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U.S. Citizenship
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File: EAC 03 109 50910

Office: VERMONT SERVICE CENTER

Date: **MAY 01 2007**

IN RE:

Petitioner:

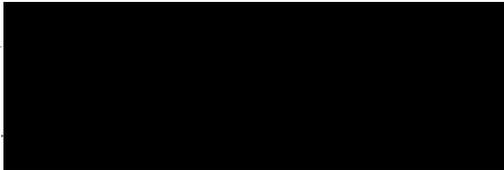
Beneficiary:



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)

IN 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, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner subsequently filed a motion to reopen and reconsider with the service center. The director granted the motion, but determined that the grounds for denial had not been overcome and affirmed the previous decision denying the petition. 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 president/chief executive 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 is a corporation organized in the State of New Jersey that is engaged in the import and wholesale distribution of furniture and curio items. The petitioner claims that it is the subsidiary of [REDACTED], located in Chandigarh, India. The beneficiary was initially granted a one-year period of stay to open a new office in the United States and, subsequently, a two-year extension of her L-1 status. The petitioner now seeks to extend the beneficiary's stay for an additional three years.

On July 30, 2003, the director denied the petition concluding that the record does not demonstrate that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. Specifically, the director noted that there appeared to be no personnel to perform the sales and service functions of the U.S. entity and that the petitioner failed to provide a breakdown of the number of hours per duty performed as requested.

In a motion to reopen and reconsider, counsel for the petitioner offered an explanation for the small size of the petitioner's staff and indicated that the petitioner did provide a breakdown of the employees' job duties by hours per week in response to the director's request for further evidence. Counsel indicated in his brief that additional evidence was included to support his assertions; however, there is no additional evidence attached to counsel's brief in the record.

On April 14, 2004, the director issued a decision granting counsel's motion to reopen and reconsider, but affirming the previous denial of the petition. The director noted that no additional evidence appeared to have been submitted, and counsel's assertions alone, without supporting evidence, are insufficient for meeting the petitioner's burden of proof in these proceedings.

In appealing the director's April 14, 2004 decision, counsel for the petitioner asserts that the petitioner in fact did submit further evidence to support counsel's arguments in the motion; counsel provides on appeal copies of the evidence that was purportedly submitted with the motion. Counsel also states that contrary to the director's statement in the earlier decision, the petitioner did in fact provide a breakdown of the number of hours devoted to each of the employees' duties on a weekly basis as requested. Counsel further asserts that the director erred in concluding that the beneficiary would not be employed in the United States in a primarily managerial or executive capacity.

At the outset, the AAO notes that at the time the director issued his decision in response to the petitioner's motion to reopen and reconsider, the record did not contain the additional evidence to which counsel referred

in his motion.¹ Therefore, the director did not err in stating in his April 14, 2004 decision that counsel's assertions alone, without supporting documentary evidence, are insufficient for meeting the burden of proof in these proceedings. Regardless, even considering the additional evidence submitted on appeal, the petitioner failed to establish it would employ the beneficiary in a primarily managerial or executive position.

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.

At issue in the present matter is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

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

¹ The AAO acknowledges that counsel subsequently submitted copies of such documentation along with the appeal presently before the AAO.

- (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.

In a letter dated February 14, 2003 accompanying the initial petition, the petitioner described the beneficiary's job duties as follows:

- Enter into contact [sic] with various vendors . . . for steady supply of pre-identified goods for wholesale, sales to franchisees and retailers in the United States.
- Enter into contract with franchisees, who wish to market goods imported, and "*finished*" by the [petitioner].
- Formulate plans and methods of execution of launching a retail division, for internet based sales and show room based sales of the [petitioner]'s goods. . . .
- Make Executive level decisions that would have far reaching ramifications to the on-going success of the [petitioner], i.e., in continuing to hire and where need to fire employees, and setting up business relationships with other Professionals (whose expertise would be needed for [the] running of a successful business), such as Attorneys, Bankers, Certified Public Accountants, Real Estate Agents, Customs & Import Brokers,

Direct Mail Promoters, ("Val-Pak"), Freight Forwarders, Contractors for, among others [sic] polishing and "finishing" of furniture imported from abroad. The above mentioned entities/organizations/firms are all professional set-ups, with whom the Beneficiary will be associating and will require various degree of supervision/control to be exercised by her.

