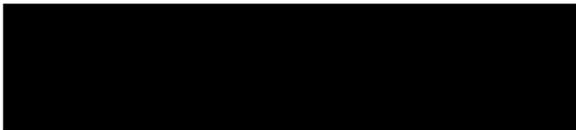


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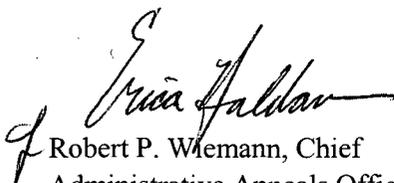
IN RE: Petitioner: 
Beneficiary: 

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:



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, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a California corporation and claims to be engaged in the wholesale of computer parts and hardware. The petitioner states that it is a subsidiary of [REDACTED] located in Taiwan. The U.S. entity petitioned Citizenship and Immigration Services (CIS) to classify the beneficiary as a nonimmigrant intracompany transferee (L-1A) pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The beneficiary was initially granted a one-year period of stay to open a new office (WAC 01 179 52954) in the United States and was subsequently granted an extension of stay (WAC 01 274 58506) for a one-year period. The petitioner was then granted a second extension of stay for a one-year period (WAC 03 063 54081). The petitioner now seeks to extend the beneficiary's stay in order to continue to fill the position of managing director.

The director denied the petition on March 24, 2004. The petitioner submitted an appeal on April 8, 2004. The director accepted the appeal as motion to reopen. On April 22, 2005, the director requested additional evidence from the petitioner in order to proceed with the motion to reopen. On November 4, 2005, the director denied the petition concluding that the record contains insufficient evidence to demonstrate that the beneficiary will be employed in a managerial or executive capacity.

Counsel for the petitioner timely filed an appeal on November 30, 2005. On appeal, counsel for the petitioner states that the beneficiary is employed in an executive capacity and asserts the director erred by denying the petition. Counsel for the petitioner pointed out several quotes from the decision and asserted that the statements were false and misleading. Specifically, counsel clarified that the U.S. entity employs seven individuals, including the beneficiary. In addition, counsel asserts that the beneficiary is the only executive in the U.S. entity who supervises all employees, including the sales distributors. Counsel further states that the beneficiary supervises professional employees who relieve her from performing non-qualifying duties. Counsel submits a brief and documentation in support of the appeal.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, 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) further 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 AAO withdraws the director's statements in her decision dated November 4, 2005 which states that the instant petition is an extension of a new office petition and will be "analyzed pursuant to the regulations of 8 C.F.R. § 214.2(l)(1)(ii)(F)." The petitioner has already been granted L-1A classification as an extension of a new office petition, and has subsequently been approved for L-1A extensions. Therefore, this petition will be decided as an L-1A extension pursuant to 8 C.F.R. § 214.2(l)(1)(14)(i).

The AAO will base this decision on the evidence in the record as of the date the instant petition was filed on January 9, 2004. It is regrettable that the Service, pursuant to the Motion to Reopen, requested that the petitioner submit documentation for dates after the petition was filed, however, this documentation will not be utilized by the AAO for this decision. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Thus, the AAO will review all documentation as of January 9, 2004.

The issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary will be employed 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) 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), provides:

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

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

The nonimmigrant petition was filed on January 9, 2004. Therefore, the petitioner must establish the beneficiary's eligibility as of this date. *See, e.g. Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The Form I-129 indicates that the beneficiary will be employed in the position of managing director and will be responsible for "general administration of the company affairs on a daily basis, directing the business activities and hiring and supervising managerial and professional personnel." The petitioner indicated that the U.S. company had two employees as of January 2004.

In addition, in a support letter dated December 8, 2003, the petitioner described the beneficiary's proposed duties in the U.S. as the following:

In her position as Managing Director of the US branch, [the beneficiary] has also expanded the customer lists, secured steady wholesale business for the company and will continue to play an important role in introducing the parent company's latest developed high technical hardware products to the US industrial consumers.

The petitioner also submitted the organizational chart of the U.S. entity. The chart indicates the beneficiary as president, and shows that she also holds a position in purchasing and in the sales and marketing department. The chart also indicates that the beneficiary will supervise two employees in the sales and marketing department, one employee in the technical department, one employee in the finance department, and one employee in the warehouse department. The chart also indicates that the head of the technical

department will supervise one employee in service. The chart identifies a total of five employees, four of which are depicted as performing more than one function for the company.

The petitioner also submitted the company's 2002 IRS Form 1120, U.S. Corporation Income Tax Return, for the fiscal year ended on October 31, 2003, which indicates that the U.S. company has \$513,079 in gross sales. In addition, the company paid \$36,000 in compensation of officers, and \$52,747 in salaries and wages.

