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U.S. Citizenship
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Services

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File: EAC 06 203 52358 Office: VERMONT SERVICE CENTER Date: SEP 05 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 AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its director 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, states that it is engaged in retail investment and services. The petitioner claims to be a subsidiary of Savabhai Investments Group (Pvt.) Ltd., located in Karachi, Pakistan. The beneficiary was initially granted a one-year period of stay to open a new office in the United States in 2001 and was subsequently granted a two-year extension of status. The petitioner now seeks to extend the beneficiary's L-1A status for two additional years.

The director denied the petition concluding that the petitioner did not establish: (1) that the beneficiary would be employed in the United States in a primarily managerial or executive capacity; or (2) that the U.S. company has a qualifying relationship with the foreign entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director misinterpreted the nature of the petitioner's businesses and incorrectly characterized the beneficiary's duties as not being executive in nature. Counsel submits a brief and additional evidence in support of the appeal.

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

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

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior

education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue to be addressed 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 June 30, 2006. The petitioner indicated on Form I-129 that the beneficiary would serve as the director of the U.S. company, which was stated to have 15 to 17 employees. In support of the petition, the petitioner submitted a letter dated June 27, 2006, in which it explained that the

U.S. company engages in the retail trade and investment business through several acquired corporations. The petitioner asserted that the company manages 15 employees and over \$2 million in gross receipts. The petitioner did not submit a description of the beneficiary's duties. The petitioner submitted copies of its IRS Forms 941, Employer's Quarterly Federal Tax Return, indicating that the petitioner employed only the beneficiary and his spouse during 2005.

The petitioner indicated that it owns: (1) a 70 percent interest in Excellent, Inc., which operates as Kwik's Top grocery; (2) a 50 percent interest in Riteways Enterprises, Inc., which operates as Super One Hour Cleaner; (3) a 75% interest in Waverly Business, Inc., which does business as Waverly Power Fuel; (4) a 25% interest in Alvin Mart, Inc., which does business as Alvin Power Fuel; and (5) a 27.5% interest in La Porte Business, Inc., which is described as a "retail trade investment."

The petitioner attached an organizational chart for the petitioning company and its claimed subsidiaries, which depicts the beneficiary as president/director and his spouse as director, finance. The chart indicates that the beneficiary ultimately supervises all five of the above-referenced companies. According to the submitted chart, Excellent Inc. has one manager, three cashier/clerks and one "canteen operator"; Waverly Business, Inc. has one manager/clerk and one cashier/supervisor; Riteways Enterprises, Inc. has two managers, three plant/press operators and one cashier/clerk; Alvin Mart, Inc. has one manager/clerk and one cashier/clerk, and LaPorte Business, Inc. has two "prospective" cashiers.

The petitioner submitted its 2005 IRS Form 1120 for 2005, which indicates that the U.S. company earned \$8,400 in dividends from 20% or more owned domestic corporations and \$44,820 in "consulting income," but had no gross receipts or sales. The petitioner's tax return shows that the company paid \$39,000 in salaries and wages. The petitioner's claimed subsidiaries are identified not as subsidiaries but as "Other Investments" at Schedule L, line 9 of the tax return, which indicates that the petitioner has invested in Alvin Mart Inc., Waverly Business Inc., Riteways Enterprises, Inc. and Excellent Inc., for a total investment of \$116,330. The petitioner indicated at Schedule K that it does not own 50 percent or more of the voting stock of a domestic corporation.

The petitioner also submitted evidence related to the ownership and business activities of each of its claimed subsidiary companies. With respect to Excellent, Inc., the petitioner submitted copies of the company's stock certificate #6, issuing 510 shares to the petitioning company on August 1, 2001; a copy of stock certificate #8 issuing 190 shares to the petitioning company on April 22, 2004; a copy of its stock certificate #9 issuing 300 shares of stock to [REDACTED] on April 22, 2004; and a copy of the company's stock transfer ledger showing all stock certificates issued since the company was formed in 1993. The petitioner also submitted a corporate resolution dated April 22, 2004, indicating that [REDACTED] is president of the corporation and 30 percent stockholder while the petitioning company owns 70 percent of the stock. The 2005 IRS Form 1120 for Excellent, Inc. also shows this ownership structure.

