U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

File: EAC-03-030-54649 Office: VERMONT SERVICE CENTER Date: OCT 1 1 2004

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

[redacted]

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, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 General Manager as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of Maryland that claims to operate two or three motels and is involved in some unexplained capacity in the plastics trade. The petitioner claims that it is the subsidiary of Bijal Trading, located in Mumbai, India. The beneficiary was initially granted a three-year period of stay in the United States as an L-1A nonimmigrant intracompany transferee, and the petitioner now seeks to extend the beneficiary's stay for an additional three-year period.

The director denied the petition concluding that the petitioner did not establish that the beneficiary's employment abroad was in a primarily managerial or executive capacity, or that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner requests an "[a]pplication of correct legal standards for grant classification under Section 101(a)(15)(L) of the Immigration and Nationality Act." The AAO notes that, though counsel requested 60 days from January 29, 2003, the date of filing the appeal, in order to submit a brief or additional evidence, as of the date of this decision the AAO has received no further correspondence from counsel or the petitioner.

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 in the present matter is whether the beneficiary was employed abroad 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.

In the initial petition filed on November 4, 2002, the petitioner did not provide a description of the beneficiary's job duties with his foreign employer. The sole evidence submitted to show that the beneficiary worked for the foreign entity was a business card, which did not include his title or an indication of the date that it was created.

On May 23, 2003, the director requested additional evidence. Although a petitioner is not required to submit evidence with an extension petition, the director may request any evidence deemed necessary. 8 C.F.R. §§ 214.2(l)(3)(viii) and (l)(14)(i). Specifically, regarding the beneficiary's employment abroad, the director requested: (1) a comprehensive description of the duties that were performed by the beneficiary during his employment with the foreign entity; (2) the number of subordinate supervisors that were under the beneficiary's management; (3) the job titles and job duties of the employees that the beneficiary managed; (4) an account of the executive, managerial, and technical skills that were required to perform the beneficiary's overseas duties; (5) the amount of time the beneficiary allotted to executive and managerial tasks, as well as non-executive and non-managerial tasks; (6) the degree of discretionary authority the beneficiary had in day-to-day operations; and (7) an organizational chart for the foreign entity, including complete position descriptions for all of the foreign entity's employees.

In a response dated August 14, 2003, counsel for the petitioner submitted an organizational chart for the beneficiary's foreign employer, and a letter from the Proprietor of the foreign entity that described the beneficiary's duties abroad. The proprietor's letters stated:

> In 1994, [the beneficiary] was appointed Import/Export Manager. He remained in that position until June 1998, when he was transferred to manage [the petitioner]. During his position as Import/Export Manager . . . [the beneficiary] had the responsibility and authority to make decisions with respect to cost effective procurement of raw materials, identify items for importation to meet the expanding consumer product market in India, negotiate terms of purchase/sale, [and] identify and implement competitive advantages of financing through various sources. As a direct result of his ability to negotiate financing terms our business experienced growth of more than 300% in four years. [The beneficiary's] ability to raise financing on attractive terms also enabled [the foreign employer] to invest in commercial buildings and industrial yard [sic]. [The beneficiary] occupied the managerial and supervisory position with [the foreign employer] with direct responsibility and authority to make and implement financing/negotiation decisions; and supervise management of commercial/industrial properties through [a] staff of [an] office manager, [a] receptionist, [a] manager warehouse, and [a] contractor for direct supervision of day to day import/export of raw material.
>
> In his capacity as supervisor of commercial industrial properties he established the goals and objectives for producing revenues that are sufficient to pay for the property, upkeep and profit for the investor. [The beneficiary] had great latitude in making the decisions as to how to make the property generate revenues by short term/long term license/lease. He accepted my direction to accept and/or reject the deals [that] did not meet my approval. [The beneficiary]

> supervised the following persons: 1. Praveen Shah, office Manager, Bachelor of Commerce, 2. Kirti Shah, Ware House [sic] Manager, Industrial Engineer, 3. Sangeeta Shah, Receptionist, Secondary School Certificates, and 4. Contract Labor.

The petitioner provided no response to the director's request for: (1) complete position descriptions for all of the foreign entity's employees, including the job duties of the employees that the beneficiary managed; (2) an account of the executive, managerial, and technical skills that were required to perform the beneficiary's overseas duties; and (3) the amount of time the beneficiary allotted to executive and managerial tasks, as well as non-executive and non-managerial tasks. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The 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).

