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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: TEXAS SERVICE CENTER

Date:

MAR 16 2010

WAC 08 001 51090

IN RE:

Petitioner:

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)

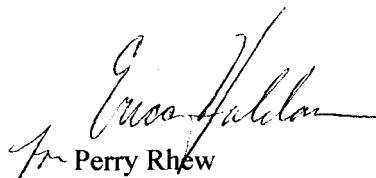
ON BEHALF OF PETITIONER:



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).


Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a corporation organized in the State of Georgia that claims to be in the business of importing glass, toys, and furniture for wholesale. It seeks to employ the beneficiary as its president. 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 had not established that the beneficiary was employed by the foreign entity, or will be employed by the United States entity, in a primarily managerial or executive capacity. The director also found that the petitioner failed to establish that it has the ability to pay the beneficiary his proffered wages.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner contends that the director's decision is in error. Counsel submits a brief and additional evidence on 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 and 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 that 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. *See 8 C.F.R. § 204.5(j)(5).*

The first issue in the present matter is whether the beneficiary would be employed in a primarily managerial or executive capacity in the United States.

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.

On the Form I-140, Immigrant Petition for Alien Worker, filed on October 1, 2007, the petitioner described the beneficiary's proposed U.S. position as "develop and direct growth of business." In an undated letter to counsel, submitted with the Form I-140, the petitioner reiterated:

[F]or more than fifteen years until his official transfer to the U.S. in November of 2006, [the beneficiary] had been our Assistant General Manager. As President of our branch in Georgia, [the beneficiary] has assumed the responsibility of directing and developing the growth of a new business.

The petitioner provided no other information relating to the beneficiary's proposed position.

On November 10, 2008, the director issued a request for further evidence (RFE). Among other things, the director requested evidence that the beneficiary would be functioning primarily in a managerial/executive capacity in his U.S. position. The director requested specific examples of managerial or executive tasks to be performed by the beneficiary; the number of subordinates, their duties, and level of education; and an organizational chart showing the beneficiary's position in the organization with respect to other managers.

In a letter dated December 1, 2008 responding to the RFE, the petitioner stated the following in connection with the beneficiary's U.S. job responsibilities:

[The beneficiary] supervises the staff of [the U.S. company] for our parent company in China. He holds meetings with them. He reviews their performance. He trains them the knowledge [sic] of glass production and handling. He exercises discretionary authority and implements corporation policies of our parent company [sic]. He helps to communicate the needs, concerns and suggestions between the office in China and the office in the U.S.

The petitioner also described some of the beneficiary's "accomplishments" for the company since his arrival in the United States, including: "helped the [U.S. company] to secure an agent role for GGI, one of the leading glass distributors in the U.S.;" "present . . . information about the needs of the U.S. firm in an understandable fashion to our parent company"; "added two important personnel to the company in February and March 2007" (the IT & operation manager and the sales manager); "led the marketing team to find out a more practical and long-term position for the company"; "led [the] marketing team to do the Glass Build America show in Atlanta, GA"; "slash the original plan of selling flat glass [and] recommended to develop the shower door business"; and negotiating a partnership with [REDACTED] to form a new company.

The petitioner provided an organizational chart for the U.S. company as of September 2008, which places the beneficiary as president at the top of the hierarchy. Directly below him are the general

manager and vice president. Below the general manager are a sales manager and an IT & operations manager, and below the vice president is a warehouse manager. The chart indicates that the general manager, sales manager and IT & operations manager possess bachelor's degrees.

The petitioner also submitted a document entitled "Duties of Staff", which lists the duties of the beneficiary and other employees as follows:

- Liaison between office in the U.S. and the parent company in China
- Review financial reports
- Oversee logistics
- In charge of personnel, hiring and firing
- Approve purchases of merchandises and major equipments

- Oversee the daily operations.
- Assist [the beneficiary] in supervising of sales and IT operation
- Government regulation and insurance compliance
- Keep record of company
- Run central office and Accounting Department of the company
- Acts as interpreter for [the beneficiary] whenever needed

- In charge of toy operation: Sourcing, purchasing, selling, market research, shipping, after sale service.
- Supervise shipping department and warehouse

- Call on all major glass distributors, shops, furniture manufactures [sic], and specialty vendors
- Market research
- Product development
- Supervise customer service, sales Reps. Relations
- Do trade shows

- Market research
- Data base of inventory
- Product specification Data base
- Provide all IT help to the general manager

