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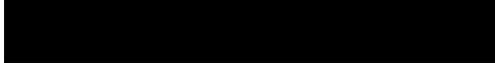
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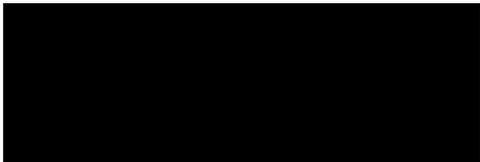


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FILE: EAC 07 048 51447 Office: VERMONT SERVICE CENTER Date: **NOV 06 2007**

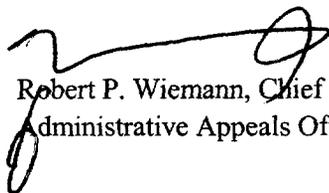
IN RE: Petitioner:   
Beneficiary: 

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, Vermont 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 filed this nonimmigrant petition seeking to extend the employment of its 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 Texas corporation authorized to do business in New York, states that it is engaged in retail/wholesale investment services. It claims to be a subsidiary of Faith Associates, located in Karachi, Pakistan. The beneficiary was initially granted L-1A status in November 2002 and was subsequently granted two extensions of stay. The petitioner now seeks to extend the beneficiary's status for three additional years.

The director denied the petition on May 14, 2007, 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 discrepancies in the record regarding the nature of the business operated by the petitioner, and also observed that photographs of the U.S. company raise questions regarding "the veracity of the instant petitioning entity as a functioning business entity for immigration purposes."

On appeal, counsel for the petitioner asserts that the evidence submitted in support of the petition clearly demonstrates the nature of the petitioner's business, the number of subordinate employees working for the company, and the managerial nature of the beneficiary's position. Counsel submits a brief 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) 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 primary addressed by the director is whether the petitioner established that 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 petition was filed on November 20, 2006. The petitioner indicated on Form I-129 that the U.S. company has eight employees, and stated its intention to continue to employ the beneficiary as its president. In a letter dated November 8, 2006, the petitioner described the beneficiary's proposed duties as follows:

As President and Executive Director, he is responsible for overall direction and operation of the company. He is involved in all facets of the business, including new hires of the management staff, establishment of financial relations, business expenditures and corporate planning and strategy.

\* \* \*

[The beneficiary] is responsible for overseeing the entire operation. He has full discretion to make all financial decisions, hiring & firing of managers, and executive decisions concerning the welfare of [the petitioner].

The petitioner stated in its letter that the company employs a staff of five employees and is involved in the "wholesale industry." The petitioner submitted an organizational chart for the U.S. company which identifies a total of five employees including the beneficiary, a vice president, a marketing-sales employee, an office administration employee, and a sales-retail employee. The chart represents three lower-level "staff" positions which appear to be vacant.

The director issued a request for additional evidence on January 4, 2007. In part, the director requested that the petitioner submit the following: (1) a comprehensive description of the beneficiary's duties that indicates how such duties will be managerial or executive in nature; (2) a list of the U.S. company's employees, accompanied by a detailed description of each employee's duties and a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis; (3) payroll records for the months of October and November 2006; (4) a copy of the U.S. company's IRS Form 1120, U.S. Corporation Income Tax Return; (5) copies of IRS Form 941 for the first three quarters of 2006; and (6) copies of all IRS Forms W-2 and 1099 issued by the company in 2005.

In a response received on March 28, 2007, the petitioner submitted the following description of the beneficiary's duties:

He is responsible for overseeing the management of the company. Responsibilities include defining the objectives of the company and directing the overall operations of the U.S. Company; He plans, develops, and implements company policy; Responsible for establishing and maintaining budgets, meeting profitability levels, and ensuring the overall growth of the company; Reviews activity reports and financial statements to determine progress and status in attaining objectives [and] revises objectives and plans in accordance with current conditions; He has full authority to make executive decisions such as determining how and when the company will expand into new markets. He is involved in the establishment of financial relations, business expenditures, and corporate planning and strategy. He has wide

discretionary powers to make decisions and hiring and when necessary firing any personnel in the company; Delegates to subordinate corporate officers and managers authority for administrating activities and operations under their control; Meets with management to discuss operational problems or explain procedural changes or practices.

Time spent on duties 100%

[The beneficiary] is in charge of overseeing a company that operates a retail establishment. It is necessary that he has extensive management and marketing experience to oversee operations. He oversees the Vice President/General Manager who in turn supervises professional managerial staff.