With respect to Riteways Enterprises, Inc., the petitioner submitted a copy of its stock certificate #5, issuing 5,000 shares to the petitioning company on June 27, 2005; a stock certificate #4 issuing 5,000 shares to

██████████ on October 1, 1998¹ ; stock certificate #2 issuing 5,000 shares to ██████████ on October 1, 1998; and the reverse side of a stock certificate indicating that ██████████ transferred his 5,000 shares to the petitioning company on June 27, 2005. The stock transfer ledger indicates that stock certificates #2 and #4 were issued on October 15, 1998, and stock certificate #3, issuing 5,000 shares, appears to have been issued, but the information is covered with correction fluid and indicated as "void." The petitioner submitted a copy of a check for \$15,000, issued by the U.S. company to ██████████ on June 27, 2005, "for buying 50% of stock shares of Riteways Enterprises, Inc." The record contains several bank statements for the petitioning company for 2005 and 2006, but does not include the company's June or July 2005 statements which could confirm that this check was indeed cashed. However, the AAO notes that as of May 31, 2005, the U.S. company had a checking account balance of \$688.78, and none of the submitted statements reflect a balance above \$5,000. Furthermore, the petitioner submitted the 2005 IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for Riteways Enterprises, Inc., including Schedules K-1. Shareholder's Share of Income, Deductions, Credits, Etc. The Schedules K-1 indicate that ██████████ and ██████████ each own 50% of the company as of December 31, 2005.

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). Due to the discrepancies noted, the petitioner has not adequately substantiated its claim that it owns a 50 percent interest in Riteways Enterprises, Inc.

With respect to Waverly Business, Inc., the petitioner submitted a "Unanimous Written Consent of Directors in Lieu of the First Meeting," dated June 1, 2004, in which ██████████ is identified as Chairman of the Board and President of the company, and the owner of 250 shares of common stock, the petitioning company is identified as the owner of the remaining 750 shares of stock, and the beneficiary is identified as the company secretary. The company's stock certificates, stock transfer ledger, and 2005 Form 1120 confirm the ownership of the company's stock in these proportions.²

The petitioner also submitted evidence of the ownership and business activities of its two claimed minority-owned subsidiaries, ██████████ (25%) and ██████████ (27.5%).

¹ The AAO notes that although stock certificates #2 and #4 are dated October 1, 1998, the stock certificates were clearly produced at a later date, as the form on which they are printed is copyrighted 2003 and the pre-printed date to be completed is "20__." Based on the submitted corporate tax return for Riteways Enterprises, Inc., the company was actually incorporated on July 28, 1995. 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).

² The AAO has reviewed publicly available corporate records held by the Texas Secretary of State for Excellent, Inc., Waverly Business, Inc., and Riteways Enterprises, Inc. None of these company's records indicate that either the beneficiary or the petitioning company is an officer of the company. The sole officer of Waverly Business, Inc. is ██████████, the sole officer of Excellent, Inc. is ██████████, and the sole officer of Riteways Enterprises, Inc. is ██████████.

The director issued a request for additional evidence on July 12, 2006. The director advised the petitioner that although the U.S. company appears to be a partial owner in other U.S. companies, it was not evident that the beneficiary was performing in a managerial or executive position within the petitioner's investment office, which appears to employ only two people. The director requested a position description for each employee within the petitioning company, and requested evidence of the decisions made by the beneficiary as the director of the company within the last year.

In a response dated October 2, 2006, counsel re-submitted an organizational chart for the petitioner and its claimed subsidiaries and asserted that the beneficiary "oversees the global affairs of the company, and acts in a presidential capacity with regard to marketing, advertising, human resources, legal matters, financial matters, investing, etc." Counsel emphasized that the organizational chart shows two separate levels of employees subordinate to the beneficiary, including "section managers" within each company, and lower-level employees, and stated that the beneficiary "exercises control over both levels of employees."

Counsel stated that the beneficiary, "as owner of [the petitioner]," which in turn "owns and controls four successful entities," performs both executive and managerial duties. Counsel stated that the beneficiary personally negotiated and executed fuel contracts with Oil Products Distribution Inc. and Valero Energy & Marketing, undertaking "substantial business risk." Counsel further stated that the beneficiary "personally authorized electronics funds transfers on behalf of Excellent, Inc., Waverly Business, Inc. and Alvin Mart, Inc." and negotiated, executed and personally guaranteed a merchant processing agreement. Counsel also noted that the beneficiary "personally handles accounting and tax-related issues for LaPorte Business, Inc., Waverly Business, Inc. and Excellent, Inc."

Counsel concluded:

All of the preceding evidence provides that [the beneficiary] acted as a director in an executive capacity in all of [the petitioner's] entities. He negotiates price, quantity, and quality of the items his businesses sell, he personally puts himself at financial risk in order to move the business forward, he controls the money of the business, he oversees the tax and accounting matters for all of the businesses, and he decides when and where to do business. It is almost impossible to be more directorial than [the beneficiary] is in [the petitioning company].

