U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 13 2007

EAC 05 041 51671

IN RE: Petitioner: [redacted]
Beneficiary:

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, Vermont Service Center, denied the employment-based immigrant 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 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 New Jersey that provides event management services. The petitioner seeks to employ the beneficiary as its executive vice-president.

The director denied the petition concluding that the petitioner had not demonstrated that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner contends that the director erroneously reviewed and neglected to consider evidence offered by the petitioner. Counsel claims that the beneficiary primarily manages the company's personnel and contracted staff, and, as a result, qualifies as the "top executive officer" in the United States company. 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):
>
> * * *
>
> (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 issue in the instant 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-
>
> (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-
>
> (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 petitioner filed the Form I-140 on November 19, 2004 noting that the beneficiary would be employed as the executive vice-president of the six-person United States company. In a November 3, 2004 letter, the petitioner provided a lengthy list of the beneficiary's proposed job responsibilities. As the letter is already part of the record, it will not be entirely repeated herein. The noted areas of responsibility included: project management; supplier liaison and development; financial management and development; staff development, motivation and management; office support; and general business matters. The petitioner submitted an April 1, 2004 organizational chart depicting the beneficiary's subordinate employees as including an office manager, project executive and two project coordinators. In a separate organizational chart depicting the

staffing levels of the United States company and its purported affiliate in the United Kingdom, the positions subordinate to the beneficiary were identified as office manager, project executive and project coordinator.

The director issued a request for evidence, dated September 8, 2005, instructing the petitioner to submit the following evidence related to the beneficiary's proposed employment: (1) a detailed description of the beneficiary's managerial or executive job duties, including an allocation of the amount of time the beneficiary would devote to performing each task; (2) documentation illustrating the petitioner's management and staffing levels; (3) the number of supervisors employed in positions subordinate to the beneficiary; (4) the job titles and job duties of those managed by the beneficiary; (5) the managerial, executive, or technical skills necessary to perform in the position of executive vice-president; (6) the amount of time the beneficiary would spend performing non-managerial or non-executive tasks; (7) the degree of discretionary authority held by the beneficiary in day-to-day operations; and (8) who would assume the performance of the beneficiary's job duties in the event of his absence from the company. The director also requested copies of the petitioner's 2004 federal income tax return, payroll records, and Internal Revenue Service (IRS) Forms W-2 and W-3, state quarterly wage reports for the third and fourth quarter of 2004, and, if applicable, documentary evidence of the petitioner's use of contracted workers.

Counsel for the petitioner responded in a letter dated November 21, 2005. In an appended November 2, 2005 letter, the petitioner noted the beneficiary's responsibility for the successful performance of the United States company, including "managing, with full autonomy, a subordinate project management staff which is responsible for a gross annual revenue of $3.98 million in 2004," and "full [p]rofit and [l]oss responsibility for the US operation." The petitioner stated:

> [The beneficiary] has the following authority over the employees whom he directly supervises:
>
> - [C]onduct appraisals for [the] supervised staff;
> - [C]onduct all interviews for vacancies [in the] supervised staff[;]
> - Hire, discipline and dismiss [the] supervised staff[;]
> - Promote [the] supervised staff[;]
> - Grant leave authorization for [the] supervised staff[.]
>
> [The beneficiary] functions at a senior level within our organization. This includes but is not limited to reporting monthly on the overall profitability of the US office, planning for staffing requirements, succession planning for the US office, and making recommendations fro the overall strategy for the US operation to the board of directors, to whom he reports.
>
> [The beneficiary's] team has responsibility for devising and signing-off client budgets and contracts; managing a team to professionally deliver those projects; and signing off the final reconciliation for each of those projects, prepared by his team, within agreed expected [profit and loss] parameters. [The beneficiary] makes recommendations to the board of directors, to whom he reports, regarding company pricing models for the provision of events to his key clients. Additionally[,] [the beneficiary's] team in turn has autonomous authority over the awarding of vendor contracts, project staffing and event delivery. [The beneficiary's] subordinate team is responsible for overseeing the awarding of those

> contracts. Additionally, [the beneficiary's] subordinate office manager is responsible for managing all overheads for the US company.

