U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2006

WAC 04 244 50836

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the instant immigrant petition to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C). The petitioner is a corporation organized under the laws of the State of California that is operating as a trading company and is engaged in "textile embroidery, printing and real estate investments businesses." The petitioner seeks to employ the beneficiary as its president.

The director denied the petition concluding that the petitioner did not demonstrate that: (1) the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity; or (2) a qualifying relationship existed between the foreign and United States entities at the time of filing.

On appeal, counsel for the petitioner challenges the director's findings, stating that Citizenship and Immigration Services (CIS) erroneously concluded that the beneficiary did not qualify for the immigrant classification sought under the present petition. Counsel submits a brief and additional documentary evidence in support of the appeal.

Section 203(b) of the Act states, in pertinent part:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
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> * * *
>
> (C) Certain Multinational Executives and Managers. – An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives or managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement, which indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien.

The first issue in this proceeding is whether the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

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

> The term "managerial capacity" means an assignment within an organization in which the employee primarily-
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> (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) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
>
> (iv) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

> The term "executive capacity" means an assignment within an organization in which the employee primarily-
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> (i) Directs the management of the organization or a major component or function of the organization;
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> (ii) Establishes the goals and policies of the organization, component, or function;
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> (iii) Exercises wide latitude in discretionary decision-making; and
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> (iv) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the instant petition on August 30, 2004, noting the beneficiary's proposed employment as president of the three-person company. While the petitioner submitted an undated letter with the petition, it did not specifically address the beneficiary's position in the United States entity.

In a notice dated April 8, 2005, the director noted that the record was inadequate for establishing the beneficiary's employment as a manager or executive. The director asked that the petitioner submit the following evidence: (1) a description detailing the specific job duties to be performed by the beneficiary in the United States company, as well as the education and employment qualifications required for the position; (2) an organizational chart reflecting the petitioner's staff on the date of the notice, including the beneficiary's

position and those of her subordinates; (3) a brief description of the job duties performed by the beneficiary's subordinate employees, their educational levels, wages, status as a part-time or full-time employee, and immigration status; (4) copies of the federal and state quarterly wage reports filed by the petitioner for the last four quarters; and (5) the petitioner's payroll summary, IRS Form 1120, U.S. Corporation Income Tax Return, and IRS Forms W-2 and W-3, Wage and Tax Statement.

Counsel for the petitioner responded in a letter dated June 28, 2005. In an appended statement, the petitioner stated that in the position of president, the beneficiary would perform "the tasks of an executive and a manager." The petitioner explained:

> [The beneficiary] is the highest ranking executive at [the petitioning entity] and, by corporate charter, her actions are subject to review only by the board of directors and the shareholders of the Corporation. [The petitioner's] Bylaws are attached as Exhibit 4. [The petitioner's] staff, including the General Manager, report to [the beneficiary]. [The beneficiary] manages the entire organizational operations. She also supervises and controls the work of other supervisory and managerial employees. The company's organizational chart is attached as Exhibit 12. [The beneficiary] has complete authority to hire, fire, promote and discipline [the petitioner's] employees. She has complete discretion over the day-to-day operations and decisions concerning [the petitioning entity]. She exercises wide-latitude in settling company financing, budget, hiring, personnel, investment, customer service and business policies. As the company grows, the general manager and the department managers will take more decision making responsibilities for their departments and for the company as a whole. [The beneficiary] has full control and investing authority for the [petitioning entity] and [the foreign entity's] U.S. investment. To date, she has hired and she manages Eight (8) employees. The company plans to add 4-6 employees in the next 12-24 months.
>
> [The beneficiary] performs all her duties with a high degree of autonomy employing complete discretion and authority. At [the petitioning entity], the performance of the above-detailed executive and managerial duties occupy, at least 80-90% of [the beneficiary's] time. She spends the remainder of her time at the Company negotiating contracts, overseeing accounting and finance functions and performing day-to-day functions. As the top executive and manager at [the petitioning entity], [the beneficiary] coordinates and consults with the General Manager and the department managers to maximize the company's business development and its performance. [The petitioner] plans to hire additional employees to reduce [the beneficiary's] participation in day-to-day operational functions from 10-20% down to 0-5% of her time. At present, the Company has three first-line managers and one General Manager, in the next 12-24 months, additional employees will be added to fill the lower layers of the [c]ompany [o]rganizational [c]hart thereby moving the first-line managers into true managerial positions while the General Manager is being groomed to eventually take-over most of [the beneficiary's] responsibilities at [the petitioning entity]. [The beneficiary], currently, is responsible for one general manager and three managers-in-training.