On December 30, 2003, the director denied the petition, in part based on a finding that the petitioner did not establish that the beneficiary's employment abroad was in a primarily managerial or executive capacity. The director stated that "the beneficiary's duties abroad appear to indicate that his [primary] duties involved the actual procurement activities on behalf of the company, rather than the supervision of other professionals performing these duties." Regarding the employees that the beneficiary supervised abroad, the director noted unexplained discrepancies between the proprietor's letter and the organizational chart for the foreign entity.

On appeal, counsel for the petitioner did not specifically address this ground for denial and, in effect, concedes the issue. Despite the director's request for evidence and the opportunity provided on appeal, the petitioner has provided no new evidence to support that the beneficiary was employed in a primarily managerial or executive capacity abroad.

Upon review, the AAO will affirm the director's determination on this issue. 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.* In the instant matter, the description of the beneficiary's duties abroad includes mostly non-managerial and non-executive tasks, such as identifying items for importation, negotiating the terms of purchase and sale agreements, and negotiating financing transactions. Based on the current record, the AAO is unable to determine whether the claimed managerial tasks constituted the majority of the beneficiary's duties, or whether the beneficiary primarily performed non-managerial administrative or operational duties. Although specifically requested by the director, the submitted description of the beneficiary's job duties abroad does not establish what proportion of the beneficiary's duties were managerial in nature, and what proportion were actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Thus, counsel has not established whether the beneficiary was primarily engaged in managerial duties, or rather tasks necessary to produce the foreign entity's products or to provide the foreign entity's services. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Though requested by the director, counsel has not clearly established the level of discretionary authority the beneficiary exercised in the course of his work with his foreign employer. The letter from the proprietor of beneficiary's foreign employer states that "[the beneficiary] had the responsibility and authority to make decisions with respect to . . . procurement of raw materials, to negotiate terms of purchase/sale . . . [and] to make and implement financing/negotiation decisions." Yet, later in the same letter, the proprietor states that "[the beneficiary] accepted my direction to accept and/or reject the deals [that] did not meet my approval." Thus, the proprietor's later statement implies that the beneficiary's discretion was limited with regard to his daily functions.[1] *See* Section 101(a)(44)(A)(iv) of the Act, 8 U.S.C. § 1101(a)(44)(A)(iv).

The letter from the beneficiary's foreign employer indicates that the beneficiary managed commercial and industrial properties through the supervision of subordinate staff, including an office manager, a warehouse manager, a receptionist, and contract labor. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by a subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, counsel has not established that an advanced degree was actually necessary to perform the duties of the beneficiary's subordinates abroad. Although specifically requested by the director, counsel did not provide the job duties of the employees that the beneficiary managed. Thus, the AAO cannot determine whether the subordinate employees were supervisory or managerial, or what level of

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[1] Counsel has not clarified whether he is claiming that the beneficiary was primarily employed abroad in managerial duties under section 101(a)(44)(A) of the Act, or executive duties under section 101(a)(44)(B) of the Act. A petitioner must clearly describe the duties performed by the beneficiary and indicate whether such duties were either in an executive or managerial capacity. The petitioner must demonstrate that the beneficiary's responsibilities met the requirements of one or the other capacity. In the instant matter, as the beneficiary's titles have included the word "manager," and counsel and the petitioner have consistently referred to the beneficiary as a manager, the AAO has focused its analysis on the requirements of "managerial capacity" as provided in section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). Yet, the AAO here notes that the record does not establish that the beneficiary functioned in a primarily executive capacity abroad, due to a lack of wide latitude in discretionary decision making as required by section 101(a)(44)(B)(iii) of the Act, 8 U.S.C. § 1101(a)(44)(B)(iii).

education or experience was prerequisite to successfully perform the duties of their respective positions. 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). Though the beneficiary's foreign employer indicates that two of the beneficiary's subordinates possessed baccalaureate degrees, as stated above, their possession of a bachelor's degree alone does not show that they were employed in a professional capacity. Accordingly, the record lacks sufficient evidence to establish that the beneficiary was supervising and controlling the work of other supervisory, professional, or managerial employees as contemplated by section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii).