- Selecting properties/real estate in various parts of the United States, based on Market research provided by independent consultants, for setting up of retail show rooms. . . .
- The Beneficiary will be involved in the selection of franchisees and agents, throughout the United States, so as to create outlets for the goods imported/finished by the [petitioner].
- The Beneficiary has been instrumental in formulating the marketing of the goods imported by the [petitioner] and to this end she has used different methodology, including mass mailings . . . and distribution of flyers. . . .
- The Beneficiary has been primarily responsible for the [petitioner] being able to enter into contacts with reputable U.S. organizations. . . .

On March 24, 2003, the director requested additional evidence. Among other things, the director requested (1) a comprehensive description of the beneficiary's duties, indicating how they have been and will be managerial or executive in nature; (2) a list of the U.S. entity's employees including their names, position titles, position descriptions, and breakdown of the number of hours devoted by each employee, including the beneficiary, to each job duty on a weekly basis; and (3) for the year 2002, copies of the U.S. entity's federal income tax return and Internal Revenue Service (IRS) Forms W-2, W-3, 1999, 1096, and 941 (for the third and fourth quarter). The director also requested a number of other documents relating to the conduct of the petitioner's business in the United States and its relationship with the foreign entity.

The petitioner responded to the request with the following description of the beneficiary's job duties:

Executive Functions

- Directing Management of the organization including[:] establishing of goals, policies and set standards, exercising wide latitude in discretionary decision making, maintaining contact with the sister organization in India, and its Board of Directors, its Executives, agents and employees in various countries, through various means, including but not limited [to] telephone conversations, E-mail, correspondence, and face to face meetings, (approx 10 hours).
- Plan, develop, establish goals/objectives in accordance with/to the Directives of the Board of Directors, (approx 3 hours)[.]
- Discussing, with the Chief Financial Officer, and outside consultants, including the organization[']s CPA, and outside Financial Planners on planning of business objectives and developing of organizational policies including marketing strategies, financial planning and setting up of financial targets and sales goals based on projected revenues and expenses. Formulating plans and media for advertising the organization[']s products,

based on available revenues and financial targets. Identifying international and domestic suppliers for purchase of finished and semi-finished goods. (approx 7 hours).

Managerial Functions

- Assigning of goals and objectives to the different Managers, including the Marketing Manager and the Chief Financial Officer of the company, (approx 3 hour[s]).
- Discussions with company officers who plan business objectives, develops organizational policies to co-ordinate functions and operations between divisions and departments, (approx 8 hours).
- Judge performance/evaluate the potential of Managerial staff including the Chief Financial Officer, ... the Marketing Manager, and those non-employees who provide professional services, including the CPA, the lawyers, and the financial planners, (approx 4 hours).
- Plan and develop industrial, labor, and public relations with corporate and retail customers, employees, stockholders and public, and ensure that they are in conformity with the objectives and goals of the organization, (approx 1 hour).
- Deal with financial institutions, legal matters/lawyers, CPA[s], and financial planners, (approx 2 hours).
- Deal with major issues arising out of Shipping/Insurance claims, needs, (approx 1 hour).
- Preside over Board of Directors Meeting(s), (approx 1 hour).

The petitioner also submitted job descriptions for four other employees in addition to the beneficiary, namely a chief financial officer, a marketing manager, an accountant, and a warehouse manager. The petitioner provided copies of Forms W-2 filed for the year 2002 for all five of its employees; Forms 1099-MISC for the year 2002 for six individuals; and the company's 2002 Form W-3, Forms 1096, and Forms 941 (for the third and fourth quarter). In lieu of its 2002 federal income tax return, the petitioner submitted a copy of IRS Form 7004, Application for Automatic Extension of Time to File Corporate Income Tax Return. There are no copies of the petitioner's corporate income tax return for any year in the record.

