subcontractor, paid \$39,646 in Form 1099 wages in 2005, who supervises "Outside Service Solano Cleaners," payment of whom was reflected as "cost of goods sold" on the petitioner's 2005 income tax return, in the amount of \$89,555. The chart also depicts five building supervisors, each of whom supervises subcontractors. The petitioner indicated that the total number of subcontractors is 40, and that they received total wages of \$140,606. The petitioner submitted copies of 40 IRS Forms 1099-MISC, Miscellaneous Income, issued by the U.S. company in 2005.

The petitioner indicated that the part-time office manager is responsible for answering telephone calls, making sales calls and appointments, filing company documents, ordering office supplies, typing letters and memos, accounts receivable, accounts payable, vendor invoices, employee wages and basic accounting responsibilities. The petitioner noted that the part-time general manager is responsible for managing the day-to-day activities, supervising the night staff, monitoring each individual building progress and quality of workmanship, and managing building supervisors and subcontractors to coordinate company services and workflow.

The petitioner further stated that the general subcontractor "is responsible for oversight and management for the company *Outside Services*, and coordinates and schedules all the subcontractors associated with any given building they have been assigned, handles material and supply orders, coordinates all products and shipping to the contracted building sites." The petitioner noted that Solano Cleaners is responsible for all onsite subcontractor supervision including site and security permissions, wage disbursement, equipment and product

disbursement, and quality supervision. The petitioner noted that [REDACTED] independent of the petitioner, is responsible for hiring and firing subcontractors. The petitioner did not provide a copy of its contract with [REDACTED]

The director denied the petition on June 21, 2006, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director noted that, based on the job description provided, the beneficiary appeared to be involved in the day-to-day business activities of the company, including negotiating contracts, researching new suppliers, meeting with customers and signing off on expenditures. The director acknowledged that the petitioner appears to have sufficient employees to perform the cleaning function of the business, but observed that it was unclear from the record who is performing the other routine business activities of the company, given that the beneficiary is the only full-time employee. The director concluded that the beneficiary would be required to participate in many non-managerial, non-executive duties and would be precluded from performing primarily managerial or executive tasks.

On appeal, counsel for the petitioner asserts that the beneficiary's position qualifies as managerial or executive in accordance with the statutory definitions. Counsel acknowledges the director's statement that it "is unclear who is performing the day to day business activities of the company," since the beneficiary is the only full-time employee. Counsel states that the facts of this case are similar to those of an unpublished decision in which the AAO determined that a person may be a manager or executive, even if he is the sole employee of the company, if the company utilizes independent contractors, or if the business is complex.

Counsel asserts that as president "the beneficiary will direct the organization to outsource service and accounting functions using independent contractors as per the attached documentation." Counsel contends that the beneficiary's role as president of an international company "constitutes a myriad of complexities, for which he as President is inherently bestowed with the requisite superior authority to continue to direct all of the essential functions of the company, including binding the company contractually."

In support of the appeal, the petitioner submits a letter dated July 19, 2006, in which it further describes the beneficiary's role within the U.S. company:

The petitioner, which is engaged in the maintenance and cleaning service business, is wholly dependent on the hiring of independent contractors, who perform the ultimate service the company has to offer, which is cleaning.

The coordination in the level of independent contractor employment is driven by the decisions of upper-level management. . . balancing the company's needs according to work-order variations all towards the goal of profit maximization. For this reason, among others, the U.S. subsidiary requires a President, with ultimate decision making authority, to monitor staffing as implemented through other subcontractors, such as [REDACTED] earned \$39,646 in 2005 as per Form 1099) in furtherance of profitable business operations. Our tax returns our [sic] indicative of our successful operation, grossing hundreds of thousands of dollars annually.

The Notice of Decision places undue emphasis on the two part-time subordinate supervisors, [REDACTED] and [REDACTED]. . . . Please be advised that even if these two individuals were not employed by the company, the offered position would still qualify as an executive and managerial capacity based on the beneficiary's role in the essential function of overseeing operations, which is wholly dependent on the coordination of independent contractors. (Furthermore, we respectfully submit that [REDACTED] is a professional by virtue of a combination of two-years of college level work in Business Administration. . . coupled with over 14 years as a Manager in a business setting, also complying with the regulations.)