The petitioner also submitted the company's Form 941, Employer's Quarterly Federal Tax Return and Form DE-6, Quarterly Wage and Withholding Report, for the first three quarters of 2003, which indicated that the U.S. entity hired approximately three to four employees during these quarters.

On January 22, 2004, the director determined that the petitioner did not submit sufficient evidence to process the petition. In part, the director requested: (1) a description of the duties to be performed by the beneficiary in the U.S.; (2) information as to whether the beneficiary has the power to hire and fire employee; (3) the number and positions of employees who will be working under the supervision of the beneficiary; (4) the job title of the employee who will be supervising the beneficiary; and (5) an organizational chart of the U.S. entity.

In the response to the director's request, counsel for the petitioner submitted a letter dated February 9, 2004. The letter further described the beneficiary's proposed duties in the United States as the following:

The beneficiary is in charge of the daily operations of the US company and plays an executive role with the authority of hiring personnel for the various department including sales & marketing, shipping & receiving, service & warehouse operation.

* * *

Based on her extensive experience as a sales manager in the international business activities of [the foreign company], [the beneficiary] has full responsibility for the direction and coordination of activities and operations of the US corporation. She is responsible for planning, formulating, and implementing administrative and operational policies and procedures. Her duties include conducting general administration affairs of the company on a daily basis, acting as liaison and representative for the petitioner's foreign parent in the U.S., marketing the services of the parent company, directing the business activities and hiring and supervising managerial and professional personnel. Particularly, [the beneficiary] handles marketing sales administration, sourcing and purchasing, negotiating contracts, managing inventory, and maintaining business contacts and relations with the US customers in the relevant business areas.

There is a list of "New Project for Taipei Computex" attached to the documents supplemented in this package which shows the list of products and services in development for the parent company and to be marketed here in the US currently and within the next two calendar years. [The beneficiary] is responsible for marketing these products and services to the US industrial and commercial PC wholesalers and retailers through the promotions and

sales of the distributor associates having entered in the distributorship agreement with the US company.

The petitioner also submitted the company's Form DE-6, Quarterly Wage and Withholding Report, for the last quarter of 2003, the quarter before the instant petition was filed on January 9, 2004. According to the quarterly report, the U.S. entity employed four individuals as of December 2003. Aside from the beneficiary, none of the employees listed on the tax returns are listed on the organizational chart of the U.S. entity submitted by the petitioner. The petitioner resubmitted the same organizational chart that was originally submitted with the petition.

The director sent a second request for evidence on February 18, 2004, requesting the documents the petitioner failed to submit in response to the first request for evidence. In part, the director requested a more detailed description of the duties the beneficiary will perform in the United States, and information regarding the employees the beneficiary will supervise.

In the letter in response to the director's second request for evidence, dated March 9, 2004, counsel for the petitioner explains that the staffing of the U.S. entity has changed as follows:

[The beneficiary] made the decisions to hire new staff replacing the old ones, some left spontaneously, one or two first for non-satisfactory performance. [The beneficiary] handled the recruitment projects and interviewed new staff to hire the most qualified for the company.

Such evidence was not submitted in the first place, although already existed even before the application package was first submitted to INS in January, 2004, because [the beneficiary] believes they are part of the routine office work she is in charge of and not related to her personal application status with INS.

For this reason, the petitioner submitted an updated organizational chart of the U.S. entity. Counsel for the petitioner clarifies the new employees of the U.S. entity and described their duties as the following:

- Sales department headed by [REDACTED], who assists [the beneficiary] in overseeing the sales representative nationwide (contracts signed with several sales representative for different distributing territories nationwide already submitted in the initial application package), monitoring their sales performance, resolving their concerns and inquiries as to products and pricing, and taking in orders for further processing; aside for sales representative on independent contractor basis, there are two more sales working under [REDACTED] to run this department, [REDACTED] and [REDACTED]
- Technical department headed by James Tsu, who communicates with the technical department of the parent company with regards to all new and existing products' parts and technical questions, resolves technical problems raised by the sales representatives and customers; updating the web site information regarding new technical development; providing the media advertisement scripts with latest technology release from the parent company, etc.

- Shipping and receiving handled by (██████████) responsible for shipping out orders from the Sales Department;
- [The beneficiary] supervises her staff on a daily basis to ensure efficient operation of the company's daily operation, expanding sales and responding to customers' concerns. The staff of the relative departments have to report to [the beneficiary], who in turn, will submit evaluation reports of the US company's overall performance to the shareholders, [the foreign company].