- Inventory control
- Warehouse supplies

- Shipping and receiving
- Warehouse safety and maintenance

On December 18, 2008, the director denied the petition, concluding that the petitioner had not established that the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity. Specifically, the director observed that the petitioner's response indicates that the beneficiary would "primarily perform the firm's marketing tasks by establishing agreements with various companies for future glass finished products." The director noted that the petitioner failed to describe clearly other duties of the beneficiary that would be managerial in nature, or clarify the amount of time such duties would occupy the beneficiary's daily work. The director further noted that the beneficiary has five subordinates who appear to function as workers rather than managers, despite their titles. Moreover, the director found, an assessment of the company's overall purpose and stage of development would suggest a need for a large staff involved in purchasing, inventory maintenance and sales, and the evidence does not show that the petitioner has such a staff, so that the beneficiary would be in a position to spend the bulk of his time on managerial or executive duties.

On appeal, counsel pointed out that in his decision, the director had mistakenly referred to the beneficiary's current immigration status as L-1B rather than L-1A. Counsel contends that "this confusion is responsible in large part for the denial." Without offering further evidence, counsel claims that the evidence of record shows that the beneficiary's duties as president of the U.S. company are "clearly executive and managerial."

At the outset, the AAO acknowledges that throughout his decision, the director erroneously stated that the beneficiary is presently in the United States in L-1B status, rather than the correct L-1A status. However, contrary to counsel's claim, this error is not germane to the reasons for denial stated in the director's decision, as the director properly set forth his assessment of the beneficiary's qualification as a multinational executive or manager based on the criteria set forth under section 203(b)(1)(C) of the Act. Upon review, the AAO concurs with the director's conclusion that the petitioner has failed to establish that the beneficiary would be employed in a primarily executive or managerial capacity in the United States.

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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* Beyond the required description of the job duties, the U.S. Citizenship and Immigration Services (USCIS) reviews the totality of the record when examining the claimed managerial or executive capacity of a beneficiary, including the petitioner's organizational structure, the duties of the beneficiary's subordinate employees, the presence of other employees to relieve the beneficiary from performing operational duties, the nature of the petitioner's business, and any other factors that will contribute to a complete understanding of a beneficiary's actual duties and role in a business.

Further, it is noted that the definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are

specified in the definitions. Second, the petitioner must prove that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). Whether the beneficiary is a managerial or executive employee turns on whether the petitioner has sustained its burden of proving that the beneficiary's duties are "primarily" managerial or executive. See sections 101(a)(44)(A) and (B) of the Act.

The AAO agrees with the director's observation that the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. In the initial petition, the petitioner merely stated that the beneficiary "has assumed the responsibility of directing and developing the growth of a new business." Even though the director requested a more detailed job description and specific examples of managerial and executive tasks to be performed by the beneficiary, the petitioner responded with more generalities. For example, the petitioner claimed that the beneficiary "supervises the staff," "holds meetings," "reviews [staff] performance," "trains [staff]," "exercises discretionary [sic] authority and implements corporate policies," "oversees logistics," and acts as "liaison" between the U.S. office and the Chinese parent company. It is unclear based on the evidence what these general duties entail – what is involved in the supervision and training of the staff? What are the "logistics" that the beneficiary oversees? What "corporate policies" are being implemented? 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 provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). 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.*

It is noted that the organization chart for the U.S. company depicts two levels of subordinates below the beneficiary. Although the beneficiary is not required to supervise personnel, if it is claimed that his duties involve supervising employees, the petitioner must establish that the subordinate employees are supervisory, professional, or managerial. See § 101(a)(44)(A)(ii) of the Act. Here, the record is insufficient to show that the beneficiary's subordinates in the U.S. company are indeed supervisory, professional, or managerial personnel. Although all five members of the beneficiary's staff have managerial or executive titles, it is not clear based on the information provided that any of these employees in fact function in a "supervisory or managerial" capacity. For example, the vice president is described as being "in charge of toy operation" including "sourcing, purchasing, selling market research, shipping and after sale service," and "supervis[ing] shipping department and warehouse." However, below the vice president, there is only one employee, with the title of "warehouse manager." The brief descriptions of the duties of these two employees do not provide sufficient detail to determine whether either of them in fact function in a supervisory or managerial capacity rather than performing the day-to-day tasks relating to the "toy operation" and shipping and warehouse inventory, particularly when there appears to be no other employees to perform such tasks. Similarly, the general manager is described as, among other things, "oversee[ing] the daily operations," "assist[ing] [the beneficiary] in supervising of sales and IT operation," and "run central

office and Accounting Department of the company." However, the "sales and IT operation" appear to consist of only two employees, the "sales manager" and the "operation manager," who are apparently managers in title only, and there is no mention of any employee in the "accounting department." Again, the cursory descriptions of the duties of these employees leave unanswered the question of to what extent the general manager actually supervises or manages the other two employees rather than performs along with them the day-to-day tasks in sales, IT, and accounting. In all, the evidence presented is insufficient to demonstrate that any of the beneficiary's subordinates actually function in a managerial or supervisory role, despite their titles.