On July 30, 2003, the director denied the petition concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity. Specifically, the director noted that there appeared to be no non-managerial personnel to perform the sales and service functions of the U.S. entity, thus it seems likely that the beneficiary would be involved in performing these duties. Also, the director noted that the petitioner failed to provide a breakdown of the number of hours per duty performed as requested. The director further remarked that despite the beneficiary's executive title, the Citizenship and Immigration Services (CIS) is not persuaded that in an organization the size and nature of the petitioner's, the beneficiary would be engaged in primarily executive or managerial duties. Rather, the director observed, it appears likely that she would be engaged primarily in the day-to-day operations involved in providing a service or selling the company's products. The director further found that the petitioner has not shown that the beneficiary would function at a senior level within the organizational hierarchy other than in title, or that the beneficiary will be involved in the supervision and control of the work

of other supervisory, professional, or managerial employees who would relieve her from performing the services of the corporation.

In his motion to reopen and reconsider, the petitioner's counsel asserted that there was no sales staff because the petitioner is a wholesale distributor and the business is entirely generated by/through the Internet. Counsel further pointed out that a breakdown of the employees' job duties by hours per week was in fact provided in response to the director's request for further evidence. While counsel's brief makes reference to various documents that purportedly support his assertions, there did not appear to be any further evidence submitted with the brief.

On April 14, 2004, the director granted counsel's motion to reopen and reconsider but affirmed the previous denial of the petition. The director noted that there was no additional evidence was submitted with the motion, nor did any appear to be forthcoming. The director concluded that counsel's assertions alone, without supporting evidence, are insufficient for meeting the petitioner's burden of proof in these proceedings.

On appeal following the April 14, 2004 decision, counsel for the petitioner asserts that the petitioner in fact did submit further evidence to support counsel's arguments in the motion. Counsel provides copies of the evidence that was purportedly submitted with the motion. Counsel also states that contrary to the director's statement in the initial decision, the petitioner did in fact provide a breakdown of the number of hours devoted to each of the employees' duties on a weekly basis as requested. Counsel further asserts that the job descriptions of the petitioner's employees clearly show that the beneficiary's functions are executive, managerial and supervisory, and there is no basis for the director's presumption that the beneficiary likely would be engaged in the non-managerial, day-to-day operations of the organization. Counsel argues that since CIS had approved a two-year extension of the beneficiary's L-1 status prior to the current petition extension and as the beneficiary is continuing in the same position and continues to perform the same job duties as before, a conclusion at this time that the beneficiary's duties are not managerial/executive is clearly erroneous. Counsel further contests the director's remark regarding the size of the petitioner's staff. Counsel maintains that the very nature of the petitioner's operations eliminates the requirement of a sales force and the size of a company or the number of employees supervised is not the sole determining factor of eligibility for L-1 status under the Act.

At the outset, the AAO acknowledges that, as counsel stated, the petitioner did submit a breakdown of the number of hours per duty performed for each of its employees in response to the director's request. Therefore, the director's statement that the petitioner had failed to provide such information is withdrawn.

Notwithstanding the foregoing, the AAO finds that the record is insufficient to demonstrate that the beneficiary would be employed in the U.S. in a primarily managerial or executive capacity.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(1)(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 petitioner must specifically state whether the

beneficiary is primarily employed in a managerial or executive capacity. A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In this instance, the petitioner provided two different job descriptions for the beneficiary, one with the initial petition and one upon the director's request for further evidence. Neither job description satisfactorily demonstrates that the beneficiary would be employed by the petitioner in a primarily managerial or executive capacity.