The petitioner stated that in addition to the above responsibilities, the beneficiary would manage the staff in the foreign company's human resources, accounting, information technology and operations departments, which provided support services to the United States company.

Counsel also noted in his November 21, 2005 letter the petitioner's use of outside contractors, stating:

> As an event management company, the management of contractors to coordinate an event is the primary function of the organization. Other than the client communication services and registration of event attendees provided, the organization's sole purpose is to act as the coordinator of contractors to produce events on behalf of its corporate clients.
>
> The management of contractors is coordinated by [the beneficiary's] subordinate staff. Subordinate management duties include contractor bid requests, bid evaluation, contractor selection, contractor supervision, and budget management. The full value of the amount of work awarded to contractors for 2004 by the subordinate team managed by [the beneficiary] is shown in the Cost of Sale figure, as shown in the corporate tax return. These contractor payments totaled $3,234,747 in 2004.
>
> * * *
>
> Moreover, in addition to the management of contractors, the employed subordinate team managed by [the beneficiary] also hires contracted freelance staff to project manage these events, and hence manage the associate contractors for that job.

Counsel referenced the following documentary evidence of the beneficiary's purported employment in a primarily managerial or executive capacity: (1) a November 1, 2005 organizational chart identifying two new employees in the positions of office manager and consultant project manager, as well as the project manager and project coordinator employed on the filing date; (2) IRS Forms W-2, W-3, and quarterly tax reports for the third and fourth quarters of 2004; (3) "job card summary reports" of payments made by the petitioner to outside contractors; (4) a list of "major contractors" used by the petitioner; (5) "sample summary reports" of the expenses incurred by the petitioner for the management of four events; and (6) invoices for contracted freelance project managers. The AAO notes that the adjustments made to the petitioner's staffing levels as reflected in its updated organizational chart will not be considered in the analysis of the beneficiary's employment capacity at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (finding that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts).

Counsel provided an additional detailed job description for the beneficiary's position as executive vice-president, again outlining the same six job responsibilities as those noted in its initial submission, and allocating the time devoted to each task as follows: (1) project management, 10%; (2) supplier liaison and development, 15%; (3) financial management and development, 30%; (4) staff development, motivation, and management, 30%; (5) office support, 2%; (6) general business matters, 13%. Again, as the job description is already part of the record, it will not be entirely repeated herein.

In a decision dated February 22, 2006, the director denied the petition concluding that the beneficiary would not be employed by the United States company in a primarily managerial or executive capacity. The director emphasized inconsistencies in the petitioner's representation of its staffing levels, in particular, the employees that would work subordinate to the beneficiary. The director stated that the IRS Forms W-2 issued by the petitioner suggest the employment of three full-time employees in 2004, as opposed to the six-person staff claimed by the petitioner on Form I-140 and in its organizational chart submitted in response to the director's request for evidence. The AAO again notes that as the revised organizational chart reflects changes in staffing levels since the Form I-140 was filed, it is not probative in the instant analysis of the capacity in which the beneficiary was employed at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. at 49. The director noted ambiguity in the number of workers employed by the petitioner and their related job responsibilities, as well as the specific managerial or executive job duties performed by the beneficiary. The director further stated that the petitioner did not appear to employ "promotion people or salespersons to provide the services of your organization to your customers," and concluded that the beneficiary would likely primarily perform the promotional services offered by the petitioner. Consequently, the director denied the petition.