The petitioner submitted state quarterly wage reports for the second quarter of 2006 for the petitioning company and each of its claimed subsidiaries. The petitioner reported two employees as of June 2006, Excellent Inc. had no more than four employees during the quarter and paid only \$2,000 to its "manager" over the three-month period, and Waverly Business, Inc. reported only one employee, who is not identified on the organizational chart.

As evidence of the beneficiary's claimed managerial and executive decisions, the petitioner submitted a letter dated August 21, 2006 from the president of Oil Product Distribution, Inc. (OPD), who stated that OPD had been doing business with the petitioning company and supplying fuel to three of its locations operating as Alvin Mart, Inc., Waverly Business, Inc. and Excellent Inc. The president of OPD stated that the beneficiary

executed a contract on behalf of Alvin Mart to convert it to the Valero brand image. The petitioner attached a copy of a Valero Dealer Franchise Agreement signed by OPD and by Barkat Momin as President of Alvin Mart, Inc. The beneficiary was one of two guarantors to the agreement, but did not actually execute the agreement as claimed.

The director denied the petition on October 17, 2006, concluding that the petitioner had failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. The director noted that the petitioner claims to employ 15 to 17 individuals but in fact only has two employees. The director further found that even accounting for the employees of the entities that are partially owned by the petitioning company, the record did not establish that the beneficiary would supervise professional, supervisory or managerial employees. The director noted that it appears that the beneficiary "would be performing direct duties of the daily operation of his investment company by directly performing searches for new investments and performing the actual negotiations for the investments, as well as the operation of his office."

The director acknowledged that the petitioner's alleged subsidiary companies are claimed to employ managers, but noted that the small size of these companies suggested that the managers would be primarily involved in the day-to-day operations of the businesses. The director noted that the petitioner only owns a 25% interest in Alvin Mart, Inc., and thus it was not evident that the beneficiary would supervise this company's employees, as claimed by the petitioner. Finally, the director noted that the beneficiary's offered salary of \$24,000 is not commensurate with a managerial or executive position, and found the evidence inconsistent with the petitioner's claims that the company can support such a position.

On appeal, counsel for the petitioner asserts that the beneficiary is acting in both an executive and managerial capacity, and asserts that he "is in an executive position with regard to at least three of the entities [the petitioner] owns and controls." Counsel asserts that the beneficiary clearly fits the definition of an executive based on the following:

First, as President of [the petitioner], [the beneficiary] directs the management of three out of the five entities [the petitioner] owns. As President of the majority stockholder [the beneficiary] is the final authority on the direction of each of those stores. He is the one who decides which products the stores sell, the name of the stores, the kinds and numbers of the employees that work at each store, etc. Furthermore, [the beneficiary] establishes the goals and policies of the businesses. If he does not wish to sell a product, for example, his stores will not sell the product. He also sets the profit goals and the extent to which the stores need to minimize expenses. [The beneficiary] has complete latitude in this decision making as he is the owner and President of [the foreign entity] which owns 100% of [the petitioning company]. The fourth element [of the statutory definition of "executive capacity"] is also satisfied, as [the beneficiary] answers to no one with regard to the management of his business.

Counsel asserts that even if the petitioner concedes that there are not 15 to 17 employees working for the petitioner's entities, the definition of the term "executive" does not preclude an executive of a small business

from qualifying for the requested visa classification. Counsel emphasizes that "the beneficiary is the chief executive in the operations of Excellent, Inc., Waverly Business, Inc., and Riteways Enterprises, Inc."

Counsel's assertions are not persuasive. Upon review, 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(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.*

Here, the petitioner submitted no description of the beneficiary's proposed duties in support of the initial petition, and was thus requested by the director to provide detailed position descriptions for each employee of the petitioning company. The petitioner's response to the director's request for evidence provided little insight into the nature of the beneficiary's duties. For example, counsel for the petitioner stated that the beneficiary "oversees the global affairs of the company," and "acts in a presidential capacity with regard to marketing, advertising, human resources, legal matters, financial matters, investing, etc." These general, conclusory statements fall significantly short of meeting the petitioner's burden of establishing that the beneficiary would be performing primarily managerial or executive duties under the extended petition, and could not be considered clear or detailed by any standard. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990).