The petitioner stated that the beneficiary devotes 60 percent of his time to "management" duties including overseeing management, recruiting and terminating employees, and liaising with the general manager to oversee daily activities and to establish procedures and policies. The petitioner indicated that an additional 20 percent of the beneficiary's time is spent on contract negotiations, including final approval of contracts with vendors and large customer orders. Finally, the petitioner stated that the remaining 20 percent of the beneficiary's time is spent on "financials" including approving business expenditures and budgets, reviewing balance sheets and profit and loss statements, and preparing and filing tax returns.

The petitioner indicated that the company's vice president/general manager has a bachelor's degree, and that he directs the activities of subordinate managerial personnel, maintains employment records, ensures compliance with company policies and procedures, delegates tasks, meets with managers to discuss subordinate employees, participates in formulating policies and objectives, reviews activities and operations of the business, reviews financials, budgets and profit and loss statements, and meets with an accountant to file tax returns.

The petitioner indicated that its sales and marketing manager has a master's degree in business administration and is in charge of developing marketing strategies, sales, advertising, promotion, pricing and product development, identifying potential markets for expansion, coordinating sales and promotions, and overseeing the sales team. Finally, the petitioner identified two sales representatives who make sales calls, keep sales records, sell goods to wholesalers and retail businesses and individuals, solicit orders from established clients, and secure new customers. The AAO notes that the individuals identified as sales representatives were initially identified as holding the positions of "sales-retail" and "office administration" on the petitioner's organizational chart, and their positions were represented as being lateral to that held by the sales and marketing manager.

The petitioner also provided the requested IRS Forms 941 and W-2 and copies of its New York State quarterly reports for 2006. The record shows that the petitioner employed all five employees during the fourth quarter of 2006, however, only four workers were reported for the month of December, as one of the sales representatives was not paid that month. Overall, the petitioner employed three people during the first five months of 2006, one worker in June 2006, three workers in July and August, five workers from September through November, and four workers in December. During the months in which they were

employed, the vice president/general manager, and both sales representatives all earned the same salary of \$1,000 per month.

The director denied the petition on May 14, 2007, concluding that the petitioner did not establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director found that the evidence was insufficient to establish that the beneficiary's subordinates are employed by the company on a full-time basis, and further found that the petitioner had not demonstrated that the beneficiary would manage a subordinate staff of professional employees. The director concluded that "as it is not clear who is providing the goods and full-time services of the United States operation to its customer/clients besides the beneficiary, it seems likely that the beneficiary will perform or help to perform these duties in light of your current staffing arrangement." The director further observed that the petitioner had not adequately responded to the director's request for a comprehensive description of the beneficiary's duties and the amount of time he devotes to each duty.

In addition, the director addressed a discrepancy regarding the nature of the petitioner's business, noting that the petitioner described itself as a retail and wholesale investment company, while a telephone directory submitted by the petitioner indicated that the company is an exporter of color dyes and pigments.

On appeal, counsel for the petitioner asserts that the evidence submitted clearly shows that the petitioner employs five people and is engaged in the export of industrial and commercial supplies as part of its wholesale business. Counsel asserts that the petitioner did in fact provide a detailed description of the beneficiary's duties and indicated the amount of time he devotes to each duty, as requested by the director. Counsel asserts that, contrary to the director's findings, the record shows that the sales manager and two sales people provide the goods and services of the company, while the beneficiary is primarily responsible for supervising a staff of subordinate managerial and supervisory employees.

Counsel's assertions are not persuasive. Upon review of the petition and evidence, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. 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 show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

As noted by the director, the petitioner has provided a vague, nonspecific position description that fails to identify the specific managerial or executive duties performed by the beneficiary or the amount of time he devotes to such duties. For example, petitioner's statements that the beneficiary is responsible for overseeing the management of the company, defining objectives, directing the overall operations, implementing company

policy, making executive decisions, ensuring the overall growth of the company and reviewing activity reports convey little understanding of the actual duties the beneficiary performs on a day-to-day basis as president of the petitioning company. Many of these duties simply paraphrase the statutory definition of executive capacity. See section 101(a)(44)(B) of the Act. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). The petitioner has 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. at 1108.

Although the petitioner provided a breakdown of how the beneficiary would allocate his time, the petitioner failed to identify the amount of time devoted to specific tasks, and instead indicated that the beneficiary would spend 60 percent of his time to "overseeing the management of the company." Again, specifics are clearly an important indication of whether a beneficiary's duties involve specialized knowledge, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Id.* Furthermore, the petitioner indicates that the beneficiary devotes 20 percent of his time to "financials," but also states that his subordinate devotes thirty percent of her time to the identical finance-related duties. Beyond these duties, there is considerable overlap between the beneficiary's duties and the vice presidents' duties, and the AAO finds it reasonable to question whether a four- or five-person company would plausibly require two employees to perform the same claimed managerial and executive duties. 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).