The petitioner has also failed to demonstrate that any of the beneficiary's subordinates qualify as a "professional." In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966). Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. Here, the petitioner claims that three of the beneficiary's subordinates hold bachelor's degrees. However, the possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not, in fact, established that a bachelor's degree is actually necessary to perform the work of any of the beneficiary's subordinates. As such, the record is insufficient to show that the beneficiary's subordinate employees are supervisory, professional, or managerial, as required by section 101(a)(44)(A)(ii) of the Act.

The AAO notes that in the December 1, 2008 letter responding to the RFE, the petitioner indicated that it considers the beneficiary to be functioning in an executive capacity in the U.S. company. 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, 8 U.S.C. § 1101(a)(44)(B). Under the statute, a beneficiary must have the ability to "direct the management" and "establish the goals and policies" of that organization. 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.* As discussed above, the petitioner has provided job descriptions that are too vague and lacking in detail to support a conclusion that the beneficiary's position meets the criteria set forth in the statutory definition of "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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, inherent to the definition of "executive capacity," the organization must have a subordinate level of managerial employees for the beneficiary to direct and the beneficiary must primarily focus on the broad goals and policies of the organization rather than the day-to-day operations of the enterprise. Again, as discussed above, the petitioner has not sufficiently demonstrated that the beneficiary in fact directs a subordinate level of managerial employees that would relieve him from direct involvement in the company's day-to-day operations. 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.

In light of the foregoing, the AAO concurs with the director's conclusion that the petitioner has failed to establish that the beneficiary would be employed in the United States in a primarily executive or managerial capacity. For that reason, the petition will be denied.

The second issue in this matter is whether the beneficiary was employed abroad in a primarily executive or managerial capacity.

As the petitioner had failed to provide any evidence relating to the beneficiary's overseas employment, the director requested further evidence demonstrating that the beneficiary was employed overseas in an executive or managerial capacity for at least one of the three years prior to the beneficiary's admission into the United States. The director requested specific examples of managerial or executive tasks performed by the beneficiary; the number of subordinates, their duties, and level of education; and an organizational chart showing the beneficiary's position in the organization with respect to other managers.

In response, the petitioner submitted a translated letter from the corporate officer of the foreign entity describing the beneficiary's overseas position as follows:

[The beneficiary] had been the [REDACTED] of our company since 1990. Our company was formerly [REDACTED]. Due to the expanding of the business, the company name was changed to [REDACTED] City in 1996. [The beneficiary] has been the [REDACTED] since the change. In 2003, he invested and became one of the shareholders of [REDACTED], while being the [REDACTED]. With a decade's worth of hard works, our business is expanding worldwide. Aside from sales and marketing, [the beneficiary] has also been responsible in handling company personnel, investments, purchasing of raw materials, etc.

The petitioner did not provide an organizational chart of the foreign entity or any information regarding the beneficiary's subordinate staff.

In concluding that the petitioner has failed to demonstrate that the beneficiary was employed abroad in a primarily executive or managerial capacity, the director found that "the job duty description is

too limited." The director noted that the petitioner stated only that the beneficiary "served as assistant general manager responsible for handling sales, marketing, personnel, investments and the purchase of raw material." The director observed that managerial or executive titles alone do not in themselves establish that the beneficiary function primarily in qualifying capacities.

On appeal, counsel asserts that in the foreign company, the beneficiary "served as the [REDACTED] supervising numerous professionals and subordinate managers in the more than 200 employee group, for which the [b]eneficiary was in charge." Counsel further contends that the director's decision on this issue was affected by the "mistaken impression that the [b]eneficiary had come to the U.S. on a L-1B."

Upon review, the AAO concurs with the director's finding that the petitioner has failed to establish that the beneficiary was employed abroad in an executive or managerial capacity.