Counsel for the petitioner filed an appeal on March 22, 2006, contending that the director made "gross errors of judgment" and overlooked evidence in his denial of the petition. Counsel submits a letter, dated March 21, 2006, stating that as the "top executive officer" of the United States organization, the beneficiary is responsible for directing the company's entire operations. Counsel challenges the director's observation of inconsistencies in the petitioner's staffing levels, and references the petitioner's November 2, 2005 organizational chart as "unequivocal" evidence of the job duties performed by the beneficiary and his subordinate and contracted staff. Counsel states that the petitioner submitted "[c]omplete detailed job descriptions" for both the beneficiary and his subordinate workers, and contends that the director "overlooked the clear and detailed evidence in the record." Counsel further claims that the director did not understand the use of contract workers and consultants in the petitioner's business. Counsel also notes that the petitioner is not "actively engage[d] in promotions and sales," and contends speculation on the part of the director in concluding that the beneficiary would primarily perform the promotional and sales services of the organization. Counsel asserts that a review of the entire record demonstrates that the beneficiary would be employed in a primarily managerial or executive capacity. Counsel resubmits the documentary evidence previously provided in response to the director's request for evidence, as well as a letter from the petitioner.

In the March 20, 2006 letter submitted in support of the present appeal, the petitioner challenges the director's finding that the beneficiary would perform the tasks associated with its sales and promotion functions. The petitioner addresses five responsibilities listed in the beneficiary's previously submitted job description that would pertain to its promotions and sales, which, the petitioner claims, account for approximately 5 percent of the beneficiary's time, and instructs that the majority of the selling is done through "repeat business," "client referrals," or networking. The beneficiary, in his position as executive vice-president, stated:

> I had been working primarily on US accounts while employed at the foreign organization. As well as bringing those specific client relationships with me to the US company, more importantly I brought with me an understanding of those clients business needs for event management services, in addition to other internal factors which affect the selection process of event vendors within those clients (like pressure from procurement departments). Over the last 4 years of course, these relationships have developed even further and new ones have developed. While my staff also now have relationships with our key clients, I am

> very much the main executive level contact the US company's clients have with [the petitioning entity], and the only one who has a strategic overview of their business as a whole, as it pertains to their event management requirements. To that end, should I not be around to service this client relationship, this would have a seriously detrimental impact to the US company's client relationships. Not to mention the day-to-day operational impact, which would be similarly detrimental.

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

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).

A critical analysis of the nature of the petitioner's business undermines the petitioner's claims that the beneficiary would primarily perform the managerial and executive job duties outlined in his job description.

As required by section 101(a)(44)(C) of the Act, if staffing levels are used as a factor in 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. Based on counsel's representations in his November 21, 2005 letter, the petitioner's "sole purpose is to act as the coordinator of contractors to produce events on behalf of its corporate clients." Both counsel and the petitioner stated that the contractors are managed and coordinated by the beneficiary's subordinate staff, which the petitioner claimed was comprised of an office manager, project executive, and two project coordinators. The AAO acknowledges the petitioner's use of outside contractors and freelance workers, but notes that the IRS Forms W-2 and employee records do not corroborate the petitioner's claim of employing a second project coordinator at the time the immigrant petition was filed. Also, there is no evidence that the individual identified on the petitioner's organizational chart as its office manager was employed on the filing date; however, the record reflects the petitioner's use of a freelance office manager during this time. Regardless, it appears that at the time of filing, the petitioner employed four employees - the beneficiary, a project executive, project coordinator, and a freelance worker – rather than six as alleged on the Form I-140. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In light of the petitioner's "primary function" of managing contractors, it does not appear that the petitioner employs a subordinate staff sufficient to manage its contracted workers while also supporting the beneficiary in a primarily managerial or executive capacity. Based on the job descriptions offered by the petitioner in its November 2, 2005 letter for the positions of project coordinator and project executive, as well as the descriptions related to these positions in the foreign company, the beneficiary's two subordinates would have full responsibility to sign-off on vendor contracts, oversee "project staffing and event delivery," appoint design and production professionals, and choose venues, caterers, and forms of transportation. According to the petitioner, the beneficiary is responsible for the company's overall profit and loss, but the expenses of the petitioner's individual events are the responsibility of the project coordinator and project executive.

