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MAIL STOP 2090

U.S. Citizenship and Immigration Services

B4

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 19 2008

LIN 07 160 51087

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a Maryland limited liability company, claims to be in the construction business and to be a subsidiary of the beneficiary's foreign employer located in Brazil. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition concluding that the petitioner failed to establish that it would employ the beneficiary in a managerial or executive capacity.

On appeal, counsel disputes the director's findings, asserts that the beneficiary will be employed in a managerial capacity, and submits a brief and additional evidence in support of her arguments.

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 and managers who have previously worked for a firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and who 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.

Title 8 C.F.R. § 204.5(j)(3) explains that a petition filed for a multinational executive or manager under section 203(b)(1)(C) must be accompanied by a statement from an authorized official of the "petitioning United States employer" which demonstrates that:

(A) If the alien is outside the United States, in the three years immediately preceding the filing of the petition the alien has been employed outside the United States for at least one year in a managerial or executive capacity by a firm or corporation, or other legal entity, or by an affiliate or subsidiary of such a firm or corporation or other legal entity; or

(B) If the alien is already in the United States working for the same employer or a subsidiary or affiliate of the firm or corporation, or other legal entity by which the alien was employed overseas, in the three years preceding entry as a nonimmigrant, the alien was employed by the entity abroad for at least one year in a managerial or executive capacity;

(C) The prospective employer in the United States is the same employer or a subsidiary or affiliate of the firm or corporation or other legal entity by which the alien was employed overseas; and

(D) The prospective United States employer has been doing business for at least one year.

The primary issue in this proceeding is whether the petitioner provided sufficient evidence to establish that it will employ the beneficiary 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) 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), 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 AAO reviews appeals on a *de novo* basis. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The petitioner does not clearly state in the underlying petition whether the beneficiary will be employed in a managerial or executive capacity. Therefore, while counsel on appeal argues that the beneficiary will be employed in a managerial capacity, the AAO will nevertheless consider both classifications on appeal.

In the Form I-140, the petitioner fails to identify the number of workers employed in the United States. However, it did submit a job description for the beneficiary's proposed position as "general manager of operations" as follows:

> *A: Purpose and Scope*
>
> The position accumulates the responsibilities as acting general manager and business unit operations. The officer occupying this position will be responsible for general management of the business, strategic decision making, operations, new product development, sales and marketing, and contract management. He/She will also be responsible supervising employees and ensuring that the unit conforms to the company quality and safety system procedures.
>
> *B: Responsibilities*
>
> Management of the overall day to day business operations, develop new markets, preparation of strategic plans, engineering, sales and marketing management personnel, contract

management, documenting and reporting product, operations, marketing, and sales performance to shareholders.

C: Organization Relationships

The general manager of operations reports directly to the president and shareholders. He/She will directly coordinate and supervise the business development manager, the office secretary, and the site supervisors.

On August 22, 2007, the director requested additional evidence. The director requested, *inter alia*, a more detailed description of the beneficiary's proposed duties in the United States. The director also requested descriptions of the employees to be supervised in the United States by the beneficiary and copies of all 2006 Forms W-2 pertaining to the petitioner's workers.

In response, the petitioner submitted an undated letter in which it further describes the beneficiary's proposed duties as follows:

> [The beneficiary] manages the [petitioner]. He exercises broad authority and reports directly to [the chief executive officer of the foreign employer]. As General Manager of Operations, he provides the necessary leadership to plan, organize, direct, coordinate and control all company resources and the entire day-to-day operation of the business in order to meet the growth and profit objectives of the company. The General Manager of Operations implements, and adapts the [sic] for the U.S. market, the general policies set forth by the CEO.
>
> The General Manager establishes the profit plan for the company. It is then the General Manager's responsibility to take actions – as well as to delegate responsibility and sufficient authority to subordinates – in order to meet the objectives of this profit plan, including revenue, cost control, and profit attainment.
>
> Part of this function is achieved through ensuring that all employees meet or exceed established guidelines for standards of performance, including teamwork and cooperation between all individuals and profit/cost centers. He is obligated to fulfill certain legally prescribed duties and to guarantee good company relations with employees, customers, clients, vendors, regulatory agencies, and the community at large. He is to select and appoint the managers and employees that directly report to this position.