The petitioner also submitted its quarterly tax return for the quarter ending September 30, 2004, the period during which the instant petition was filed, which identified the beneficiary and three other individuals as employees. According to the organizational chart, also submitted by the petitioner in its June 28, 2005

response, the three employees held the positions of sales manager, properties supervisor, and computer technician. The petitioner identified the computer technician as a part-time employee, working twenty hours per week. The petitioner further provided the requested tax returns and the IRS Form W-2 issued by the petitioner in 2004.

In a decision dated December 14, 2005, the director concluded that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. The director stated that the job description is insufficient as it "contains many elements that restate the responsibilities listed in the definitions of executive and managerial capacity." The director also stated that the description was "vague and nonspecific", and failed to "define the goals, policies, [or] strategies, or clarify who actually performs the marketing, budgeting, finance and accounting, advertising, and personnel functions." The director further noted inconsistencies in the staff identified by the petitioner on its organizational chart and those listed on the petitioner's quarterly wage report for the third quarter of 2004. Noting that the petitioner had failed to submit job descriptions for each of the named subordinates, the director concluded that the beneficiary's subordinate staff would not include any supervisory, professional or managerial employees, and also found that the beneficiary would not be employed as a function manager. Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on January 13, 2006, claiming that the director erred in its finding that the beneficiary would not be a manager or executive of the United States entity. In an appended appellate brief, dated January 12, 2006, counsel states that as the company's president, the beneficiary "is performing the tasks of an executive and a manager." In support of the beneficiary's employment in a qualifying capacity, counsel essentially restates the job description already stated above and submits a revised organizational chart of the petitioner's staffing levels[1]. Counsel contends that the petitioner's "viability and success" are dependent on the beneficiary's "skills in starting a business and nurturing its growth." Counsel notes an increase in the petitioner's sales during the year 2003 following the beneficiary's appointment as the company's president. Counsel also addresses the director's statement that the company's general manager was not identified on the petitioner's quarterly wage report as an employee during the period in which the immigrant visa petition was filed. Counsel states that following the fourth quarter of 2003 the company's general manager was paid as an independent contractor rather than an employee of the petitioner, and therefore received an IRS Form 1099. Counsel submits on appeal documentary evidence already provided for the record and considered by the director.

Upon review, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

The petitioner does not clarify whether the beneficiary would be primarily engaged in managerial duties under section 101(a)(44)(A) of the Act, or primarily executive duties under section 101(a)(44)(B) of the Act. Here, both the petitioner and counsel identify the beneficiary as "performing the tasks of an *executive* and a *manager*." **(Emphasis added). A petitioner must clearly describe the duties to be performed by the**

[1] In addition to eliminating a second "sales manager" position, the revised organizational chart reflected the following changes: (1) renamed the original position of sales manager to textiles manager; (2) identified the employee [redacted] as the manager of properties in a position equal to the textiles manager, rather than the previously identified position of supervisor of properties, which appeared to be a lower-level position; and (3) identified the company's computer technician as a manager of administration.

beneficiary and indicate whether such duties are either in an executive or managerial capacity. The petitioner must demonstrate that the beneficiary's responsibilities will meet the requirements of one or the other capacity. If the petitioner chooses to represent the beneficiary as both an executive *and* a manager, it must establish that the beneficiary meets each of the four criteria set forth in the statutory definition for executive and the statutory definition for manager. As will be discussed, the record does not corroborate the petitioner's claim that the beneficiary would be employed as an executive or as a manager.