First, in a letter submitted with the initial petition in February 2003, the petitioner described the beneficiary's tasks as "entering into contracts with vendors" and "franchisees," "formulating plans and methods of launching a retail division," "mak[ing] executive level decisions" related to hiring and firing employees and setting up business relationships with other professionals, "selecting properties/real estate ... for setting up of retail showrooms," "selecting franchisees and agents," and "formulating the marketing of the goods imported by the petitioner." The AAO notes that tasks such as negotiating contracts with vendors and marketing products are considered tasks that are necessary to provide a service or product, and as such, would not be considered managerial or executive in nature. Since the petitioner did not provide a breakdown of time spent on each of the beneficiary's job duties in the initial job description, it cannot be determined how much of the beneficiary's time is spent on those potentially non-qualifying duties. If an employee "primarily" performs tasks necessary to produce a product or to provide services, that employee 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).

Subsequently, in a June 2003 response to the director's request for a more detailed job description that breaks down the beneficiary's week by number of hours spent per duty, the petitioner provided a job description that is substantially different from the one previously submitted. In that response, the petitioner claimed that the beneficiary's position is both managerial and executive and listed a new set of duties which are divided into executive functions and managerial functions, totaling 20 hours in each category. As previously noted, the petitioner must specifically state whether the beneficiary is primarily employed in a managerial or executive capacity. See 8 C.F.R. § 214.2(l)(3)(ii). A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in both the statutory definition for executive and the statutory definition for manager. As such, assuming the beneficiary will in fact spend 20 hours per week on managerial functions and 20 hours per week on executive functions, she cannot be considered to be employed *primarily* in an executive or managerial position as exactly half of her time will be devoted to each set of functions with neither being the majority of her job duties. Moreover, in this particular instance, the job duties as described fail to show that the beneficiary even meets the criteria set forth in either the statutory definition for executive or that for manager.

The description of the beneficiary's executive functions merely paraphrases the statutory definition of executive capacity rather than providing a specific description of the beneficiary's duties. See section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). For instance, the petitioner depicted the beneficiary as

"directing the management of the organization including establishing of goals, policies and set standards, exercising wide latitude in discretionary decision making, maintaining contact with the sister organization in India and its Board of Directors." Conclusory assertions regarding the beneficiary's employment capacity that merely repeat 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.).

Similarly, the description of the beneficiary's managerial duties involve such vague phrases as "discussions with company officers who plan business objectives," "develops organizational policies to co-ordinate functions and operations between divisions and departments," "deal with financial institutions, legal matters/lawyers, CPA's [sic] and financial planners" and "deal with major issues arising out of Shipping/Insurance claims, needs." The petitioner does not elaborate upon what the "discussions," "business objectives," "organizational policies," or "dealing with" financial or legal service providers entail. 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. 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. *Id.*

Further, the petitioner failed to explain why the two separate job descriptions for the beneficiary provided before and after the director's request for further evidence appear to describe two different sets of duties. 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). Moreover, the purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Finally, based on the information provided, the AAO cannot determine what the beneficiary's exact duties are, nor can it determine the amount of time she actually spends on each duty; consequently, it cannot be determined whether the beneficiary *primarily* performs managerial or executive duties, as the regulations require. *See Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

In addition, although the beneficiary is not required to supervise personnel, if it is claimed that her 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. Here, as discussed *infra*, the evidence is not sufficient to demonstrate that the beneficiary supervises employees who are supervisory, professional, or managerial, as required by the Act.

The petitioner claims to utilize the services of a number of independent contractors whom the petitioner described generally as "different types of artisans" in response to the director's request for further evidence. The petitioner submitted Forms 1099 for the year 2002 for six different individuals. However, the AAO notes that three of the individuals on the Forms 1099 are actually described elsewhere as full-time employees of the company. As previously noted, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *See Matter of Ho*, 19 I&N Dec. at 591-92. Moreover, the petitioner did not provide any detail regarding the type and extent of work or services the claimed independent contractors perform for the company. 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. 158, 165 (Comm. 1998).