The petitioner also described its staffing in the undated letter as follows:

> To ensure profitability in our early years, [the beneficiary] has made the decision not to engage a large labor force. Instead, [the petitioner] has contracted for much of the required labor as well as some easily outsourced services such as accounting. Using contract labor allows the company to avoid the high cost of maintaining a labor force during slower times.

> As the organizational chart and other information provided indicates, [the beneficiary] reports directly to [the chief executive officer of the foreign employer]. He has complete authority regarding the business in the U.S. He supervises our project engineer who manages the projects. Reporting to the engineer is the supervisor or foreman who in turn supervises the contract carpenters. [The beneficiary] employs an administrative assistant who carries out all administrative duties on his behalf. Finally reporting to him is the marketing/sales manager.

The petitioner also submitted an organizational chart for the United States operation. The chart shows the beneficiary at the top of the organization supervising an administrative assistant, a project engineer, and a marketing/sales worker. The project engineer is portrayed as supervising a foreman who, in turn, is shown supervising "contracting construction companies." However, the petitioner did not specifically describe the duties of any of the claimed workers, including the purported subordinate supervisors, i.e., the project engineer and the foreman.

On December 31, 2007, the director denied the petition. The director concluded that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity.

On appeal, counsel asserts that the director erred, claims that the beneficiary will be employed in a managerial capacity, and submits a brief and additional evidence in support of her arguments, including copies of the petitioner's 2007 Forms W-2 and 1099. These documents indicate that, in 2007, the petitioner employed two full-time employees, the beneficiary and the "project engineer," and three part-time or intermittent employees, the "foreman," the "administrative assistant," and a third worker not previously identified in the record. The documents also indicate that, in 2007, the petitioner compensated 10 independent contractors. However, the petitioner did not describe the duties of any of these subordinate workers. Finally, the petitioner submitted a letter dated February 29, 2008 further describing the proposed duties of the beneficiary.

Upon review, counsel's assertions are not persuasive in establishing that the beneficiary will be employed in a primarily managerial or executive capacity.

As a threshold matter, the petitioner's attempt on appeal to expand the beneficiary's proposed job duties was inappropriate and will not be considered by the AAO. The petitioner was put on notice of required evidence in the director's Request for Evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. As the petitioner failed to submit the requested evidence and now submits it on appeal, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Furthermore, 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 petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to U.S. Citizenship and Immigration Services (USCIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

In examining the executive or managerial capacity of the beneficiary, USCIS will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The actual duties themselves 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).

In this matter, the petitioner's description of the beneficiary's job duties fails to establish that the beneficiary will act in a "managerial" or "executive" capacity. In support of the petition, the petitioner has submitted a vague and non-specific job description which fails to sufficiently describe what the beneficiary will do on a day-to-day basis. For example, the petitioner states that the beneficiary will be responsible for "general management of the business, strategic decision making, operations, new product development, sales and marketing, and contract management." The petitioner also claims that that the beneficiary will provide "leadership to plan, organize, direct, coordinate and control all company resources and the entire day-to-day operation of the business" and will implement "general policies." Finally, the petitioner claims that the beneficiary will establish the "profit plan," take actions "to meet the objectives of this profit plan, including revenue, cost control, and profit attainment," and "guarantee good company relations with employees, customers, clients, vendors, regulatory agencies, and the community at large." However, the petitioner fails to specifically describe the strategies, operations, new products, general policies, profit plans, or objectives, or explain what, exactly, the beneficiary will do to "manage" the enterprise other than perform the non-qualifying administrative, operational, or first-line supervisory tasks necessary to the provision of the petitioner's subcontracted carpentry services. The fact that the petitioner has given the beneficiary a managerial or executive title and has prepared a vague job description which includes inflated job duties does not establish that the beneficiary will actually perform managerial or executive duties. 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. *Id.* 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).

Consequently, the record is not persuasive in establishing that the beneficiary will primarily perform qualifying duties in his operation of the business. As noted above, the petitioner asserts that the beneficiary will supervise four employees and various independent contractors. However, the petitioner failed to specifically describe the duties of these workers. Therefore, it has not been established that any of these workers will relieve the beneficiary of the need to perform the non-qualifying tasks inherent to his ascribed duties and to the operation of a small business in general. Once again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* Accordingly, it appears more likely than not that the beneficiary will primarily perform non-qualifying administrative or operational tasks in his administration of the enterprise. 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 International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The petitioner has also failed to establish that the beneficiary will supervise and control the work of other supervisory, managerial, or professional employees, or will manage an essential function of the organization.