Moreover, a review of the supporting evidence submitted, including correspondence related to the petitioner's export activities, reveals that the beneficiary is directly involved in routine aspects of the business such as requesting quotes from potential suppliers, purchasing goods, completing sales transactions, and making shipping and delivery arrangements. These are the daily operational tasks inherent to operating the petitioner's business, and do not fall under the statutory definitions of managerial or executive capacity. Since none of these duties were included in the position description provided by the petitioner, it is impossible to estimate how much time the beneficiary may devote to such non-qualifying tasks. The supporting evidence submitted raises questions as to whether the petitioner provided a complete and accurate account of the beneficiary's position.

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). 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 sections 101(a)(15)(L) of the Act. See 52 Fed. Reg. 5738, 5739 (Feb. 26, 1987). Therefore, while the beneficiary in this matter evidently exercises discretion over the U.S. business as its president, the petitioner must still establish that he is not primarily involved in performing the company's day-to-day operations. Overall, the evidence submitted suggests that the beneficiary performs both managerial and operational tasks, but the petitioner has failed to provide any meaningful information to quantify the time the beneficiary spends on them. This failure of documentation is

important because some of the beneficiary's daily tasks, as discussed above, do not fall directly under traditional managerial duties as defined in the statute. For this reason, the AAO cannot determine whether the beneficiary is primarily performing the duties of a manager or executive. *See, e.g., IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Beyond the required description of the job duties, USCIS reviews the totality of the record when examining the claimed managerial capacity of a beneficiary, including the beneficiary's duties, the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

Here, the petitioner claims that the beneficiary will manage at least one subordinate managerial employee, the vice president/general manager. The AAO notes that this employee was initially identified on the petitioner's organizational chart as the only supervisory employee working under the beneficiary, and was initially shown to be supervising an office administrator, a marketing-sales employee, and a sales-retail employee. In response to the request for evidence, the petitioner elevated the marketing-sales employee to the position of sales and marketing manager, and indicated that the individuals previously identified as holding the positions of office administrator and retail sales were both sales representatives responsible for "making sales calls." The petitioner provided no explanation for the change in the job titles and job duties of these employees. 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).

As noted above, the director also addressed some confusion regarding the nature of the petitioner's business. A determination regarding the nature of the business is essential to determining whether the submitted position descriptions for the beneficiary and his subordinates are credible, and in determining whether the subordinate staff could plausibly relieve the beneficiary from performing non-managerial and non-executive duties associated with the business. 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 petitioning company in conjunction with other relevant factors, such as a 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.*

The director noted that the petitioner described itself as a retail and wholesale investment company, while a telephone directory submitted by the petitioner indicated that the company is an exporter of color dyes and pigments. The AAO notes that the record contains a business plan for the petitioner indicating that the company is a wholesaler of miscellaneous grocery items, soda and telephone cards to grocery stores. The

petitioner has submitted a price list for these types of items and three invoices showing sales of miscellaneous items to grocery stores. The record also contains evidence that the petitioner has purchased computer equipment and electric pumps for sale and export overseas, although this evidence represents relatively few transactions. A yellow pages directory listing identifies the petitioner as an "exporter," while a separate directory lists the company as a provider of chemicals, dyes and related products. The petitioner's profit and loss statement for the year ended September 2006 indicates that the company derived all of its income of \$331,398.55 from "fees" with a deduction for food sales of \$-266.74. The petitioner's accompanying transaction detail for the same year shows frequent purchases of phone cards, beverages, snack foods, bakery and dairy items. Finally, the petitioner stated in response to the request for evidence that the beneficiary "is in charge of overseeing a company that operates a retail establishment."

Based on the petitioner's evidence and representations, the petitioning company appears to be involved in no less than four different types of business activities. However, although the petitioner indicates that the beneficiary "oversees a company that operates a retail establishment," the petitioner has not provided evidence that it actually leases, owns or operates a retail store. The petitioner did initially claim to employ a retail sales employee, and its purchases would be consistent with the operation of a store. Although the petitioner indicates that it is engaged in the wholesale of grocery and food items to other wholesalers and retailers, it has not indicated that it has any employees engaged in purchasing, warehousing, shipping, or delivery of goods, nor does it appear that the petitioner has premises for storing such goods. The record contains evidence that the petitioner has purchased and exported computer and industrial equipment in small quantities, but as noted above, the beneficiary appears to be directly involved in these activities. Again, the petitioner does not indicate that it has employees who perform duties related with purchasing or exporting of goods. 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).