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. § 204.5(j)(5). As noted by the director in his December 14, 2005 decision, a significant portion of the beneficiary's job description is essentially a restatement of the criteria outlined in the statutory definitions of "managerial capacity" and "executive capacity." *See* §§ 101(a)(44)(A) and (B). Specifically, the petitioner stated such managerial responsibilities as "manag[ing] the entire organizational operations," "supervis[ing] and control[ling] the work of other supervisory and managerial employees," and "[possessing] complete discretion over the [petitioner's] day-to-day operations and decisions." In addition, the petitioner noted the beneficiary's executive responsibility of exercising wide latitude in determining company policies. According to the petitioner, the beneficiary would devote approximately 80 – 90 percent of her time to these executive and managerial duties; yet the blanket restatements do not convey the beneficiary's true role in the United States company. The petitioner cannot rely on a restatement of the statute to establish the beneficiary's employment in a qualifying capacity. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Also, the limited job description offered by the petitioner fails to identify the managerial or executive job duties to be performed by the beneficiary in her position as president. In addition to the above restatements of the statutory definitions, the petitioner stated that the beneficiary would possess "full control and investing authority" over the petitioning entity, holds a "high degree of autonomy," "coordinates and consults with the [g]eneral [m]anager," and spends 10 – 20 percent of her time "negotiating contracts, overseeing accounting and finance functions and performing day-to-day functions." The vague job duties are insufficient to determine what specific managerial or executive tasks the beneficiary would perform on a day-to-day basis. For example, the petitioner did not define the "day-to-day operations" to be managed by the beneficiary, or clarify her role in the company's finances, budget, investments, customer service and business policies. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to answer a critical question in this case: What does the beneficiary primarily do on a daily basis? The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The AAO notes that despite the director's reference to the "vague and nonspecific" job description, the petitioner's counsel submitted essentially the same description on appeal, without supplementing the record with a more detailed outline of the beneficiary's proposed managerial or executive job duties.

Moreover, the job description offered by the petitioner raises inconsistencies in the petitioner's staffing levels. Specifically, the petitioner noted that the beneficiary would supervise the company's general manager, as well as three first-line managers. With regard to the general manager, the record does not substantiate the petitioner's claim that it either employed or contracted for the services of a general manager at the time of filing. The petitioner's quarterly tax return for the period ending September 30, 2004 did not identify the

general manager as an employee. The AAO recognizes counsel's claim on appeal that on the filing date, the general manager was being paid as an independent contractor of the company. Counsel, however, does not submit documentary evidence supporting this claim, the most important being a copy of the purported IRS Form 1099 issued by the petitioner in 2004 to the general manager.[2] 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). There is insufficient evidence in the record to demonstrate that the beneficiary would be supervising a general manager in the petitioning organization.

The petitioner also references three first-line managers as subordinates of the beneficiary. However, a review of the petitioner's organizational chart and quarterly wage report for the quarter ending September 30, 2004 indicate that the beneficiary would supervise three employees holding the positions of sales manager, properties supervisor, and part-time computer technician.[3] The AAO notes that despite the managerial and supervisory titles assigned to two of the beneficiary's subordinates, the petitioner has not represented that either subordinate has a lower-level staff who would perform the actual day-to-day, non-managerial operations of the company.[4] Therefore, it is questionable whether the beneficiary is actually directing or supervising the work of supervisory or managerial employees. *See* section 101(a)(44)(A) of the Act.

The changes made by counsel to the organizational chart submitted on appeal will not be considered in the present analysis. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. *See id.* at 176.

Furthermore, the limited evidence provided with respect to the petitioner's staffing levels precludes a finding that the petitioner's reasonable needs would be met through the services of the beneficiary and her three subordinates. As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in

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[2] The petitioner's quarterly wage reports for the quarters ending December 2003 and March 2005 list the general manager as an employee of the organization, yet she is not identified on the petitioner's quarterly reports for 2004. The AAO notes that despite the fact that the petitioner paid compensation in the amount of approximately $94,000 to independent workers in 2004, there is no evidence that the general manager was one of the contract workers compensated for her services.

[3] While the organizational chart submitted by the petitioner in its June 28, 2005 response reflects nine workers, the quarterly wage report for the quarter ending September 30, 2004 identifies the beneficiary and the three previously named employees.