As asserted in the record, the beneficiary will directly supervise four workers and various independent contractors in his operation of a construction subcontractor business. However, it has not been established that any of these workers will have supervisory or managerial responsibilities over other workers. Although the petitioner submitted an organizational chart depicting the "foreman" and the "project engineer" as superior to other workers, the petitioner failed to specifically describe their job duties. In examining the supervisory or managerial capacity of an employee, USCIS will look first to the petitioner's description of the job duties. *See cf.* 8 C.F.R. § 204.5(j)(5). Accordingly, it has not been established that either of these workers is a bona fide supervisory or managerial employee. Likewise, as the petitioner failed to establish the specific duties or level of commitment of the various independent contractors identified in the record, it cannot be concluded that any of these workers is truly controlled by the beneficiary, the foreman, or the project engineer. Once again, 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. Therefore, it appears that the beneficiary will be, at most, a first-line supervisor. A managerial employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor, unless the supervised employees are professionals. Section 101(a)(44)(A)(iv) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

Moreover, the record is not persuasive in establishing that any of these workers is a professional. In evaluating whether the beneficiary will manage 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). As the petitioner failed to establish the skills or education required to perform the duties of the subordinate workers, it has not been established that any of the workers is a bona fide professional. The record is devoid of evidence describing the duties of the various positions. Once again, 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.

Furthermore, the record is not persuasive in establishing that the beneficiary will manage an essential function of the organization. The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act. The term "essential function" is not defined by statute or regulation. If a petitioner claims that the beneficiary will manage an essential function, the petitioner must furnish a written job offer that clearly describes the duties to be performed in managing the essential function, i.e., identify the function with specificity, articulate the essential nature of the function, and establish the proportion of the beneficiary's daily duties attributed to managing the essential function. *See* 8 C.F.R. § 204.5(j)(2). In addition, the petitioner's description of the beneficiary's daily duties must demonstrate that the beneficiary will manage the function rather than perform the tasks related to the function.

In this matter, the petitioner has not provided evidence that the beneficiary will manage an essential function. The petitioner's vague job description fails to document that the beneficiary's duties will be primarily managerial. Also, as explained above, the record indicates that the beneficiary will more likely than not primarily perform non-qualifying tasks and be a first-line supervisor of non-professional workers. Absent a clear and credible breakdown of the time spent by the beneficiary performing his duties, the AAO cannot determine what proportion of his duties will be managerial, nor can it deduce whether the beneficiary will primarily perform the duties of a function manager. *See IKEA US, Inc. v. U.S. Dept. of Justice*, 48 F. Supp. 2d 22, 24 (D.D.C. 1999).

Accordingly, the petitioner has not established that the beneficiary will be employed primarily in a managerial capacity.

Similarly, the petitioner has failed to establish that the beneficiary will act in an "executive" capacity. The statutory definition of the term "executive capacity" focuses on a person's elevated position within a complex organizational hierarchy, including major components or functions of the organization, and that person's authority to direct the organization. Section 101(a)(44)(B) of the Act. Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. Inherent to the definition, the organization must have a subordinate level of employees for the beneficiary to direct, and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. An individual will not be deemed an executive under the statute simply because they have an executive title or because they "direct" the enterprise as the owner or sole managerial employee. The beneficiary must also exercise "wide latitude in discretionary decision making" and receive only "general supervision or direction from higher level executives, the board of directors, or stockholders of the organization." *Id.* For the same reasons indicated above, the petitioner has failed to establish that the beneficiary will act primarily in an executive capacity. The beneficiary's job description is so vague that it cannot be discerned what, exactly, the beneficiary will do on a day-to-day basis. Also, as explained above, it appears more likely than not that the beneficiary will primarily perform administrative or operational tasks and work as a first-line supervisor of non-professional workers. Therefore, the petitioner has not established that the beneficiary will be employed primarily in an executive capacity.

In reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d 175, 178 (D.C. Cir. 1991)); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990) (per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when USCIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.*

In this matter, the record contains discrepancies and questionable documents which undermine the credibility of the petition. For example, in support of its petition, the petitioner submits a document titled "Loan Agreement" dated September 26, 2007. Counsel notes in her letter submitted in the response to the Request for Evidence that the Loan Agreement should be accepted as evidence of his performance of qualifying managerial or executive duties on behalf of the United States operation. However, this Loan Agreement does not appear to be a bona fide document. The Agreement indicates that the petitioner has borrowed $18 million from Bank of America at an annual 8.5% interest rate. However, the Agreement indicates that the petitioner has agreed to repay the loan over a four-year period and has agreed to make monthly payments of principal and interest of $443.71. It is not credible that these repayment terms would apply to an $18 million loan and, upon further review, it appears that a $443.71 monthly repayment obligation over four years mathematically corresponds almost exactly to an $18,000.00 term loan. It is also noted that the primary collateral listed in the appended security agreement is a 2004 GMC 2500 SLE, a motor vehicle. Accordingly, it appears that the amount of the Loan Agreement was intentionally altered, and subsequently submitted with the instant petition, in an attempt to mislead USCIS.

The AAO finds that the petitioner knowingly submitted documents containing false statements in an effort to mislead USCIS and the AAO on an element material to the beneficiary's eligibility for a benefit sought under the immigration laws of the United States. *See* 18 U.S.C. §§ 1001, 1546. The AAO hereby enters a finding of fraud. Additionally, the evidence is not credible and will not be given any weight in this proceeding. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d at 15. Moreover, the petitioner's submission of a fraudulent document brings into question the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Accordingly, the petitioner has failed to establish that the beneficiary will primarily perform managerial or executive duties, and the petition may not be approved for that reason.

Beyond the decision of the director, the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity.

The petitioner described the beneficiary's duties abroad in a letter dated April 18, 2007 as follows:

> In Brazil, [the beneficiary] served as Vice President of Operations with [the foreign employer]. His responsibilities included the general management of [the foreign employer], including negotiation and coordination of several private and public construction contracts. He was also responsible for the development and implementation of these construction jobs in several states of the northeast region of Brazil.

The petitioner also submitted an organizational chart for the foreign employer. The chart vaguely portrays the beneficiary's position as having direct or indirect supervisory authority over the bidding department, the equipment and maintenance shop, the field engineers, field logistics and supplies, and construction workers.

However, the petitioner did not describe the duties of any of these purported subordinate workers and did not indicate whether he supervised and controlled subordinate supervisors, managers, or professionals.

Upon review, the petitioner has failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity. The beneficiary's vague job description fails to describe the beneficiary as primarily performing managerial or executive duties abroad. It has not been established that any of the vaguely described duties, such as "development and implementation of [the] construction jobs" or "general management," is a bona fide managerial or executive duty. Once again, 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. Specifics are clearly an important indication of whether a beneficiary's duties were 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, *aff'd*, 905 F.2d 41. Furthermore, as the petitioner failed to identify or describe the duties of the beneficiary's subordinates abroad, if any, it cannot be concluded that he was relieved of the need to perform non-qualifying tasks or that he supervised and controlled supervisory, managerial, or executive workers, or managed an essential function of the organization. 8 U.S.C. § 1101(a)(44)(A)(ii).

Accordingly, the petitioner failed to establish that the beneficiary was employed abroad in a primarily managerial or executive capacity, and the petition may not be approved for this additional reason.

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 at 1002 n. 9 (noting that the AAO reviews appeals on a *de novo* basis). Therefore, based on the additional ground of ineligibility as discussed above, this petition cannot be approved.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd,* 345 F.3d 683.

As a final note, USCIS records indicate that the beneficiary has previously been approved for L-1 employment with the instant petitioner. However, with regard to the beneficiary's L-1 nonimmigrant classification, it should be noted that, in general, given the permanent nature of the benefit sought, immigrant petitions are given far greater scrutiny by USCIS 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 USCIS 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 USCIS spends less time reviewing Form I-129 nonimmigrant 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 at 29-30 (recognizing that USCIS approves some petitions in error).

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 USCIS 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 USCIS will approve an immigrant petition filed on behalf of the same beneficiary. USCIS denies many I-140 immigrant 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 approvals 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 USCIS 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).

In addition, 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).

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.