Counsel further stated that the beneficiary "negotiates price, quantity, and quality of the items his businesses sell," "controls the money of the business," and "oversees the tax and accounting matters for all of the businesses." These statements, without additional clarification regarding the duties performed by the beneficiary's claimed subordinates, suggest that the beneficiary is involved in performing non-managerial duties associating with purchasing and routine financial matters. Counsel's statement that that it would be "impossible to be more directorial than [the beneficiary] is in [the petitioning company]," can not be accepted in lieu of the required detailed description of the beneficiary's day-to-day duties. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, the petitioner neglected to respond to the director's specific inquiry regarding the specific managerial or executive duties the beneficiary performs for the petitioning company, and instead focused on the beneficiary's responsibility for overseeing several partially owned businesses. The petitioning company itself appears to employ only two employees and conducted very limited business operations in its own right, thus the director's request for additional explanation regarding the duties performed by the beneficiary and his

spouse for the petitioning company was reasonable. Although the petitioner describes itself as an investment company, its 2005 tax return shows that the company's primary source of income came from consulting fees. Since the company does not claim to employ anyone to provide such services, and has not described the types of services it provides, the petitioner's silence on this issue raises further questions regarding the beneficiary's actual duties. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Overall, the petitioner did not show a good faith effort to respond to the director's request for the required detailed job description. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Accordingly, the record before the director contained no concrete description of what the beneficiary does on a day-to-day basis as the director of the petitioning company. The definitions of executive and managerial capacity have two specific requirements. 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). Here, while the AAO does not doubt that the beneficiary exercises decision-making authority and overall oversight over the petitioning company as its director, the petitioner has not met its burden to show that the beneficiary primarily performs managerial or executive duties. The AAO cannot accept a managerial or executive job title and broad, conclusory assertions regarding the beneficiary's responsibilities in lieu of the required detailed description of the beneficiary's duties. The petitioner has not described the beneficiary's actual duties, such that they could be classified as managerial or executive in nature.

The AAO will next consider whether the beneficiary's employment with the petitioner's claimed subsidiaries can be considered in determining whether the beneficiary qualifies as a nonimmigrant intracompany transferee under section 101(a)(15)(L) of the Act. The statutory definitions of executive and managerial capacity refer to an assignment within an organization in which the employee either manages the organization or directs the management of the organization. Section 101(a)(28) of the Act defines "organization" as follows: "The term 'organization' means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects." The statutory definition of an organization would not ordinarily include a partially owned corporation that is an entity separate and distinct from the petitioning organization. However, the petitioner may provide evidence to establish that the petitioner and the petitioner's partially owned entity are either permanently or temporarily associated through controlling ownership, contract, or other legal means. Accordingly, a beneficiary's claimed managerial or executive duties that relate to the partially owned entity may be considered in certain instances for purposes of a nonimmigrant visa petition.

Although the petitioner claims that the beneficiary oversees and supervises the employees of a total of five other companies, the evidence submitted establishes that the petitioner owns a majority interest in only two of these companies, Excellent, Inc. and Waverly Business, Inc. As discussed above, the petitioner has submitted

inconsistent evidence regarding the ownership of Riteways Enterprises, Inc. which precludes the AAO from finding that the petitioner in fact owns the claimed 50 percent interest in this company. Although the petitioner appears to have purchased a majority interest in both Excellent, Inc. and Waverly Business, Inc., it does not automatically follow that the beneficiary became the chief executive of both of these entities by virtue of holding the position of director of the U.S. holding company. As noted above, there is no evidence that the beneficiary has been appointed as an officer or director of either of these companies, and the petitioner has declined to provide a comprehensive description of the beneficiary's duties or explain how he divides his time among the six different companies he is claimed to manage.

The AAO will nevertheless consider the petitioner's claim that the beneficiary will supervise two tiers of employees who relieve him from performing the day-to-day operations of the retail businesses operated by Excellent, Inc. and Waverly Business, Inc. The statutory definition of "managerial capacity" allows for both "personnel managers" and "function managers." *See* section 101(a)(44)(A)(i) and (ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(i) and (ii). Personnel managers are required to primarily supervise and control the work of other supervisory, professional, or managerial employees. If a beneficiary directly supervises other employees, the beneficiary must also have the authority to hire and fire those employees, or recommend those actions, and take other personnel actions. 8 C.F.R. § 214.2(l)(1)(ii)(B)(3).

When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. Contrary to the common understanding of the word "manager," the statute plainly states that a "first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional." Section 101(a)(44)(A)(iv) of the Act; 8 C.F.R. § 214.2(l)(1)(ii)(B)(2).

In the present matter, the totality of the record does not support a conclusion that the beneficiary's subordinates are supervisors, managers, or professionals. At the time the petition was filed on June 30, 2006, Waverly Business, Inc. reported that that it employed only one worker. The employee identified as the "manager" of the company did not receive any wages in the second quarter of 2006. The submitted quarterly wage reports for Excellent, Inc. show that the company had only three to four employees during the same quarter, and paid wages of only \$2,000 to its claimed "manager." While each company purportedly has a "manager," the record indicates that the employees perform the actual day-to-day tasks of operating the gas station/convenience stores operated by these two companies. The petitioner has not provided evidence of an organizational structure sufficient to elevate the beneficiary to a supervisory position that is higher than a first-line supervisor of non-professional employees. Pursuant to section 101(a)(44)(A)(iv) of the Act, the beneficiary's position does not qualify as primarily managerial under the statutory definitions.