As previously noted, 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). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* Contrary to counsel's claim that the petitioner provided sufficient evidence to demonstrate that the beneficiary was employed overseas in an executive or managerial capacity, the description of the beneficiary's overseas position suffers from the same vagueness and lack of detail discussed in connection with the U.S. job description. In fact, evidence of the beneficiary's job responsibilities overseas consisted solely of the statement of the foreign entity's corporate officer that, "Aside from sales and marketing, [the beneficiary] has also been responsible in handling company personnel, investments, purchasing of raw materials, etc." Again, the petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine in his position abroad, and the brief statement above provides no insight into what it was that the beneficiary actually did on a day-to-day basis in his job. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Further, it is noted that in addition to the petitioner's failure to address the director's request for a complete, detailed description of the day-to-day duties performed by the beneficiary abroad, the petitioner also failed to provide any information relating to the beneficiary's subordinate staff overseas, or an organizational chart of the foreign entity, as requested. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Without a more detailed explanation of the beneficiary's job duties and further information regarding his staff or the organizational structure of his foreign employer, the AAO is unable to determine what role the beneficiary actually occupied within the foreign entity, and whether he in fact primarily functioned in an executive or managerial capacity.

The AAO notes counsel's claim on appeal that, in his overseas position, the beneficiary supervised "numerous professionals and subordinate managers in the more than 200 employee group, for which

the [b]eneficiary was in charge." However, there is no evidence in the record to support this claim. 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). In addition, contrary to counsel's claim, the director's mistaken reference to the beneficiary's "L-1B" status again does not appear to have any bearing on his analysis of the issue at hand.

In light of these deficiencies in the evidence, the AAO finds that the petitioner has failed to establish that the beneficiary was employed abroad in an executive or managerial capacity as required by section 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). For this additional reason, the petition will be denied.

The third issue in this matter is whether the petitioner has established its ability to pay the beneficiary's proffered wages for the U.S. position.

In this matter, the petitioner indicated in the Form I-140 that the beneficiary's proffered salary for the U.S. position is \$576.92 per week, which would amount to approximately \$30,000 annually.

In his decision, the director noted that the petitioner's IRS Forms 1120, U.S. Corporation Income Tax Return, shows that for the year 2007, the company had a loss of \$52,376, and for 2006, a loss of \$18,331. Based on that evidence, the director concluded that "it is difficult to see how the company can pay the beneficiary's salary, including the salary of the staff of five that work for him."

On appeal, counsel points out that the petitioner had submitted IRS Form W-2 and Form 1040, U.S. Individual Income Tax Return, for the beneficiary, which show that the beneficiary received \$30,000 in wages from the U.S. company during that year. Counsel also submits on appeal the beneficiary's IRS Form W-2 for 2008, also indicating that the beneficiary received \$30,000 in wages from the U.S. company in 2008. Counsel contends that such evidence is sufficient to demonstrate the petitioner's ability to pay the beneficiary's proffered wages. Counsel further asserts that the beneficiary is paid an additional \$24,000 in China plus other benefits.

In determining the petitioner's ability to pay the proffered wage, USCIS will first examine whether the petitioner employed the beneficiary at the time the priority date was established. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, this evidence will be considered *prima facie* proof of the petitioner's ability to pay the beneficiary's salary. In the present matter, based on the beneficiary's IRS Forms W-2 for the years 2007 and 2008, and Form 1040 for 2007, it appears that the beneficiary received wages from the U.S. company in the amount of \$30,000 for each of those years. This amount equals the beneficiary's proffered wages, as stated in the Form I-140. Accordingly, the AAO finds that the petitioner has satisfactorily established its ability to pay the beneficiary's proffered wages at the time the petition was filed. See 8 C.F.R. § 204.5(g)(2). The director's decision with respect to this issue is therefore withdrawn.

However, notwithstanding the foregoing, the petition will still be denied based on the petitioner's failure to establish that the beneficiary was employed abroad, and will be employed in the United States, in a primarily managerial or executive capacity, as discussed above.

Finally, the AAO acknowledges that USCIS has previously approved L-1A nonimmigrant petitions filed by the petitioner on behalf of the instant beneficiary. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22; *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103. Examining the consequences of an approved petition, there is a significant difference between a nonimmigrant L-1A visa classification, which allows an alien to enter the United States temporarily, and an immigrant E-13 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. Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant L-1A petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also* 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). Despite the previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act. Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous nonimmigrant petition approvals by denying the instant petition.

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. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.