As noted by the director, the petitioner has not clearly established the structure of the foreign organization, specifically the beneficiary's subordinates abroad. The letter from the beneficiary's foreign employer indicates that the beneficiary, as import/export manager, supervised an office manager, a warehouse manager, a receptionist, and contract laborers. Yet, the organizational chart for the foreign entity reflects that the import/export manager supervised a shipping agent, an accountant, and part-time contract labor. The chart shows that a "Manager Office," a receptionist, and a "Manager Warehouse" were under the supervision of the proprietor, not the import/export manager. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no explanation or evidence to clarify these inconsistencies.

Thus, the petitioner has not established that the beneficiary was employed abroad in a primarily managerial or executive capacity as required by the regulation at 8 C.F.R. § 214.2(l)(3)(iv). For this reason, the appeal will be dismissed.

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

With the initial petition, the petitioner submitted a letter that described the beneficiary's prospective job duties in the United States as follows:

> [The beneficiary] was transferred to the United States to develop and expand business ventures specifically directed to utilize investment opportunities and diversify business activities. Since his arrival in USA, he has orchestrated the leasing of University Lodge, Super 8 Motel and Knights Inn, and is actively pursuing other investment opportunities. His duties as General Manager remain the same; namely, identification of sources of plastic raw materials, cost effective purchases independent decision making to meet projected demand of plastic raw materials based on market conditions, identify commercial properties and supervise management of commercial properties. In addition to his continued liaison between the U.S. and foreign companies, [the beneficiary] continues to remain responsible for overseas investments and operations of the parent company.

> [The beneficiary's] current salary is $60,000 per year. On the average he devotes over forty hours a week in his current job duties, as outlined above. There has been no change in the terms or conditions of his employment, other than having to devote a larger amount of time in overseeing the Company's newest investment. [The petitioner's] Knights Inn employs seven (7) individuals and have [sic] combined annual room revenues of approximately $685,000.00[.]

Counsel further submitted: (1) monthly employee time summaries showing the hours and wages for each worker employed at the Knights Inn from April to September 2002; (2) a 2002 second quarter tax summary showing wages paid to each worker employed at the Knights Inn from April to June 2002; (3) an employee time summary showing hours and wages paid to one worker employed at an unspecified location in March 2002; (4) monthly employee time summaries showing the hours and wages for each worker employed at the Super Eight Motel from January to March 2002; (5) a 2002 second quarter tax summary showing wages paid to each worker employed at the Super Eight Motel from April to June 2002; and (6) a 2002 first quarter tax summary showing wages paid to each worker employed at the Super Eight Motel from January to March 2002.

In the May 23, 2003 request for evidence, the director requested further evidence that the beneficiary would be employed in the United States in a primarily managerial or executive capacity, including: (1) a comprehensive description of the beneficiary's duties, indicating how they are managerial or executive in nature; (2) a demonstration of how the beneficiary will function at a senior level within an organizational hierarchy as well as in position title, or in the alternative, a demonstration that the beneficiary will be managing a subordinate staff of professional, managerial, or supervisory personnel who will relieve him from performing non-qualifying duties; (3) an organizational chart for the petitioner; (4) a list of all of the petitioner's employees that identifies each employee by name and title; (5) a complete position description for each of the petitioner's employees, including a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis; and (6) a breakdown of the number of hours devoted to each of the beneficiary's job duties on a weekly basis.

In response to these specific requests, on August 14, 2003 counsel submitted: (1) a statement further describing the beneficiary's duties; (2) a list of the petitioner's employees, indicating their names, titles, and wages earned in 2002; (3) copies of 2002 Forms W-2 Wage and Tax Statements for the petitioner's employees; (4) an organizational chart for the petitioner; (5) a copy of the beneficiary's 2002 Form 1040 U.S. Individual Income Tax Return; (6) a copy of the beneficiary's 2002 Virginia State Income Tax Return; and (7) a copy of the petitioner's 2002 Form 1120 U.S Corporation Income Tax Return. The statement of the beneficiary's duties provided:

> [The beneficiary] as General Manager of [the petitioner] is responsible for overall policy and oversight of three separate divisions:
>
> 1. Management of Super 8 Motel, Culpepper, VA.
>
> 2. Management of [Knights] Inn, Culpepper, VA.

3. Kalpana Management.

   In his capacity, [the beneficiary's] duties include:

   - Negotiation of Commercial Contracts
   - Negotiation of Franchise Agreement compliance with franchisor's quality assurance, standards, specifications, administrating, clearliness [sic], accounting, capital maintenance and improvement requirements.