On appeal, counsel for the petitioner asserts that the beneficiary qualifies as an executive because he "directs the management of three out of the five entities" the petitioner owns, "is the final authority on the direction of each of those stores," "establishes the goals and policies of the businesses," and "answers to no one with regard to the management of his business." Again, the AAO must emphasize that 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. at 1108; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's direction of the organization. Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.*

Here, while the petitioner has submitted an impressive organizational chart with the beneficiary situated at the top, the evidence submitted does not corroborate the beneficiary's claimed level of authority over three of the five subsidiary operations, does not establish the existence of a subordinate level of managerial employees who work under the beneficiary's direction, and does not contain any comprehensive description of the beneficiary's actual duties, or the duties of any of his subordinates. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner has not submitted persuasive evidence to corroborate its claim that the beneficiary will be employed in an executive capacity.

Counsel correctly observes that 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.*

At the time of filing, the petitioner was a five-year old investment company with two employees and total income of \$53,220, the majority of which was derived not from its investments, but from unexplained "consulting fees." The duties of the petitioner's two employees have not been described in any detail. The petitioner claims to control the operations of five separate companies, but can only establish a majority interest in two of these companies, Excellent, Inc. and Waverly Business, Inc., both of which operate gas

stations/convenience stores, and one of which appears to also offer food services. Based on the evidence presented, one store employs only one person, and the other employs three people. It is unclear how these businesses are able to operate with the staffing structure indicated. Regardless, it is implausible that either the petitioner or its claimed subsidiaries have a reasonable need for the beneficiary's services in a primarily managerial or executive capacity. Furthermore, 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.

Based on the foregoing discussion, it is not possible to determine from the limited record that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition. Accordingly, the appeal will be dismissed.

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

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

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

* * *

- (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
- (J) *Branch* means an operating division or office of the same organization housed in a different location.

- (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
- (L) *Affiliate* means
- (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or
 - (2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner indicated on Form I-129 that it is a wholly owned subsidiary of Savabhai Investment Group (Pvt.) Ltd., located in Karachi, Pakistan. The petitioner stated that the foreign entity is owned in equal proportions by the beneficiary, his spouse, and [REDACTED]. In the petitioner's letter dated June 27, 2006, the foreign entity was described as a registered corporation that owns and operates three business: Al-Madad Dairy Farms, Dental Clinic and Cosy Water Park.

The petitioner submitted a copy of the U.S. company's Articles of Incorporation dated September 5, 2000, which indicates that "Savabhai Investment Group" owns 100 percent of the company's stock. The petitioner also provided a corporate resolution dated April 2, 2004, which states that Savabhai Investment Group is transferring "all his shares [sic]" to Savabhai Investment Group (Pvt.) Ltd. The petitioner submitted a copy of its stock certificate number one issuing 1,000 shares to Savabhai Investment Group on September 5, 2000, and its stock certificate number two issuing 1,000 shares to Savabhai Investment Group (Pvt.) Ltd. on April 2, 2004. Stock certificate number 2 indicates shows that the shares were transferred from "Savabhai Investment Group." The petitioner's 2005 IRS Form 1120, U.S. Corporation Income Tax Return, at Schedule K, identifies Savabhai Investment Group as the owner of 100 percent of the company's shares.

The petitioner's initial filing included two versions of the company's stock ledger. One stock ledger is typewritten and indicates that only stock certificate number one has been issued. The other stock ledger is handwritten and shows the transfer of shares from Savabhai Investment Group to Savabhai Investment Group (Pvt.) Ltd. and issuance of stock certificate #2.

With respect to the foreign entity, the petitioner submitted an acknowledgement of filing with the Pakistan Securities and Exchange commission and certificate of incorporation for Savabhai Investment Group (Pvt.) Ltd., both dated March 19, 2004. The petitioner also submitted the foreign entity's memorandum of association, which includes the following articles addressing the company's intended activities:

- (5) To acquire, take over and carry on as a going concern the business now carried on in Pakistan under the name of Al-Madad Dairy Farm and all or any of the assets and liabilities relating to such business or used in connection therewith or belonging thereto.
- (6) To acquire and take over as a going concern the business now carried on in Pakistan by the Dental Clinic situated at 13, Karachi Auditorium, Nishter Road, Garden West, Karachi and all or any of the assets and liabilities relating to such business or used in connection therewith or belonging thereto.
- (7) To acquire and take over as a going concern the business now carried on in Pakistan by the partnership firm of Cosy Water Park and all or any of the assets and liabilities relating to such business or used in connection therewith or belonging thereto.