[4] As previously noted, based on the petitioner's 2004 federal income tax return, the petitioner paid approximately $94,000 to independent contractors during this year. However, other than the reference to seasonal contract workers on the revised organizational chart submitted by counsel on appeal, the petitioner did not address its use of contract workers, explain what work they performed for the petitioner, or identify who would be in charge of supervising the workers.

determining whether an individual is acting in a managerial or executive capacity, CIS must take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. At the time of filing, the petitioner was a three-year-old trading company that was also engaged in textile embroidery, printing and real estate investments. As noted, the company employed the beneficiary as president, plus a sales manager, properties supervisor, and a part-time computer technician. Again, other than the part-time computer technician, all of the employees have managerial or executive titles. The AAO notes that an undated letter from the petitioner addresses such business functions as negotiating with department stores for supply contracts, operating a "computer equipment and hardware line," and offering real estate investment and management services. The petitioner has not addressed or accounted for the employment of any subordinate staff members who would perform the actual day-to-day, non-managerial operations of the company. Based on the petitioner's representations, it does not appear that the reasonable needs of the petitioning company might plausibly be met by the services of the beneficiary as president and the three employees. Regardless, the reasonable needs of the petitioner serve only as a factor in evaluating the lack of staff in the context of reviewing the claimed managerial or executive duties. The petitioner must still establish that the beneficiary is to be employed in the United States in a primarily managerial or executive capacity, pursuant to sections 101(a)(44)(A) and (B) or the Act. As discussed above, the petitioner has not established this essential element of eligibility.

Based on the foregoing discussion, the petitioner has not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The second issue in this proceeding is whether a qualifying relationship existed between the foreign and United States entities at the time of filing the immigrant visa petition.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

> *Affiliate* means:
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> (A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;
>
> (B) 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;
>
> * * *
>
> *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.

At the time of filing, the petitioner did not address the existence of a qualifying relationship between the foreign and United States entities. As a result, the director issued a request for evidence on April 8, 2005 asking that the petitioner submit the following documentary evidence: (1) an annual report for both the

foreign and United States entities naming affiliate or subsidiary companies; (2) a copy of the minutes from each company's board of director's meetings identifying its shareholders and each person's interest in the company; (3) a list of the ownership interests in the foreign and United States entities; (4) each organization's articles of incorporation; (5) evidence in the form of wire transfer receipts, canceled checks, and deposit receipts documenting that the petitioner's shareholders furnished consideration in exchange for their stock ownership; (6) copies of stock certificates issued by the petitioner; (7) the petitioner's stock transfer ledger documenting the transfer of stock from its inception to the present; and (8) a copy of the petitioner's Notice of Transaction Pursuant to Corporations Code Section 25102(f).

Counsel for the petitioner responded in a June 28, 2005 letter stating that the petitioner is a wholly owned subsidiary of the foreign entity, Traders International. Counsel explained that the beneficiary is the sole shareholder of the foreign entity, and therefore, does not produce an annual report, nor has it filed articles of incorporation. Counsel submitted copies of the foreign entity's balance sheet for the years 1997 through 2003 and its profit and loss statement for the year ending June 30, 2004, as well as copies of the foreign entity's income tax ordinances for the years 1996 through 1999, naming the beneficiary as the proprietor. Counsel stated that with regard to the United States corporation, the beneficiary holds sole ownership of its issued stock, and presented stock certificate number one evidencing the transfer of 25,000 shares of stock to the beneficiary on March 28, 2001. As additional evidence of a qualifying relationship, counsel provided the petitioner's stock transfer ledger, which reflected the issuance of stock to the beneficiary, and the California notice of transaction. Counsel further provided copies of two wire transfer receipts dated May 16, 2001 and August 9, 2001, reflecting transfers in the amounts of $100,000 and $50,000, respectively, from "Rajput Trading Co., LLC" to the petitioner.