4. Attend franchisor's management training/regional and annual conferences.

5. Identify acquisition leasing, investment opportunities.

6. Provide consulting services to other hotels/motels.

7. Negotiate with banks and financial institutions.

8. Negotiate with Vendors.

9. Hire/fire employees.

The employee list provided the names, titles, and 2002 wages of 20 employees, including a bookkeeper, a night auditor, a supervisor, and 17 housekeepers. The list states that "[the beneficiary] directly supervise [sic] Bookkeeper, Supervisor, and [Night] Auditor's [sic] with supervisory responsibilities for the house keeping staff of more than fifteen (15) employees."

The petitioner provided no response to the director's request for a complete position description for each of the petitioner's employees, including a breakdown of the number of hours devoted to each of the employees' job duties on a weekly basis. Critically, the petitioner also failed to provide a breakdown of the number of hours devoted to each of the beneficiary's job duties on a weekly basis. Again, 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).

In her December 30, 2003 decision to deny the petition, the director concluded that the petitioner did not establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity. The director found that the petitioner did not sufficiently explain the beneficiary's duties such that CIS could determine whether they will be executive or managerial in nature. The director noted that the record did not clearly indicate the number of subordinates that will work under the beneficiary. The director further highlighted that counsel did not submit the requested position descriptions for the petitioner's employees, and thus CIS could not determine whether the beneficiary will be managing individuals that are supervisory, professional, or managerial. The director finally noted that the wages paid to employees and the

organizational chart submitted for the petitioner suggest that the beneficiary's subordinates are not truly supervisors as claimed.

On appeal, counsel for the petitioner did not specifically address this ground for denial. Counsel provided no new evidence to support that the beneficiary will be employed in a primarily managerial or executive capacity.

Upon review, the AAO will affirm the director's determination on this issue. As noted above, 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.*

In the instant matter, the description of the beneficiary's prospective duties includes mostly non-managerial and non-executive tasks, such as identifying sources of plastic raw materials, making cost-effective purchases, attending franchisor's management training and annual conferences, providing consulting services to other motels, and negotiating with vendors. Based on the current record, the AAO is unable to determine whether the claimed managerial tasks constitute the majority of the beneficiary's duties, or whether the beneficiary will primarily perform non-managerial administrative or operational duties. Although specifically requested by the director, the submitted description of the beneficiary's job duties in the United States does not establish what proportion of his tasks are managerial in nature, and what proportion are actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Thus, counsel has not established whether the beneficiary is primarily engaged in managerial duties, or rather tasks necessary to produce the petitioner's products or to provide the petitioner's services. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

In fact, the petitioner has not sufficiently explained and documented its business activities such that the AAO can determine the actual scope of the general manager position. While counsel claims that the petitioner operates two motels, the evidence of record presents serious inconsistencies on this issue. In counsel's letter dated October 31, 2002, submitted with the initial petition, he states that "[the petitioner] currently employs seven (7) individuals . . . [and the petitioner's] current operations represent two hotel/motel projects in operation." Yet, the petitioner's letter dated October 25, 2002 states that "[the beneficiary] has orchestrated the leasing of University Lodge, Super 8 Motel and Knights Inn," which implies that the petitioner operates three motel properties. The petitioner's letter further states that "[the petitioner's] Knights Inn employs seven (7) individuals." If the petitioner employs seven individuals as counsel states, and seven individuals work for the petitioner's Knights Inn as the petitioner states, then evidence reflects that the petitioner was only operating one motel at the time the petition was filed.

The payroll records submitted for the record provide additional inconsistencies. The petitioner submitted documents, each labeled "Employee Time Summary," that report the monthly hours and wages of motel staff at the Knights Inn and Super Eight Motel. These documents show that employees worked for the petitioner's Super Eight Motel from January to June 2002, and for the petitioner's Knights Inn from April to September

2002. This evidence implies that the petitioner ceased operating the Super Eight Motel by June 2002, and only operated the Knights Inn in the later half of 2002. Other than the petitioner's statement regarding the leasing of the University Lodge, there is no evidence in the record of the petitioner's business activity with respect to this property. 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. As discussed above, the record is unclear regarding the actual number of properties operated by the petitioner, and counsel has offered no evidence or explanation to reconcile significant inconsistencies.