The memorandum of association indicates that the beneficiary, [REDACTED], and [REDACTED] each own one share of stock in the foreign corporation. The petitioner also submitted stock certificates for the foreign entity confirming this ownership structure.

In addition, the petitioner submitted: (1) a 2004 Pakistani individual income tax return for the beneficiary, Dr. [REDACTED], which bears the address of the dental clinic referenced above and appears to reflect income from that business; (2) a 2004 Pakistani individual income tax return for [REDACTED], the beneficiary's spouse, reflecting business income from Cosy Water Park and from another business in which she is a partner; (3) a letter from [REDACTED] dated June 27, 2005, indicating that M/s Savabhai Investment Group Pvt. Ltd. has a savings account with a balance of Rs. 214,925.26; (4) a letter dated May 25, 2006, indicating that [REDACTED] is partner number nine of Cosy Water Park; (5) a 2005 Pakistani tax return filed by M/s Cosy Water Park; (6) a letter dated May 25, 2006, indicating that the beneficiary is a partner of Cosy Water Park; (7) a partnership deed and registration for Cosy Water Park, dated July 1995, indicating that the beneficiary and his spouse are among the 20 partners of the company; (8) a summary of the capital account of Cosy Water Park, dated June 30, 2005, indicating that the beneficiary owns a 7.5% share in the company and his spouse owns a 5% share; (9) a memorandum of mutual understanding, dated March 31, 2001, which identifies the beneficiary as the owner of an 11.11% share and allotted shed number 8 of the Al Madad Dairy Farm, and identifies the beneficiary's spouse as the owner of an 11.11% share and allotted shed number 7 of the farm; (10) a letter from Al-Madad Dairy Farm, dated May 15, 2006, indicating that the beneficiary owns a farm and actively engaged in the dairy farming business at shed number 8 from 1991 until 2000; and (11) evidence related to the ongoing business operations of [REDACTED]

On July 12, 2006, the director issued a request for additional evidence, which addressed the issue of the petitioner's claimed qualifying relationship with the foreign entity as follows:

It is not evident that the company, Savabhai Investment Group, Pvt. Ltd., continues to operate as a business overseas. You have provided evidence of the continuing operation of the companies Cosy Water Park, Al-Madad Dairy Farm, and a Dental Clinic However, you have not provided any evidence of the actual business operation of an investing company known as Savabhai Investment Group (Pvt.) Ltd. overseas. Since none of the companies that you have provided evidence for, Cosy Water Park, Al-Madad Dairy Farm, or the Dental

Clinic, own any of the United States office the evidence of their existence overseas is not relevant to this petition. Rather, it must be established that the company that does have 100% ownership of the United States office does continue to operate a valid business overseas. Please provide additional evidence of the overseas operations, Savabhai Investment Group (Pvt.) Ltd., business activities such as payroll, tax returns, and checking account statement.

The director also requested evidence that the foreign entity is engaged in the provision of goods and services.

In a response dated October 2, 2006, counsel for the petitioner asserted that the foreign entity is a holding company "that controls and unites the three substantive entities at issue here (the dentist office, the dairy farm, and Cosy Water Park)." Counsel stated that the foreign entity "merely acts as a nominal corporation, or a holding company, that conveniently allows everybody involved in the entities' affairs to link the three together conceptually."

Counsel further stated that the foreign entity "operates like a trust," and "is purely a legal entity of convenience, not of action." Counsel indicated that the tax returns and payroll functions are "passed down" to the component companies, but that without the foreign holding company, "the three companies would not have any legal title." Counsel emphasized that Savabhai Investment Group (Pvt) Ltd. is "the one and only entity that has the final control in how the entities operate." Counsel asserted that all four entities in Pakistan are owned by the beneficiary, his spouse, and his sister, and that "all executive and legal control is in the hands of [the beneficiary]."

In addition, counsel explained that regardless of how the foreign entities are structured, "Savabhai Investment Group (Pvt.) Ltd. is the owner of all the entities involved in this case." Counsel concluded that the foreign entity, by virtue of its operation of the U.S. and other Pakistani entities, "is currently running and operational."

In support of these assertions, counsel emphasized that the foreign entity's memorandum of association authorized the company "to take over" Al-Madad Dairy Farm, the dental clinic and Cosy Water Park. The petitioner submitted an updated bank letter for the foreign entity, and additional evidence to establish that the farm, dental office and water park continue to do business in Pakistan.