The petitioner also submitted an updated organizational chart of the U.S. entity to reflect the changes in employees. According to the updated chart, the beneficiary is the managing director, and the head of the purchasing department and the financial department. The chart indicates that the beneficiary supervises one employee in the sales department, who in turn supervises two outside sales employees, and the beneficiary supervises one sales engineer in the technical department, and one employee in the warehouse department. The AAO notes that the petitioner's Form DE-6 for the fourth quarter of 2003 confirms the employment of the beneficiary, ██████████

The director denied the petition on March 24, 2004, on the ground that insufficient evidence was submitted to demonstrate that the beneficiary will be employed in a primarily executive or managerial capacity by the U.S. company. The director noted several discrepancies in the staffing levels of the U.S. entity, and the director suggested that the petitioner did not provide evidence of subordinate employees who would relieve the beneficiary from performing the tasks necessary to produce a product or to provide services.

The petitioner submitted an appeal on April 9, 2004. On appeal, counsel for the petitioner stated that the beneficiary will in fact be employed in a managerial capacity. In addition, counsel for the petitioner clarifies the discrepancies in the staffing levels of the U.S. entity. Counsel stated that the petitioner submitted a revised organizational chart with new employee names to reflect changes that occurred after the instant petition as filed. In addition, counsel states that although the beneficiary is the only employee listed under the finance and purchasing department, she is assisted by "██████████," who handles all "internal bookkeeping, invoicing, shipping and receiving." Counsel also stated that "██████████, the vice president when staying in Los Angeles, will help in the warehouse work to monitor the inventory counting." Counsel states that the beneficiary is involved with all of the departments but subordinate employees assist the beneficiary. In addition, counsel explains why the beneficiary was listed as the sole employee in the sales department in the first organizational chart but not in the second organizational chart as follows:

[The beneficiary] heads all the department [sic]. Her focus might have been more in the sales in the beginning and when staffing is satisfied in that department, she now focuses more on the finance and purchasing.

On April 22, 2005, CIS sent a notice of a Motion to Reopen/Reconsider to the petitioner explaining that the petitioner did not have appeal rights, thus the appeal was accepted as a motion to reopen or reconsider which was granted by CIS. The director sent a request for evidence dated April 22, 2005, in part

instructing the petitioner to provide USCIS with authorization to obtain original certified and sealed copies of the U.S. company's Forms DE-6 for the last three years directly from the California Employment Development Department (EDD). In a response dated July 11, 2005, the petitioner submitted the required certified copies of its California Forms DE-6, including the Form DE-6 for the first quarter of 2004, which listed a total of four employees including the beneficiary, [REDACTED] and one other employee, [REDACTED], who did not appear on any organizational chart.

The director denied the petitioner on November 4, 2005, concluding that the petitioner did not establish that the beneficiary will be employed in a primarily managerial or executive capacity. The director noted that it did not appear that the beneficiary supervises a staff of professional, managerial, or supervisory personnel who will relieve the beneficiary from performing non-qualifying duties, and thus the beneficiary will be primarily involved in performing the day-to-day services essential to running a business. In addition, the director stated that the beneficiary's proposed duties are "primarily comprised of marketing tasks and other day-to-day duties required [to] run the business."

On appeal, counsel for the petitioner states that the beneficiary is employed in an executive capacity and asserts the director erred by denying the petition. Counsel for the petitioner pointed out several quotes from the decision and asserted that the statements were false and misleading. Specifically, counsel clarified that the U.S. entity employs seven individuals, including the beneficiary. In addition, counsel asserts that the beneficiary is the only executive in the U.S. entity who supervises all employees, including the sales distributors. Counsel further states that the beneficiary supervises professional employees who relieve her from performing non-qualifying duties.

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary will be employed in a 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. § 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 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 beneficiary's proposed job description includes vague duties such as the beneficiary will be responsible for "the daily operations of the US company and plays an executive role with the authority of hiring personnel for the various department including sales & marketing, shipping & receiving, service & warehouse operation": "full responsibility for the direction and coordination of activities and operations of the US corporation"; and "planning, formulation, and implementing administrative and operational policies and procedures. The petitioner did not, however, define the petitioner's goals and policies, or clarify the role of the operational and personnel functions that the beneficiary will supervise. 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

provide any detail or explanation of the beneficiary's activities in the course of her 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). The petitioner's descriptions of the beneficiary's position do not identify the actual duties to be performed, such that they could be classified as managerial or executive in nature.

Furthermore, the job description also includes several non-qualifying duties such as the beneficiary "handles marketing sales administration, sourcing and purchasing, negotiating contracts, managing inventory, and maintaining business contacts and relations with the US customers in the relevant business areas"; and "is responsible for marketing these products and services to the US industrial and commercial PC wholesalers and retailers through the promotions and sales of the distributor associates having entered in the distributorship agreement with the US company." It appears that the beneficiary will be providing the services of the business rather than directing such activities through subordinate employees. An employee who "primarily" performs the tasks necessary to produce a product or provide a service 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 International*, 19 I & N Dec. 593, 604 (Comm. 1988).