The petitioner notes that the U.S. company paid approximately \$245,000 to independent contractors in 2005, and emphasizes that the director did not take into account the duties performed by the general subcontractor, the outside services provider, [REDACTED] or the company's accountant. The petitioner also notes that the company signed a lucrative agreement with a Florida company that is likely to result in further expansion of its workforce. The petitioner submits new and previously submitted documents in support of the appeal, including documents related to its new service agreement, and evidence of payments to subcontractors.

Upon review, the petitioner's assertions are not persuasive. 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.*

The beneficiary's job description does not establish that he will be employed in a primarily managerial or executive capacity. The initial description of the beneficiary's duties was comprised of vague, broadly defined responsibilities that failed to convey what managerial or executive tasks the beneficiary performs on a daily basis. General statements such as "direct all operations of the U.S. corporation," "be in charge of hiring and firing employees and independent contractors," and "be in control of all financial matters" do not adequately represent the beneficiary's day-to-day tasks. 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 failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In response to the director's request for a more detailed description of the beneficiary's duties and an explanation as to how his time is allocated among the different job duties, the petitioner indicated that the beneficiary devotes 42.5% of his time to "establish and oversee the operating structure," "guide and direct the organization," and "look for future opportunities, strategic partners and growth areas." In addition, the petitioner included in its response a separate job description, which noted the beneficiary's responsibility for reviewing the company's internal policies and "adjusting goals according to the market." Again, these duties are too ambiguous to provide any meaningful idea of what the beneficiary does on a day-to-day basis. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or

managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103.

In addition, the petitioner indicated that the beneficiary is responsible for developing, coordinating and approving all marketing activities, and handling "high level market entry sales calls." Although the petitioner indicated that these duties require only a small portion of the beneficiary's time, the petitioner also noted the beneficiary's responsibility for establishing sales strategies and visiting potential clients, yet did not indicate how much time the beneficiary devotes to these duties. The petitioner suggests that the beneficiary manages sales and marketing activities, yet, it does not claim to have anyone on its staff to actually perform routine tasks associated with marketing and selling the company's services, and even states that the beneficiary himself is responsible for sales calls. Furthermore, if the beneficiary is the only employee responsible for the company's sales and marketing activities, the AAO is left to question the validity of the petitioner's claims that sales and marketing activities require only a few hours of his time per week. 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. 582, 591 (BIA 1988).

The petitioner indicated that the beneficiary devotes 30 percent of his time to "approve and authorize" payroll, purchases, shipments, "capital infusion and outlays," accounts receivables and payables, final inventories, and "budgets and general expenses." However, given that the petitioner is a service-oriented company that does not claim to sell any products, it is not clear to what "shipments" or "inventories" the petitioner is referring. The petitioner has attributed its day-to-day bookkeeping and finance activities to the office manager, but indicates that she only works part-time. Based on the wages received by the office manager in December 2005, it appears that she worked approximately 15 hours per week. Further, the office manager is the beneficiary's spouse, an L-2 nonimmigrant who requires employment authorization in order to work in the United States. According to USCIS records, the beneficiary's spouse did not submit a Form I-765, Application for Employment Authorization, to request an extension of her employment authorization, and thus the petitioner's ability to employ her beyond January 19, 2006 has not been established. Accordingly, the petitioner has not established that the beneficiary would perform only managerial duties associated with the petitioner's day-to-day finances under the extended petition.

When examining the managerial or executive capacity of a beneficiary, U.S. Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position.

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).

The AAO acknowledges that the beneficiary exercises discretion over the U.S. company as a shareholder and senior employee of the business, and spends a portion of his time performing duties that would fall under the statutory definitions of managerial or executive capacity. However, upon review of the totality of the record, the petitioner has not established that the majority of the beneficiary's time is allocated to managerial or executive duties. As noted by the director, the petitioner has accounted for employees to provide the janitorial services of the U.S. company, and the record does not suggest that the beneficiary performs these services or directly supervises these lower-level employees.

However, the petitioner has not established that the beneficiary would be relieved from performing many other routine operational and administrative tasks inherent in operating the petitioner's business on a day-to-day basis. Both the part-time general manager and full-time general subcontractor are responsible for overseeing the activities of the subcontracted cleaning staff. While the petitioner indicated that the office manager performs some administrative tasks, the record shows that she worked a minimal number of hours and, as discussed above, it does not appear that the petitioner would employ her under the extended petition. A critical analysis of the nature of the petitioner's business undermines counsel's assertion that the subordinate employees relieve the beneficiary from performing non-qualifying duties. Rather, it appears from the record that the beneficiary would be the only employee responsible for sales and marketing functions, payroll, day-to-day accounting tasks, and other non-managerial functions related to the day-to-day administration of the petitioner's business. These duties are clearly not merely incidental to any managerial or executive duties the beneficiary performs. Based on the record of proceeding, it is evident that the U.S. company reasonably requires the beneficiary to perform a number of non-qualifying duties that would necessarily preclude him from functioning in a primarily managerial or executive role. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

The 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. 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).