The director denied the petition on October 17, 2006, concluding that the petitioner failed to establish that there is a qualifying relationship between the U.S. and foreign entities. The director determined that the foreign entity, Savabhai Investment Group (Pvt.) Ltd. is not doing business and therefore is not a qualifying organization. The director acknowledged counsel's assertions that the foreign entity is doing business through the "investment companies," Cosy Water Park, Al-Madad Dairy Farm, and a dental clinic, but found no evidence that Savabhai Investment Group (Pvt.) Ltd. in fact owns a majority interest in these businesses. The director noted that Cosy Water Park is not owned by the claimed foreign parent company, but by 20 individuals, including the beneficiary and his spouse, who each own a small percentage of the business. Similarly, the director noted that the foreign entity does not own any interest in Al-Madad Dairy Farm, but rather the beneficiary and his spouse each own 11.11% of the farm. The director also noted that the petitioner had not established that the same group of individuals own Savabhai Investment Group (Pvt.) Ltd., and the

water park or the farm, and therefore, the petitioner had not established that a parent-subsiidiary or affiliate relationship existed between the entities.

With respect to the dental clinic, the director noted that the business appears to be owned by the beneficiary, not by Savabhai Investment Group. The director concluded that none of the overseas businesses are owned or controlled by Savabhai Investment Group (Pvt) Ltd., and noted that there is no evidence that the petitioner's claimed parent company currently has any staff or functions as a business. Accordingly, the director found that the overseas entity is not a qualifying organization for the purpose of this visa classification.

On appeal, counsel for the petitioner concedes that the foreign entity owns only a minority interest in Cosy Water Park, but asserts that Savabhai Investment Group (Pvt.) Ltd. owns 100 percent of Al-Madad Dairy Farm and "Dr. Sadruddin Dental Clinic." Counsel suggests that the director misinterpreted the evidence submitted with respect to the ownership of the Al-Madad Dairy Farm, based on "cultural differences" between the United States and Pakistan. Counsel asserts that the entity is a cooperative farming unit divided into nine units or sheds, with each shed owned in full by the individuals listed in the partnership agreement. Counsel states that at the time of the agreement, the beneficiary and his spouse owned 100 percent of their respective sheds. Counsel asserts that the beneficiary and his spouse later created Savabhai Investment Group (Pvt.) Ltd. "as a way of grouping the distinct businesses into one easily managed entity." Counsel claims that the ownership of the sheds was transferred to the corporate entity pursuant to its memorandum of association. Counsel asserts that there is an affiliate relationship between the two dairy farm sheds and the petitioning company.

With respect to the dental clinic, counsel states that the business is not incorporated, but asserts that there is sufficient evidence in the record to establish that the beneficiary owns the business and it is operational. Counsel asserts that the beneficiary transferred the right of ownership and control of the clinic to Savabhai Investment Group (Pvt.) Ltd. at the time it was incorporated. Counsel alleges that Savabhai Investment Group (Pvt) Ltd. owns 100% of the dental clinic, thus it is also an affiliate of the petitioning company.

Upon review, the petitioner has not established that the petitioner maintains a qualifying relationship with its claimed parent company, as the petitioner has not established that the foreign entity is a qualifying organization doing business overseas.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *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). In the context of this visa petition, 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.

In this case, as the claimed parent company is a holding company with no income, employees or any documented business activities in its own right, the petitioner must establish that the foreign entity does in

fact do business abroad through one or more of its claimed investment businesses, Cosy Water Park, Al-Madad Dairy Farm, or the beneficiary's dental clinic.

The evidence in the record shows that Cosy Water Park is organized as a partnership with 20 individual partners, none of whom own more than a 7.5% interest in the company. Although the beneficiary owns a 7.5% interest in the company and his spouse owns a 5% interest in the company, there is no evidence that any of the other owners of this business transferred their interest to Savabhai Investment Group (Pvt.) Ltd. The fact that the foreign entity's memorandum of association references an intent to "take over" the water park is irrelevant absent evidence that such a change in ownership actually occurred. Counsel's statement in response to the request for evidence that Savabhai Investment Group (Pvt.) Ltd. is "the one and only entity that has the final control" in how the water park operates is completely unsupported by the evidence in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Rather, the summary of Cosy Water Park's capital account as of June 30, 2005 shows that the company continues to be owned by 20 individual partners. It is unclear how the petitioner intends to demonstrate control of the park by Savabhai Investment Group (Pvt.) Ltd. without providing any evidence of ownership by the foreign entity. In addition, the petitioner has not established an affiliate relationship between Savabhai Investment Group (Pvt.) Ltd. and Cosy Water Park, as one entity is owned by three individuals, and the other is owned by 20 individuals, with neither entity having a majority owner.