The petitioner's representations suggest that the beneficiary would not have a direct role in the planning, organization, and financials of each event. The record, however, lacks sufficient evidence that the beneficiary would not be engaged in locating, contacting, and procuring contractors, such as caterers, venues, musicians,

or transportation, for its events. The petitioner has not offered documentation of communications initiated between its project coordinator, project executive and outside contractors or of contractual agreements attained by the beneficiary's subordinates, which would corroborate their purported role as the organizer and coordinator of the events managed by the petitioning entity. In fact, the minimal amount of evidence pertaining to agreements with the petitioner's outside contractors suggests that the beneficiary would be directly involved in deciding and coordinating the details of a particular event. Specifically, the record contains letters, contracts, and invoices sent directly to the beneficiary from conference and meeting venues documenting the details for various events, including lodging, transportation, organized excursions, menus, seating, flowers, music and lighting, as well as the associated fees. The majority of evidence undermines the petitioner's claims that its two subordinate employees would be solely responsible for performing the petitioner's primary function of choosing and overseeing the outside staffing for its events. 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).

Additionally, it is questionable why nine of the petitioner's thirteen agreements to provide contractual services were personally written by the beneficiary. The AAO notes that the content of the beneficiary's correspondence with the petitioner's corporate clients and contractors does not fall within the beneficiary's purported managerial or executive responsibility of "build[ing] and maintain[ing] long-term relationships with the hotels, venues and suppliers on a strategic level." Rather, the agreements include the specific terms of the contract, such as the services to be provided by the petitioner and the expenses, broken down by category, to be incurred by the petitioning organization. The record also contains a proposal for event management services personally prepared by the beneficiary.

The petitioner's claims that the beneficiary is primarily responsible for the management of the organization's finances and staff is severely undercut by the above-noted documents, which suggest that the beneficiary is performing routine functions in the organization's event management. The employment of one project coordinator, rather than the two claimed by the petitioner, further insinuates the beneficiary's role in personally performing the services offered by the petitioner. Again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

The AAO recognizes the petitioner's use in November 2004 of outside contractors to provide such services as transportation for individual events and "personal concierge." Invoices in the record reflect additional contractual workers of the petitioning entity, yet the contractors either rendered services prior to the time at which the petition was filed, or, in the case of [redacted], it is unclear in what capacity they worked for the petitioner. The AAO emphasizes that despite this documentary evidence, the petitioner has failed to resolve the beneficiary's apparent role in contracting with the petitioner's clients and coordinating contractors to provide event management services, functions that are said to be "primary" to the petitioner's business. The AAO notes that an employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 604 (Comm. 1988).

Moreover, the petitioner has not documented the beneficiary's purported managerial authority over the foreign company's human resources, accounting, information technology and operations departments, or the specific non-managerial and non-executive tasks that would be performed by those departments for the benefit of the

petitioning organization. While the foreign entity's organizational chart identifies the existence of these departments, the beneficiary is not shown as holding managerial or executive authority over the functions performed by each division. 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)).

The petitioner's failure to document the role of the foreign entity's finance department in the petitioner's operations is particularly relevant to determining the beneficiary's employment capacity, as many of the beneficiary's "financial management" responsibilities are non-managerial and non-executive tasks associated with the finance function of the United States business. For example, the beneficiary is noted as "manag[ing] the finances" of the company, preparing financial projections, maintaining the company's budget, liaising with financial institutions, processing bank transfers, payroll payments, and state and federal tax reports, tracking the financials of each event, and negotiating rates with hotels and suppliers. The petitioner has not clarified whether the beneficiary's purported management of the petitioner's finances constitutes personally performing the financial functions of the business, tasks that would not be deemed to be primarily managerial or executive. *See* §§ 101(a)(44)(A) and (B) of the Act.

Based on the record as presently constituted, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity in the United States organization. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, an additional issue is whether the beneficiary was employed by the foreign entity in a primarily managerial or executive capacity for the requisite one-year during the three years prior to his entrance into the United States as a nonimmigrant.