In this case, the record shows that the beneficiary devotes some portion of his time to supervising the work of supervisory personnel, namely the part-time general manager and general subcontractor. As discussed above, however, the record does not establish that this is his primary function. Nor does the record establish that the beneficiary would primarily supervise professional personnel. In evaluating whether the beneficiary manages

professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary, for example, to perform the bookkeeping and clerical duties of the office manager, who is the petitioner's only claimed professional employee.

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 provide a detailed job description that identifies the function with specificity, articulates the essential nature of the function, and establishes 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, although counsel claims on appeal that the beneficiary will "direct all of the essential functions of the company." Counsel's blanket claim is not sufficient; the petitioner has not identified a specific function managed by the beneficiary, nor established that the beneficiary's duties are primarily managerial. As discussed above, the record suggests that the beneficiary will perform non-qualifying duties associated with the company's sales, marketing, finance and administrative functions.

Counsel further refers to an unpublished decision in which the AAO determined that the beneficiary met the requirements of serving as a function manager for L-1 classification even though the beneficiary was the sole employee of the company. Counsel indicates that the facts of the instant matter are similar to those described in the unpublished decision, where the beneficiary utilized a number of independent contractors and the business was found to be complex enough to require the beneficiary's services in a managerial or executive capacity. As discussed above, in this matter, the petitioner has established that independent contractors relieve the beneficiary from directly providing or supervising the provision of janitorial services; however, the record

does not establish that the petitioner has subordinate employees or independent contractors who would relieve the beneficiary from performing other non-qualifying duties associated with the day-to-day operations of the company, such as its sales, marketing, administrative and day-to-day financial activities. Further, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* While the beneficiary exercises discretion over the petitioning company, the record does not establish that he is removed from performing the day-to-day office functions associated with running the business and performing all of its sales, marketing and business development tasks, or that the majority of his time is devoted to tasks associated with the company's broader goals and policies.

By statute, eligibility for this classification requires that the duties of a position be "primarily" of an executive or managerial nature. Sections 101(A)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44). Pursuant to the strict statutory definitions, section 101(a)(15)(L) of the Act does not include any and every type of "manager" or "executive." The fact that the beneficiary manages a business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(15)(L) of the Act. *See* 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987).

Based on the foregoing discussion, the petitioner has not established that the beneficiary will be employed in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(ii). For this reason, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established that a qualifying relationship exists between the U.S. and foreign entities. 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 petitioner stated on Form I-129 that it is a subsidiary of Helen Empreendimentos Imobiliares, Ltda, located in Brazil. The petitioner described the stock ownership of both companies as follows:

U.S. company: Brazilian company 50%, [Beneficiary]: 50%

Brazil: [REDACTED] 40%; [Beneficiary]: 40%; [REDACTED] 0%; Helenice: 10%

The petitioner did not submit copies of its stock certificates or other documentation corroborating the claimed ownership of the U.S. company. However, on appeal, the petitioner submits a complete copy of its 2005 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, along with two Schedules K-1, Shareholder's Share of Income, Deductions, Credits, etc. According to the submitted Schedules K-1, the beneficiary owns a 28 percent interest in the petitioner, and [REDACTED] owns the remaining 72 percent interest. Therefore, it does not appear that the U.S. company is a subsidiary of the foreign entity as claimed by the petitioner, as there is no evidence that the foreign entity owns any interest in the company. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO notes that it appears that "[REDACTED]" and "[REDACTED]" may be the same person; however, the record does not show that this individual owns and controls a majority or controlling interest in both entities, such that they could be considered affiliates as defined at 8 C.F.R. § 214.2(l)(1)(ii)(L). 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).

Counsel notes that USCIS previously approved an L-1A petition 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). The prior approval does not preclude USCIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

If the previous nonimmigrant petitions were approved based on the same assertions and evidence that are contained in the current record, the approval would constitute material and gross error on the part of the director. Based on the lack of evidence of eligibility contained in the current record, the AAO finds that the director was justified in departing from the previous approval by denying the present request to extend the beneficiary's status. 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)

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 petitions on

behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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

ORDER: The appeal is dismissed.