On appeal, counsel abandons his previous argument that the foreign entity owns and controls Cosy Water Park, and concedes that it only owns a minority interest. Counsel offers no further explanation for the previous statements that the foreign entity in fact operates and controls the water park. 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). 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.* at 591. The AAO notes that counsel's statement that Savabhai Investment Group (Pvt.) Ltd. only owns a minority interest in Cosy Water Park is also inaccurate. A corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). The evidence shows that the beneficiary and his spouse, individually, are minority owners of Cosy Water Park. As noted above, the foreign entity does not have an ownership interest in the park, and it is not an affiliate of Cosy Water Park.

The AAO will next consider the claim that the foreign entity does business through Al-Madad Dairy Farm. The record appears to show that the beneficiary and his spouse each own a shed and a portion of the land, but there is no evidence to establish that ownership and control of the individually owned farms was transferred to Savabhai Investment Group (Pvt.) Ltd. Again, the fact that the foreign entity noted its intent to "take over" the entire dairy farm in its memorandum of association does not establish that such a change in ownership in fact occurred. Rather, the evidence submitted indicates that two of the farm sheds continue to be owned

separately and individually by the beneficiary and his spouse, while the remaining approximately 88% of the land and other six farms sheds are owned by other individuals who have no ownership interest in Savabhai Investment Group (Pvt.) Ltd. The petitioner's claim that Savabhai Investment Group (Pvt.) Ltd. owns and is doing business through Al-Madad Dairy Farm has not been corroborated with documentary evidence, and therefore the parent-subsidiary relationship has not been established. The fact that the beneficiary and his spouse individually own and control farm plots and individually own a minority interest in Savabhai Investment Group (Pvt.) Ltd. is not sufficient to establish an affiliate relationship between the entities. The petitioner has not established that the foreign entity is doing business through Al-Madad Dairy Farm.

Finally, the AAO finds no evidence to support counsel's claim that the foreign entity owns and controls the dental clinic, which, based on the evidence submitted, is owned and operated by the beneficiary as a sole proprietorship. Again, it must be emphasized that a corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). The dental clinic will not be considered to be owned and/or controlled by Savabhai Investment Group (Pvt.) Ltd. simply because one of its shareholders owns the clinic, or because it states in its memorandum of association that it intends to acquire and take over such clinic. Counsel's statement that the beneficiary transferred the right of control and ownership of the clinic to Savabhai Investment Group (Pvt.) Ltd. is unpersuasive. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Finally, there is no evidence to support counsel's argument that the legal rights and legal title of the water park, dairy farm and dental clinic are vested with Savabhai Investment Group (Pvt.) Ltd., or counsel's statement that all four entities in Pakistan are owned by the beneficiary, his spouse, and his sister. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the above, the petitioner has not established that Savabhai Investment Group (Pty) Ltd., which has no employees and does not appear to earn income or pay taxes, is engaged in the regular, systematic and continuous provision of goods and/or services, and thus it is not a qualifying foreign organization for the purposes of this visa classification. It cannot be considered a holding company with active subsidiaries absent evidence that it actually owns another company that is doing business in Pakistan. Contrary to counsel's assertions, the fact that the company is a member of the chamber of commerce and has a savings account is not sufficient to establish that it is doing business as defined in the regulations.

Another related issue not addressed by the director is the apparent reorganization of the foreign operations subsequent to the beneficiary's transfer to the United States. The petitioner's claimed parent company was organized nearly three years after the approval of the beneficiary's initial L-1A petition, and no explanation has been provided regarding the previous owner of the petitioner's stock, "Savabhai Investment Group." Clearly, the beneficiary's prior foreign employer was not Savabhai Investment Group (Pvt.) Ltd. if that company did not exist prior to 2004. There also remains some question as to whether the stock was actually

transferred from one party to the other, as the petitioner has submitted two completely different stock ledgers, one of which indicates that Savabhai Investment Group is the only shareholder. The petitioner's 2005 corporate tax return also appears to identify Savabhai Investment Group, and not Savabhai Investment Group (Pvt.) Ltd., as the owner of its stock. 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.

Based on the foregoing discussion, the petitioner has not established that the U.S. company and its claimed parent company are qualifying organizations. For this additional reason, the appeal will be dismissed.

The AAO acknowledges that USCIS approved other L-1 nonimmigrant petitions that had been previously filed on behalf of the beneficiary. It must be emphasized that each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous petition approvals by denying the instant petition.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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

ORDER: The appeal is dismissed.