The petitioner does indicate that there are four employees working under the beneficiary -- the chief financial officer, the marketing manager, the accountant, and the warehouse manager. The AAO notes that the job descriptions the petitioner submitted for its staff indicate that the chief financial officer spends some of his time supervising the work of the accountant. However, the record is insufficient to show that the beneficiary's other subordinate employees actually supervise or manage other employees or otherwise function in a supervisory or managerial capacity, despite their managerial titles. The job description for the marketing manager states that he "oversees the activities of the sales staff," among other things. However, there is no evidence in the record that the petitioner actually has a sales staff; in fact, counsel contends on appeal that given the nature of the business, the petitioner does not have and does not need to have a sales staff. Similarly, the warehouse manager is said to spend the bulk of his time "hiring/using the services of independent contractors" to finish and transport the products but, as previously noted, there is nothing in the record to show how the company actually uses the independent contractors, such that it can be ascertained that those individuals in fact work under the supervision of any of the beneficiary's subordinates. In all, the evidence is insufficient to show that the beneficiary supervises employees who function in a managerial or supervisory capacity. The petitioner also has failed to provide any information relating to the educational and professional background of the beneficiary's subordinate employees, or the qualifications required for their jobs, such that it could be determined whether any of them are in fact employed in a professional capacity. Given these deficiencies in the record, the AAO cannot conclude that the petitioner has demonstrated that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

On appeal, counsel also contests the director's remark regarding the size of the petitioner's staff. Counsel argues that the size of a company or the number of employees supervised is not the sole determining factor of eligibility for L-1 status under the Act. A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. *See* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, it is appropriate for CIS to consider the size of the petitioner in conjunction with other relevant factors, such as the company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g., Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.* In this instance, the petitioner has presented conflicting information regarding the existence of and/or

need for a sales staff within the company. On the one hand, the petitioner represented in the record that the marketing manager spends approximately 22 hours, more than half of his working hours, overseeing and trouble shooting the activities of the sales staff. On the other hand, in contending on appeal that the small size of the company's staff should not matter, counsel maintains that the petitioner does not have a sales staff and that the very nature of the petitioner's operations eliminates the requirement of a sales force. These conflicting claims have not been reconciled in the record. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 591-92. 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. *Id.*

Finally, counsel contends that CIS approved a previous petition for extension that had been 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. at 597. 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 decisions 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 light of the foregoing, the AAO concludes that the petitioner has failed to establish that the beneficiary would be employed in the U.S. in a primarily managerial or executive capacity, as required by 8 C.F.R. § 214.2(l)(3)(ii).

Beyond the decision of the director, the AAO finds that the record is insufficient to establish that a qualifying relationship exists between the foreign and U.S. entities as required under 8 C.F.R. § 214.2(l)(3)(i). The regulations and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between the U.S. and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. at 593; *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). Ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International*, 19 I&N Dec. at 595.

Here, the petitioner has provided conflicting information regarding the ownership and control of the U.S. entity. On the Form I-129, the petitioner disclosed that the U.S. company is 10% owned by the foreign entity. In the letter dated February 14, 2003 accompanying the initial petition, however, the petitioner stated that the

foreign entity and its "associate company" each owns 50% of the U.S. entity. The petitioner failed to clarify or reconcile these conflicting statements in the record. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. See *Matter of Ho*, 19 I&N Dec. at 591-92. The petitioner did submit copies of two stock certificates for 100 shares each in the U.S. entity, issued to the foreign entity and an entity called Unitech Business Consultant, and a copy of the U.S. entity's stock ledger documenting these share issuances. However, without further evidence, these documents alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity, especially in view of the conflicting statements made regarding the ownership of the U.S. entity. The corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. See *Matter of Siemens Medical Systems, Inc.*, *supra*. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control of the U.S. entity. Consequently, the claimed qualifying relationship between the U.S. and foreign entities cannot be ascertained.

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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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 director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.