Without a clear explanation and evidence of the nature and scope of the petitioner's business, it is difficult to properly evaluate the petitioner's claims regarding the duties performed by the beneficiary and his subordinates. 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. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

The petitioner has not established that the reasonable needs of a company engaged in this array of retail, wholesale and export activities would reasonably be met a president, a vice president, a sales and marketing manager and only one or two sales people. In the present matter, the totality of the record does not support a conclusion that the beneficiary's subordinates are supervisors, managers, or professionals. Instead, the record indicates that the beneficiary's subordinates would be required to perform the actual day-to-day tasks of operating the petitioner's various business functions and are not managers or supervisors themselves. Furthermore, as noted by the director, the record does not clearly establish that the vice president, who earned \$10,000 in 2006 and \$7,500 in 2005, was employed on a full-time basis. In addition, the evidence shows that

the petitioner's staff size was reduced from five employees to four employees at approximately the same time the petition was filed.

Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) of the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Overall, the petitioner's claims are undermined by its failure to provide a detailed description of the beneficiary's duties, its inconsistent statements regarding its organizational structure, and the discrepancies in the evidence submitted regarding the nature and scope of the petitioner's business. Based on these deficiencies, the AAO is unable to determine the actual duties performed by the beneficiary and his subordinates, and cannot conclude that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

A remaining issue in this matter concerns photographs of the petitioning entity submitted in response to the request for evidence. In his decision dated May 14, 2007, the director acknowledged that the evidence submitted in response to the request for evidence supported the petitioner's claim that the U.S. entity is actively doing business. However, the director made the following observations regarding photographs submitted by the petitioning entity:

The photographs you submitted in response to this service's request for evidence show the inside and outside of a suburban locale with no readily apparent customers; only the individuals you highlight as being your current employees are shown working at the United States entity by being on the telephone. It is also noted that the photograph indicating the outside of the business appears to show a photocopied paper sign taped to a front glass door. Therefore, the veracity of the instant petitioning entity as a functioning business entity for immigration purposes can be called into question. . . .

On appeal, counsel for the petitioner objects to the director's findings and notes that "the fact the Petitioner submitted photographs showing no customers and a photograph showing that it has a paper sign on the business does not call into question whether the Petitioner is actually a functioning business entity." Counsel observes that the director acknowledged that the evidence submitted in response to the request for evidence supported the petitioner's claim that it is actively doing business. Counsel asserts that the director's finding was therefore contradictory.

Upon review, the photographs submitted do not clearly indicate that the premises shown are located at [REDACTED] which incidentally, is also indicated as the beneficiary's residential address on Form I-129. The single photograph of the building's exterior does not indicate a street address, and the fact that the petitioner has covered what appears to be a permanent sign on the front door with a paper sign is significant, considering that the petitioner claims to have been leasing its premises since January 2003. Again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation

of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. The evidence submitted does show that the petitioner has been making rent payments pursuant to the terms of its lease. However, the premises depicted would also appear to be inconsistent with the petitioner's claim that it operates a retail establishment, or that it is engaged in the wholesale of grocery items.

As noted by the director, the evidence, overall, does support the petitioner's claim that it is doing business in the United States. As discussed above, the exact type and nature of the business operated by the petitioner remains questionable and the photographs do not assist in such a determination. The director appropriately questioned the photographs in the context of evaluating the beneficiary's claimed managerial or executive capacity.

The AAO acknowledges that USCIS has approved two prior petitions requesting extension of the beneficiary's L-1A status. The prior approval does not preclude USCIS from denying an extension of the original visa based on a reassessment of the beneficiary'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 unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approvals by denying the present request to extend the beneficiary's status. As discussed above, the evidence submitted fails to describe the beneficiary's actual job duties in detail as required by 8 C.F.R. § 214.2(l)(3)(ii) and is insufficient to establish that the beneficiary would be employed in a managerial or executive capacity.

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). USCIS memoranda merely articulate internal guidelines for CIS personnel; they do not establish judicially enforceable rights. An agency's internal personnel guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely." *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(quoting *Fano v. O'Neill*, 806 F.2d 1262, 1264 (5th Cir.1987)).

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 petitioner has not submitted evidence on appeal to overcome the director's determination that the beneficiary will not be employed in a managerial or executive capacity. Accordingly, the appeal will be dismissed.

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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.