The petitioner stated in its November 3, 2004 letter that the beneficiary was employed as the foreign entity's account manager from January 2001 through November 2001, which is the time at which the beneficiary was transferred to the United States organization. Prior to January 2001, the beneficiary occupied the position of senior account executive. The petitioner focuses predominantly on the beneficiary's position of account manager to support its claim that the beneficiary satisfied the required one-year of foreign employment in a primarily managerial or executive capacity. The AAO notes, however, that the beneficiary did not hold the position of account manager for one year, but rather less than eleven months. Form G-325 filed in connection with the beneficiary's Form I-485 application to adjust status indicates that the beneficiary commenced employment with the petitioning entity in November 2001.

The record does not contain sufficient evidence to establish that the position of senior account executive, which was held by the beneficiary prior to the position of account manager, was primarily managerial or executive in nature. The petitioner described the position as "a [d]eputy [a]ccount [m]anager with virtually the same duties as the [a]ccount [m]anager and standing in for the [m]anager as circumstances required." The petitioner also stated that the beneficiary, whose authority in this position was noted as being "one person less" than the account manager, "managed client accounts including profitability using staff and other resources to prepare, plan, organize and deliver prestigious conferences throughout the [United Kingdom] and at international venues, exceeding client expectations." The beneficiary's resume identifies the following job responsibilities: (1) "management of international pharmaceutical meetings and conventions;" (2) manage the project coordinators; and (3) hold responsibility for the profitability of the project.

The above-noted job descriptions are not sufficient to identify the managerial or executive job duties performed by the beneficiary in the position of senior account executive, or to differentiate the position from that of account manager. 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 did 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. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

As the position of senior account executive is not identified on any of the foreign entity's organizational charts, it is not clear who the beneficiary was managing during his employment and whether he was sufficiently supported in a primarily managerial or executive capacity. 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. at 165. Absent additional evidence of the beneficiary's employment as the foreign entity's senior account executive, the AAO cannot determine whether the beneficiary was employed abroad in a primarily managerial or executive capacity for the requisite one-year. Accordingly, the petition will be denied for this additional reason.

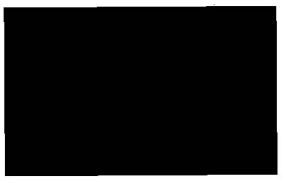
An additional issue not addressed by the director is whether the foreign and United States entities enjoyed a qualifying relationship at the time of filing the petition as required in section 203(b)(1)(C) of the Act.

To establish a qualifying relationship under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed United States employer are the same employer (i.e. a United States entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C); *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

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

> *Affiliate* means:
>
> (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.

The petitioner represented the existence of an affiliate relationship between the foreign and United States entities, stating that the same three shareholders owned and controlled each organization. The record reflects that the United States organization is owned in the following manner:



43.3%
43.3%
10.3%
3.1%

The AAO notes that the petitioner did not submit stock certificates corroborating the claimed ownership interests. 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. at 165.

With respect to the foreign entity, the record indicates that the company's class A voting stock is owned in the following proportions:

47.5%
47.5%
4.9%

According to the petitioner, an affiliate relationship exists between the two companies as a result of having three common shareholders. The petitioner also noted in its November 3, 2004 letter that both [redacted] and individually own more than 25 percent of the stock of each corporation.

Upon review, the petitioner's claim of an affiliate relationship between the foreign and United States entities is flawed. To establish eligibility as affiliates, it must be shown that the foreign employer and the petitioning entity share common ownership and control. Control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982).

In this case the U.S. entity is owned by four individuals, and the foreign entity is controlled by three individuals. No one shareholder holds a majority interest in either corporation. *See Matter of Tessel, Inc.*, 17 I&N Dec. 631 (Acting Assoc. Comm. 1981) (finding that if one individual owns a majority interest in a petitioner and a foreign entity, and controls those companies, then the companies will be deemed to be affiliates under the definition even if there are multiple owners). Absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the petitioner has not established that the same legal entity or individuals control both entities. Thus, the companies are not affiliates as both companies are not owned and controlled by the same individuals. Based on the evidence submitted, it is concluded that the petitioner has not established that a qualifying relationship exists between the U.S. and foreign organizations. For this additional 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).

The AAO recognizes that CIS previously approved two L-1A nonimmigrant petitions filed by the petitioner on behalf of the beneficiary. 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.