In his December 14, 2005 decision, the director concluded that the petitioner had not demonstrated the existence of a qualifying relationship between the foreign and United States entities. The director noted that the stock certificate and stock transfer ledger identify the foreign organization[5] as the owner of 25,000 shares of the petitioner's issued stock. The director, however, focused on the petitioner's 2003 and 2004 tax returns, which failed to reflect a value for common stock. The director stated that the information contained in the petitioner's tax returns "contradicts the petitioner's evidence showing that they were paid $25,000 for the stares of stock," and noted that the petitioner failed to clarify the inconsistency. The director further stated that the petitioner had not demonstrated "that the foreign entity has a ownership interest in the petitioner." Consequently, the director denied the petition.

On appeal, counsel for the petitioner contends that the petitioner is a wholly owned subsidiary of the foreign organization. Counsel claims that CIS disregarded evidence, such as the stock certificate, stock ledger, and California notice of transaction detailing the foreign entity's investment in the United States company. Counsel contends that CIS based its finding on "a single factor" that the petitioner's tax returns did not reflect common stock in the amount of $25,000. Counsel notes that the petitioner's accountant "admits to its error,"

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[5] In fact, the stock certificate and stock transfer ledger identify the beneficiary, not the foreign organization, as the stockholder. Yet, as the foreign organization is a sole proprietorship, the director's misstatement is not relevant to the instant issue. A sole proprietorship is a business in which one person operates the business in his or her personal capacity. *Black's Law Dictionary* 1398 (7th Ed. 1999). Unlike a corporation, a sole proprietorship does not exist as an entity apart from the individual owner. *See Matter of United Investment Group*, 19 I&N Dec. 248, 250 (Comm. 1984).

and submits amended tax returns for the years 2003 and 2004. Counsel again submits copies of the petitioner's issued stock certificate, stock transfer ledger, wire transfer receipts, and notice of transaction. Counsel also provides a tax certificate for the foreign organization, dated January 1, 2001, noting the beneficiary as an employee or proprietor, and a May 24, 2001 letter from the foreign entity's manager addressing the beneficiary's position as "proprietor/general manager" of the foreign organization.

Upon review, the petitioner has not demonstrated the existence of a qualifying relationship between the foreign and United States entities.

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.

As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The corporate stock certificate ledger, stock certificate registry, corporate bylaws, and the minutes of relevant annual shareholder meetings must also be examined to determine the total number of shares issued, the exact number issued to the shareholder, and the subsequent percentage ownership and its effect on corporate control. Additionally, a petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. at 364-365. Without full disclosure of all relevant documents, CIS is unable to determine the elements of ownership and control.

The regulations specifically allow the director to request additional evidence in appropriate cases. *See* 8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired. As requested by the director, evidence of this nature should include documentation of monies, property, or other consideration furnished to the entity in exchange for stock ownership. Additional supporting evidence would include stock purchase agreements, subscription agreements, corporate by-laws, minutes of relevant shareholder meetings, or other legal documents governing the acquisition of the ownership interest.

In the instant matter, the petitioner has offered sufficient evidence to establish that the foreign entity is a sole proprietorship, owned by the beneficiary. The record, however, does not establish the beneficiary's ownership of the United States entity, a factor critical to corroborating the petitioner's claim of a qualifying relationship.

The record contains several inconsistencies that undermine the petitioner's claim that the United States entity is an affiliate or subsidiary of the foreign entity. The AAO notes that despite submitting a copy of an issued stock certificate, Schedules E and K of the petitioner's 2004 tax return do not reflect the beneficiary's purported stock ownership in the company. In fact, the petitioner's accountant indicated that no individual or

organization owned a share of the United States corporation. 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).

With regard to the "amended" tax returns submitted on appeal, the AAO questions the authenticity, as they are not certified as being filed with the Internal Revenue Service. In addition, the clerical error on Part Two of IRS Form 1120X, Amended U.S Corporation Income Tax Return, noting common stock in the amount of $24,000 rather than $25,000 raises doubt as to the accuracy of the information provided. 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.