In the petitioner's letter submitted with the initial petition, it indicated that the beneficiary's duties include identifying sources of plastic raw materials and making decisions regarding the projected demand of plastic raw materials based on market conditions. Yet, counsel has provided no evidence that the petitioner's operations relate to or involve plastic raw materials, and the record does not establish that these duties are germane to the work of the general manager of motel properties. In the petitioner's letter in response to the director's request for evidence, it stated that the beneficiary is responsible for "provid[ing] consulting services to other hotels/motels," and that he has oversight of the petitioner's Kalpana Management division. Yet, counsel has provided no documentation or explanation of the petitioner's consulting activities, nor has he described the function of the Kalpana Management division. Such evidence should be readily available, including consulting invoices and correspondence, a description of the services that Kalpana Management provides, a list of clients that the Kalpana Management division has served, and a description of the duties of the employees in the Kalpana Management division. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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). Further, counsel has not clearly established the number of employees under the beneficiary's supervision, as the 2002 employee list submitted in response to the director's request for evidence names 20 employees, while letters from the petitioner and counsel submitted with the initial petition indicate that the petitioner employs seven workers. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Again, counsel has not sufficiently explained and documented the petitioner's business activities such that the AAO can determine the true scope of the beneficiary's position. The numerous unresolved inconsistencies in the record, detailed above, call into question the veracity of the petitioner's evidence. 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 2002 employee list indicates that the beneficiary directly supervises a bookkeeper, a supervisor, a night auditor, and over 15 housekeeping staff. The organizational chart for the petitioner reflects that the

beneficiary operates three divisions through the use of subordinate supervisors. As stated above, if it is claimed that the beneficiary's duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. *See* § 101(a)(44)(A)(ii) of the Act. In the instant case, counsel has not established that an advanced degree is necessary to perform the duties of the beneficiary's subordinates in the United States. Although specifically requested by the director, counsel did not provide the job duties of the employees that the beneficiary manages. Thus, the AAO cannot determine what level of education or experience is required to successfully perform the duties of their respective positions. As noted by the director, the employee indicated on the organizational chart as the supervisor of Kalpana Management carries the title of Housekeeping on the employee list, which undermines a finding that he is a professional or supervisory employee. Accordingly, the record lacks sufficient evidence to establish that the beneficiary will be supervising and controlling the work of other supervisory, professional, or managerial employees as contemplated by section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii).

Thus, counsel has not established that the beneficiary will be employed in a primarily managerial or executive capacity as required by the regulation at 8 C.F.R. § 214.2(l)(3)(ii). For this additional reason, the appeal will be dismissed.

It is noted for the record that the petitioner's claim to eligibility is severely injured by its failure to adequately respond to the director's request for evidence. The regulations provide that the director may request any evidence deemed necessary to determine the petitioner's eligibility. 8 C.F.R. §§ 214.2(l)(3)(viii) and (l)(14)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The 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). Considering the petitioner's failure to fully respond to the director's request for material evidence, the director properly denied the petition and the appeal must be dismissed.

Beyond the decision of the director, the inconsistencies in the record of proceeding raise doubts as to whether the petitioner has been doing business in the United States in a regular, systematic, and continuous manner, as required by 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*). As detailed above, the petitioner has not clearly explained and documented its business activities, and the evidence of record contains numerous inconsistencies regarding the nature of its operations. The AAO is unable to determine the number of motels the petitioner operates, the number of individuals employed by the petitioner, whether the petitioner provides consulting services to other motels as claimed, or whether the petitioner is involved in the plastics trade. Again, the numerous unresolved inconsistencies in the record call into question the veracity of the petitioner's evidence. Doubt cast on any aspect of the petitioner's proof may 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. For this additional reason, the petition will be dismissed.

The AAO notes that the CIS Vermont Service Center previously approved a prior petition filed by the petitioner on behalf of the beneficiary. The director's decision does not indicate whether she reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. Further, the prior approval of the

petitioner's prior nonimmigrant worker petition does not preclude the AAO from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Omni Packaging, Inc. v. INS*, 930 F. Supp. 28, 33-34 (D. P.R. 1996); *Matter of Khan*, 14 I. & N. Dec. 397 (BIA 1973)(finding that the agency is not required to approve an application where eligibility has not been demonstrated, merely because of a prior approval, which may have been erroneous). 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). Additionally, the AAO's authority over the service centers is generally comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition 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*, 534 U.S. 819 (2001).

In visa proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.