According to the petitioner's statement on Form I-129, the U.S. company has two employees. As indicated above, the petitioner submitted an organizational chart of the U.S. entity with the original petition and submitted a revised organizational chart in response to the director's request for evidence. The petitioner explained that the U.S. entity experienced changes in the staffing which are reflected in the updated organizational chart. According to the updated chart, the beneficiary is the managing director, and the head of the purchasing department and the financial department. The chart indicates that the beneficiary supervises one employee in the sales department, who in turn supervises two outside sales employees, and the beneficiary supervises one sales engineer in the technical department, and one employee in the warehouse department. The same employee fills a position in the sales department and the warehouse and shipping and receiving department. Thus, the U.S. entity appears to employ two individuals in addition to the beneficiary. The petitioner indicated that two employees are outside sales who are independent contractors. According to the California Forms DE-6, for the first quarter of 2004, the U.S. entity employed a total of four employees including the beneficiary, [REDACTED] and one other employee, [REDACTED]. Thus, the reports confirm the employment of the beneficiary, the head of the sales department and the head of the warehouse and shipping and receiving departments. The report also lists a [REDACTED] who did not appear on any organizational chart. In addition, the individual listed as the head of the technical department on the organizational chart is not listed on the quarterly report for the quarter in which the instant petition was filed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, as noted above, in support of the initial petition, the petitioner submitted one organizational chart that differs from the updated organizational chart submitted in response to the director's request for evidence. The petitioner has not provided persuasive or consistent evidence of the staffing of the U.S. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner

submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, according to the first organizational chart submitted, a '██████████' was indicated as an employee of the technical department. However, '██████████' is indicated as the vice president of the U.S. entity on several documents submitted in support of the petition. Furthermore, this individual is not listed in the updated organizational chart; however, on appeal, counsel for the petitioner asserts that this individual is the vice president of the company and he assists with the inventory functions. The petitioner has not explained why this individual is not listed on either organizational chart as the vice president of the U.S. company. Again, 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.

In addition, the organizational chart indicates that two individuals are employed as outside sales that are independent contractors. Although counsel states that the petitioner has contractual employees in the areas of sales, the petitioner has neither presented evidence to document the existence of these employees nor identified the services these individuals provide. Additionally, the petitioner has not explained how the services of the contracted employees obviate the need for the beneficiary to primarily conduct the petitioner's business. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

A critical analysis of the nature of the U.S. entity'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 is performing many of the operational and administrative tasks in running a business. As the U.S. entity employed one individual in sales, one individual in warehouse and shipping and receiving, and one individual that is not listed on the organizational chart, it can only be assumed, and has not been proven otherwise, that the beneficiary is performing many of the administrative and routine operational tasks such as marketing, sales, inquiries, financial reports and budget. According to the brief job descriptions for the two additional employees of the U.S. entity, it appears that they assist the beneficiary in some of the administrative, sales and financial functions, but as seen in the beneficiary's job description, she is still responsible for performing many of these services for the business. Based on the record of proceeding, the beneficiary's job duties are principally composed of non-qualifying duties that preclude her 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 employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. at 604.

The record shows that as of the date of filing, the petitioner asserts that the beneficiary will control and direct subordinate managerial staff. According to the California Forms DE-6, for the first quarter of 2004, the U.S. entity employed a total of four employees including the beneficiary, the head of the sales department, the head of the warehouse and shipping and receiving departments, and one other individual who did not appear on any organizational chart and whose duties have not been defined. Although the beneficiary is not required to supervise personnel, if it is claimed that her managerial duties involve

supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act.

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 subordinate employees. 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 sales, warehouse and shipping functions of the beneficiary's subordinates. Thus, the petitioner has not shown that the beneficiary's subordinate employee is professional as required by section 101(a)(44)(A)(ii) of the Act. Nor has the petitioner demonstrated that the beneficiary's subordinates supervise other employees, or perform managerial duties for the U.S. company.

In addition, the petitioner submitted three "non-exclusive distributor agreements" between the U.S. entity and three separate companies. The agreements state that the distributors, the outside companies, "shall act as a non-exclusive distributor for the products" manufactured by the U.S. entity. In the response to the director's request for evidence, dated February 9, 2004, counsel for the petitioner stated that the beneficiary is "responsible for marketing these products and services to the US industrial and commercial PC wholesalers and retailers through the promotion and sales of the distributor associates having entered into the distributorship agreement with the US company." Although counsel states that the petitioner has contractual employees in the areas of sales, the petitioner has not presented evidence of how many individuals will assist in the sales activities and has not specifically identified the services these individuals provide. Without documentary evidence to support its statements, the petitioner does not meet its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Based upon the lack of a comprehensive job description, and the lack of evidence of the company's staffing levels, it cannot be concluded that the beneficiary will be employed by the United States entity in a managerial or executive capacity. Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive position. Accordingly, the appeal will be dismissed.

Counsel for the petitioner noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval

would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.