In addition, the petitioner has not submitted documentation sufficient to establish that the beneficiary or foreign entity furnished consideration in exchange for the beneficiary's claimed interest in the United States company. The two wire transfer receipts provided by the petitioner indicate that the monies received by the United States company in exchange for stock ownership were transferred from the company '[redacted] Co, LLC." In his June 28, 2005 letter counsel references [redacted] as the "agent" of the foreign entity. Counsel's unsupported claim is not sufficient to establish a relationship between the beneficiary and [redacted] The director specifically requested that the petitioner document the source from where the monies were transferred, explain why the funds were not transferred from the beneficiary or foreign entity, and document the relationship between the transferor and the beneficiary. The petitioner, however, did not comply with the director's request. 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). As noted previously, an essential element of ownership for purposes of a qualifying relationship is demonstrating how the purported stock ownership was acquired. The petitioner failed to satisfy this critical element. Based on the current record, the AAO cannot conclude that a qualifying relationship existed between the foreign and United States entities at the time of filing. For this addition reason, the appeal will be dismissed.

Counsel also addresses on appeal the beneficiary's employment in the foreign entity, claiming that the director concluded that the beneficiary was not employed in a primarily managerial or executive capacity. Following a review of the director's December 14, 2005 decision, the AAO notes that the director did not address the issue of the beneficiary's overseas employment. For purposes of completeness, the AAO will address this issue.

The record does not demonstrate that the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). Counsel stated in his June 28, 2005 response that the beneficiary occupied the position of manager of the foreign entity in which she was responsible for the organization's operations, and import and export divisions, "exercise[d] a wide latitude of discretionary decision-making authority and control," "[held] responsibility for the management and direction of a staff of full-time managerial and administrative employees," "formulated and implemented policy," "direct[ed] the company's development," and possessed authority over the company's sales, accounting, personnel, and planning. Counsel subsequently submitted on appeal a statement addressing essentially the same job duties as those ready provided for the director's consideration. The job description offered by the petitioner does not identify the specific managerial or executive tasks performed by the beneficiary as the foreign entity's manager. Rather, the petitioner relies on portions of the statutory

definitions of "managerial capacity" and "executive capacity" to establish the beneficiary's classification as a manager or executive. Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108. The actual duties themselves reveal the true nature of the employment. *Id.* at 1108. Absent a detailed description of the managerial or executive tasks performed by the beneficiary in the foreign entity, the AAO cannot conclude that the beneficiary was employed in a primarily qualifying capacity. For this reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Counsel for the petitioner notes on appeal that CIS previously approved two L-1A nonimmigrant visa petitions filed on behalf of the beneficiary. Counsel acknowledges that the petition requesting an extension of the beneficiary's L-1A status was denied. It should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by CIS than nonimmigrant petitions. The AAO acknowledges that both the immigrant and nonimmigrant visa classifications rely on the same definitions of managerial and executive capacity. ***See* §§ 101(a)(44)(A) and (B) of the Act, 8 U.S.C.** § 1101(a)(44). Although the statutory definitions for managerial and executive capacity are the same, the question of overall eligibility requires a comprehensive review of all of the provisions, not just the definitions of managerial and executive capacity. There are significant differences between the nonimmigrant visa classification, which allows an alien to enter the United States temporarily for no more than seven years, and an immigrant visa petition, which permits an alien to apply for permanent residence in the United States and, if granted, ultimately apply for naturalization as a United States citizen. *Cf.* §§ 204 and 214 of the Act, 8 U.S.C. §§ 1154 and 1184; *see also* § 316 of the Act, 8 U.S.C. § 1427.

In addition, unless a petition seeks extension of a "new office" petition, the regulations allow for the approval of an L-1 extension without any supporting evidence and CIS normally accords the petitions a less substantial review. *See* 8 C.F.R. § 214.2(l)(14)(i) (requiring no supporting documentation to file a petition to extend an L-1A petition's validity). Because CIS spends less time reviewing L-1 petitions than Form I-140 immigrant petitions, some nonimmigrant L-1 petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003).

Moreover, each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. The prior nonimmigrant approvals do not preclude CIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch,* 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The approval of a nonimmigrant petition in no way guarantees that CIS will approve an immigrant petition filed on behalf of the same beneficiary. CIS denies many I-140 petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd. v. Sava,* 724 F. Supp. at 1103.

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and

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

Finally, 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 denial. 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.